THE

ALL INDIA DIGEST

1836—1910

SECTION I—CRIMINAL

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Vakil High Court.
SRINAGAR (Kashmir)

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IN TWO VOLUMES

VOL. I—A TO J

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1910

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To

THE HON'BLE SIR CHARLES ARNOLD WHITE, KT.,

BARRISTER-AT-LAW,

CHIEF JUSTICE OF THE HIGH COURT OF JUDICATURE, MADRAS.

THIS BOOK

IS

BY HIS LORDSHIP'S KIND PERMISSION

MOST RESPECTFULLY AND GRATEFULLY

DEDICATED.

S. N. DAR, B. A. LL. B.,
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Books
Checked

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PREFACE.

IN the year 1905, at the earnest call of many members of the legal profession, I undertook the issue of my Current Index. It has now run through a course of five years and has started upon the sixth year of its existence. I am glad to state that, since the publication was launched into existence, it has been acquiring a widely increasing popularity throughout the length and breadth of India and Burma. It focusses within its pages decisions of each and every province in India, so that the use of the book is not confined to this province or that, but extends to all the provinces in India, in short, wherever the laws of the country are administered; so much so that I have often had requisitions from my esteemed constituents in the various provinces to send them type-written copies of the cases to be found in some of the rarer original reports, which cannot be had in the libraries of their own provinces. While the profession appreciate the utility of the publication as keeping them in easy touch with all the latest case-law of the country, they have, for the last few years, been feeling, and justly, that, as the numbers of these annual digests increase, the task of hunting up references is becoming more and more troublesome and laborious, as it involves the consultation of a number of stray volumes—a trouble which the profession would always like to see as far minimised as possible. My constituents have, on the one hand, been asking me for the consolidation of my Current Indexes from the year 1905. On the other hand, they have been asking me to bring out a consolidated Digest from the earliest times up to date, since Woodman's Digest stops with 1900 and there has been no consolidation since then. In order, therefore, to minimise, to some extent at least, this inconvenience, I published in 1908 my "Triennial Key," which was intended to serve the purpose of the consolidation of the Current Indexes for the years 1905 to 1907, and had an idea of consolidating this "Triennial Key" from time to time as years rolled by. But, partly as the "Triennial Key" removed the difficulty, a small consolidation for three years went but a little way towards meeting this widely felt need.

The want of a consolidated Digest from the earliest times up to date being thus a standing grievance among the profession, I have, for some time past, been earnestly urged to bring out one on the lines of my Current Index. The only publication that professes to supply the place of a comprehensive digest is the time-honoured and well-renowned Digest of Woodman, not to speak of many other minor Digests of a limited and varying scope. But Woodman's Digest, great as may be its merits, is antiquated in many ways. In the first place, the consolidated edition of Woodman's Digest stops with 1900. And, though separate Digests have been, from time to time, published for the subsequent years, they stand isolated and without consolidation and there seems to be but little prospect of these Digests being consolidated and brought down to date. Besides, Woodman's Digest was compiled when Acts XIV of 1882, XV of 1877 and III of 1877, were in force ; and the cases have been grouped under the sections of these old Acts. A practitioner, therefore, who has now to prepare his cases under Act V of 1908, Act IX of 1908 and Act XVI of 1908 will experience no small difficulty when he finds for his guide a book in which the cases have been arranged under the sections of the older and repealed Acts.

Again, Woodman's publication digests only a few of the reports that now form the available sources of information for the modern lawyer in respect of the Chartered High Courts. Reports, like the Madras Law Journal, the Madras Law Times, the Allahabad Law Journal, the Calcutta Law Journal and the Bombay Law Reporter, do not find a place in Woodman's Digest, not to mention works like Weir's Criminal Rulings and Ratanlal's Unreported Criminal Cases.

There is yet another point in which Woodman's Digest is also defective. Standard commentators of great renown embody in their works cases from the Punjab Record, the Oudh Cases, the Central Provinces and the Nagpur Law Reports and the Burma Law Reports. Of late years, a practice is also coming into existence for Judges of the Chartered High Courts to hear cited, in the arguments before them, decisions of the Chief Courts and the Courts of the Judicial Commissioners of the various provinces and to refer to them in their judgments. *Vide* I.L.R. 30 A. 334 (342), I.L.R. 34 C. 216 (220), 4 M.L.T. 404 (410), where cases of the highest Courts other than the Chartered High Courts have been referred to by the learned Judges of the several High Courts.

Woodman's Digest has altogether left out of consideration cases decided by these Courts which find no place in it. The ever-increasing popularity of my Current Index is proof positive of the recognition of the above fact.

With the object of satisfying all these requirements, I set about, more than a year ago, compiling an "ALL INDIA DIGEST" from the earliest times up to date. Considering the gigantic nature of the task as well as the inadvisability of jumbling up the criminal and the civil cases together in one and the same volume or volumes, I have thought it expedient to separate the criminal from the civil cases and to issue separate volumes dealing with these distinct subjects, such of the cases having a two-fold aspect being given in both the criminal and the civil sections as well. The advantages of such a separation are obvious. The criminal cases will be contained in one handy and portable volume; the entire field of Criminal Law will be ready before the practitioner when he is conducting a case in the Criminal Courts. Such of the members of the profession as confine their practice to the Criminal Courts only, Magistrates, members of the Police Department and others similarly circumstanced, will be saved the expense of having to purchase the volumes containing the civil cases also.

It is but a small part of the work of a practitioner preparing his case to get at an authority for a certain position. To fix its exact value with reference to the case-law on the particular point is the next, but a more important and difficult, task. The value of the decisions of one High Court, in a case argued in a different High Court, by way of supporting or distinguishing a decision of the latter High Court, is incalculable. Even a mere observation, unconnected with the facts of the case, of a single Judge of the High Courts acquires very much the weight of a decided case, when such observation is cited with approval by their Lordships of the Privy Council. Again, even the Full Bench case of a particular High Court loses much of its value, when it has been constantly dissented from by all the other High Courts and distinguished in later cases by the same High Court. It has, therefore, been deemed essential to indicate, at the end of almost every case, whether it has been *followed, referred to, or distinguished, etc.*, in subsequent cases. For similar reasons, it has also been found desirable to give, wherever possible, a list of such of the earlier cases as the later case has *followed, referred to, distinguished, &c.*

A rectangular bracket at the end of a case contains the subsequent cases, wherein such case has been *followed, referred to, &c.*, whereas a circular bracket at the end of a case contains the previous cases which have been dealt with by such case. **Examples:**—1 B. 15 [*D.*, 19 B. 105] means 1 B. 15 has been *distinguished* in 19 B. 105; see column 9; 15 P. R. 1901, Cr., (16 A. 437, 21 A. 263, *F.*), means that 16 A. 437 and 21 A. 263 have been *followed* by 15 P.R. 1901, Cr., see column 15; and 8 A. 18 (A.W.N., 1884, 37; A.W.N., 1385, 30; 7 B. 82, *R*). [*F.*, 7 C.P.L.R. 21, Cr.] means that A.W.N., 1884, 37, A.W.N., 1885, 30 and 7 B. 82 have been *referred to* in 8 A. 18 and that 8 A. 18 has been *followed* in 7 C.P.L. R. 21, Cr. The reader will thus be pleased to see the immense advantages offered by this publication. If he should light upon any one case on any subject, he will be able to understand the development of the case-law on the subject from the earliest times down to the present date—an advantage not to be had in any other publication known hitherto.

The cases will be brought down to June, 1910, and the "ALL INDIA DIGEST," as its title indicates, will contain all the cases from all the reports, official and non-official, in the country. (*Vide* list of Reports digested).

Numerous cross-references have been given to facilitate the task of picking up authorities on any particular subject. The cases decided under an Act have been arranged under the sections of the latest Act on the subject, the corresponding sections of the older and repealed Acts being also given within brackets at the commencement of the sections.

I trust I have done almost everything that ingenuity can devise to make this book a work of ready reference and I believe I have spared no labour in achieving this end. I would consider my labours amply rewarded if the profession should generously appreciate the publication and humbly hope that it will also be of use to the Government in its great work of Legislation.

"MADHWA VILAS,"
TEPPAKULAM P.O., TRICHINOPOLY.
Dated, 19th April, 1910.

T. V. SANJIVA ROW.

POSTSCRIPT.

A WORD of explanation may be deemed necessary regarding the arrangement of the cases herein collected under the several headings and subheadings. It was the desire of the late Mr. T. V. Sanjiva Row that the ALL INDIA DIGEST should be modelled on the lines of his Current Index of Indian Cases. The main principle which he endeavoured to follow in the compilation of this Digest has been to group all the cases coming under a legal conception, say **Abetment**, under that particular heading alone, and to give cross-references to the other headings under which such cases may fall, so that the reader may have the whole case-law on that conception at one and the same place in the Digest. But this, he found, was not always quite practicable. Owing to the nature of the subject, it has been considered desirable to group the cases dealing with the same subject, some under one heading and some under another, and to give cross-references to the other heading; for instance, cases dealing with the subject, "**Dispute as to possession of immoveable property**," have been put, some under the heading "**Criminal Procedure Code, 1898, s. 145**," and some under the heading "**Dispute as to possession of immoveable property**," and *vice versa*, with cross-references to each other. The reader, therefore, who wishes to be exhaustive in his researches, will find the case or cases he may require by searching for them under all the headings under which they may be expected to appear.

The cases will be brought down to the end of the year 1910, though the original intention was to bring them only down to the end of June, 1910. An appendix will be added, which will contain all the cases that may appear too late to be inserted in the body of the Digest. The quantity of the Mss., having far exceeded the original estimate, the Criminal Section of the Digest has to be issued in two volumes.

For the sake of thoroughness and to help the reader in his investigations, it will be seen that, in the case of the various legislative enactments, a short historical survey, showing the effect of the later enactments on the earlier ones under consideration, has been appended to the Acts, Imperial and Local, wherever possible. In the preparation of this historical note, the latest Government editions of the Unrepealed Acts of the Imperial and the Local Legislatures have furnished the main guidance.

Two tables of cases have been given. One gives the list of the cases digested by the number and page of the volumes of the Reports in their chronological order and the other gives the list in the alphabetical order of the names of the cases.

"MADHWA VILAS,"
TEPPAKULAM P.O., TRICHINOPOLY.
Dated 26th November, 1910.

P. RAMANATHA IYER.
P. HARI RAO.

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THE
ALL INDIA DIGEST
1836—1910.

Section I.—Criminal.

Abandonment of Children.

(1)—*When abandonment is offence—Penal Code, s. 317—Object of section.*—The real object of s. 317, Penal Code, is the prevention of the abandonment or desertion by a parent of his or her children of tender years in such a manner that children, not being able to take care of themselves, may run the risk of dying or being injured. **16 W.R. Cr. 12.** [*R.*, 24 M. 662].

(2)—*Intention of wholly abandoning child is gist of offence.*—The gist of the offence, under s. 317, Penal Code, is the exposure or leaving of the child in any place with the intention of wholly abandoning it; and the manner of exposure or leaving and the consequences likely to ensue from it are not essential ingredients of the offence under the Indian Law, though they may often be properly taken into consideration in estimating its gravity and in apportioning the sentence. **24 M. 662=1 Weir 332.** (16 W.R. Cr. 12 and 18 A. 364, *R.*).

(3)—Under s. 317, Penal Code, the only intention required to complete the offence is an intention of wholly abandoning the child. It is not necessary that there should be an intention to abandon the child so as to endanger its life. **1 Weir 331.**

(4)—*Leaving child near place of public resort—Penal Code, ss. 307 and 317—Attempt to murder.*—A mother would be liable to be punished under s. 317, and not under s. 307, Penal Code, although she left her child in a place which was quite close to a village and also near a public road where it was, in fact, shortly after discovered. **A.W.N. 1903, 43.**

(5)—A newly-born child was left by its mother in an enclosure near a road not far from the village, was there discovered by a passer-by and shortly after breathed its last. *Held* that the mother could not be convicted of murder, the child not having been left on a barren heath or in an unfrequented place, but of an offence under s. 317, Penal Code. **23 P.R. 1866 Cr.**

(6)—*Death remotely due to exposure.*—Where a child does not die on account of the exposure except in a remote degree, the mother that exposed the child would not be guilty of murder, but only of an offence under s. 317, Penal Code, which contemplates cases in which death is caused from cold or from some other result of exposure. **10 W.R. Cr. 52.**

Abandonment of Children—continued.

(7)—*Penal Code, ss. 300, 304, 317—Starving child to death.*—An accused person who caused the death of her infant child by deliberately starving it, but did not either abandon or part with it, was held to have been wrongly convicted under s. 317, Penal Code, and it was pointed out that the Sessions Judge, in convicting the mother under s. 304, ought to have specified the exception under s. 300, which covered the case. **18 P.R. 1870 Cr.**

(8)—*Penal Code, ss. 304, 317—Exposure of child knowing that death was likely to ensue.*—Where a mother exposed an infant child, knowing that such abandonment by her was likely to cause its death, and death ensued in consequence thereof, *held* that she could properly be convicted of culpable homicide under s. 304, and not under both s. 304 and s. 317. **2 A. 349.**

(9)—*When no offence—Penal Code, s. 317—Leaving children under care of others.*—The mother of an illegitimate child, aged 6 months, made over the child to a blind woman in whose company she was, and promised to return with food which she said she was going to beg; she went off to another village and probably had no intention whatever of returning. *Held* (*per* Blair and Aikman, JJ., Knox, J., *dissenting*) that she was not guilty of an offence under s. 317, Penal Code. **18 A. 364=A.W.N., 1896, 117.** [*R.*, 24 M. 662].

(10)—*Mother sending another to expose child.*—A mother, who, being too ill to move, sends another to expose her child, is not guilty of an offence under s. 317, Penal Code, as she does not herself expose it; nor is the woman exposing it guilty, as she is not the mother: nor could either of them be guilty of abetting the other. **1 Mad. Sess. 1869.**

(11)—*Newly-born babe left in charge of husband's sister.*—Where a woman left her daughter's newly-born babe with the sister of her son-in-law, who was then absent from the place, saying that it was her brother's child, and the infant died shortly after her departure, *held* that the woman was not guilty of an offence under s. 317 and that her daughter had not abetted any such offence. **33 P.R. 1872 Cr.**

(12)—*Woman eloping leaving infant under husband's care.*—A married woman, who eloped leaving her suckling baby a month and a half

Abandonment of Children—concluded.

old in the house of her husband, was *held* not to be guilty of an offence under s. 317, Penal Code, as she knew that her husband would surely take care of it. **5 P. R. 1878 Cr.** [*Appr.*, 4 P.R. 1879 Cr.].

(13)—A married woman quarrelled with her husband and left for her parent's home when he had gone out, leaving her child six months old in his house. The husband took charge of the crying infant on his return home; *held* that the woman was not guilty of an offence under s. 317, Penal Code. **4 P.R. 1879 Cr.** (5 P. R. 1878 Cr., *Appr.*).

(14)—*Charge to jury in a case of—Duty of Sessions Judge in summing up.*—Where the Jury doubted whether a woman had abandoned her child at all, or whether she was the mother of it, although the Sessions Judge had no reasonable doubt from the evidence on these points, it was pointed out that it was his duty in summing up the evidence to lay before the Jury all the facts requiring to be determined by them. **1 W.R. Cr. Letters, 10.**

Abatement of Appeal.

(1)—*Death of appellant, effect of.*—The death of the appellant during the pendency of the appeal causes the appeal to abate. **16 P.R. 1878 Cr.**

(2)—*Cr. P. C. (1872), ss. 283, 297—Death of convict who appealed—Revision.*—The Criminal Procedure Code has not made any provision for the continuance of an appeal either by the heir, devisee, or executor of a deceased convict, or by any other person, an appeal lodged by such convict abating on his death. The High Court has, however, the right to call for the record and make such order thereon as it may deem to be due to justice. **2 B. 564.**

(3)—*Cr. P. C. (1882), s. 431—Remedy of deceased appellant's legal representatives.*—Case where the High Court *held* that the appeal of a deceased appellant abated on his death and declined to take it up under its revisional powers as the decision depended on the appreciation of evidence. The legal representatives of the deceased appellant were, however, referred to the Government for redress. **19 B. 714=Rat. Un. Cr. C. 707=Cr. Rg. 40 of 1894.**

Abatement of Nuisance.

—Arising from privy on public road—*See* CRIM. PRO. CODE (1898), Ch. X and s. 133, 4 Bom. L.R. 882.

See PENAL CODE, ss. 99, 141, 425, 2 C. L.R. 62.

Abatement of Prosecution.

(1)—*Effect of complainant's death on prosecution.—Cr. P.C. (1898), s. 198.*—The death of the complainant, during the course of criminal proceedings for defamation, necessarily terminates those proceedings. **8 P. W. R. 1908 =7 Cr. L.J. 290=10 P.R. 1908 Cr.=112 P. L.R. 1908.** (31 C. 993 F.B., *F.*).

Abatement of Prosecution—concluded.

(2)—*Penal Code, s. 97—Adultery—Husband's death.*—A prosecution for adultery, under s. 497, Penal Code, is not necessarily put an end to by the death of the husband. **4 M.H.C. App. 55=2 Weir 235.**

Abatement of Revision.

—*Death of applicant during pendency of revision—Cr.P.C. (1882), s. 431.*—The death, during the pendency of revision proceedings, of the applicant for revision causes, by analogy to s. 431, Cr. P.C., the revision to abate. **6 P.R. 1893 Cr.**

Abduction.

See KIDNAPPING.

See PENAL CODE, ss. 359—369, 494, 498.

(1)—*When punishable—Penal Code, ss. 362, 363.*—Bare abduction, without the intention pointed out in the different sections dealing with the subject, is not *per se* an offence. Where persons charged for abduction and also for rioting with the common object of abducting a certain woman were acquitted of the former charge but convicted on the latter charge, *held*, that the conviction was bad, as the common object which made the act punishable was not proved. **6 C.W.N. 208.** (15 W.R. Cr. 4=6 B.L.R. 121, *F.*)

(2)—*Force or deceit not practised.*—A conviction of abduction was quashed, no force or deceit having been practised on the person abducted. **2 W.R. Cr. 7.**

(3)—*Promise of marriage not fulfilled.*—Where a man by a promise of marriage induces a woman to leave her house, but does not marry her or get her married, he is guilty of deceiving her within the meaning of s. 362, Penal Code. **4 A.L.J. 482.**

(4)—*Penal Code, ss. 362, 366—Marrying girl with idea of prostituting her.*—Where an accused person dishonestly induced a girl to marry him and leave her home with the view of causing her to prostitute herself, *held* that the fact of such marriage did not exculpate him from being guilty of abduction under s. 362, Penal Code, or of an offence under s. 366. **7 P. R. 1881 Cr.**

(5)—*Penal Code, ss. 3[illegible] 368, 498, 116—Enticing by procuress.*—The conviction of a procuress was changed from abduction to enticing, where the woman alleged to have been abducted was of mature age and a free agent, and the conviction of the other prisoners was also changed from abetting wrongful concealment under s. 368, to abetment under s. 116, Penal Code. **1 W.R. Cr. 45.**

(6)—*Magistrate to take evidence of marriage and not to refer complainant to civil suit—Penal Code, s. 498.*—The procedure of a Magistrate discharging an accused person, charged with enticing away a married woman, on the ground that she denied having been married to the complainant and referring the complainant to a civil suit was *held* to be irregular; the Magis-

Abduction—concluded.

trate being under an obligation to take evidence as to the fact of the marriage. In cases under s. 498, Penal Code, marriage could not be proved by the evidence given in a civil suit. **3 P.R. 1881 Cr.**

(7)—*Married woman, if can abet her own abduction.*—Neither under the Penal Code, nor under the Frontier Regulations is it an offence for a married woman to abet her own abduction. **40 P.R. 1866 Cr.** See, also, 6 P. R. 1871 Cr., 14 P. R. 1875 Cr., 11 P. R. 1883 Cr.

See COMPLAINT, 17 P.R. 1874 Cr.

See CRIM. PRO. CODE (1898), ss. 188, 537, 4 P. R. 1902 Cr.

See CRIM. PRO. CODE (1898), ss. 199, 238, 27 M. 61.

See CRIM. PRO. CODE (1898), ss. 248, 345, 8 P. R. 1871 Cr.

See SENTENCE, 7 M. H. C. 375.

Abetment.

(1)—*Abetment, what constitutes—Penal Code, ss. 109, 114 and 118.*—To substantiate a charge under s. 109, I.P.C., it is necessary to show intentional aid by some act or illegal omission. Where a person admittedly conceals the existence of a design to commit an offence which he is bound to disclose, and by this concealment intentionally facilitates or is likely to facilitate the commission of the offence, he is guilty of abetment under s. 118, I.P.C. A conspirator, who stands out of a house while his friends enter inside and loot it and watches out in pursuance of the common design, is, if he is near enough to render assistance, guilty of abetment under s. 114, I.P.C. **1 Bom. L.R. 351.**

(2)—*Test of abetment—Guilty knowledge of abettor.*—The test of culpability, in cases of abetment, must always be whether, having regard to the immediate object of the instigation or conspiracy, the act done by the principal is one which, according to ordinary experience and common sense, the abettor must have foreseen as probable. **6 A. 491.** [*R.*, U.B.R. (1897-1901), Vol. I, 249.]

(3)—*Penal Code, s. 108—Abetment—Concert—Intention.*—To constitute a man the abettor of another's crime, it must be clearly established that both intended to commit or to further the same crime. **Rat. Un. Cr. C. 93=Cr. Rg. 47 of 1875.**

(4)—*Penal Code, ss. 109, 511—Intention—Preparation—Attempt.*—Mere intention not followed by an act cannot constitute an offence. An indirect preparation, which does not amount to an act which can be held to be a commencement of the offence, does not constitute either a principal offence or an attempt or abetment of the same. **24 B. 287.** (19 B. 105, *R.*)

(5)—*Presence at offence, how far abetment.*—To be present and aware that an offence is about to be committed does not constitute an

Abetment—continued.

abetment, unless the person present holds some position of rank or influence, such that his countenancing what takes place may, under the circumstances, be held to be a direct encouragement, or unless some specific duty of prevention rests on him, which he leaves unfulfilled, in such wise that he may be safely taken as having joined in a conspiracy for the perpetration of the offence. **Rat. Un. Cr. C. 303=Cr. Rg. 51 of 1886.**

(6)—The mere presence at the commission of a crime of a person, who has no authority to interfere, will not constitute an abetment of the offence. **Rat. Un. Cr. C. 844=Cr. Rg. 13 of 1896.**

(7)—*Commission of offence in presence of Village Chowkidar.*—The mere fact of the commission of the offence of extortion in the presence of the Village Chowkidar, without any disapproval on his part, will not constitute him an abettor. **8 C. 728=11 C.L.R. 223.**

(8)—*Penal Code, s. 114—Abetment of offences under ss. 330, 348, I.P.C., by constable—Evidence of active instigation, whether necessary.*—Where a Village Magistrate, being present on an occasion in which a police constable was causing hurt to and wrongfully confining a person, did not attempt to interfere with, or stop the criminal acts of the constable, committed in his presence, nor did he report them to the Magistrate, *held*, that he was guilty of the abetment of offences punishable under ss. 330 and 348, Penal Code, although there was no evidence that he actively instigated the police to commit the offence, which they committed. **1 Weir 52.**

(9)—*Policeman present at beating of prisoner—Penal Code, s. 330.*—A policeman, who is present at the beating of a prisoner by another policeman for the purpose of extorting a confession and does not remonstrate with him, is guilty of the abetment of an offence under s. 330, Penal Code. **20 B. 394.**

(10)—*By intentionally aiding.*—Where A gave a *dao* to B, who had given out his intention to coerce the party against whom he was acting and who inflicted grievous hurt on such party with the *dao*, A was held to be guilty of abetment within the second head of the 3rd clause of s. 107, Penal Code. **12 W.R. Cr. 52.** [*R.*, 1 Bom. L.R. 35.]

(11)—*Abetment by instigation—Depends on abettor's intention.*—The offence of abetment by instigation depends upon the intention of the person who abets, and not upon the act which is actually committed by the person whom he abets. **21 W.R. Cr. 8.**

(12)—*Instigation by means of letter sent by post—Place of trial.*—Where a person sends a letter to another through the post, inviting him to the commission of a criminal offence, he is guilty of the offence of abetment as soon as the letter is received by, and the contents become known to, the addressee, and is triable at the place where the letter is received. **16 A. 389.**

Abetment—continued.

(13)—*Doctor supplying woman with medicine to poison her son-in-law.*—Where an accused person asked a native doctor to supply her with medicine for poisoning her son-in-law, *held* that it was no attempt to murder, it being simply an act by way of preparation to commit an offence and not being a transaction which would necessarily have ended in murder if not interrupted; but that it amounted to an instigation by the native doctor to abet the accused in committing murder, punishable, with reference to s. 108, Expln. 4, Penal Code, under ss. 116 and 302 of the Code. **24 P.R. 1882 Cr.**

(14)—*Sympathy with an unlawful assembly, if abetment.*—The mere fact that persons of influence, being aware of the objects of an unlawful assembly, deliberately absented themselves from the locality, would not make them guilty of instigation within the meaning of s. 107, Penal Code, or abetment of an offence under s. 143, Penal Code. **4 C.W.N. 500.**

(15)—*Act abetted should result from abetment—Penal Code, s. 109.*—The act abetted should, under s. 109, Penal Code, be committed as the result of the abetment. **1 Ind. Jur. O.S. 105.**

(16)—*Commission of act abetted unnecessary.*—It is not necessary, to constitute the offence of abetment, that the act abetted should be committed. **18 W. R. Cr. 32.**

(17)—*Abetment of abetment.*—To constitute the offence of abetment of an abetment of an offence, the original offence need not have been actually committed. **4 C. 366=3 C.L.R. 525.**

(18)—*Abetment where offence not committed—When conviction will be quashed—Cr. P. C. (1861), ss. 404, 405.*—Notwithstanding that the offence abetted has not been committed, there may be an abetment of it; but the Chief Court will, on appeal or revision, quash the conviction of the alleged abettors, where the principal offender is acquitted, if the following rule of the Sudder Court of Agra be applicable:—"In any case in which a person convicted of an offence is acquitted on appeal on grounds of fact and the decision of the Appellate Court proceeds on grounds common to other convicted persons in the same case who have not appealed, the Appellate Court is competent to acquit such persons also: it being held that, under the finding of the Appellate Court which has reversed the general finding of the Lower Court common to the appellant and other persons, the sentence on the non-appellant convicted person has become inconsistent with the finding, and by consequence, is contrary to law and is, therefore, reversible under s. 404 or s. 405, Cr.P.C. (1861), as the case may be." **71 P.R. 1866 Cr.**

(19)—*Intention of accused to employ means physically incapable of producing effect—Penal Code, ss. 108, 109 and 511*—Under s. 108, Expln. (2), and s. 511, Penal Code, the abetment of an offence is possible, even though the means intended to be employed are such that they are physically incapable of producing

Abetment—continued.

the effect essential to constitute the offence. **20 P.R. 1885 Cr.** See, also, 10 B.H.C. 75.

(20)—*Of act after its commission, if abetment.*—There is no abetment of an act *after* it has been committed. A person cannot be convicted of the abetment of a false charge, merely because he gave evidence in support of it. That offence must be committed either before or at the time when the act was committed. **10 C.L.R. 4.**

(21)—A young man, sent out of his paternal house for criminal intimacy with a woman, carried away from his father's house things, which he presented to her: on his conviction for house trespass in order to commit theft and the woman's for abetting him, *held* that the latter's conviction was bad, as no act subsequent to the commission of an offence could be construed as an abetment. **11 P.R. 1869 Cr.**

(22)—*Attempt to abet offence—Penal Code, ss. 40, 109, 511*—The attempt to abet an offence is not legally impossible, and such an offence is punishable; for, the abetment of an offence, as defined in s. 40, Penal Code, is itself an offence punishable by the Penal Code under s. 109 and other sections of Ch. V and an attempt to commit the offence of abetment is provided for by s. 511, Penal Code. **49 P.R. 1887 Cr.**

(23)—*Charge of attempting and abetting same offence.*—Where a person was charged and convicted of attempting as well abetting the same offence, the High Court set aside the conviction and sentence on one of the counts. **8 Bom. L.R. 855=4 Cr. L.J. 450.** (23 B. 706=1 Bom. L.R. 142, 17 M. 235 F.B., *R.*)

(24)—*Cumulative charges of abetment of offence and commission of offence—Penal Code, ss. 109 and 114.*—A man cannot be charged as an abettor by conspiracy as well as a perpetrator of the offence abetted cumulatively. **24 M. 523=2 Weir 340.**

(25)—*Woman abetting her own abduction.*—A woman cannot be convicted with the abetment of her own abduction. **Colm. Dig. Cr. No. 4 (1871) (Central Provinces).**

(26)—*Abettor when punishable as principal—Penal Code, s. 114.*—An accused, who, when absent, is liable to be punished as abettor, is liable to be punished as principal, if he is present at the time of committing the offence. **A.W.N. 1883, 39.**

(27)—*Abettor present at commission of offence, effect of.*—An abettor, when present at the commission of the offence, must be reckoned as a principal party. **1 W.R. Cr. Letters, 2.**

(28)—*Penal Code, ss. 109 and 114.*—*Held* that to bring a prisoner within s. 114, I.P.C., it is necessary first to make out the circumstances which constitute an abetment, so that, if absent, the person charged with abetment would have been liable to be punished as an abettor, and then to show that he was also

Abetment—continued.

present when the offence was committed. Instigation, engaging in a conspiracy, and intentionally aiding by an act or illegal omission make a person an abettor, even though he is not present when the offence, the commission of which he has instigated, conspired to effect, or intentionally aided by an act or illegal omission, is committed; and if he is present, though merely as a spectator, he is punishable as a principal, under s. 114, I.P.C. *Held*, further that, when no conspiracy, instigation, act or illegal omission is proved and the abetment consists only of participation in the actual commission of the offence, s. 109 is the section applicable. **P.L.R. 1900, p. 11 Cr.=15 P.R. 1899 Cr.** (7 W.R. Cr. 9, *F.*)

(29)—*Penal Code, ss. 109, 111—Murder—Abetment—Different act.*—The accused accompanied his brother who was taking a child to murder it; after accompanying him for a while, he refused to go further along with his brother, but at the same time, though knowing full well that the child was being taken to be murdered, he made no attempt to take the child back with him: and the child was subsequently murdered. *Held* that, under s. 109 and 111, Penal Code, the accused was guilty of murder. **Rat. Un. Cr. C. 207.**

(30)—*Of murder—Punishment—Penal Code, ss. 302, 109, 114.*—A sentence less than transportation for life is not a legal sentence for the abetment of murder under ss. 302, 109, Penal Code, when the offence of murder is actually committed in consequence of the abetment. The legal punishment for such abetment is the punishment provided for murder, that is, death or transportation for life. Where the abettor is present when the offence abetted is committed, the abettor should be charged and convicted as a principal under s. 114, Penal Code. **L.B R. (1893—1900), 269.**

(31)—*Presence at commission of offence after resiling—Penal Code, ss. 107, clauses 2 and 3, 109.*—A prisoner, who consented to form one of a party that committed theft and resiled from his agreement but was present at the commission of the theft, does not come within clause 2, s. 107, Penal Code, and ought not to be convicted of the theft, but of the abetment thereof under clause 3, s. 107, and s. 109, Penal Code, read together. **8 W.R. Cr. 78.**

(32)—*Principal's acquittal no bar to abettor's conviction.*—The offence of abetment under the Penal Code is a substantive offence. Its punishment, when the culprit has been present at the commission of the principal offence, is the same as for that offence; and the trial of it is not, in any way, dependent on the conviction of the person charged with the principal offence. An abettor may be convicted before the principal is arrested. **1 B. 15.** [*D.*, 19 B.105.]

(33)—*Cognisance of offence under s. 494, Penal Code.*—A Magistrate should not take cognisance of the abetment of an offence under s. 494, Penal Code, without a complaint. **4 P.R. 1888 Cr.**

Abetment—continued.

(34)—*Abetment beyond territorial jurisdiction of a Magistrate—Crim. Pro. Code (1898), s. 180.*—Although the abetment of an offence might have taken place beyond the territorial jurisdiction of a Magistrate, yet under s. 180, Crim. Pro. Code, the abettor can be tried by a Magistrate within whose territorial jurisdiction the offence abetted was committed. **1 Weir 155.**

(35)—*Abetment in British India of offence committed outside British India—Penal Code, ss. 109, 115, 148, 302—Crim. Pro. Code (1882), s. 188.*—Where a British subject abets in British India an offence committed outside British India, he is not charged with an offence punishable under the Penal Code, and cannot, therefore, be tried by British Courts. S. 188, Crim. Pro. Code, does not apply to such a case. **19 B. 105.** (7 B.H.C.Cr. 89, 5 M. 338, *F.*) [*R.*, 22 B. 54; *D.*, 24 B. 287.]

(36)—*Penal Code, ss. 108-A., 372—Disposal of minor girl for immoral purposes, effected outside British India—Jurisdiction of British Courts—Cr. P.C. (1898) s. 188—Political Agent's certificate.*—The charge against the first accused was that she took a minor girl of 16 years from Sholapur to Tuljapur (in the Nizam's territory) to dedicate her to the Goddess Amba, with the intent of employing or using the girl, or knowing it to be likely that the girl would be employed or used, for the purposes of prostitution, and the second accused was charged with having directed the first accused to do so. *Held* that the intention of either accused, while they were staying at Sholapur did not constitute any offence, and their removal with the girl to Tuljapur did not, by itself, constitute an abetment. The second accused was, therefore, not guilty of abetment under s. 108-A, I.P.C. *Held*, also, that the British Courts had no jurisdiction over the offence of the disposal of the girl in Tuljapur in the absence of a certificate of the Political Agent or the sanction of the Local Government as required by s. 188, Cr. P. C. **24 B. 287=1 Bom. L.R. 678.** (5 M. 23, 13 M. 423, 13 B. 147, 14 B. 227, 6 B. 122, 2 A. 218, 19 A. 109, Rat. Un. Cr. C. 773, *R.*)

(37)—*When triable by Jury*—Abetments are triable by Jury only when they relate to offiences which are themselves so triable. **1 W.R. Cr. Letters, 2.**

(38)—*Joint trial of principal and abettor—Penal Code, s. 114—Evidence Act, s. 30.*—Two persons, jointly tried, the one for committing a theft and the other for having abetted it previously and of being present at its commission, were held to be jointly tried for the same offence within the meaning of s. 30, Evidence Act; a person answering the description given in s. 114, Penal Code, cannot be properly called an abettor, he being, for practical purposes, identical with a principal. **3 P.R. 1879 Cr.** [*F.*, 32 P.R. 1882 Cr.]

(39)—*Whether abettor and principal tried for same offence.*—Two persons jointly tried, one for committing an offence and the other for abetting it, were held not to be tried for the same

Abetment—continued.

offence within the meaning of s. 30, Evidence Act. **8 P.R. 1874 Cr.** [*F.*, 39 P.R. 1885 Cr.]. **But** see s. 4 of Act III of 1891 or the explanation to s. 30, Evidence Act, which enacts that "offence, as used in this section, includes the abetment of, or attempt to commit, the offence."

(40)—*Act XXI of 1856 (Excise)*—The Excise Act, XXI of 1856, makes no provision for punishing abetment. **7 W.R. Cr. 53.**

(41)—*Act XIV of 1866—Scope of s. 109, Penal Code.*—Act XIV of 1866 does not provide for the punishment of abetting an offence under that Act. Under s. 109, Penal Code, the abetment must be of an offence punishable under that Act, and not of an offence punishable under a distinct and special law. **7 W.R. Cr. 54.**

(42)—*Abetment of assault—Unlawful assembly.*—Of several persons constituting an unlawful assembly, some only were armed with sticks, and A, one of them, was not so armed but picked up a stick and used it ; B the master of A, who gave a general order to beat, was held to be guilty of abetting the assault made by A. **12 W.R. Cr. 51.**

(43)—*Abetment of bigamy—Penal Code, ss. 368, 494, 109, 420.*—Case where the Court acquitted the accused holding that they had not committed the offence of concealing a kidnapped person but that there was sufficient *prima facie* evidence that they had committed the offences of cheating (s. 420) and of abetment of bigamy (ss. 109 and 494), and leaving the District Magistrate to act as he thought fit. **7 P.R. 1894 Cr.**

(44)—*Mahomedan Law.*—To establish a charge of abetment, the accused must be proved either to have instigated or aided some other person, or to have conspired with another for the commission of an offence. Therefore, a Mahomedan guardian of a married female infant, who, during her husband's lifetime causes a marriage ceremony to be performed in her name with another man, but without her taking any part in the transaction, does not commit the offence of abetment of bigamy, because, in doing the act, he is the sole actor, and the act, though illegal, is not, if done by one person alone, an offence provided for by the Penal Code. An act of the above description, instead of being the subject of a criminal prosecution, ought properly to be decided in a Civil Court. **4 C. 10=3 C.L.R. 81.** [*D.*, 6 C.W.N. 343].

(45)—*Offering bribe to public servant to drop prosecutions under Opium and Excise Acts—Trial for graver offence under s. 161, Penal Code—Penal Code, ss. 214, 161, 116.*—An accused person offered a bribe of Rs. 90 to an Excise Officer not to prosecute him under the Opium and Excise Acts, the offence under the former Act being the possession of 4 annas weight of opium and that under the Excise Act being the possession of 12 bottles of *seinye*. For the former offence the sentence inflicted

Abetment—continued.

was a fine of Rs. 10, and for the latter Rs. 75. The Magistrate, besides sentencing the accused to pay a fine of Rs. 50, also ordered the confiscation of the ninety rupees offered as bribe. *Held* that, as the accused offered an illegal gratification to a public servant whose duty it was to prosecute for offences against the Excise Act, the accused should have been tried for the more serious offence of abetting an offence under s. 161, Penal Code, but that the gravity of the offence rather depended upon the gravity of the offences he wished to conceal than upon the amount he offered, though the amount offered, as representing the degree of temptation, ought also be taken into consideration. **L.B.R. (1893-1900), 338.**

(46)—Even if a public servant is corrupt and solicits a bribe directly or indirectly, the giving him a bribe is none the less an abetment of his offence. **U.B.R. (1892-1896), Vol. I, 158.**

(47)—*Abetment of cheating.*—Where an accused person, in possession of a double pice, quicksilvered it so as to cause it to resemble a rupee and subsequently gave it to B to get copper changes for it, *held* that the accused was not guilty under s. 244, Penal Code, nor under s. 232, unless *at the time of whitening the coin* he intended thereby to practise deception or knew it to be likely that deception would thereby be practised ; if the idea of uttering the white coin as a rupee was an afterthought, the accused might be convicted of abetting B to cheat the person to whom he was sent with the counterfeit rupee, under ss. 116 and 420, Penal Code. **9 P.R. 1884 Cr.**

(48)—*Penal Code, ss. 417 and 419.*—Where an accused person, by falsely representing to the prosecutor that a notorious and well-skilled gambler was a rich *seth*, who would fall an easy prey, induced the prosecutor to gamble with such expert and the prosecutor lost all his property thereby, *held* that the accused was guilty of the abetment of cheating under ss. 417 and 419, Penal Code. **4 P.R. 1905 Cr.**

(49)—*Of cock fighting.*—A person, who is present at a cock fight in a public place, and encourages it by his presence, being present not against his will or accidentally, is guilty of aiding and abetting the fight. **U.B.R. (1892-1896), Vol. I, 119.**

(50)—*Conspiracy under English and Indian Laws—Penal Code, s. 169.*—Under the Indian Criminal Law, conspiracy, except in certain cases, is a mere species of abetment, when an act or an illegal omission takes place in pursuance of the conspiracy and amounts to a distinct offence for each distinct offence abetted by the conspiracy. But, under the English Law, the agreement or combination to do an unlawful thing by unlawful means amounts, in itself, to a criminal offence. The Penal Code follows the English Law of conspiracy only in a few exceptional cases, which are made punishable under ss. 311, 400, 401, 402 and 121-A. In these cases, whether an act is done or not

Abetment—continued.

or an offence committed in furtherance of the conspiracy, the conspirator is punishable, and he can also be punished separately for every offence committed in furtherance of the conspiracy. In all other cases, conspiracy is only one species of "abetment of an offence" and stands on the same footing as abetment by "intentional aiding." **24 M. 523=2 Weir 340.**

(51)—*Penal Code, ss. 109, 108, 107—Conspiracy—Relation between conspiracy and abetment.—Held* (*Per* Arnold White, C.J., and Sheppard and Boddam, JJ.) that a conspiracy to commit various acts, which are in themselves distinct offences, is itself one offence under the Penal Code and not several abetments of, those distinct offences. *Held* (*Per* Davies, Benson and Moore, JJ.) that conspiracy is a mere species of abetment and amounts to a distinct offence for each distinct offence abetted by the conspiracy. *Held* (*Per* Davies, J.) that a charge of abetment by conspiracy of an offence against a person, who is also charged with the commission of the offence itself, is illegal. **10 M.L.J. 147.**

(52)—*Conspiracy—Penal Code, s. 108, Exp. 5.*—Under Expln. 5, s. 108, Penal Code, it is not necessary to the commission of the offence of abetment by conspiracy that the abettor shall concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed. **21 W.R. Cr. 35.**

(53)—*Penal Code, ss. 107, 109, 379, 382, and 393—General intention to commit robbery.*—The conviction under ss. 109, 382, Penal Code, of the resident of a foreign territory, found concealed with three others in a deserted house, for assembling to steal certain Government camels that were grazing in the village or any other property that may be available was altered by the confirming Court to one under s. 393, but the Chief Court quashed it as unsustainable. *Held* (*Per* Smyth, J.)—The mere fact that a number of persons assembled together with the general intention of committing theft, and not a specific theft or theft of specific property, does not amount to the abetment of an offence of theft, so as to be punishable under ss. 116 and 379, Penal Code, or under ss. 116 and 382, Penal Code. A design to commit a specific offence must be proved before holding a person guilty of the abetment of such an offence by having conspired with others to commit it. *Per* Elsmie, J. (*contra*) That the case was covered by the 2nd clause of s. 107, Penal Code, and that the conviction was proper. *Per* Plowden, J.—On a charge of abetment of conspiracy, it is necessary to allege and prove not only that the person charged engaged with one or more other person or persons in a conspiracy for the commission of an offence (specifying the offence), but also that some act or illegal omission (specifying the act or omission) took place in pursuance of that conspiracy, and in order to the commission of the said offence. *Held*, further (*per* Plowden, J.) that a charge against several persons of engaging in a conspiracy to commit an offence of a particular kind (as, for instance, theft) as opportunity should offer within a determinate area (as, for instance, a village) would not be improper as being too vague. **16 P.R. 1879 Cr.**

(54)—*Of criminal breach of trust by servant, proof of.*—In order to sustain a conviction for the abetment of criminal breach of trust by a servant, it must be proved that the transaction was a dishonest one and that the accused knew that, in respect of such transaction, the servant was acting dishonestly and was committing a breach of trust, and that the accused abetted the servant in doing it. **4 C.W.N. 309.**

(55)—The accused, appointed as the treasurer of the Punjab Bank at Mooltan, shortly afterwards introduced X as his agent or his gumastah and removed himself to Amritsar on some other duty of the Bank. X misappropriated some of the Bank's money and absconded. The accused, being convicted of criminal breach of trust as a servant and of abetting the same, as he had, according to the Sessions Court's finding, received some of the misappropriated money and had connived at X's embezzlement, appealed, on the ground that he had no control over the Bank's property, being only treasurer in name, that he had not abetted X, and, that, X being the Bank's and not his servant, he, the accused, had not committed criminal breach of trust. *Found* by the Chief Court, that the accused and X were servants of the Bank, that X had committed breach of trust as such, and that the accused had received the misappropriated money from X with a guilty knowledge, and *held* that, although no act done by the accused *after* X's offence was committed would make the former guilty as an abettor yet as the accused, who was, as the Bank's treasurer, bound to disclose the fact that he had irregularly received the Bank's money on the first defalcation, did not do so, he was guilty of an illegal omission, by which he voluntarily caused the safe abstraction and transmission to himself of the second sum and had thereby abetted the breach of trust by a servant. **30 P. R. 1868 Cr.**

(56)—*Of criminal trespass and theft—Penal Code, ss. 107 and 108—Execution of document giving lease over property not belonging to the lessor—Lessor's liability as abettor for criminal trespass and theft of crops by lessee.*—It is necessary to satisfy the requirements of ss. 107 and 108, Penal Code, that the act done should aid the commission of an offence or the commission of an act, which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abetter. The accused gave a lease of the pepper on certain hills. described to be the property of his *tarwad*. The lease granted comprised within the boundaries stated, not only land belonging to the accused, but also other land stated to be the property of the Government. The lessee

Abetment– continued.

conveyed his right to others, and, under the color of the lease, the sub-lessees entered upon the Government land comprised therein and took the pepper. The accused was convicted of the abetment of criminal trespass and of theft. *Held* that the essential ingredient of criminal trespass and theft being unlawful entry and unlawful taking, the mere execution of a document cannot be said to aid either the entry or the taking, and was, by itself, consistent with an intention that the person in whose favour the document was executed should assert his claim thereunder in due course of law. *Held*, also, that, as there was no evidence that the accused suggested the entry on the land or the taking of the pepper, the accused was not guilty of the charge of abetment. **1 Weir 48.**

(57)—*Abetment of dacoity, what constitutes.*—*Per* Fulton, *J.*—If A asks B and others to come with him to commit dacoity, he instigates these men to dacoity just as much as if he asks them to go under some other leader. Similarly, if he asks B to ask C and others to join a dacoity, he abets the abetment of dacoity. An instigation to wage war against the Government includes an instigation to dacoity as such war necessarily includes robbery. **25 B. 90=1 Bom. L.R. 653.**

(58)—*Penal Code, s. 107.*—An accused person, who was present when a dacoity was planned, from whose hut the dacoits set out and to which they subsequently returned with their booty, was held to have been properly convicted of abetment of dacoity. **A.W.N. 1903, 2.**

(59)—*Penal Code, ss. 109, 395 and 397.*—Where certain persons simply pointed out to the dacoits the house to be robbed or actively participated in planning the dacoity and in taking charge of the camels used by the party during the commission of the offence, the abettors should be punished under ss. 109 and 395, Penal Code, and not s. 397, which applies only to persons actually committing a dacoity in which one of the acts specified is done. **15 P.R. 1901 Cr.** (16 A. 437, 21 A. 263, *F.*).

(60)—*Giving evidence in support of a false charge—Abetment of such charge.*—A person cannot be convicted of the abetment of a false charge solely on the ground of his having given evidence in support of such charge. **9 B.L.R. Ap. 16.**

(61)—The Lower Criminal Courts cannot punish, as abettors, persons who gave evidence in support of false charges, or other charges found by such Courts to be false. S. 108, Penal Code, does not contemplate any acts of subsequent abetment, or provide for the punishment of such offences, except when they are such as are defined in ss. 212 to 218. **18 W.R. Cr. 28.**

(62)—*Penal Code, ss. 109, 211.*—The offence of making a false charge before the police falls within the first portion of s. 211, Penal Code. Where, in a quarrel between one of the accused

Abetment—continued.

and the complainant, the other accused, espousing the cause of the former, beat the complainant and lodged a false complaint of theft against him acting on the former's advice, *held* that the first accused was guilty of abetting an offence under s. 211, and that his conviction for the substantive offence, instead of for abetment, had not prejudiced him. **7 C.W.N. 556.** (14 C. 633, *F.*) [*R.*, 32 C. 180.]

(63)—*Abetment of giving false evidence—Proof—Intention.*—In order to convict a person of abetting the commission of a crime, it is not only necessary to prove that he has taken part in those steps of the transaction which are innocent, but, in some way or other, it is absolutely necessary to connect him with those steps of the transaction which are criminal. There can be no offence of the abetment of giving false evidence, unless the person charged with abetment intended, not only that the statement should be made, but also that the statement should be made falsely. **20 W.R. Cr. 41.** [*F.*, 8 C.L.R. 236; *R.*, 1 Bom. L.R. 351].

(64)—*Penal Code, ss. 181 and 193—Accused inducing a witness to suppress certain facts.*—Where an accused person asked a witness to suppress mention of certain facts in giving evidence against him before a Magistrate in reference to a charge of defamation, *held* that the act of the accused constituted an abetment of giving false evidence in a judicial proceeding and not of an offence under s. 181. **1 Weir 114=2 M.H.C. 438.**

(65)—*Of preparation of false record.*—A, who was in the habit of preparing records from certain abstracts made and read to him by B, was made to prepare an incorrect record by B, who made and read false abstracts. *Held*, that B was guilty of the abetment of the offence described in s. 218, Penal Code, even though A had no guilty intention or knowledge in the matter. **7 N.W.P. 134.**

(66)—*Knowledge of pleader—Client not an abettor but principal—Common intent—Penal Code, s. 471.*—The fact that the document filed by a pleader was known by him to be forged must be established before he can be convicted of an offence under s. 471, Penal Code. In such a case, the client who gave the document is liable to be punished, not as an abettor, but as a principal, under s. 471, Penal Code, **A.W.N. 1887, 95.**

(67)—*Of causing grievous hurt.*—A ordered B and C to seize and forcibly take D in the contemplation of an assault upon D, and D was so beaten and tortured as to have died in consequence. *Held* that A was guilty at least of abetting the commission of voluntarily causing grievous hurt. **7 W.R. Cr. 61.** [*R.*, 24 A. 67.]

(68)—*Abetment of house trespass by woman with whom adultery committed.*—Where a person entered another's house and committed

Abetment—continued.

adultery with his wife, *held* that he could be severally convicted and punished for the house trespass and the adultery, but that the woman could not be convicted of abetting the house trespass. **5 P.R. 1871 Cr.**

(69)—*Use of house for illegal marriage, if abetment.*—The mere act of allowing an illegal marriage to take place at one's house does not amount to the abetment of an illegal marriage. **W.R. 1864 Cr. 13.**

(70)—Where persons simply consent to be present at an illegal marriage, or are present thereat in pursuance of such consent, or grant the accommodation of a house for the marriage, they do not necessarily abet such marriage. **6 B. 126** [*R.*, 19 B. 363.]

(71)—*Kidnapping from lawful guardianship—Penal Code, ss. 366, 109—Kidnapping not a continuing offence.*—The offence of kidnapping a minor is complete as soon as he or she is enticed or taken out of the keeping of his or her lawful guardian. The *taking* of a minor from lawful custody is not the same as *keeping* the minor out of such custody, and, therefore, during the time the minor is kept out of the custody of his or her guardian, the offence of kidnapping does not continue; consequently, a person who assists a kidnapper after the enticement in keeping the minor, cannot be convicted of the abetment of kidnapping, unless the kidnapping was itself the outcome of a preconcert. **26 A. 197 = A.W.N. 1903, 233.**

(72)—*Penal Code, s 363—Carrying kidnapped girl from place to place.*—On a charge of kidnapping a minor girl out of her lawful guardianship, two of the accused were convicted under s. 363, Penal Code, but the third was, on proof of having conveyed the girl from place to place, though he was not connected with the "taking," convicted of the abetment of an offence under s. 363, I.P.C. *Held* that the conviction was bad, as kidnapping from lawful guardianship was not an offence which continued so long as the minor was kept out of the lawful custody and as conduct, which commences only after the custody of the lawful guardian is put an end to by the minor once for all being fully removed from such custody, cannot amount to an abetment of "taking." *Held*, also, that, as the third accused's acts were distinct from those of the rest and formed a different offence, if at all any was committed, his trial jointly with them was wrong. **13 P.R. 1893 Cr.**, (1. M. 173, *Not F.*). See, also, 6 P.R. 1894 Cr.

(73)—*Woman kidnapped to be compelled to marriage—Penal Code, ss. 109, 366—Cr. P. C., (1882) s. 182—Continuing offence.*—Kidnapping being complete as soon as the kidnapped is taken out of the lawful guardian's custody, no abetment of it is possible under the law after the kidnapped has once been so removed and it is not a continuing offence under s. 182, Cr.P.C. **8 P.R. 1894 Cr.** (6 and 7 P.R. 1894, Cr., *F.*).

Abetment—continued.

(74)—*Conspiracy—Abetment of kidnapping—Evidence Act, s. 10.*—Where a child was kidnapped after a visit to the accused's house by the servants of the person whose paramour the accused was, and she was charged with abetment of kidnapping and it was proved that she was very fond of the child, *held*, that the evidence was insufficient to establish the charge of abetment, or that, if there was any conspiracy, she was a party to it. A conspiracy, within the terms of s. 10, Evidence Act, contemplates something more than the joint act of two or more persons to commit an offence. S. 10, Evidence Act, could not be properly applied so as to convict the woman by admitting evidence as to what had been said, done or written by others. **4 C.W.N. 528.**

(75)—*Abetment of murder—Proof of murder.*—There can be no conviction for abetment of murder without proof of murder. **W.R., 1864, Cr., 12.**

(76)—*Abetment of murder by impossible means—Sorcery.*—As to whether the abetment of murder by sorcery or other impossible means is an offence under the Penal Code, see **10 B.H.C. 75.**

(77)—*Penal Code, s. 108, Expl. 3—Abetment of murder*—Under s. 108, Expl. 3, it makes no difference in the guilt of the abettor that the agent carries out the desired object under a mistaken belief that the act which he is employed to do is an innocent act. This is clear from the 3rd Explanation to s. 108, I.P.C. The offence consists in the abetment; the consequences are only material as affecting the punishment. **14 C.P.L.R. 192.**

(78)—*Informing husband against intriguing wife and her lover.*—A person informed a certain husband, who had been for some time suspecting his wife, that she had arranged to meet her paramour at a certain place, to which the husband, armed with a stick, and the informant went together and caught them committing adultery. The husband pursued the paramour and killed him with his stick and then mortally struck his wife, who had been detained by the informant but who escaped severely thrashed. The Sessions Court convicted the husband of murder and the informant of abetting it, but the Chief Court quashed the latter's conviction, holding that he had not committed any crime and altered the husband's to one of culpable homicide not amounting to murder. **30 P.R. 1872 Cr.**

(79)—*Omission to inform police when an offence had been committed, if abetment.*—A person omitting to give information that a crime has been committed does not abet the crime, unless such omission involves the breach of a legal obligation. A private individual is not bound by any law to give information of any offence which he has seen committed. **4 B. L.R.A. Cr. 7.**

(80)—*Abetment by illegal omission, proof of.*—To prove abetment under s. 107, I.P.C., by "illegal omission," it would be necessary to

Abetment—continued.

show that the accused intentionally aided the commission of the offence by his non-interference. **24 W.R. Cr. 26.**

(81)—*Penal Code, ss. 107 and 109—Abetment by omission—Bombay Motor Vehicles Act (II of 1904), ss. 9 and 13—Infringement of rules—Master and servant.*—It is not an abetment of the offence for the master to omit to give information to his servant, unless the omission were illegal, that is to say, in disobedience of an obligation imposed upon him by law. **9 Bom. L.R. 161=5 Cr. L.J. 176.**

(82)—*Penal Code, s. 109—Abetment by omission—Bombay Motor Vehicles Act (II of 1904), s. 12—Rules under the Act—Omission of the owner to give information of the rules to the driver.*—Abetment by omission is punishable, only if the omission is an illegal omission. The owner of a motor car cannot, therefore, be held guilty of abetment, in merely omitting to give information to his employees as to the rules framed under the Bombay Motor Vehicles Act, 1904. **9 Bom. L.R. 159=5 Cr. L.J. 173.**

(83)—*Of rash navigation—Penal Code, ss. 280, 109—Omission to load ballast.*—A ferry boat contractor was convicted under ss. 280 and 109, Penal Code, of abetting the rash navigation of a vessel on the evidence that the boat hired by him in fulfilment of the contract was upset from not containing sufficient ballast. *Held* that, there being no evidence to show that the contractor intentionally omitted to provide the ferry boat with what he knew to be necessary for safe navigation, the conviction for abetment was untenable. **Rat. Un. Cr. C. 35=Cr. Rg. 28-7-1870.**

(84)—*Riot, abetment of.*—As to whether there can be an abetment of a riot, see **33 C. 1023=10 C.W.N. 890=4 Cr. L.J. 79.**

(85)—*Abetment of sale of printed defamatory matter.*—The principles of the Criminal Law as to the allegations required to be made and proved in a complaint, under s. 198, Cr. P. C., (1882), of the offence of abetting the sale of a newspaper containing defamatory matter discussed. **8 P.R. 1891 Cr.** (12 P.R. 1883 Cr., 18 P.R. 1889 Cr., *R.*).

(86)—*Penal Code, s. 107—Abtement—Supplying food to a person known to be engaged in crime.*—The supplying of food to a person known to be engaged in crime is not *per se* criminal; but, if food were supplied in order that the criminal may go on a journey to the intended scene of the crime, or conecal himself while waiting for an opportunity to commit the crime, the supplying of food would be in order to facilitate the crime and might facilitate it. **2 M. 137=1 Weir 46.** [*R.*, 1 Bom. L.R., 351.]

(87)—*Assisting in suicide.*—Persons who assisted a leper in the ceremonies connected with the performance by the leper of the sacrificial act preparatory to suicide were held (Pearson, J., *dissenting*) to have been rightly convicted of the abetment of suicide. **1 Agra 21 Cr.**

(88)—*Penal Code, ss. 107, 306—Conspiracy to commit suicide—Suttee.*—Where there was evidence that a woman prepared herself for suicide in the accused's presence and that they followed her to the pyre and stood by her, her step-sons crying "Ram, Ram," and one of the accused admitted that he exhorted her to say "Ram, Ram," and told her that she would then become *suttee*, *held* that the evidence was sufficient to prove active connivance and unequivocal countenance on their part, and to justify the inference that they had engaged with her in a conspiracy for the commission of *suttee*. **3 N.W.P. 316.**

(89)—*Penal Code, s. 107, Expl. 1*—A person can be convicted of the abetment of theft under the 1st Explanation to s. 107, Penal Code, only if he either procures or attempts to procure the commission of the theft. Mere subsequent knowledge of the offence is insufficient. **2 W.R. Cr. 40.**

(90)—*Abetment of theft*—The carrying-off of certain buffaloes, belonging to the complainant, by order of the accused and the retention of them in the custody of the latter's servant were held to amount to an abetment of theft as defined in the Penal Code. **18 W.R. Cr. 8.** [*Cons.*, 22 C. 669; *R.*, 22 C. 1017 F.B.].

(91)—*Zemindar lending house to police officer—Police officer putting illegal pressure in extorting confession—Knowledge of the zamindar of that purpose—Zemindar an abettor—Penal Code, ss. 107, 330*—Where a zamindar, who had lodged a complaint of theft, lent his house to the police officer conducting the investigation into the theft case, knowing that it was likely to be used for the purpose of putting illegal pressure upon persons suspected of complicity in or knowledge of the theft, and he was present at times while the police officer was engaged in actual torturing, *held*, that, under the above circumstances, the zamindar was properly convicted, under s. 107, Expl. 2, Penal Code, of doing an act in order to facilitate the commission of an offence, namely, the offence punishable under s. 330 of the Code. **A.W.N., 1896, 194.**

(92)—*Constable keeping out of way knowing that offence is likely to be committed.*—Where a Head-Constable, who knew that certain persons were likely to be tortured for the purpose of extorting confessions, purposely kept out of the way, *held* that he was guilty of abetment under the words of s. 107, Expl. 2, Penal Code. **21 W.R. Cr., 11.** [*R.*, 20 B. 394.]

(93)—*Persons all engaged in torture, if abettors.*—Where several prisoners were all concerned in a case of torture and were prosecuting a common object, *held*, each was as guilty as a principal, and not as an abettor of the others, **7 W.R., Cr. 3.** [*Ap.*, 1 C.L.R. 275, 20 W. R. Cr., 41, Rat. Un. Cr. C. 222, 254, 850, 10 B. 506, 20 B 394, 26 C. 863, 3 C.W.N. 653].

(94)—*Unlawful assembly—Right of private defence.*—A person, who obtained a decree against some others, sent four of his men to

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take possession of the property from the defendants, who opposed the assailants with the result that one of the defendants' men died. In an appeal by the first party against their conviction for being members of an unlawful assembly and for culpable homicide, *held* that there was no common object on the part of the two factions, the second party having merely exercised their right of private defence and that the first party, being less than five, were not unlawful, but that the person, who gave the fatal blow among them, was guilty of culpable homicide and the rest of abetting him. **13 P.R. 1870 Cr.**

(95)—*Penal Code, ss. 114, 379—Unlawful assembly for the commission of theft—Liability of a member who did not commit theft.*—Where the accused was a member of an unlawful assembly, the common object of which was to commit theft, but he was not proved to have himself committed any theft by removing any property, or to have made any previous preparation for committing any theft, or to have aided any one in the commission of theft, *held* that he could not be convicted under s. 379 read with s. 114. **8 C.W.N. 519**. (27 C. 566, *R.* and 16 C. 442, F.B.) [*D.*, 7 C.L.J. 172=7 Cr. L.J. 200.]

(96)—*Penal Code, s. 107—Acceptance of unstamped receipt, if abetment.*—The mere acceptance by the payer of an unstamped receipt does not constitute an abetment of the execution of the document within the definition of the term "abetment" in s. 107, Penal Code. **7 C.P.L.R. 21 Cr.** (8 A. 18 and 7 B. 82, *F.*).

(97)—*Stamp Act, 1879, s. 61.*—A *Mahajan*, who gets a promise from a debtor to pay interest added to an acknowledgment of debt in his account book without a proper stamp, abets an offence under s. 61 of Act I of 1879. **10 C. P.L.R. 1 Cr.** (7 B. 82, *D.*).

(98)—It is not an abetment of the execution of an unstamped instrument to receive it, any more than the acceptance of stolen property is abetment of theft. **7 B. 82** [*F.*, 8 A. 18=A.W.N., 1885, 317, 7 C.P.L.R. 21, 20 A. 440=A.W.N., 1898, 108, 1 N.L.R. 163; *R.*, U. B.R. 1904, 2nd Qr. Stamp, 1; *D.*, 10 C.P.L.R. 1.]

(99)—The term "accepting," in s. 61, Stamp Act, 1879, does not mean "receiving" but "executing as an acceptor." The mere receiver of a pro-note not duly stamped does not render himself liable to the penalties under the section. **20 A. 440=A.W.N., 1898, 108** (7 M. 71, 24 W.R. Cr. 1, 7 B. 82, A.W.N., 1883, 145, *R.*) [*R.*, U.B.R., 1904, Stamp, 1.]

(100)—In the absence of evidence of conspiracy, a person receiving an insufficiently stamped instrument cannot be convicted of abetting by conspiracy the execution of an insufficiently stamped instrument. **A.W.N., 1883, 145 and A.W.N., 1888, 37.**

(101)—The conviction of a person, who merely received a promissory note executed on

Abetment—continued.

plain paper in his favour, of the abetment of an offence under s. 62 of the Stamp Act, 1899, is bad in law. The person, who *makes* an unstamped instrument, and not the person in whose favour it is made, commits the offence, and the receiving by the latter of the unstamped instrument made by the former does not constitute an abetment of the execution of it. **1 N.L.R. 163**. (24 W.R. Cr. 1, 7 M. 71, 20 A. 440, *F.*; 7 B. 82, 10 C.P.L.R. 1 Cr., *R.*)

(102)—*Abetment of making an unstamped receipt.*—Where an accused person paid a sum of money to his creditor, accepted a receipt from the latter without a stamp, and promised himself to affix one, *held*, that the accused was not guilty of abetting the offence of making an unstamped receipt. as he did not aid the offence by an act, nor omitted to do anything which he was bound by law to do. **8 A. 18** (A.W.N., 1884, 37 A.W.N., 1885, 30, 7 B. 82, *R.*) [*F.*, 7 C.P.L.R. 21, Cr.]

(103)—*Penal Code, ss. 213 and 147—Wrongful confinement by chowkidars sent by Head Constable for getting money extorted from arrested person.*—A Head Constable in charge of an outpost agreed to drop proceedings against a certain person, arrested on a charge of illicit possession or manufacture of country liquor, on payment of a sum of money. For this purpose, the Head Constable sent that person in charge of chowkidars to procure the money. The chowkidars, in effecting this object, confined the person, ducked him in a pond and beat him. *Held*, that it would be impossible to hold that the Head Constable was guilty of abetting an offence under s. 347 in the absence of proof that he gave definite orders. **31 C. 710.**

See ABANDONMENT OF CHILDREN, 1 Mad. Sess., 1869, 33 P.R. 1872 Cr.

See ABDUCTION, 40 P.R. 1866 Cr.

See ACT XX OF 1866, s. 91, 23 P.R. 1869 Cr.

See ACT XVIII OF 1869, 23 P.R. 1876 Cr.

—Of false personation—*See* ACT III OF 1877, s. 82, 7 W.R. Cr., 99; 2 B.L.R.A. Cr. 25.

—Punishment for—*See* ACT III OF 1877, s. 82, 8 W.R. Cr. 16.

—Of making an unstamped receipt.—*See* ACT I OF 1879, s. 61, 18 P.R. 1895 Cr.

See ACT XXII OF 1881, ss. 42, 49, L.B.R. (1872-1892), 373.

See ACT IX OF 1890, s. 126, 1 Bom. L.R. 682.

See ACT XII OF 1896, U.B.R. (1892-1896), Vol. I, 100.

See ACT XII OF 1896, s. 49, 55 P.R. 1905 Cr.=201 P.L.R. 1905=3 Cr. L.J. 135.

See ACT II OF 1899, s. 62, U.B.R., 1904, 2nd Qr., Stamp. 1.

See BOM. ACT IV OF 1890, 20 B. 394.

See BIGAMY, 6 C.W.N. 343.

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See COCK-FIGHTING, L.B.R. (1872—1892), 163.

See CONSPIRACY, 28 C. 797, A.W N., 1902, 143.

—Of commission of offence involving a breach of the peace by a zamindar—*See* CRIM. PRO. CODE (1898), s. 110, 31 C. 419.

See CRIM. PRO. CODE (1898), s. 233, 10 M.L.J. 147.

See CRIM. PRO. CODE (1898), ss. 423, 247, 238, 7 M.L.T. 79.

—Whether "offence" in s. 30, Evidence Act, includes abetment also—*See* EVIDENCE ACT, s. 30, S.C. 143, Oudh.

—Of framing incorrect record by public servant—*See* FALSE EVIDENCE, 7 N.W.P. 134.

See FORGERY, 25 C. 207=1 C.W.N. 681, 3 M. 4.

—Abetment of waging war against Queen—*See* JURISDICTION OF CRIMINAL COURTS, 9 B.L.R. 36=17 W.R. Cr. 15.

See KIDNAPPING, 8 C. 969=11 C.L.R. 6, A.W.N., 1902, 143, 2 C.W.N. 81, 1 M. 173=1 Weir 353.

See OFFENCE, 24 B. 287=1 Bom. L.R. 678.

See PENAL CODE, s. 34, 14 B. 115.

See PENAL CODE, ss. 34, 111, 149, 395, L.B.R. (1893-1900), 150.

See PENAL CODE, s. 107, 7 A.W.N., 236, A.W.N., 1896, 194, 12 P.R. 1883 Cr.

—Where person abetted does act with different intention—*See* PENAL CODE, ss. 109 and 110, U.B.R. (1897-1901), Vol. I, 249.

See PENAL CODE, ss. 109, 494, 6 B. 421.

See PENAL CODE, s. 114, A.W.N., 1883, 39, 8 B.H.C. Cr. 164, 10 B.H.C. 497, 10 Bom. L.R. 26, 27 C. 566, 2 C.W.N. 49, 9 C.W.N. 69, 7 W.R. Cr. 49, 4 M.H.C. Ap. 37, 4 L.B.R. 71.

—Instigation to join an unlawful assembly—*See* PENAL CODE, ss. 114, 144, 5 C.W.N. 250.

See PENAL CODE, ss. 114, 149, 302, 2 C.W. N. 49.

See PENAL CODE, s. 218, 7 N.W.P. 134.

See PENAL CODE, s. 302, 1 U.B.R. (1902-1903), Penal Code, 5.

—of a negligent act—*See* PENAL CODE, ss. 304-A, 336, 337, 338, 114, 13 C.W.N. 362=36 C. 302=9 C.L.J. 204=9 Cr.L.J. 393=1 Ind. Cas. 894.

See PENAL CODE, s. 352, 4 L.B.R. 271.

See PENAL CODE, s. 362, 11 P.R. 1883 Cr.

See PENAL CODE, s. 471, A.W.N., 1887, 95.

See PENAL CODE, s. 498, 11 P.R. 1883 Cr.

See POLICE OFFICER, 20 B. 394.

See PREVIOUS CONVICTION, 10 Bom. L.R. 26.

Abetment—concluded.

See SANCTION TO PROSECUTE, 30 C. 905, 55 P R. 1887 Cr.

See SENTENCE—SEPARATE SENTENCES, 16 C. 725.

See THEFT, 2 A.L.J. 53.

See UNLAWFUL ASSEMBLY, 5 C.W.N. 250.

Abettor.

(1)—*When person an abettor.*—To constitute a man the abettor of another's crime, it must be clearly established that both intended to commit or to further the same crime. **Rat. Un. Cr. C. 93=Cr. Rg. 47 of 1875.**

(2)—*Who are not abettors.*—Persons, who are present at the scene of offence against their will, or accidentally or for a legitimate purpose, are not persons that aid or abet the commission of the offence. **U.B.R. (1892-1896), Vol. I, 117.**

(3)—*Employing innocent agent, effect of.*—An abettor's guilt is not affected by the circumstances of his employing an innocent agent for carrying out his object. **14 C.P.L.R. 192.**

(4)—*Treasure Trove Act, VI of 1878, ss. 20 and 22, liability of abettors under.*—The mere fact that s. 21 of Act VI of 1878 makes the owner of a land, where treasure is found, liable to a special penalty does not exclude the punishment, under the Penal Code, of persons who abet an offence under s. 20 of Act VI of 1878. **1 Weir 919**

(5)—*Abettor more severely punished than principal—Registration Act, 1866, s. 94.*—Under s. 94 of the Registration Act (XX of 1866), an abettor may be punished more severely than his principal can be. **8 W.R. Cr., 16.**

(6)—*Abettor guilty when principal innocent.*—An abettor may be guilty, though the principal has committed no offence. **55 P.R. 1905, Cr.=201 P.L.R. 1905=3 Cr. L. J. 135.**

See ABETMENT, 8 P.R. 1874 Cr., 39 P.R. 1885 Cr., 3 P.R. 1879 Cr., and 32 P.R. 1882, Cr., 7 W.R. Cr. 3.

See PENAL CODE, ss. 34, 114, 3 L.B.R. 264 =5 Cr. L.J. 414.

See PENAL CODE, ss. 109 and 114, 24 M. 523=2 Weir 340.

See PENAL CODE, s. 114, 11 C.P.L.R. 2 Cr., 8 B.H.C. 164.

Abkari.

1.—Abkari Acts.

See 1. BENGAL ACT XI OF 1849.
2. BENGAL ACT XXI OF 1856.
3. BOMBAY ACT V OF 1878.
4. MADRAS ACT III OF 1864.
5. MADRAS ACT I OF 1886.

Abkari—concluded.

2.—Excise Acts.

See 1. ACT X OF 1871.
2. ACT XXII OF 1881.
3. BENGAL ACT III OF 1873.
4. BENGAL ACT II OF 1876.
5. BENGAL ACT VII OF 1878.
6. BENGAL ACT IV OF 1881.

3.—Opium Acts.

See 1. ACT XIII OF 1857.
2. ACT I OF 1878.
3. REG. XXI OF 1827.

4.—Spirituous Liquors Act.

See 1. BOMBAY ACT III OF 1852.

Absconding Offender.

See CRIM. PRO. CODE (1898), ss. 87, 88, 89.

See PENAL CODE, s. 172.

(1)—*Evidentiary value of absconding.*—Absconding is but slight evidence of guilt usually. **5 W.R. Cr. 28.**

(2)—"*Abscond*," *meaning of the term—Penal Code, s. 172*—The term "abscond" is not to be understood as implying necessarily that a person leaves the place in which he is. Its etymological and its ordinary sense are to hide one-self; and it matters not whether a person departs from a place or remains in it, if he conceals himself; nor does the term apply to the commencement of the concealment. If a person, having concealed himself before process issues, continues to do so, after it has issued, he absconds. **4 M. 393=1 Weir 76.**

(3)—*Crim. Pro. Code (1882), s. 87—Absconder.*—It should not be laid down as law that no person can be deemed an absconder until he has been proclaimed as such under s. 87 of the Code; but an absent person should not be too readily assumed to be an absconder without due enquiry and notice. **2 Weir 40.**

(4)—*Procedure for trial of.*—Absconding by a person against whom a warrant has been issued must be dealt with in the manner provided for by the Code of Criminal Procedure and not under s. 172, I.P.C. **7 N.W.P. 302.** [*F.*, 2 C.L.J. 625].

(5)—*Proclamation against an absconding offender, effect of.*—An accused person, against whom a proclamation has been issued, until he has come in and surrendered, must be regarded as in contempt; and no petition will be entertained on his behalf, until he has surrendered. **2 N.W.P. 441.**

(6)—*Contempt of Court due to absconding, whether solved by striking out case.*—An order striking off a case, on account of the little prospect of bringing the guilty parties to trial, cannot dispose of the question of contempt of Court arising out of the fact of the accused having absconded to evade justice. **7 W.R. Cr. 40.**

Absconding Offender—continued.

(7)—*Absconder appearing before attachment—Effect on attachment.*—Where the accused did not appear on the date mentioned in the proclamation, but appeared before the attachment, *held*, that, as attachment of property under s. 88 is intended to enforce the attendance, required by a proclamation issued under s. 87, within the time therein specified, it was illegal to wait till that period was over and to order attachment because the proclamation has not been obeyed. **6 C.P.L.R. 38, Cr.**

(8)—*Proclamation and attachment authorized for what offences.*—Ss. 183, 184, Cr. P. C., (1861) (proclamation and attachment of property of absconding parties) do not apply to offences punishable with imprisonment extending to six months only. There is no rule which requires a Magistrate to satisfy himself that a party has absconded, before issuing a proclamation; but the party, on suing to recover his property, may prove by evidence that he had not absconded. Before a Magistrate proceeds to declare attached property forfeited, he should take evidence to prove compliance with the formalities laid down by law with regard to proclamation. **3 W.R. Cr. 34.**

(9)—*Essentials for issuing proclamation for appearance—Appearance after fixed time—Cr. P.C. (1861), ss. 183, 184.*—In order to lay a sufficient foundation for the issue of a proclamation under s. 183, and the accompanying order of attachment under s. 194, Cr. P. C., (1861) the Magistrate must, upon some sufficient materials, find judicially that the person against whom the proclamation is to be issued has absconded or concealed himself for the purpose of avoiding service of the warrant of arrest previously issued against him. The period of thirty days, which is prescribed in s. 183 as the minimum period within which the person is to be required by the proclamation to appear, was intended by the Legislature to run from the date on which the publication, in the mode prescribed by the same section, should be effected. The declaration of forfeiture directed to be made in s. 184, if not made before the person affected by the proclamation has come in, ought not to be made at all. **19 W.R. Cr. 12=10 B.L.R. Ap. 14.** See, also, 3 L.B.R. 116.

(10)—*Proceedings of Magistrate under s. 88, Crim. Pro. Code (1882), whether judicial.*—The law makes no provision for investigation by a Magistrate of the claims of third persons to property which has been attached under s. 88 of the Code. Therefore, the proceedings of the Magistrate under s. 88 are not "judicial proceedings" in the sense of s. 4 (*d*) of that Code. **6 A. 487** [*F.*, 4 L.B.R. 109, *R.*, 9 P.R. 1908, Cr.]

(11)—*Order for attachment to be issued with proclamation—Cr. P. C. (1861), s. 184.*—The words "order the attachment of any moveable and immoveable property" of an absconding party in s. 184 are enabling and not

Absconding Offender—continued.

restrictive. The Magistrate may attach both kinds of property. But the words "at the same time" must be taken in their literal sense, and he must issue his warrant of attachment simultaneously with the proclamation if he thinks fit to resort to attachment at all. **4 M.H.C. App. 48.**

(12)—*Attachment of undivided interest in a joint family of an absconding party—Cr. P.C. (1898), ss. 87, 88.*—S. 88 is not intended to apply to the undivided property of a Hindu family, for it cannot be seized, being unascertained. A receiver cannot be appointed, nor can an order be made prohibiting the payment of rent or delivery of the property to the managing member of the family. Nor can the undivided interest of the absconding person be sold under sub-section 7 of s. 88. **2 Weir 43.**

(13)—There is nothing in the language of s. 88 to restrict the meaning of the word "property" and it includes the rights and interests of persons who, as members of an undivided family, are jointly entitled to the property of the family. **2 Weir 43 (Foot-note).**

(14)—*Irregular enquiry into other charges.*—When an accused person was arrested as an absconding offender, and, without evidence being gone into that charge, an enquiry was made into his mode of livelihood without any summons being issued under s. 306, Cr. P.C., 1861, such proceedings were held to be irregular. **3 N.W.P. 2.**

(15)--*Irregularity in the proclamation--Attachment of property, effect on--Cr. P.C. (1882), ss.87, 88, 89.*—On a person, for whose arrest a warrant was issued, absconding, a proclamation under s. 87, Crim. Pro. Code, was issued on the 6th of November, the date fixed for the appearance of the accused being the 11th of December, 1893. The proclamation was published by affixing of a copy on the court house on the 6th of November, but it was not published in the place where the accused resided until the 15th of November. The accused surrendered on the 25th June, 1894, and applied for the property attached under s. 88, which was refused by the Magistrate. *Held*, that there was no legal proclamation under the Code and the attachment of the property was void. **19 M. 3=2 Weir 40.**

(16)—*Cr. P. C. (1882), ss. 87, 88, 90, 436, 437—District Magistrate issuing a warrant before setting aside order of discharge.*—On the discharge of an accused person, the District Magistrate issued a notice to him to appear and show cause why he should not be retried and, on the same day, before setting aside the order of discharge, issued a warrant against him requiring him to execute a bond with sureties for his presence till the decision of the case, but, learning that the accused had absconded, issued a proclamation under s. 87, Cr. P. C., and, after some months, ordered the accused's property to be attached under s. 88, Cr. P. C. *Held* that the proceedings of the District Magistrate, calling upon the accused to appear and show cause, were legal but

Absconding Offender—continued.

that the subsequent proceedings, issuing the warrant, the proclamation and the attachment order were without jurisdiction. **15 P.R. 1893 Cr.**

(17)—*Effect on purchaser's title.*—Where the property of an absconder had been attached and sold and had vested in a third person, the purchaser, *held*, that the sale could not be set aside on the ground of irregularity in the proclamation, as the property had vested in a person who was not a party to the proceedings in which the proclamation was made. **22 A. 216** [*R.*, 9 P.R. 1908 Cr., 29 P.W.R. 1908 Cr.=8 Cr. L.J. 260].

(18)—*Crim. Pro. Code (1898), ss. 87, 88 and 190—Overawing police officer—Attachment of property of absconders—Penal Code, ss. 99, 143 and 183.*—A Magistrate issued a proclamation under s. 87 of the Code and an order for attachment of the property of certain persons who, being accused of an offence, had absconded. In the course of the attachment, an objection was raised by another person that the property, which the police had attached, did not belong to the absconders. The Police Officer, being informed by the *patwari*, that it was the property of the absconders, proceeded to make the attachment. Then, certain persons, among whom were the accused, combined to overawe the police officer in the execution of his duty, by threatening language and attitude. *Held*, that the accused were rightly convicted under ss. 143 and 183 of the Penal Code. *Held*, also, that, under the circumstances of the case, the rightful owner had no right of private defence of his property, even supposing that the absconders were not the rightful owners, inasmuch as the Police Officer was acting in good faith and under colour of his office. Where, in the case mentioned, the attaching Police Officer sent a person to inform the Magistrate of what had taken place, and the latter, thereupon, sent the Senior Inspector to the spot to take up the case, instructing him, in order to comply with the law, that he should take the statement of the attaching Police Officer as the first information of the occurrence and send it to him, *held*, that the proceedings, instituted under such circumstances, were properly instituted. **29 C. 417=6 C.W.N. 680** [*R.*, 9 C.W.N. 123].

(19)—*Forfeiture of property*—Procedure by Magistrate before declaring a forfeiture of the property of an absconded offender indicated. **6 W.R. Cr. 79.**

(20)—Before passing an order declaring the property of an accused person, who cannot be found, to be at the disposal of the Government, there must be a proclamation under s. 183, Code of Criminal Procedure, 1861, fixing a time within which such person should appear. But, before a Magistrate can issue such a proclamation, he must be satisfied that such person had absconded or was concealing himself for the purpose of avoiding the service of the warrant. **6 W.R. Cr. 73.**

Absconding Offender—continued.

(21)—*Enquiry to precede order of forfeiture.*—Where an absconding offender appears within two years from the attachment of his property, the order for forfeiture of his property should not be carried into effect until after a regular enquiry into the causes of the offender's absence. **3 W.R. Cr. 63.**

(22)—*Title given by Magistrate's sale superior to other titles.*—Where property belonging to an absconding accused was attached, under s. 172, Crim. Pro. Code, and subsequently sold, and the same property was in the meantime also attached and sold in execution of a money-decree, *held*, the title conferred on the purchaser in the Magistrate's sale was the superior one. So long as the attachment by the Magistrate continued, no title could be conferred by any attachment subsequently made. **9 C. 861=12 C.L.R. 411.**

(23)—*Court if can investigate claim of third parties to attached property.*—Ss. 184 and 185 of the Code of Criminal Procedure (1861) make no provision for any investigation by a Magistcate of the claims of third persons to property which has been attached. The claimants are not barred by the sale and may bring a suit in a Civil Court against the purchasers to establish their rights. **7 W.R. Cr. 35** [*F.*, 17 W.R. Cr. 10, 6 A. 487] See, also, L. B.R. (1893-1900) 324.

(24)—*Claims to attached property—Remedy by civil suit.*—The proper remedy of claimants to the property attached, as belonging to an absconding offender, is by a civil suit. **17 W. R. Cr. 10.**

(25)—*Crim. Pro. Code, (1882), ss. 88 and 836.*—Where property is attached under s. 88 of the Code of Criminal Procedure as belonging to a person absconding to avoid a warrant and where a claim by another person is made to such property, the Magistrate should stay the sale of the property seized to give the claimant time to establish his right. If the Magistrate errs in not giving the claimant an opportunity of proving his case, the remedy of the aggrieved party is by civil suit. The same applies to s. 386, Cr. P. C. **20 M. 88=2 Weir 42.** [*F.*, Rat. Un. Cr. C. 976; *R.*, 4 L.B.R. 109] See, also, 5 W.R. Cr. 8.

(26)—*High Court's power to make order about absconder's property at Government's disposal.*—The High Court cancelled a previous order made by it (under an error of law caused by a misrepresentation of facts) directing the restoration of the moveable property of a prisoner which was under attachment: the Court not having been informed at the time that the property in question had, under s. 184, Cr. P. C. (1861), been declared to be at the disposal of the Government. Property so declared to be at the disposal of the Government can only be restored by the Government. **9 B. L.R. 342=18 W.R.Cr. 34.**

(27)—*Burden of proof as to manner of proclamation—Cr. P. C., (1882), ss. 45, 87, 88—*

Absconding Offender—concluded.

Omission by zamindar to give information of presence of proclaimed offender—Proof of proclamation.—Where a zemindar was convicted of having intentionally omitted to inform a public servant, of the resort to the village of a proclaimed offender, and the fact of his being a proclaimed offender was presumed from the fact that the property belonging to him was attached and sold under the provisions of s. 88, Crim. Pro. Code, *held*, that the conviction was bad, as it was on the prosecution to prove that the proclamation was made in the manner prescribed by s. 87, Cr. P. C. **7 M. 436=1 Weir 102.**

(28)—*Admissibility of evidence recorded in accused's absence—S. 327, Cr. P. C., 1872.*—The conditions laid down in s. 327, Cr. P. C., 1872, should be strictly complied with before admitting against an accused person the record of depositions taken in his absence, and, hence, without a finding, by the Court making the record, that the accused absconded and could not, after due pursuit be arrested and without any evidence upon which the Court could base such a finding, such record should not be used against the accused. **21 P. R. 1883, Cr.**

(29)—*Absconding to avoid service of summons—Gist of the offence—Penal Code, s. 172.*—In order to prove the commission of an offence under s. 172, Penal Code the existence of a summons, notice or order is necessary. It is not sufficient to show that a person apprehended that a process will be issued, and has, therefore, absconded. It must also be shown that the accused knew or had reason to believe that the process had issued. **4 M. 393=1 Weir 76.**

(30)—*Penal Code, s. 172—Absconding by person against whom warrant issued, if covered by s. 172, I.P.C.*—A warrant is not a summons, notice or order within the meaning of s. 172, I.P.C. and, therefore, the offence of absconding by an offender, against whom a warrant has been issued, is not punishable under the above section of the Code. **Rat. Un. Cr. C. 152=Cr. Rg. 24-2-1881** (5 W.R. Cr. 71, *F.*)

See ACCUSED PERSON, 1 L.B.R. 60.

See CRIM. PRO. CODE (1898), s. 87, 27 A. 572, 5 N.L.R. 125.

See CRIM. PRO. CODE (1898), ss. 88, 189, A.W.N., 1904, 159.

See PENAL CODE, s. 172, 7 N.W.P. 302, Rat. Un. Cr. C. 152, 5 W.R. Cr. 71, 9 W.R. Cr. 70, 1 Weir 76, 1 Weir 75.

See PENAL CODE, s. 174, 1 Weir 89=7 M. H.C. App. 43.

See SECURITY FOR GOOD BEHAVIOUR, 3 N.W.P. 2.

—Time to be given for appearance of person against whom proclamation issued under s. 87, Cr. P. C. (1898)—*See* SECURITY PROCEEDINGS, 17 M.L.J. 438.

Abusive Language.

See PENAL CODE, s. 291, L.B.R. (1872—1892), 309.

Accepting Instrument Not Duly Stamped.

(1)—*Act II of 1899, s. 62—"Accepting." meaning of.*—The term "accepting," in s. 62 (1), Act II of 1899, does not mean receiving, but executing, as an acceptor; and the mere fact that a person receives from another a promissory note without the same being duly stamped does not make him guilty under that section. **4 O.C. 168** (20 A. 440, *F.*).

(2)—*Act XVIII of 1869, s. 28—Unstamped receipt.*—The acceptor of an unstamped receipt is not punishable, unless it can be shown that he abetted the making of the receipt, but the maker of such receipt is. **S.C. 33, Oudh.**

See ABETMENT, 7 C.P.L.R. 21 Cr.

Accessory.

—*Accessory after the fact—Punishment, liability to*—Under the Indian Law, an accessory after the fact is not liable to be punished. **2 C.W.N. 81.**

Accomplice.

1.—GENERAL.

2.—ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION.

3.—ACCOMPLICE EVIDENCE—CHARGE TO JURY.

See APPROVER.

See CRIM. PRO. CODE (1898), s. 337.

See CONFESSION.

See EVIDENCE ACT, ss. 114, 133.

1.—GENERAL.

(1)—*Meaning and definition of.*—The term "accomplice" signifies a guilty associate in crime. *Per* Subrahmania Ayyar, J. **27 M. 271 = 2 Weir 803 = 14 M.L.J. 226.**

(2)—Where the witness sustains such a relation to the criminal act that he could be jointly indicated with the defendant, he is an accomplice. *Ibid.*

(3)—Where a witness is not concerned in the commission of the crime for which the accused is charged, he cannot be said to be an accomplice in the crime. *Ibid.*

(4)—*Accomplice, how differs from spy.*—An accomplice confesses himself a criminal and may have a motive for giving information, as it may purchase immunity for his offence. A spy, on the other hand, may be an honest man; he may think that the course he pursues is absolutely essential for the protection of his own interests and those of society; and, if he does so, if he believes that there is no other method of counteracting the designs of wicked men, there can be no impropriety in his taking upon himself the character of an accomplice. **19 B. 363.**

Accomplice—continued.

1.—GENERAL—*continued.*

(5)—*Who are accomplices--Person offering bribe to public officer.*—A person offering a bribe to a public officer is an accomplice. No distinction can be drawn between accomplices who volunteer to assist in the receipt of illegal gratifications and those who assist under compulsion. **14 B. 115.** [*F.*, 26 B. 193 = 3 Bom. L.R. 694; *D.*, 27 C. 144; *R.*, 33 C. 649 = 10 C.W.N. 669.]

(6)—Witnesses, who, in order to avoid pecuniary injury or personal molestation, offer or give bribes to a public servant are abettors of the offence of taking an illegal gratification, and their evidence should be treated as that of accomplices. **14 B. 331.** [*R.*, Rat. Un. Cr. C. 720, 19 B. 51, 20 B. 394, Rat. Un. Cr. C. 746, 26 B. 193, 33 C. 649; *D.*, 27 C. 144.]

(7)—A person, who gives bribes, is an accomplice of the person who receives them; and, while it is usually unsafe to convict an officer on the uncorroborated testimony of a person or persons who say that he or they have given them bribes, the question as to the amount of corroboration depends upon the circumstances of each case. **26 B. 193.** [*R.*, 6 Bom. L.R. 443, 10 C.W.N. 669 = 33 C. 649 = 3 Cr. L.J. 452.]

(8)—*Persons present during the giving of bribes.*—Where a person gave bribes to a salt officer for the purpose of obtaining due deliveries of the salt he was purchasing from the Government, on being threatened by the salt officer that his weighments would not be done properly if rupees were not paid, *held*, that there was not such a threat as would excuse the person from the offence he was committing in giving bribes to a public servant. He was, therefore, an accomplice and his evidence given against the salt officer would require corroboration. So, also, the person who had actually paid the bribe to the officer would also be an accomplice and his evidence would require also material corroboration. But persons, who were merely present on the occasion but took no part in the transaction and another who merely cooked the account after the transaction was over, were not accomplices. The degree of credit to be attached to the evidence of such witnesses would depend on all the facts and circumstances of the particular case. **26 M. 1 = 2 Weir 521.**

(9)—*Persons accompanying another to witness payment of bribe.*—Persons who accompany another, who is entrusted with and carries the money intended to be given as a bribe, are accomplices, if they know that the money is to be paid as a bribe and if they go to see and assist, although they do not actually carry the money or tender it. **2 C.W.N. 672** [*D.*, 27 C. 144.]

(10)—*Who are not accomplices—Witnesses to payment of bribes*—Witnesses to payment of bribes are not accomplices, unless they co-operate in the payment of the bribes, or are instrumental in the negotiation for the payment of

Accomplice—continued.

1.—GENERAL—*continued.*

the same. **33 C. 649=10 C.W.N. 669=3 Cr. L.J. 452.**

(11)—The mere presence of a person on the occasion of giving bribes and his omission to inform the authorities will not make him an accomplice, unless it is shown that he somehow co-operated in the payment of the bribes or was instrumental in the negotiations for their payment. **27 C. 144** (24 W.R. Cr. 55, 14 B. 115, 14 B. 331, 17 C. 642, 21 C. 328, 2 C. W. N. 55, 2 C. W. N. 672, 23 C. 361, *D.*).

(12)—*Spy or detective, not accomplice.*—Spies do not partake of the criminal contamination of accomplices, who enter into "communication with the conspirators with an original purpose of discovering their secret designs and disclosing them for the benefit of the public." **19 B. 363.**

(13)—*Treating person as accomplice on mere suspicion.*—An accomplice confesses himself a criminal. No man ought to be treated as an accomplice on mere suspicion, unless he confesses that he had a conscious hand in the crime or makes admissions of facts showing that he had such hand. If the evidence of a witness falls short of these tests, he is not an accomplice; and his testimony must be judged on principles applicable to ordinary witnesses. **11 Bom. L.R. 1153.**

(14)—*Wrongful confinement—Money paid to obtain release—Receiving illegal gratification—Extortion.*—Where money was paid to a Police Sub-Inspector by a money-lender for obtaining the release of a person wrongfully confined, the money not being voluntarily given nor given in consideration of the Sub-Inspector not proceeding against the person so confined for the purpose of bringing him to legal punishment, *held*, that such payment was not an illegal gratification, but money extorted and that the money-lender advancing the money could not be regarded as an accomplice of the Police Officer. **27 C. 925=4 C.W.N. 755**

(15)—*Person supplying marked money.*—The act of a detective in supplying marked money for the detection of a crime cannot be treated as that of an accomplice. **19 B. 363.** (16 B. 661, *F.*)

(16)—*Person charged with offence by police but discharged by Magistrate.*—A person charged with an offence by the police, but discharged by the Magistrate after the examination of the witnesses for the prosecution, because he found that no case had been made out which, if unrebutted, would warrant his conviction, cannot be said to be an accomplice, simply because he had been sent up by the police for trial. Not being an accomplice, his evidence should not be considered as insufficient for a conviction. **L.B.R. (1893-1900), 467.** (L.B.R. (1872-1892), 322, *R.*)

(17)—*Accomplice, whether a competent witness—Person under trial in same case—Cr. P.C. (1898), s. 494.*—An accomplice, if he is not an accused under trial in the same case, is a competent witness and may be examined on oath. So, if the prosecution be withdrawn and the accused discharged under s. 494, Cr. P.C. (1898), he would be a competent witness. Where, however, the Court, purporting to act under s. 494, Cr. P.C. (1898), sanctioned the withdrawal of the prosecution but omitted to record an order of discharge and the accused continued to be kept in custody, *held*, that his position was in no way changed from that of an accused. **33 C. 1353=10 C.W.N. 962=4 Cr. L.J. 145.** (1 B. 610, 2 A. 620, *R.*).

(18)—*Accused discharged by Magistrate for want of evidence.*—There is no law or principle which prevents a person who has been suspected and charged with an offence, but discharged by the Magistrate for want of evidence, being afterwards admitted as a witness for the prosecution. **7 W.R. Cr. 44.** [*D.*, 2 A. 260; *R.*, 16 B. 661, 33 C. 1353=4 Cr. L.J. 145=10 C.W.N. 962].

(19)—*Accused person, when can be examined as witness.*—Unless an accused person is convicted or acquitted, he should not, except in the case where he is made Queen's evidence, be examined as a witness touching the matter of which he is accused. **5 C.P.L.R. 1 Cr.**

(20) - *Accomplice to whom the Local Government has made a promise not to prosecute.*—An accomplice, to whom the local Government has made a promise not to prosecute him and by whom the promise has been accepted, after the commencement of the trial, is not a competent witness. Such grant of pardon does not alter the position of the accomplice as an accused person and make him cease to be an accused person. No oath could be administered to him. **9 P.R. 1906 Cr.=4 Cr. L.J. 282.**

(21)—*Person arrested by police as accomplice.*—A person arrested by the Police as an accomplice in an alleged burglary sent up to a Magistrate for trial under s. 457, Penal Code, and examined by him as a witness, was held to be an accused person, having been neither discharged nor acquitted, who could not be examined as a witness. **12 P.R. 1902 Cr.**

(22)—*Power of Local Government to tender conditional pardon to accomplice.*—A Local Government in India has no power to tender a conditional pardon to an accomplice for the purpose of his being examined as a competent witness against others accused with him. **10 C.W.N. 962=4 Cr. L.J. 145=33 C. 1353.** (10 C.W.N. 874, 1 B. 610, *R.*)

(23)—*Application for sanction to prosecute approver, how to be made—Cr. P.C., (1898) s. 339*—Sanction to prosecute an approver for giving false evidence should be applied for by motion on behalf of the Crown in open Court and not by a letter of reference. **10 P.R. 1904, Cr.** (24 C. 492, *R.*).

Accomplice—continued.

1.—GENERAL—*concluded.*

(24)—*Admissibility of evidence of bribing person.*—The evidence of the person who bribes is admissible against the person bribed. **3 W. R. Cr. 19.**

(25)—*Evidence Act, s. 30—Statement of co-prisoner, value of.*—The statement of one prisoner cannot be taken as evidence against another prisoner under s. 30, Evidence Act, unless the confessing prisoner implicates himself to the full, as much as his co-prisoner whom he incriminates. **25 W.R. Cr. 43.**

(26)—*Persons paying illegal gratification under compulsion—Evidentiary value of their testimony—Probative force.*—The testimony of persons who have been compelled to pay illegal gratification has much greater probative force than that of ordinary accomplices. **12 C.W.N. 140=6 Cr. L.J. 434.**

2.—ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION.

See EVIDENCE ACT, ss. 114 and 133.

(1)—*Conviction based on uncorroborated testimony of accomplice, legality of—Evidence Act, s. 133.*—S. 133, Evidence Act, in unmistakeable terms lays it down that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice, and to hold that corroboration is necessary is to refuse to give effect to this provision. **1 M. 394=2 Weir 799; 19 W.R. Cr. 43; 19 W.R. Cr. 48.**

(2)—A conviction founded upon the uncorroborated evidence of one or more accomplices alone is valid in law. **5 W.R. Cr. 80=B L.R. Sup. Vol. 459.**

(3)—*Value of accomplice evidence—Nature of corroboration.*—Generally an accomplice must be corroborated by independent evidence, though a conviction based on the uncorroborated testimony of an accomplice is not illegal. It has been said that the evidence of one accomplice does not really corroborate that of another accomplice, and that the confession of an accused person, taken into consideration under s. 30, Evidence Act, should not be regarded as corroborative of the accomplice's evidence. But this must be taken as a general rule only and not as applicable in all cases. A confession must be considered and the accomplice's evidence must be weighed, and the Court cannot be prevented from taking into account their bearing on each other. **U.B.R. (1897—1901), Vol. I. 173.** (21 W.R. Cr. 69, 9 A. 528, *R.*).

(4)—*Law and practice in England and India.*—The law as expressed in ss. 114 (*b*) and 133 of the Evidence Act is in no respect different from the law of England, but simply reproduces a rule of practice, *viz.*, that a conviction based on the uncorroborated testimony of an accomplice is not illegal, that is, it is not unlawful. But experience teaches that it is

Accomplice—continued.

2.—ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION—*continued.*

not safe to rely upon the evidence of an accomplice, unless it is corroborated, and hence, it is the practice of the Judges, both in England and in India, when sitting alone, to guard their minds carefully against acting upon such evidence when uncorroborated; and, when trying a case with a Jury, to warn them that such a course is unsafe.

Not only is it necessary that evidence should be corroborated in material particulars, but the corroboration should extend to the identity of the accused person. There must be some corroboration independent of the accomplice, or of the accomplice and the co-confessing prisoner, to show that the party accused was actually engaged directly in the commission of the crime charged against him. It is of no value and makes no difference if there are two accomplices. A second accomplice does not improve the position of the first, nor does the fact that there are two make it unnecessary that both should be corroborated. The accomplice must be corroborated not only as to one, but as to all, of the persons affected by the evidence; corroboration of his evidence as to one prisoner would not justify his evidence against another being accepted without corroboration. **8 A. 306** (*F.*, 8 A. 120, 8 A. 509, 1 L.B.R. 29; *Appr.*, 1 A.L.J. 110; *R.*, 21 C. 612; Rat. Un. Cr. C. 750; *Expl.*, 9 A. 528.)

(5)—The rule as laid down in s. 114 corresponds with the rule observed in England. Although the tainted evidence of an accomplice should be carefully scanned and received with caution, and may be treated as unworthy of credit, yet, if the Jury or the Court credit the evidence, a conviction proceeding upon it is not illegal. **1 M. 305=2 Weir 799.**

(6)—*Evidence Act, ss. 114, 133—Presumption as to accomplice testimony.*—The substantive rule of law is (s. 133, Evidence Act), that a conviction is not illegal, merely because it proceeds upon the uncorroborated testimony of an accomplice. But the approved rule of practice is that a Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars (s. 114, Evidence Act, ill. (*b*). The initial presumption, therefore, is that the evidence of accomplices is unworthy of credit, and it is so only where there are any special circumstances that rebut this presumption and leave no reasonable doubt that the evidence of the accomplices is worthy of belief. **1 U.B.R. (1902-1903), Evidence, 1.**

(7)—*Evidence Act, ss. 114, illn. (b), 133, 155.*—According to the provision of the law (s. 133, Evidence Act) an accomplice is a competent witness against an accused person and a conviction based on the uncorroborated testimony of an accomplice is not illegal. But the Court, having regard to human conduct, may presume that an accomplice is unworthy of credit, unless corroborated in material particulars [s. 114, ill.

Accomplice—continued.

2.—ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION—*continued.*

(*b*).] As an accomplice is a competent witness, it follows, as an inevitable consequence, that, if credit is given to his evidence, it requires no confirmation from another witness. But it has now come to be considered, as a general rule of practice, that the Judge ought to advise the Jury to acquit unless the evidence of the accomplice is corroborated in some material part by unimpeachable evidence. If some part of his evidence is satisfactorily corroborated, there is good ground for believing him in other parts in which there is no corroboration. Under s. 155, independent evidence of facts unconnected with the crime itself may be given in corroboration of the statement of an accomplice. It is, however, well established that an accomplice must be corroborated as to some material facts which go to prove that the prisoner was connected with the crime charged. In this case, it was *held* that the evidence of the giver of a bribe was sufficiently corroborated by the evidence adduced in the case so as to justify the conviction of the accused under s 164, Penal Code. **1 M.L.J. 397, F.B.**

(8)—*Persons accompanying to witness bribery—Rule regarding corroboration—Presumption of law—Evidence of one accomplice not sufficient corroboration of that of another--Evidence Act, s. 114, ill.* (*b*).—A person, who accompanies another in order to witness the payment of a bribe, must be treated as an accomplice. (2 C.W.N. 672, *F.*). Further, the evidence of a person, who was a witness to the payment of a bribe in April or May, but who did not give information about it till the 21st June following, must be treated in the same way as that of an accomplice. (21 C. 328, *F.*). The rule regarding the evidence of accomplices is that it must be carefully scrutinized before it is accepted. In dealing with such evidence, a Judge or Jury must start with the rule stated in illustration (*b*) to s. 114, Evidence Act, and presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. There may be circumstances in particular cases which are sufficient to overcome such presumption, and, in such cases, a conviction is not illegal. Such cases are provided for by s. 133, Evidence Act, but, in the case of a Judge who has to give reasons for his decision, the reasons which have led him to believe the uncorroborated evidence of an accomplice should be clearly and fully set out. (14 B. 331, *F.*). The evidence of one accomplice is ordinarily not sufficient corroboration of that of another. (8 A. 306, *F.*). **1 L.B.R. 29.**

(9)—*Presumption regarding accomplice testimony.*—Though, before convicting on the evidence of an accomplice, corroboration is not legally necessary, a Court should follow the maxim that an accomplice is unworthy of credit if not corroborated in material particulars (s. 114, Evidence Act), unless circumstances justifying a disregard of such maxim exist. **16 P.R. 1866, Cr.**

(10)—*Evidence Act, ss. 114, illn.* (*b*), *133—Corroboration, rule as to, a rule more of prudence.*—It is not a rule of law but one of mere practice and prudence that an accomplice in unworthy of credit unless he is corroborated in material particulars. The High Court will not disturb a conviction under its revisional jurisdiction, simply because this rule of practice has not been observed by the convicting Court, unless there are exceptional circumstances calling for the exercise of that jurisdiction in the interests of justice. **11 Bom. L.R. 858.**

(11)—*Rule of practice regarding testimony of accomplice.*—It is unsafe to convict a person on the uncorroborated testimony of an accomplice. **8 A. 120** (8 A. 306=A.W.N., 1885 311, *F.*).

(12)—*Per Edge, C.J., and Straight, J.*—As a general rule, it would be most unsafe to convict an accused person on the uncorroborated evidence of an accomplice. But such evidence must like the evidence of any other witness, be considered and weighed by the Judge, who, in doing so, should not overlook the position in which the accomplice, at the time of giving his evidence, may stand, and the motives which he may have for stating what is false. If the Judge, after making due allowance for these considerations and the probabilities of the story, comes to the conclusion that the evidence of the accomplice, although uncorroborated, is true, it is his duty to act upon the strength of his convictions. Every case, as it arises, must be decided on its own facts, and not on supposed analogies to other cases. *Per Brodhurst, J.—Held*, on the analogy of decided cases, that the corroboration, in the case before the Court, of the evidence of an accomplice, was not sufficient to convict the accused. **9 A. 528.** (1 M. 394, A.W.N., 1884, 286, 8 A. 306, *R.* [*R.*, Rat. Un. Cr. C. 750, U. B.R. (1897-1901), Vol. I, 173.]

(13)—A conviction based on the totally uncorroborated story of an accomplice is bad in law. **Rat. Un. Cr. C. 844.**

(14)—The uncorroborated testimony of an accomplice will not by itself suffice to support a conviction. **U.B.R (1892-1896), Vol. I, 103.**

(15)—*Caution in using approver's evidence.*—The utmost caution is necessary in admitting or using the evidence of an approver. It not only requires corroboration in material particulars for its use, but its evidentiary value depends considerably upon the circumstances under which his evidence is tendered. **10 C. W.N. 962=4 Cr. L.J. 145=33 C. 1353.**

(16)—*Infringement of rule of practice, if error of law.*—The omission to follow the established rule of practice as to the corroboration

Accomplice—continued.

2.—ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION—*continued.*

of accomplice evidence does not constitute an error in law; but, where the evidence of an accomplice is not of a character to warrant the refusal of a Court to apply to it the maxim enunciated in ill. (*b*) of s. 114, Evidence Act, a conviction based on such evidence alone would be of questionable propriety. **14 B. 331.**

(17)—*Reason for requiring corroboration—Person bribing if requires corroboration.*—The evidence of an accomplice requires to be accepted with a great deal of caution and scrutiny, because, among other things, he is likely to swear falsely in order to shift the guilt from himself. But this consideration hardly applies to the evidence of one, who testifies that he has bribed the accused; for, by his own testimony, so far from shifting the offence from himself, he, in fact, thereby fastens it upon himself, for it is by making himself out to be a briber that he shows another has been bribed. **7 Bom. L.R. 969=3 Cr. L.J. 33.**

(18)—*Principle applies to persons receiving conditional pardon—Held*, that the rule that an accomplice, unless corroborated by evidence other than that of another accomplice, is unworthy of belief, applies to persons to whom a pardon has been tendered on condition of their making a full and true disclosure of all the circumstances of the crime in which they profess themselves to have been participators and subject to the penalty of being themselves placed upon their trial if, in the opinion of the Court, they have spoken falsely or kept back anything important. It does not apply to a case in which the question is as to the degree of reliance to be placed upon the evidence of accomplices who have been convicted of the offence and have undergone the full term of imprisonment inflicted upon them for their share in it. The evidence of such witnesses, if corroborated by the statements made by them at the time of their trial, is good corroborative evidence under s. 157, Evidence Act. **4 C.P.L. R. 1.**

(19)—*Evidence of person cognizant of crime.*—Where a witness admits that he was cognizant of the crime as to which he testifies and took no means to prevent or disclose it, his evidence must be considered as no better than that of an accomplice and consequently requires corroboration. **24 W. R. Cr. 55.** [*D.*, 27 C. 144; *Expl.*, 26 M. 1; *Diss.*, 26 M. 271].

(20)—The mere fact that a person is cognisant of an offence and omitted to disclose it for six days is not sufficient to constitute him an accomplice, when it does not appear that he helped in the commission of the offence. But the testimony of such person will not be sufficient to justify a conviction except when he is corroborated. **21 C. 323.** [*R.*, 27 C. 144, 1 L.B.R. 29; *Commented on*. 2 Weir 521=26 M. 1; *Diss.*, 14 M.L.J. 226=2 Weir 803=27 M 271].

(21)—*Amount of corroboration—English practice to be followed.*—The English practice should

Accomplice—continued.

2.—ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION—*continued.*

be followed as to the amount of corroboration required to support the evidence of an accomplice. According to such practice, when an accomplice speaks as to two or more persons having been concerned in the same offence, his testimony should be confirmed, not only as to the circumstances of the case, but also as to the identity of the prisoner; and any prisoner as to whom his testimony is not supported should be acquitted. **3 B.H.C. Cr. 57.** [*R.*, 6 B. H. C. Cr. 57, 14 B. 331, Rat. Un. Cr. C. 840 and 848.]

(22)—*Amount of criminality to be considered.*—In dealing with the question what amount of corroboration is required in the case of testimony given by an accomplice, the Court must exercise careful discrimination and look at all the surrounding circumstances in order to arrive at a conclusion, whether the facts deposed to by the person alleged to be an accomplice are borne out by those circumstances, or whether the circumstances are of such a nature that the evidence purporting to be given by the alleged accomplice should be supported in essential and material particulars by evidence *aliunde* as to the facts deposed to by that accomplice.

The amount of criminality is a matter for consideration, and when a person is only an accomplice by implication or in a secondary sense, his evidence does not require the same amount of corroboration as that of a person who is an actual perpetrator with the principal offender. **5 C.W.N. 517=28 C. 339.** [*R*, 7 Bom. L.R. 969.]

(23)—*Amount of corroboration varies in different cases—Persons offering bribes.*—It is generally unsafe to convict an accused person on the testimony of an accomplice, unless it is corroborated in material particulars connecting the accused with the offence. But, in considering whether this rule applies to any particular case, it must be remembered that all persons coming technically within the category of accomplices cannot be treated as precisely on the same footing, and no general rule on the subject can be laid down. **33 C. 649=10 C.W.N. 669=3 Cr. L.J. 452.**

(24)—*Nature and attributes of corroboration required.*—The evidence requisite for the corroboration of the testimony of an accomplice must proceed from an independent and reliable source. **11 B.H.C.A.C. 196.** [*F.*, 10 B. 319, Rat. Un. Cr. C. 840, 6 Bom. L.R. 481.]

(25)—The corroboration of the evidence of an accomplice, when required, should be such corroboration in material particulars as would induce a prudent man, on the consideration of all the circumstances, to believe that the evidence is true, not only as the narrative of the offence committed, but also so far as it affects each person thereby implicated. **7 Bom. L.R. 969=3 Cr. L.J. 33.**

Accomplice—continued.

2.—ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION—*continued.*

(26)—A Magistrate should not convict a person upon the evidence of witnesses who are no better than accomplices and whose evidence is not corroborated in material respects by other independent evidence in the case. **2 C.W.N. 55.**

(27)—Although a conviction is not illegal, merely because it proceeds upon the uncorroborated testimony of an accomplice, the evidence of an accomplice, ordinarily speaking, should be corroborated in material particulars, and such evidence should be accepted with a great deal of caution and scrutiny. **5 C.W.N. 517=28 C. 339.**

(28)—Not only as to the persons spoken of by an accomplice must there be corroborative evidence, but also as to the *corpus delicti* there must be some *prima facie* evidence pointing to the same direction. **Rat. Un. Cr. C. 102=Cr. Rg. 17-1-1876.**

(29)—It is an established rule of practice that an accomplice must be corroborated by independent evidence as to the identity of every person he impeaches. The value of the rule is due to this. The accomplice may know every circumstance of the crime, and, while relating all the other facts truly, may, in order to save a friend or gratify animosity, name some person as one of the criminals who was innocent of the crime. **10 B. 319.** (11 B.H.C. 196, 1 B. 475, *F.*) [*R.*, 6 Bom. L.R. 481.] See, also, 8 A. 519.

(30)—There must be independent corroboration with respect to the identification of the persons whom accomplices charge and with respect to the facts they state; and their testimony ought to be confirmed by other evidence against each person they name. **21 P.R. 1866 Cr.** See, also, 1 P.R. 1868 Cr.

(31)—The confirmation usually required of an accomplice must be not merely as to the circumstances of the crime, but as to the identity of the accused persons also. **Rat. Un. Cr. C. 840.**

(32)—Case where the conviction based solely on the evidence of an accomplice, whose story itself was not altogether satisfactory and was not corroborated in any material point connecting and identifying the accused with the offence, was held bad. Although s. 133, Evidence Act, enacts that "a conviction is not illegal, merely because it proceeds upon the uncorroborated testimony of an accomplice," a conviction solely based on such testimony will be upheld only under very exceptional circumstances. **5 P.R. 1902 Cr.**

(33)—The testimony of an accomplice is not alone sufficient for a conviction. The corroboration must be on matters directly connecting the prisoner with the offence of which he is accused; and the evidence of two or more accomplices requires confirmation equally with the testimony of one. **5 W.R. Cr. 18=1 Ind. Jur. N.S. 100.** [*R.*, 5 W. R. Cr. 80].

Accomplice—continued.

2.—ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION—*continued.*

(34)—Although a conviction based on the uncorroborated testimony of an accomplice is legal, yet having regard to human conduct, credence should not be given to it unless corroborated as to some material facts which go to prove that the prisoner was connected with the crime charged. **1 M.L.J. 397.**

(35)—A conviction cannot be ordered merely on the testimony of an accomplice. There should be corroboration on matters directly connecting the prisoner with the offence of which he is accused. Even the evidence of two or more accomplices requires confirmation equally with the testimony of one. **Rat. Un. Cr. C. 844= Cr. Rg. 13 of 1896.**

(36)—*Evidence of several accomplices also requires corroboration.*—The evidence of several accomplices requires corroboration equally with that of a single accomplice. The mere statements of a confessing co-prisoner are of still less value than that of an accomplice, especially where any improper motive for confession exists. **L.B.R. (1872-1892), 54.**

(37)—*Previous statements by accomplice, if corroboration.*—Previous statements made by the accomplice himself, though consistent with the evidence given by him at the trial, are insufficient for the corroboration of the evidence of the accomplice. **11 B.H.C.A.C. 196.**

(38)—*Confession of one prisoner cannot corroborate accomplice evidence.*—The confession of one of the prisoners cannot be used to corroborate the evidence of an accomplice against the others. **11 B.H.C. A.C. 196; 19 W.R. Cr. 68.** [*R.*, 1 B. 475, 10 C. 970, Rat. Un. Cr. C. 400, 750].

(39)—*Tainted evidence*—Tainted evidence is not made better by being corroborated by other tainted evidence. **25 W.R. Cr. 43; 8 A. 306; 5 W.R. Cr. 18=1 Ind Jur. N.S. 100.**

(40)—*Witnesses proved to have participated in offence.*—Where, from the facts of the case, it appeared that certain witnesses took an active part in carrying away the person, whose death the accused had been charged with having caused, after he had been grievously assaulted and left him in a field where he was subsequently found dead, *held*, that the evidence of the witnesses was no better than that of accomplices; at any rate it would be unsafe for the Court to rely upon their evidence, unless corroborated in some material respects, in convicting the accused. **23 C. 361.** [*R.*, 27 M. 271=2 Weir 804=14 M.L.J. *R*, 226; *D.*, 27 C. 144.]

(41)—*Retracted confession—Conviction of co-accused based on such confession, whether proper—Admissibility of accomplice's confession against co-accused*—A conviction on an uncorroborated and retracted confession of an accomplice is improper and bad. The accusation made by an accomplice in a confession may be

Accomplice—continued.

2.—ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION—*continued*.

considered against a co-accused, if that statement is put in evidence against him, but its evidential value would be very slight. **28 C. 689=5 C.W.N. 670.**

(42)—*Evidence of accomplice previously convicted on her confession.*—Case where the Court refused toconvict on the uncorroborated testimony of an accomplice, who had previously been convicted of the same offence on her own confession. (*Per* Mitter and Pontifex, JJ., Glover, J., *dissenting*.) **20 W.R. Cr. 19.**

(43)—*Evidence of persons pleading guilty, if sufficient for corroboration*—Four accused, B,C, M and T, being committed for trial, B was made an approver, M and T pleaded guilty, and the trial proceeded against C alone. *Held* that the statement of M and T could not be used against C to corroborate the evidence of B. *Held*, further, that, as M and T pleaded guilty and as the trial was against C alone, he was not being tried together with them and s. 30, Evidence Act, had no application. **Rat. Un. Cr. C. 400=Cr. Rg. 60 of 1888.**

(44)—*Evidence of accomplice made witness after pardon tendered.*—A prisoner should not be convicted on the sole and uncorroborated evidence of an accomplice, who was made a witness after a pardon was granted to him. **9 W.R. Cr. 28.**

(45)—The evidence of a pardoned accomplice, taken with that of an unpardoned co-prisoner, is not sufficient by itself to warrant the conviction of one who never confessed. **Rat. Un. Cr. C. 750.**

(46)—*Policeman procuring illegal sale of liquor to obtain conviction—Excise Act.*—Where a policeman procures an illegal sale of liquor in order to obtain a conviction, *held* that he was to be considered an accomplice and that his evidence ought not to be believed in without corroboration. **L.B.R. (1872—1892), 146.**

(47)—*Murder—Uncorroborated evidence of accomplices*—Case of murder where the prisoners, whose conviction depended on the uncorroborated evidence of accomplices and an accessory after the fact, were acquitted. **5 W. R. Cr. 59 ; 3 B. L. R. F. B., 2 (note.)**

(48)—*Confession—Corroboration.*—The accused was convicted of offences under ss. 392, 109 and 411, Penal Code. The case against the accused rested (1) on the confession of a co-accused ; (2) on his confession before a *lumbardar* and, (3) on his production of stolen property. It was proved that there was enmity between the accused and the *lumbardar* who took an active part in the investigation and the confession before him was made in the presence of the Deputy Inspector of Police. The property found was such as could not be identified. *Held*, that the confession made by the accused was inadmissible in evidence and the other evidence against him

Accomplice—continued.

2.—ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION—*continued*.

was insufficient and that he must be acquitted. **11 P.L.R. 1904.**

(49)—*Evidence Act, s. 24—Cr. P.C. (1898), s. 339—Admissibility of approver's statement where pardon withdrawn before completion of trial.*—An approver's statement, where the pardon is withdrawn before the trial is completed, could not be used against him or against anyone with whom he was being jointly tried, such statement being inadmissible under s. 24, Evidence Act, notwithstanding the special provisions of cl. (2) of s. 339, Cr. P.C. **4 P.R. 1903 Cr.**

(50)—*Accomplice's deposition taken prior to commitment—Cr.P.C. (1898), s. 288—Evidence Act, s. 157*—Where an accomplice, produced before the District Magistrate previous to his commitment and accepting an offer of pardon, made, in the accused's absence, a statement, part of which he retracted before the committing Magistrate ; but the Sessions Court admitted in evidence the approver's first statement ; *held* that the statement made in the absence of the accused could not be admitted in evidence against them, under s. 288, Cr. P.C., and was not admissible under s. 157, Evidence Act, to contradict the retraction before the Committing Magistrate. Although the mere repetition of a statement, without contradiction or material discrepancy, is, under s. 157, Evidence Act, some corroboration of the truthfulness of that statement, that section does not justify the use against accused persons of a previous statement by an approver relevant to contradict his retraction. **3 P.R. 1904 Cr.**

(51)—*Corroboration, when not necessary.*—Corroboration is not necessary in the case of persons apparently accomplices, who have entered into communication with conspirators, but who have disclosed the conspiracy to the public authorities, under whose direction they continue to act, till the matter can be so far matured as to ensure a conviction. To such persons the rule as to corroboration does not apply. The early disclosure is considered as binding the party to his duty and though a great degree of disfavour may attach to him for the part he has acted as an informer, yet his case is not treated as that of an accomplice. **Rat. Un. Cr. C. 428=Cr. Rg. 91 of 1888** [*F.*, 19 B. 363 ; *Diss.*, 15 B. 45].

(52)—There may be cases of an exceptional character in which the accomplice evidence alone convinces a Judge, and, if he acts on that conviction, with the character of the witnesses clearly present to his mind, a Revisional Court ought not to interfere in the absence of other circumstances showing a want of judicial discretion. **14 B. 115.** [*R.*, 16 B. 580=Rat. Un. Cr. C. 577].

(53)—Although it would generally be most unsafe to convict an accused on the uncorroborated evidence of an accomplice, yet, if the

Accomplice—continued.

2.—ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION—*continued.*

Judge, after considering and weighing the evidence, thinks that it is true, and, if believed, establishes the guilt of the prisoner, it is his duty to convict. **9 A. 528.** (1 M. 394, A.W.N., 1884, 286; 8 A. 306, *R*).

(54)—*Spy, whether requires to be corroborated.*—The Government are justified in employing spies and a person so employed does not deserve to be blamed if he instigates offences no further than by pretending to concur with the perpetrators. They are entirely to be distinguished in fact and in principle from accomplices, and, although their evidence is entirely for the Jury to judge of, yet, they are not such persons as would require their evidence to be corroborated. **19 B. 363.**

(55)—*Policeman procuring sale of liquor to obtain conviction, if an accomplice—Spy or informer distinguished from—Corroboration—Evidence Act, ss. 144, 133.*—A policeman or other person procuring an illegal sale of liquor in order to obtain a conviction is not an accomplice, whose evidence, if uncorroborated, ought not to be accepted as sufficient for conviction. **L.B.R. (1893-1900), 365.** (L.B.R. (1872-1892), 146, overruled; 19 B. 363, *R.*) [*F.*, U.B.R. 1897-1901, Vol. I. 176].

(56)—*Judge and Jury when may act on accomplice evidence.*—A Jury may convict upon the evidence of an accomplice, though not corroborated so as to show the prisoner's actual participation in the offence. **5 W.R. Cr. 11.**

(57)—*Compulsory payment of bribe—Persons paying bribes whether accomplices—Value of their testimony.*—When the accomplices were persons who paid a bribe to a public servant, accused under s. 161, Penal Code, not of their free will but rather of necessity, and particularly when they did not strive to save themselves by throwing the blame for the offence on the accused but were rather doing the reverse and their guilt, such as it was, plainly not being used as an instrument to induce them to give evidence, *held*, that their testimony even without corroboration might justify the conviction of the accused; at any rate, their evidence would require a much slighter degree of corroboration to establish their credit than would be the case, if they were entirely voluntary accomplices in the offence which they spoke to. **33 C. 649 =10 C. W. N. 669=3 Cr. L. J. 452.** [*F.*, 12 C.W.N. 140=6 Cr. L.J. 434].

(58)—*Magistrate erroneously treating a witness as accomplice.*—Where a Magistrate erroneously treats a witness as an accomplice and grants him a conditional pardon, his evidence does not require corroboration. **5 B.H.C. Cr. 85.**

(59)—*Pardon tendered by Police Superintendent to accomplice.*—Where an accomplice is tendered a pardon by the District Superintendent of Police under the orders of the District

Accomplice—continued.

2.—ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION—*continued.*

Magistrate, the evidence of such accomplice was held admissible. **L.B.R. (1872—1892), 246.**

(60)—*Admissibility of statement made as an approver after withdrawal of pardon.*—Should the pardon granted to an approver be withdrawn for the reason that he has not told the truth, his evidence is admissible against him or any one else. **24 P R. 1902 Cr.** See, also, 41 P. R. 1905, Cr., F.B.

(61)—*Person under arrest pending appeal—Admissibility of his evidence against persons concerned in the same offence.*—*Per Stuart, C.J.*—Where a person accused of an offence was discharged by the Sessions Judge but he was re-arrested by the Magistrate, pending an appeal from the acquittal to the High Court and before the appeal was admitted, *held*, that the re-arrest was lawful and absolutely necessary in the interests of justice, and his statement, after his re-arrest and pending his appeal, was admissible in the trial of another person who was arrested subsequently to the arrest of the former as being concerned in the same offence.

Per Spankie, J.—Assuming that the re-apprehension after an acquittal and on the same charge was unlawful, his statement and evidence although admissible, was not such evidence, as the Court would place much reliance upon. If his re-arrest was lawful, he was in the position of an accused person and the Magistrate should not have examined him as a witness in the trial of the other accused. **2 A. 386.**

(62)—*Admissibility of evidence of accomplice whose appeal against his conviction dismissed.*—When a convicted person, whose appeal against his conviction has been dismissed, is tendered as a witness in a further enquiry ordered to be held as regards other persons jointly tried with him who had been discharged, he is, in no sense, an accused person and his evidence is admissible against those discharged. **8 P.R. 1904 Cr.**

(63)—*Evidence of accomplice promised not to be prosecuted—Cr. P.C., (1898), ss. 337—339, and 142.*—*Held*, that an accomplice, whom the Local Government had promised not to prosecute in respect of an offence to which ss. 337-339, Cr. P.C., did not apply, was not an accused person within the meaning of s. 342, Cr. P.C., that an oath could be administered to him, and that his evidence was, therefore, admissible against his accomplices. **21 P.R. 1904, Cr.**

(64)—*Further investigation ordered without reversing conviction based on accomplice's evidence.*—Case where the Chief Court declined to reverse the conviction of an accused person based on the statement of a co-accused, but ordered a further investigation to be made on the ground that other evidence would be forthcoming. **27 P.R. 1869 Cr.**

Accomplice—continued.

2.—ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION—*concluded.*

(65)—*Validity of separate trial of accomplice.*—The evidence of an accomplice is insufficient without corroboration to support the conviction of another accused. An accomplice should be tried along with the other accused and not tried separately and examined as a witness. **5 C P.L.R. 1 Cr.**

(66)—*Rule of practice prior to the Evidence Act, 1872.*—Prior to the Evidence Act, the rule, not of law, but of practice was that a conviction could not be based on the unsupported evidence of an accomplice, that the accused person's statement was no evidence against a fellow-prisoner or one tried jointly with the person making the statement and that such statement was only admissible in evidence when made in the witness-box. **31 P.R. 1866 Cr.** See, also, 23 P.R. 1867 Cr., 124 P.R. 1866 Cr., 125 P.R 1866 Cr., 27 P.R. 1867 Cr., 28 P.R. 1867 Cr., 38 P.R. 1867 Cr.

(67)—*Evidence of accomplice—S. 28 of Act II of 1855.*—S. 28, Act II of 1855, applied only to the old Supreme Courts and the rules and practice prevailing in them and does not show that, in the Courts of the Mofussil, corroborative evidence is legally requisite to support the testimony of an accomplice. **5 W.R. Cr. 11.**

3.—ACCOMPLICE EVIDENCE—JUDGE'S CHARGE TO JURY.

See CHARGE TO JURY—MISDIRECTION.

(1)—*Judge's charge to Jury as to accomplice evidence.*—The Legislature intended to lay down in s. 114, Evidence Act, the rule that the testimony of an accomplice is unworthy of credit so far as it implicates an accused person unless it is corroborated in material particulars in respect to that person; and it is the duty of a Court which has to deal with an accomplice's testimony to consider whether this maxim applies to exclude that testimony or not, and, in a case tried by Jury, to draw the attention of the Jury to the principles relative to the reception of an accomplice's testimony. The Court should charge the Jury that the mere confessions of the prisoners tried simultaneously with the accused for the same offence are only to be rated as evidence of a defective character and that they require a specially careful scrutiny before they can be safely relied on. **21 W.R.Cr. 69.**

(2)—*Points of law and fact that a Judge should lay before Jury.*—The Judge should inform the Jury or assessors (1) that there is no rule of law prohibiting the conviction of an offender upon the uncorroborated evidence of an accomplice; (2) that, as a general rule of practice, it is considered unsafe to convict upon such evidence; and (3) to point out any circumstances in the particular case which, in the opinion of the Judge, afford a sufficient reason for relying upon the evidence. **2 Weir 798=4 M.H.C. App. 7.**

Accomplice—continued.

3.—ACCOMPLICE EVIDENCE—JUDGE'S CHARGE TO JURY—*continued.*

(3)—*Judge to make proper observations on accomplice's testimony.*—The evidence of accomplices should not be left to a Jury without such directions and observations from the Judge as the circumstances of the case may require. **5 W. R. Cr. 80=B.L.R. Sup. Vol. 459.**

(4)—*Improper advice given by Judge to Jury—Omission to give proper advice—Error in law—High Court, interference of*—Improper advice given by a Judge to the Jury upon a question of fact, or the omission of the Judge to give that advice which he, in the exercise of a sound judicial discretion, ought to give the Jury upon questions of fact, amounts to such an error in law in summing up as to justify the High Court, on appeal or revision, in setting aside a verdict of guilty. **5 W.R.Cr. 80=B.L.R. Sup. Vol. 459.**

(5)—*Practice where accomplice's testimony uncorroborated.*—Where the evidence of an accomplice is uncorroborated, the correct practice requires Sessions Judges not merely to tell the jury that it is *unusual* to convict on such evidence, but also to tell them that it is *unsafe*, and contrary both to prudence and practice to do so. But his omission to state the above particulars does not amount to an error in law. **6 B.H.C. Cr. 57.** (3 B.H.C. Cr. 57, *Commented on*). [*R.*, 14 B. 331].

(6)—*Assessors.*—As a general rule, Courts ought not to convict upon an accomplice's testimony, unless confirmed not only as to the offence, but also as to the identity of the individual prisoner as the person or one of the persons who participated in the offence, and Juries ought to be so advised and directed. But it cannot be laid down that, if a Judge, aided by assessors, considered an accomplice entitled to credit, though unconfirmed in both these respects, the conviction must be set aside on appeal. **2 Weir 796.**

(7)—*Judge's charge to Jury—What it should contain—Omission, effect of.*—On a trial by Jury, the Sessions Judge, in summing up, should give a full and detailed statement of the evidence on both sides; he should point out the legal bearing of it, and what weight the Jury ought to attach to its several parts. His omission to do so, if the accused is thereby prejudiced, amounts to such an error in law as would justify a Court of Appeal in setting aside the verdict. **5 B. H. C. Cr. 85.** [*F.*, 5 Bom. L.R. 207; *R.*, 6 B.H.C. 47, 16 A. 84, F.B., 19 B. 741, 19 B. 749, 23 B. 316, 3 S. L. R. 102, Rat. Un. Cr. C. 644, 719, 720, 748, 806, 850, 917].

(8)—*Admissibility at Sessions trial of accomplice's deposition taken at the preliminary enquiry—Cr. P.C. (1882), s. 288*—If an accomplice who has accepted an offer of pardon is examined as a witness at the sessions trial, he is a witness for the purposes of s. 288, Cr.P.C., and his deposition at the preliminary enquiry

Accomplice—concluded.

3.—ACCOMPLICE EVIDENCE—JUDGE'S CHARGE TO JURY—*concluded.*

can be used as evidence at the trial. Though it is not a rule of law, it is yet correct to say that the evidence of an accomplice requires just as much corroboration or as little corroboration as is needed to convince a prudent person of the truth of the facts alleged against the accused. **14 P.R. 1894 Cr.**

See BURMA ACT I OF 1899, s.9, U.B.R. (1897-1901), Vol. I. 224.

See APPROVER, 29 C. 782=6 C.W.N. 553, 7 C.W.N. 457.

See CHARGE TO JURY, 12 M. 196=2 Weir 519, 17 C. 642.

See CONFESSION, 9 C.P.L.R. Cr. 35, 19 B. 363.

See CRIM. PRO. CODE (1898), s. 288, 2 L.B.R. 214.

—Revocation of pardon tendered to accomplice —*See* CRIM. PRO. CODE (1898), s. 337, 3 O.C. 191.

—Evidence of illegally pardoned accomplice —*See* CRIM. PRO. CODE (1898), s. 337, L.B.R. (1893-1900), 51.

See DISTRICT MAGISTRATE, L.B.R. (1893-1900), 323.

—S. 114—*See* EVIDENCE ACT, 22 M. 491=2 Weir 746.

See EVIDENCE ACT, ss. 114, 133, 6 Bom. L.R. 1091=29 B. 264, 14 B. 331.

See EVIDENCE ACT, ss. 114, ill. (*b*) and 133, 14 B. 115.

See EVIDENCE ACT, s. 133, L.B.R. (1872-92), 322.

—When can be proceeded against—*See* PARDON, 13 C.P.L.R. Cr. 123.

Accounts.

See EVIDENCE ACT, s. 34.

Account books relevant as admissions.—Though certain account books are proved not to have been regularly kept in course of business, yet if they are proved to have been kept on behalf of a firm of contractors by its servant or agent appointed for that purpose, they are relevant as admissions against the firm. **1 B. 610.**

—Falsification of accounts—Fraudulent, intent necessary—*See* PENAL CODE, ss. 465, 471, 477-A, 36 C. 955.

See ACT I OF 1878, s. 9, 1 Weir 831.

Accused person.

See 1. ACCOMPLICE.
2. APPROVER.
3. CONFESSION.
4. DISCHARGE OF ACCUSED.
5. EXAMINATION OF ACCUSED.

Accused person—continued.

(1)—*Definition of*—The word "accused" has not been defined in the Criminal Procedure Code, and, in ordinary parlance, it means any person against whom an allegation has been made requiring the action of a Criminal Court. **131 P.L.R. 1905=42 P.R. 1905 Cr.**

(2)—*Meaning of term*—The word "accused" does not necessarily mean and include any person over whom a Magistrate or other Court is exercising jurisdiction. **2 C.L.J. 149=9 C.W.N. 983.** (16 B. 661, 23 C. 493 and 21 A. 107, *D.*)

(3)—*Crim. Pro. Code (1882), s. 342*—By "accused" is meant a person over whom the Magistrate or other Court is exercising jurisdiction. **16 B. 661.** [*F.*, 23 C. 493, 21 A. 107=A.W.N. 1898,185; *R.*, 23 B. 213, 15 P.R. 1900 Cr.=P.L.R. 1900, 59, 5 C.W.N. 749=28 C. 709, 15 C.P.L.R. 112, 24 P.R. 1903 Cr., 21 P.R. 1904 Cr.=135 P.L.R. 1904, 131 P.L.R, 1905=42 P.R. 1905 Cr., 13 C.W.N. 151=36 C. 163=8 C.L.J. 565, 4 N.L.R. 81=8 Cr.L.J. 20; *D.*, 9 C.W.N. 983.]

(4)—*Person required to furnish security to keep the peace—Cr.P.C. (1898), s. 107*—The party against whom proceedings under s. 107, Cr.P.C., are instituted is in the position of an accused person. **36 C. 163=13 C.W.N. 151=8 C.L.J. 565=9 Cr.L.J. 36.**

(5)—*Person required to furnish security for good behaviour*—A person called upon to furnish security for good behaviour is an accused person, and a District Magistrate is competent under s. 437, Cr.P.C., 1882, to order further enquiry in cases where the subordinate Magistrate has discharged the person under s. 119, Crim. Pro. Code. **21 A. 107.** (16 B. 661, 23 C. 493, *F.*) [*F.*, 13 C.W.N. 151=8 C.L.J. 565=36 C. 163=9 Cr.L.J. 36; *Appl.*, A.W.N. 1903, 79; *R.*, 28 A. 709=5 C.W.N. 749, 24 A. 148=A.W.N. 1904, 206, 2 L.B.R. 80; *D.*, 2 C.L.J. 149=9 C.W.N. 983; *Diss.*, 131 P.L.R. 1905=42 P.R. 1905 Cr.]

(6)—Although a person, who is called upon to furnish security for good behaviour, is not accused of an offence, yet, he is an accused person, as the word "accused" means a person over whom the Magistrate or other Court is exercising jurisdiction. **23 C. 493.** [*F.*, A.W.N. 1898, 185=21 A. 107; *R.*, 5 C.W.N. 749=28 C. 709, 2 L.B.R. 80, 135 P.L.R. 1904=21 P.R. 1904 Cr., 131 P.L.R. 1905=42 P.R. 1905 Cr.; *D.*, 9 C.W.N. 983=2 C.L.J. 149.]

(7)—An accused person, within the meaning of s. 437, Cr.P.C., includes also a person against whom proceedings are taken under s. 110, Cr.P.C. **24 P.R. 1903 Cr.** See, also, 33 P.R. 1905 Cr. *Contra* 42 P.R. 1905 Cr.

(8)—*Accused pleading guilty, but neither convicted nor acquitted—When accused becomes competent witness against co-accused*—Until an accused person, who has pleaded guilty, is convicted or acquitted, he is still an

Accused person—continued.

accused person and is, therefore, not a competent witness against the co-accused. It is open to the Court to refuse to accept the plea of guilty returned by an accused and to try the question of the accused's guilt. Where one of two accused pleaded guilty, but the Magistrate took no action on the plea, but, proceeding to try the case as against the other accused, directed his mind and his judgment entirely to the case as it stood on independent testimony (as he was of opinion that, if the second accused was not guilty, the plea of the first was valueless), *held*, the trial was good. **9 C.L.J. 291=13 C.W.N. 52.** (23 A. 53, 30 A. 540, 19 B. 195, *D.*)

(9)—*Convicted person, if accused*—A convicted person is not an accused person within the meaning of s. 390 of Act X of 1872. **1 A. 151, F.B.**

(10)—*Person discharged under s. 119, Cr. P.C. (1898)*—A person discharged under s. 119, Cr.P.C. (1898), is not an accused person within the meaning of s. 437, Cr.P.C., 1898, and a District Magistrate is, therefore, not competent to pass an order for further inquiry into the case of such a person. **42 P.R. 1905=131 P.L.R. 1905.** (27 C. 662, *F.*; 21 A. 107, *not F.*)

(11)—*Party to proceeding under s. 133, Crim. Pro. Code (1898)*—Proceedings under s. 133, Criminal Procedure Code, are more of the nature of civil than of criminal proceedings and a party to such a proceeding is not an accused person within the meaning of s. 369 of the Code; there is nothing to prevent his being examined on oath, and, if such a person gives false evidence, he may be prosecuted for an offence under s. 193, Penal Code. **2 C.L.J. 149=9 C.W.N. 983.**

(12)—The words "accused person" in s. 436, Penal Code, are inapplicable to a person who has been convicted by the Magistrate under s. 411, from whose sentence no appeal lies. **10 W.R. Cr. 16.**

(13)—*Manner of describing.*—Accused persons must be designated by name and not by number. **7 W.R. Cr. 53.**

(13-*a*)—*Accused—His position.*—The accused in a criminal case is merely on the defensive, and, unless there is any positive admission of a fact by him, any omission on his part to explain what indeed can be explained without his explanation, should not be pressed against him. **28 B. 533=6 Bom. L.R. 379.**

(14)—*Identification of accused.*—In serious cases triable by the Court of Session, the witness should not be allowed to identify the numerous persons in a body, and such statement as "I identify all the prisoners as having taken part in the dacoity" are inadmissible. The witness should be called on to identify each individual prisoner, and the identification of each should be separately recorded.

Moreover, when the witness has pointed out each individual prisoner to the Judge, it is not sufficient for the Judge to make a note that the witness has done so. He should record the words in which the witness identifies the prisoners as part of the witness's deposition. **3 O.C. 72.**

(15)—*Court importing its own knowledge into case.*—In a dacoity case, the Magistrate stated in his judgment that the identification at the jail was carried out in his presence in such a manner "as to admit of no fraud." *Held* that the Magistrate could not import his own knowledge into the case except as a witness. **6 O.C. 204.**

(16)—*Accused being a pardanashin woman—Personal attendance.*—Where a pardanashin woman, of good position, is accused of an offence, the Magistrate should dispense with her personal attendance and permit her to appear by pleader, until such time as he has before him clear, direct, and reliable *prima facie* proof that the accused has a real charge to answer. **6 A. 59=A.W.N. 1883, 207.** [*R.*, 20 P.W.R. 1908 Cr.]

(17)—*Incapability of accused to understand proceedings—Deaf and dumb accused—Cr.P.C. (1898), s. 341.*—Where an accused, being deaf and dumb, cannot be made to understand the proceedings against him, and it becomes impossible to say that he knew the nature of the act committed or that he acted with any dishonest intention therein, he must be acquitted and discharged. **4 Bom. L.R. 296.**

(18)—The conviction, under s. 457, Penal Code, of an accused person, proved to have been deaf and dumb from his birth, in consequence of which he could not understand the nature of the proceedings taken against him, was set aside and he was ordered to be discharged, under s. 341, Cr.P.C., 1882, although the Court below found that the complainant's stolen property was produced by the accused after his arrest and the prosecution evidence established the offence against him. **34 P.R. 1885 Cr.** (22 W.R. Cr. 35, *F.*)

(19)—Where a person, whose understanding was of the most limited character, was caught at night in a house with some anklets in his possession, and it appeared that he was a lad of 15 or 16 years of age and had been deaf and dumb from his birth, that he sometimes lived with his father and sometimes by begging, that there was little doubt that hunger had driven him to break into the house, and that he had never been in arrest before, the Court, under such circumstances, recommended that he should be made over to his father. **7 N.W.P. 131.**

(20)—The inability of the accused, a deaf and dumb woman, to understand the proceedings is not a ground for refraining from passing sentence on her. **A.W.N., 1881, 54.**

(21)—*Duty of Judge to report to High Court in such cases.*—Where a Sessions Judge on a trial considers that the accused had not understood the proceedings and the trial results in

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the accused's conviction, he should report the case to the High Court. **A.W.N., 1881, 15.**

(22)—*Cr.P.C. (1882), ss. 341, 471.*—A Magistrate should not, after convicting a deaf and dumb person of an offence charged against him, proceed to pass sentence on him, but should submit the matter for the orders of the High Court, and, in the absence of any clear and specific provision in the Code, should treat such accused as a lunatic and report the matter to the Local Government. **37 P.R. 1889 Cr.**

(23)—*Attempt to communicate with such accused essential—Effect of failure to do so.*—Where a deaf and dumb person was tried without any attempt being made to communicate with the prisoner, *held*, that the accused was prejudiced by the irregularity. **2 Weir 403=6 M.H.C. App. 7.**

(24)—*Crim. Pro. Code (1861), s. 186 (3) (s. 341 of the the Code of 1898)—Dumb accused—Procedure.*—Where a dumb person is placed on his trial, some means of communicating with him should be adopted. The omission to do so will not invalidate the trial, unless the accused has been prejudiced thereby. **2 Weir 402.**

(25)—*Accused found to be insane—Enquiry into his state of mind to be held.*—When an accused is found to be insane at the trial, the Court ought to make a proper enquiry into the state of the mind of the accused at the time of the commission of the offences charged. **A.W.N. 1901, 132.**

(26)—*Cr.P.C. (1882), s. 464—When enquiry can be held by Magistrate having reason to believe that accused is of unsound mind and incapable of making defence.*—Ch. XXXIV of Cr.P.C., 1882, contains only subsidiary provisions for dealing with an exceptional class of persons charged with offences. These provisions are not to be construed so as to override the general rules of procedure, except in so far as any special provision is clearly incompatible with the general provisions. *Held*, that, in the case of a charge of an offence under Ch. XVIII, Cr.P.C., 1882, made before a Magistrate, he ought to make an enquiry into the truth of the charge; and it is only when the Magistrate is satisfied after such enquiry that a *prima facie* case is made out against the accused, that he can hold the enquiry prescribed by s. 464, into the question whether the accused is unsound in mind, and consequently cannot make his defence. **11 P.R. 1894 Cr.**

(27)—When a Magistrate finds that the accused was of an unsound mind at the time when the offence was committed and at the time of his trial, he should not proceed to complete the trial, but should proceed under ss. 464 and 466, Cr.P.C., 1898. In the former case, his proceedings are open to revision under s. 439 of the Code of Criminal Procedure, inasmuch as the final order for detention in an asylum is not appealable. **A.W.N. 1900, 47.**

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(28)—*Crim. Pro. Code (1872), ss. 186, 297, 423.*—Section 186, Criminal Procedure Code, 1872, is intended to provide for cases in which the accused person is deaf and dumb, or, from ignorance of the language of the country and the want of an interpreter, is unable to understand, or make himself understood. In such cases, the High Court would probably order the prisoner to be detained during Her Majesty's pleasure. But when the accused is unable to understand the proceedings owing to unsoundness of mind, the Magistrate should adopt the procedure provided in Chapter XXXI. Where an imbecile, who was, consequently, unable to understand the proceedings and was incapable of making any defence, was convicted by the Magistrate, the High Court, under s. 297, directed that the accused should be released on sufficient security being given that he would be properly taken care of and would be prevented from doing injury to himself or to any other person and for his appearance when required; and that, in default of such security being given, the case should be reported for the orders of the Government. **5 B. 262.** [*R.*, 7 B. 15, U. B.R. (1892-1896), Vol. I, 38, Rat. Un. Cr. C. 696.]

(29)—*Acquittal.*—A person accused of an offence was found, in the course of his trial, to be of unsound mind. The Magistrate, instead of proceeding under s. 436 of the Code of Criminal Procedure, proceeded with the trial and finding that, at the time of committing the offence, he was of unsound mind, acquitted the accused. *Held* that the proceedings were irregular and must be set aside. **A.W.N. 1882, 106.**

(30)—*Proceedings against persons of unsound mind*—De novo *trial.*—Where the trial of an accused person, who was remanded to custody on the ground of insanity, was resumed upon receipt of a letter from the Zillah Surgeon, at the point at which it had been stopped, *held*, that the trial should have been commenced *de novo* after finding with the aid of assessors that he was capable of making his defence, and that the Judge should not have acted on the letter of the Zillah Surgeon, which was not legal evidence. **2 Weir 582.**

(31)—*Crim. Pro. Code (1872), s. 186 (3) (s. 341 of the Code of 1898)—Conviction, when accused does not understand the proceedings.*—Where the Magistrate was uncertain whether the accused understood the proceedings, *held*, that he would not be justified in convicting and sentencing the accused. **2 Weir 403.**

(32)—*Penal Code, s. 84.*—The accused killed his two young children with a hatchet. The reason given for the murder was that, being ill with fever for several days, he was vexed with the crying of the children. It was alleged that during fever he was very irritable, sensitive to noise, and confused in his thoughts, but that he did not become delirious. His manner was quiet, when questioned, and there was no attempt at concealment. He fully confessed,

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but showed no signs of sorrow or remorse. *Held* that the evidence was not sufficient to prove that he was not conscious of its nature. If he was conscious of its nature, he should be presumed to have been conscious of its criminality. *Held*, therefore, that s. 84, I.P.C., did not apply to the case and that he was punishable under s. 302, I.P.C. But the High Court forwarded the proceeding to H.E. the Governor in Council, observing that " there is good ground for classing the case with those of *Greensmith* and *Brixey*, as to which so high an authority as Dr. Taylor has observed that they fairly establish the occasional existence of homicidal mania, in which the mental condition of the accused persons at the time of perpetuating the acts of murder is such as to justify their acquittal on the ground of insanity." The case is one where future symptoms may, perhaps, throw more light on the accused's state of mind, and possibly justify a commutation or reduction of sentence, if not pardon. **10 B. 512.** [*F.*, 23 C. 604; *Appr.*, 12 M. 459=1 Weir 42, 94 P.L.R. 1909=6 M.L.T. 101; *R.*, Rat. Un. Cr. C. 698, Rat. Un. Cr. C. 818, 17 C.P.L.R. 113; *D.*, Rat. Un. Cr. C. 279, 14 B. 564.]

(33)—*Substantially defective criminal proceedings cannot be cured by accused's waiver.*—Criminal proceedings, which are substantially bad, cannot be cured by any amount of waiver or consent on the part of the accused not personal to the latter. **2 C. 23.** [*D.*, 6 C. 83; *R.*, 6 C. 96, 4 Bom. L.R. 53, 15 C.P.L.R. 66, 9 C.W.N. 1065, 7 Bom. L.R. 527; *F.*, 12 C.W.N. 140=6 Cr.L.J. 434.]

(34)—Where criminal proceedings are substantially bad in themselves, the defect will not be cured by any waiver or consent of the accused or their pleaders. **6 C. 96=6 C.L.R. 521.** (2 C. 23, *R.*)

(35)—If criminal proceedings are substantially bad, they will not be cured by any waiver or consent of the prisoner. **15 C.P.L.R. 66.** (2 C. 23, *R*).

(36)—Except where the law expressly permits waiver, the right of an accused person should not be held to be lost by his consent to a procedure, or to the admission of evidence which the law does not authorise. The prisoner on his trial can consent to nothing. It is the duty of Magistrates and all Criminal Courts to follow the procedure prescribed by law, and the consent of the accused cannot be invoked against irregularity in procedure. **12 C.W.N. 140=6 Cr.L.J. 734.** [*Diss.*, 12 C.W.N. 416=35 C. 457 =7 C.L.J. 488=7 Cr.L.J. 220; *Appr.*, 5 M. L.T. 218.]

(37)—*Plea of guilty, if throwing oneself on Court's mercy amounts to*—Where the accused did not formally plead guilty, the fact that he threw himself on the mercy of the Court should not prejudice him. The testimony of persons, who have been compelled to pay illegal gratification, has much greater probative force than that of ordinary accomplices. **12 C.W.N. 140.** (24 W.R.Cr. 53, 10 C.W.N. 669=33 C. 649, *F*; 13 W.R.Cr. 40, *Not F.*)

(38)—*Plea of guilty when offence was not correctly stated—Effect.*—The plea of guilty of an accused person cannot be accepted, when it is not clear that the offence was correctly stated to him. **U.B.R. 1907, 3rd Quarter, Penal Code, 9=7 Cr. L.J. 208=14 Bur. L.R. 216.**

(39)—*Joint trial of accused—Discharge of co-accused—Co-accused called as witness—Same transaction.*—The police sent up two accused, A and B, separately, A charged under s. 324, Penal Code, with causing hurt to B, and B under s. 326 with causing grievous hurt to A. The Magistrate inquired into the case against both the accused jointly, and, finding that the evidence against B was insufficient, discharged him and examined him as a witness against A, who was convicted. *Held* that, as it was proper to take the evidence of A against B, as well as that of B against A, the different offences were not committed in the same transaction, and that there should have been separate inquiries against each accused. **2 L.B.R. 106.** (1 L.B.R. 56, 20 C. 537, 5 C.L.R. 574, L.B.R. (1893-1900), 536, *R.*)

(40)—*Joint trial of two or more persons—Competency of one of them to be witness against another.*—When two or more persons are jointly tried, one of such persons cannot be called as a witness either for or against another of such persons. **15 C.P.L.R. 112.** (5 C.L.R. 574, 1 B. 610, 2 A. 260, 7 W.R.Cr. 44, 16 B. 661, 23 B. 213, *R.*)

(41)—*Examination of accused, object of—Cr. P.C. (1882), ss. 342, 364.*—The object of the examination of an accused person contemplated by ss. 342 and 364, Cr. P.C. (1882), is to enable him " to explain the circumstances appearing in evidence against him " and it is not to empower a Judge, before any evidence has been given, to extract damaging admissions from him, upon which to build up the case for the prosecution. **A.W.N. 1884, 106; 14 A. 242= A.W.N. 1892, 83.**

(42)—The examination referred to in s. 364, Cr.P.C. is subject to the purpose referred in s. 342, that is, to explain any circumstances appearing against the prisoner, but not to fasten the guilt on him. A Judge should not so examine an accused person as to enable him to supplement the case for the prosecution and show that he is guilty. **10 M. 295.**

(43)—The object of the examination of the accused is to enable him to explain circumstances appearing in the evidence against him and not to supply defects in the evidence. **1 L.B.R. 292.**

(44)—It is the duty of the Magistrate, both in summons and warrant cases, after the witnesses for the prosecution have been examined,

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to examine the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him. **U.B.R. (1897-1901), Vol. I, 82.**

(45)—*Entrapping accused to give incriminating answer, impropriety of.*—The sole object of the examination of the accused should be to enable him to explain the evidence which has been given against him. Courts ought not to try to entrap the accused into giving some incriminating answer. Failure to prove an *alibi*, or even proof that an *alibi* is false can rarely be safely regarded as evidence supporting the case for the prosecution. **L.B.R. (1893-1900), 349.**

(46)—*Accused not bound to make admissions against himself.*—No man charged with any criminal offence is bound or is under any obligation to make any admission injurious to his own interest, nor should any judicial officer attempt to compel any accused person to make any admission detrimental to his interest. **19 A. 291.**

(47)—*Admission of previous conviction—Value of such admission—Crim. Pro. Code (1898), ss. 342 (1) and 511.*—Under s. 342, cl. (1), Crim. Pro. Code, the purpose of the examination of an accused person is to enable him to explain any circumstance appearing in the evidence against him. The accused should not, in his examination, be asked if there was against him a previous conviction of which there is no evidence; nor, without proof of the authorized kind of previous conviction, does the mere admission of an accused person justify the use of the conviction to affect the punishment to be inflicted. **1 L.B.R. 8.**

(48)—To put accused persons through severe examinations is unfair to them. The examination of the accused should be conducted with the object of enabling them to explain matters appearing in the evidence against them and not of endeavouring to prove the charge against them by their admissions and contradictory statements. **5 C.P.L.R. 9 Cr.** See, also, 10 C. 140=13 C.L.R. 358.

(49)—*Examination of the accused by a Sessions Judge—S. 250, Crim. Pro. Code of 1872*—A Sessions Court, by the exercise of the power under s. 250, ought not to establish a Court of Inquisition and to force a prisoner to convict himself by making some criminating admissions, after a series of searching questions, the exact effect of which he may not readily comprehend. The real object of the power granted by the section is to enable a Judge to ascertain from time to time from a prisoner, particularly, if he is undefended, what explanation he may offer regarding any fact stated by a witness, or after the close of the case, how he can meet what the Judge may consider to be damnatory evidence against him. **6 C. 96=6 C.L.R. 521.** [*R.*, 10 M. 295=2 Weir 373.]

(50)—*Opportunity to explain circumstances.*—The accused should be given an opportunity

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of explaining all circumstances of importance appearing in the evidence against him. **U.B.R. (1892-1896), Vol. I, 144.**

(51)—*Confession by accused before evidence recorded.*—Courts should not make an accused person, before any evidence is recorded, confess his guilt and admit facts that may go to incriminate him. **2 C.W.N. 702.**

(52)—*Nature of the question to be put to accused.*—The questions put to the accused by the Court must be strictly limited to the purpose of enabling him to explain any circumstances appearing in the evidence against him. **14 A. 242; 10 C. 140; 13 C.L.R. 358.** [*R.*, 4 N.L.R. 163.]

(53)—The Legislature did not intend that, under the colour of an examination, under s. 342, Crim.Pro.Code, an accused person should make statements such as he might make if he were being examined as an approver. **6 O.C. 204.**

(54)—The examination of an accused person must not be made with a view to eliciting, by constant questions, the truth out of his mouth, as though he was a witness. **5 C.P.L.R. 13 Cr.**

(55)—The discretion given by the law for questioning a prisoner has not been allowed for the purpose of driving him to make statements criminatory of himself. This discretion can only be properly exercised for ascertaining from a prisoner how he may be able to meet facts in the evidence appearing against him, so that these facts should not stand unexplained. It is declaredly within the competency of the accused to decline answering any question, while the Court is at liberty to weigh his answers whether they tell for him or against him. **2 Weir 253=1 M.H.C.R. 199.** [*F.*, 1 C.L.R. 436, 2 Weir 361=10 M. 295, 2 C.W.N. 702.]

(56)—*Accused not to be cross-examined.*—It is opposed to the principles of English justice to commence proceedings by subjecting an accused person, who has not offered to make a confession, to a searching cross-examination; thus, in examining an accused under s. 364, Cr.P.C., it would not be fair to put him such a question as, "If you did not commit the murder, who did?". **7 O.C. 191.**

(57)—*Eliciting admission by cross-examining accused.*—To obtain an admission by putting it into the accused's mouth by cross-examining the accused and trying to prove the charge out of their mouths is unfair. **5 C.P.L.R. 11 Cr.**

(58)—*When accused's examination should be made.*—An accused person, according to s. 342, Cr.P.C., should be examined by the Court before he is put on his defence. **Rat. Un. Cr. C. 227.**

(59)—An accused person should be examined before he is called on for his defence, and the terms of s. 250, Cr.P.C., 1872, are, in this respect, mandatory. In the event of non-response on the part of an accused, the fact should

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be recorded and the Court should proceed with the trial. **A.W.N. 1881, 99.**

(60)—S. 342, Cr.P.C., 1882, imposes an obligation on the Magistrate that he should question an accused generally on the case, after the prosecution witnesses have been examined and before he is called on for his defence. **Rat. Un. Cr. C. 625 = Cr. Rg. 50 of 1892.**

(61)—*Cr.P.C. (1882), s. 342, nature and scope of.*—It is obligatory on the Court to examine an accused at the close of the case for the prosecution, s. 342, Cr.P.C., 1882, being imperative, as it is a means of enabling the accused to explain what appears against him. **Rat. Un. Cr. C. 720 = Cr. Rg. 46 of 1894.**

(62)—A Magistrate cannot, before evidence is taken for the prosecution, put questions to the accused of the nature of cross-examination. If such questions are put, the procedure is illegal, as it could not be said that the questions are put "for the purpose of enabling the accused to explain any circumstances appearing against him in the evidence," within the meaning of s. 342 of the Code of Criminal Procedure. **13 A. 345 = A.W.N. 1891, 102.** [*R.*, Rat. Un. Cr. C. 679, 4 N.L.R. 163.]

(63)—*Crim. Pro. Code (1882), s. 342—Magistrate's authority to question the accused in the absence of evidence against him.*—Where there is no evidence on the record against the accused, a Magistrate will not be justified, under s. 342, in putting any question at all to him, since it is only for the purpose of enabling an accused person to explain the circumstances appearing against him that a question even can be put; and, still less, is a Magistrate justified in putting questions for the purpose of incriminating the accused, a procedure which s. 342 was specially designed to prevent. *Per* Parker, J. **9 M. 224 = 2 Weir 125.** [*F.*, 7 O.C. 191; *R.*, 2 C.W.N. 702.]

(64)—*Plea of guilty not recorded, effect of—Examination of accused when no evidence recorded against accused—Cross-examination of accused—Withdrawal of charge by Public Prosecutor, effect of—High Court's power to disturb acquittal—Cr.P.C. (1898), ss. 271 (2), 342 (1), 439, 494.*—If the accused pleads guilty on a charge, the plea should be recorded. Where no such plea appears on the record, the conviction is bad and must be set aside and a new trial ordered on the charge. A Sessions Judge is not justified in questioning a prisoner at a stage when no evidence has yet been recorded, which the accused could be required to explain; and questions appearing to be in the nature of a cross-examination are not justifiable. If the Public Prosecutor withdraws a charge and the Court approves of it, the accused shall be acquitted; and neither the Public Prosecutor nor the Judge is called on to give any reasons for his action. The High Court has no power to interfere with such an order of acquittal. **5 M.L.T. 216.**

(65)—*Examination of accused persons by Magistrates immediately after making confessional statements—Cr. P. C. (1882), s. 344.*—The practice of pressing for the examination of accused persons by Magistrates, immediately after they have made confessional statements, is most undesirable and is calculated to defeat the objects which the police have in view. If there is any suspicion that the accused has been sent to the Magistrate with the express object of securing from him a reiteration of statements made by him while in police custody or previously, the statements cannot be entitled to the same weight as when it is clear that they were voluntarily made in the first instance by the accused. **2 Weir 414.**

(66)—*Questioning accused at close of prosecution for explaining circumstances appearing against him, when essential.*—Where it does not appear on the record that a prisoner leaves his case entirely in the hands of his legal adviser, the Judge is bound, under s. 342, Crim. Pro. Code, after the conclusion of the case for the prosecution, to ask the accused to explain any circumstances appearing in evidence against him. **2 Weir 405.**

(67)—*Accused cannot be examined as witness in his own case.*—Unless an accused person has been convicted or acquitted, he should not, except in the case where he is made Queen's evidence, be examined as a witness touching the matter of which he is accused. **5 C.P.L.R. 1 Cr.**

(68)—*Difference between accused making statement under s. 342, Cr.P.C. (1898) and as witness—Evidence Act, s. 132 and Crim. Pro. Code (1898), s. 342.*—When an accused person is making a statement under s. 342, Crim. Pro. Code, he can refuse to answer any question. But, as a witness, he is not excused from answering any question as to any matter relevant to the matter in issue. There is, however, an important proviso that no such answer which a witness shall be compelled to give shall be proved against him in any criminal proceeding except a prosecution for giving false evidence by such answer. **23 B. 213.**

(69)—*Written statement by accused cannot take the place of examination of accused—Written statement, if can be put in at Sessions trial.*—It is doubtful whether, in a trial before a Court of Session, the accused may put in a written statement of defence. But it is certain that such a statement cannot be allowed to take the place of the examination of the accused, which s. 342, Cr.P.C., imperatively orders to be made. **A.W.N. 1903, 1.**

(70)—*Examination of accused before Magistrate, when admissible at Sessions trial.*—In order to make the examination of an accused person before a Magistrate legal evidence in a Sessions Court, something more than the mere signature of the Magistrate thereto is necessary. The certificate under the Magistrate's hand required by s. 205, Cr.P.C., 1872, should be attached. **4 N.W.P. 16.**

(71)—*Record of accused's statement—Absence of questions—Admissibility.*—The mere absence

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of the questions in a prisoner's statement does not render it inadmissible. **12 C.L.R. 120.**

(72)—The omission of a Magistrate to have recorded in the vernacular the questions asked in the examination of the accused person does not necessarily render that examination inadmissible as evidence. **8 C. 618 (n)=1 C.L.R. 1, F.B.** [*F.*, 14 C. 539.]

(73)—*Sessions Judge—Trial—Examination of accused.*—The provisions of s. 342, apply to the case of an accused tried before a Sessions Judge, even when he has been questioned on the case generally by the Committing Magistrate. **9 Bom. L.R. 730=6 Cr.L.J. 74.**

(74)—*Irregularity in examining accused—Evidence Act, ss. 21, 29.*—Where a trying Magistrate examined the accused under s. 342, Cr.P.C. (1882) prematurely at a time when no evidence sufficient to connect them with the crime, with the commission of which they were charged, had been recorded against them, *held* that, although the Magistrate was wrong in examining the accused under s. 342, Cr.P.C., when it was impossible that they could have been questioned for the purpose of enabling them to explain any circumstances appearing in evidence against them, still their statements actually made cannot, if apparently freely and voluntarily given, be rejected as inadmissible in evidence on account of this irregularity of procedure; and that *prima facie*, as admissions, these statements were relevant under s. 21, Evidence Act, there being no other section to exclude them, s. 29 of the Evidence Act going to show that the mere fact of a statement being made in answer to questions is by itself no ground for exclusion. **Rat. Un. Cr. C. 679=Cr. Rg. 45 of 1893.** (13 A. 345, *R.*)

(75)—*Accused's statements whether evidence—Cross-examination by co-accused—Evidence Act, ss. 3, 133 and 30.*—Statements made by an accused person are not evidence within the definition of "evidence," given in s. 3, Evidence Act. An accused person does not make these statements on oath or solemn affirmation and cannot be cross-examined by his co-accused. S. 133, Evidence Act, does not apply to such statements. They can only be taken into consideration under s. 30, Evidence Act. **L.B.R. (1893-1900), 368.** (1 M. 163, 15 B. 66, 4 C. 483, *F.*)

(76)—*Accused's statements to be taken as a whole—Evidence.*—The statements of the accused persons should be taken in their entirety, and not in part, even as against those who made it. Such statements are no evidence against any of the accused other than those who made or adopted it. **21 C. 955.**

(77)—*Confession, how recorded.*—A confession should be recorded in the language in which it is made. **4 N.W.P. 16.**

(78)—*Certificate attesting statement by accused person.*—A certificate, when attesting the statement of an accused person recorded under s. 364 of the Code of Criminal Procedure, need not be appended in the Court's own handwriting; it is enough if it is signed by the presiding officer of the Court before which the statement is made. **A.W.N. 1900, 203.** (8 W.R.Cr. 55, *R.*)

(79)—*Statement of accused to Magistrate—Language of record.*—The Magistrate need not record the statement of an accused in the words of the very language in which it is made, when it is a foreign language; the record must be in the language in which it is interpreted. **5 C. 826.**

(80)—*Crim. Pro. Code (1861), ss. 426 and 439—Omission to record* in extenso *statement made by prisoner.*—The omission to record *in extenso* the statement made by a prisoner was held not to have prejudiced the accused, inasmuch as the substance of his statement was recorded and considered by the Magistrate. **6 M.H.C. App. 45.** [*D.*, 2 Weir 612.]

(81)—*Recording of statement of accused before evidence for prosecution taken down.* It is contrary to law to record the statement of an accused person under s. 164, Crim. Pro. Code, 1898, before any sort of evidence for the prosecution has been taken. **7 O.C. 191.**

(82)—*Crim. Pro. Code (1882), s. 364—Procedure.*—In this case a *Bhil* accused was examined by a Magistrate in the *Marathi* language and the accused's answers were given in *Marathi* with a very large sprinkling of *Bhil* terms. The Magistrate recorded the accused's statement in English. *Held* that the Magistrate's procedure was irregular, as he should have recorded the accused's statements in *Marathi*. **Rat. Un. Cr. C. 633=Cr. Rg. 4 of 1893.**

(83)—*Signature of.*—A Magistrate ought to see that the signature of an accused person to a statement recorded under s. 364, Crim. Pro. Code, is made in the immediate presence and under the careful control of the Magistrate himself. Taking the signature of the accused in an adjoining room before a clerk and not in the immediate presence of the Magistrate, is not what is intended by the section. **Rat. Un. Cr. C. 687=Cr. Rg. 8 of 1894.**

(84)—*Duty of Court towards accused—Undefended prisoner.*—Where a prisoner is not defended, the Court ought, in the interests of justice, to test the accuracy of the statements made by witnesses, by questions in the nature of cross-examination. **7 A. 160.**

(85)—*Presumption.*—When an accused person is brought before a Magistrate charged with the commission of a certain act which makes him liable to be dealt with as an offender, the Court, in dealing with him, is bound to take into consideration all the circumstances before it which may affect the measure of punishment awarded, and must be taken to have considered them, whether it has in fact done so or not. **3 C.L.R. 406.**

Accused person—continued.

(86)—*Right of accused—Accused should be given opportunity to be heard.*—Although a question may be very clear to a Magistrate, yet he ought to give the accused already discharged an opportunity to be heard. **11 C.W.N. 173 = 5 Cr.L.J. 16.**

(87)—No order should be passed against an accused person, without giving him an opportunity of being heard. **11 C.W.N. 316 = 5 Cr. L.J. 112.**

(88)—*Prosecution for false charge—Necessity for opportunity to accused to prove his case.*—It is illegal to put a man on his trial, without giving him an opportunity to prove his case. **5 C. 184.** [*R.*, 6 C. 496 = 7 C.L.R. 467.]

(89)—*Cr.P.C. (1898), s. 242*—When a case has been begun as a warrant case, it must be continued as such. A charge should be framed when there is a *prima facie* case against the accused and the accused should be given an opportunity of pleading and defending themselves. **1 L.B.R. 308.**

(90)—*Right of accused to know the charge.*—An accused is entitled to know, with certainty, the matter with which he is charged and, unless he has this knowledge, he can not but be seriously prejudiced in his defence. **15 C.P.L.R. 112.**

(91)—*Sessions trial—Accused's right to have information of the case he has to answer.*—The law contemplates that, in the serious cases of which a Court of Sessions may take cognisance, the accused should have some information of the case he has to answer. **4 M. 227 = 2 Weir 584.**

(92)—*Right of, to services of pleader.*—A Sessions Judge ought, under s. 340, Cr. P.C., 1898, to hear the pleader appointed by a person ordered to give security under s. 118. **15 P.R. 1900 Cr. = P.L.R., 1900 Cr., p. 59.** (9 C. 878, 16 B. 661, 23 C. 493, *F.*)

(93)—In an appeal from a conviction by a Sessions Court, the Chief Court ought to hear the appellant's counsel, and the Public Prosecutor, if he appears (s. 423, Cr.P.C., 1882) but, beyond this, it is not incumbent upon the Court to hear any one. **29 P.R. 1886 Cr.**

(94)—A District Magistrate, having refused to allow a pleader to appear on behalf of two accused persons under trial in his Court, the Chief Court directed him to allow the accused to be defended by counsel or pleader, with liberty to resummon witnesses, and afterwards to record a fresh judgment. **9 P.R. 1877 Cr.**

(95)—*Admissions by pleader of accused, accused not bound by.*—The admissions made by a pleader who is appointed by the Court to help the accused in his defence are not binding on the accused. **2 Bom. L.R. 751.**

(96)—*Right of accused to have evidence against him recorded as early as possible—Detention of accused person in jail for inordinate period, grounds for.*—An accused person has a right to

Accused person—continued.

have the evidence against him recorded at as early a period as possible, and the fact that there is or may be a great body of evidence forthcoming against him is not a good ground for detention for an inordinate period. **6 M. 63 = 2 Weir 409.** [*R.*, 11 M. 98.]

(97)—*Magistrate bound to question accused when brought before him—Accused's right to have evidence recorded—Cr.P.C. (1898), ss. 242, 344.*—The trial of a case should not be adjourned till all the absconders are found. An accused has the right to have the evidence against him recorded at as early a period as possible. The absence of some of the men suspected is not a reasonable cause for adjourning the enquiry into the guilt of the accused who appear before the Magistrate. **1 L.B.R. 60.** (6 M. 63, *F.*)

(98)—*Accused whether bound to produce any evidence.*—There is no obligation whatever imposed on an accused person to produce any evidence, and no inference could be drawn against him from non-production of such evidence until a strong case is made out against him. **Rat. Un. Cr. C. 779 = Cr. Rg. 43 of 1895.** (16 B. 423, 19 C. 65, *R.*).

(99)—*Quantity of evidence to be placed before the Jury—Right of accused to decide.*—It is for the accused person and not for the Judge to say what amount of evidence it would be proper to place before the Jury in order to establish the case for the defence. The Sessions Judge should not refuse to enforce the attendance of certain witnesses for the defence, on the ground that there was ample record in the evidence about the matter for which they were summoned. **7 C.W.N. 188.**

(100)—*Right of accused to recall witness after charge—Record of evidence—Crim. Pro. Code (1898), ss. 350, 256, 356 and 357.*—Although the law does not specifically require it, yet, in the case of accused persons, who are undefended, and who are probably ignorant of their strict rights, it is desirable that the Magistrate, who continues a trial, under s. 350, Crim. Pro. Code, should inform the accused of their rights under that section and should record the fact that he has done so and the reply of the accused. After having pleaded to the charge, the accused should be asked whether they wished to cross-examine any of the witnesses for the prosecution. S. 256, Crim. Pro. Code, requires this to be done. In this case, again, the Code does not explicitly require the Magistrate to record that he has observed the provisions of this section. But it is a safe and sound rule that, when the law requires anything to be done, the fact that this thing has been done should be recorded. The omission to record compliance with s. 256, Crim. Pro. Code, is not an irregularity of procedure, in the absence of any express provision on the subject. It is not a sufficient compliance with the provisions of the Criminal Procedure Code, whether s. 356 or 357 is applicable, to record that a witness corroborates another. That is a deduction from

Accused person—continued.

a comparison of the depositions. The evidence of each witness must be recorded as it is given. **1 L.B.R. 238.**

(101)—*Right of accused to recall prosecution witnesses--Omission to give accused opportunity to recall—Effect.*—The omission of the Magistrate, who tried a case under s. 353, I.P.C., after framing a charge, to ask the accused whether he wished to recall all or any of the prosecution witnesses, and the rejection by the Magistrate of an application made by the accused with that object on the ground that it was too late, was held to be an irregularity that might have caused the accused substantial injury in his defence. **A.W.N., 1902, 5.**

(102)—*Refusal to allow accused to cross-examine prosecution witnesses before framing of charge—Transfer, grounds for.*—In a case under s. 380, Penal Code, the Magistrate should at once give the accused an opportunity to cross-examine the prosecution witnesses, if they should so desire, even though the charge may not be framed.

But a refusal to give such opportunity is not, when the Magistrate acts *bona fide* from a mistaken view of the law, a good ground for transferring the case. **8 C.W.N. 838.**

(103)—*Crim. Pro. Code, (1882), ss. 256, 257—Right of accused to have the case postponed for adducing evidence.*—Under ss. 256. 257, Cr.P.C., the accused is entitled, as a matter of right, to ask that the case might be postponed to some other day, so as to allow him an opportunity to adduce evidence in support of his defence. **1 C.W.N. 313.**

(104)—*Right of accused to make a statement.*—Where the accused wants to make a statement, a Magistrate is not competent to refuse it. **10 C.L.R. 54.**

(105)—*Movements of accused at the time of offence, when to be accounted for by him.*—Unless there has been *prima facie* sufficient legal evidence to convict an accused of an offence, he would not be bound to account for his movements at or about the time of the commission of the offence. **10 C. 970.**

(106, 107)—*Cr.P.C. (1898), s. 342—Right of accused to refuse to answer questions.*—An accused person does not render himself liable to punishment by refusing to answer questions put to him by a Magistrate, and the same rule applies to his examination before the Police Patel. **1 Bom. L.R. 435.**

(108)—*Right of re-trial by Jury where conviction set aside for misdirection.*—When a case has been tried before a Jury and the conviction is set aside on the ground of misdirection, the accused is entitled to have his case retried before a Jury.

Quaere—Whether in setting aside a conviction on the ground of misdirection to the Jury, the High Court has any power to retry the case having regard to s. 423, Cr.P.C. **4 C.W.N. 576.**

Accused person—continued.

(109)—*Disobedience by accused already bound to appear before a Magistrate—Disobedience to an oral order given by police officer to remain at a certain place—Proper course to be followed by the police, Cr.P.C. (1882), s. 160.*—An accused person arrested by the police and bound to appear before a Magistrate on and from a particular date was on the next day orally directed by the police not to leave a place, K. He disobeyed these directions. *Held* that an accused person is not legally bound to obey an oral order given by a police officer to appear at a certain place, nor are the police authorised to give such an order ; nor are they authorised to require the attendance of an accused person by an order in writing under s. 160, Crim. Pro. Code, 1882. The proper course for the police to follow is to take bonds from the accused for his appearance before the District Superintendent of Police at K, in lieu of the bonds for their appearance before the Magistrate. **L.B.R. (1893-1900), 317.** (7 M. 274, *F.*)

(110)—*Special diary—Right of accused person or his agent to see it or have copies of it—Evidence Act, s. 161.*—A Criminal Court may permit the police officer, who made the special diary, to look at it for the purpose of refreshing his memory, or may use it for the purpose of contradicting such police officer. [*F.*, 4 A.L.J. 811=A.W.N., 1908, 22; *R.*, 21 A. 159].

Where the Police Officer does look at an entry in the diary for the purpose of refreshing his memory, the provisions of s. 161 of the Evidence Act apply, and the accused or his agent is entitled to see such diary and to cross-examine such police officer thereupon. A special diary cannot be used to enable any witness other than the Police Officer who made it to refresh his memory by looking at it, and it cannot be used to contradict any witness other than such Police Officer. It is the Court which is entitled to use the special diary for the purpose of seeking for sources and lines of enquiry, and for the names of persons who may be in a position to give material evidence. Neither the accused nor his agent is entitled to see the special diary for any purpose, unless it has been used by the Court for enabling the Police Officer who made it to refresh his memory for the purpose of contradicting him. In no case is an accused person or his agent entitled to a copy of the special diary or of any part of it. His right is limited to that of inspection in certain cases. **19 A. 390, F.B.**

(111)—*Occurrence reports—"Public documents"--Evidence Act, s. 74—Right of accused to copies before trial. Held*, by the Full Bench (Subramania Ayyar, J., *dissenting*) :—An occurrence report under s. 157, Crim. Pro. Code, is not a public document within the meaning of s. 74, Evidence Act, and the accused is not entitled to a copy of such report before trial. **20 M. 189=2 Weir 763, F.B.** [*R.*, 17 M.L.J. 471 =3 M.L.T. 14=6 Cr.L.J. 346=30 M. 466].

(112)—*Report made by subordinate police officer—Right of accused to copies.—Held*, by the Full Bench (Subramania Ayyar, J., *dissent-*

Accused person—continued.

ing):—A report made by a Subordinate Police Officer to the Station House Officer is not a "public document" and an accused person is not entitled to a copy of such report before trial. (*Ibid.*)

(113)—*Charge sheet—Public documents—Evidence Act, s. 74—Right of accused to a copy before trial. Held*, by Collins, C.J. and Benson, J. (Shephard and Subramania Ayyar, JJ., *dissenting*).—The charge sheet referred to in s. 173, Crim. Pro. Code, is not a "public document" within the meaning of s. 74 of the Evidence Act, and an accused person is not entitled to a copy of the charge sheet before trial. (*Ibid.*)

(114)—*Cr. P.C. (1882), ss. 157, 168, 173—Right of accused to copies of police reports and charge sheet during trial.*—As to whether an accused person is entitled to call for the occurrence report under s. 157, Cr.P.C. (1882), the report by a subordinate police officer under s. 168, Cr.P.C. (1882), and the police charge sheet under s. 173, Cr.P C. (1882), at the trial, see (*Ibid.*)

(115)—*Police charge sheet—Right of accused to a copy at the commencement of the inquiry.*—A Presidency Magistrate is entitled to refuse to give the accused a copy of the police charge sheet at the commencement of the trial, as such charge sheets put in by the Madras City Police, contain a good deal of information for the use of the Magistrate, and are extracts from, if not copies of, the police diary. **19 M. 14=2 Weir 143.**

(116)—*Accused, right of, to inspect documents filed as exhibits.*—An accused person is entitled to the inspection of all the documents filed as exhibits in the case. **1 Bom. L.R. 433.**

(117)—*Confession of co-accused, whether sufficient for conviction of accused.*—An accused person ought not to be convicted where the only evidence against him is the confession of a co-accused and circumstantial evidence, which, although true, would not itself support a conviction. **6 O.C. 204.**

(118)—*Co-accused—Punishment of some, whether an excuse for refusal to try others.*—If a body of men commit an offence, the Magistrate cannot say that he considers the punishment on some of them to be sufficient in regard to others who may be equally guilty, though probably in a different degree. **4 C.W.N. 560.**

(119)—*Character of accused—Measure of punishment.*—The character of an accused person may fitly be taken into consideration in fixing the measure of punishment, but there must be discretion in the matter. **U.B.R. (1897-1901), Vol. I, 318.**

(120)—*Youthful accused—Sentence.*—Courts may take into consideration the youth of the accused in awarding sentence. **U.B.R. (1892-1896), Vol. I, 209.**

Accused person—continued.

(121)—*Appearing without summons—Practice—Absence of summons or complaint.*—If an accused appears voluntarily in order to answer a charge, the absence of summons, or the want of a complaint antecedent to the issue of a summons, is immaterial. **Rat. Un. Cr. C. 8.**

(122)—*Doubt leading to acquittal must be reasonable.*—The doubt, which entitles an accused person to an acquittal, is a reasonable doubt and no other. **S.C. 221, Oudh.**

—bribing a public servant punishable as abettor.—*See* ABETMENT, L.B.R. (1893-1900), 338.

—Evidence taken in absence of—*See* ABSCONDING OFFENDER, 21 P.R. 1883 Cr.

See ACCOMPLICE, 8 P.R. 1904 Cr.

See U.P. ACT I OF 1900, 9 O.C. 29=3 Cr. L.J. 205.

—Appeal by accused in jail and by those not in jail—*See* APPEAL, 2 Weir 467.

—Right of accused person to know the exact value of the charge brought against him—*See* CHARGE—EXPLANATION OF CHARGE TO ACCUSED, 11 C. 106.

See CONFESSION, 4 N.W.P. 16.

—Object of examining an accused person—*See* CONFESSION, 2 C.W.N. 702.

—Person proceeded against under s. 110, Cr. P.C.—*See* CRIM. PRO. CODE (1898), ss. 123, 340, 25 A. 375=A.W.N., 1903, 79.

—Statements made by witnesses before the investigating officer—Right of accused to call for and inspect such statements—*See* CRIM. PRO. CODE (1898), ss. 161, 172, 537, 16 C. 612, note.

—Statements recorded by Magistrate—Right of accused person to have copies of such statements—Evidence Act, ss. 74, 76. *See* CRIM. PRO. CODE (1898), ss. 162, 164, 173, 30 M. 466 =17 M.L.J. 471=3 M.L.T. 14.

See CRIM. PRO. CODE (1898), s. 167, 23 B. 32.

—Omission of Magistrate to inform accused of his right to be tried by another Court—*See* CRIM. PRO. CODE (1898), ss. 190, 191, 537, 28 A. 212 = A.W.N., 1905, 258 = 2 A.L.J. 745 = 2 Cr.L.J. 809.

See CRIM. PRO. CODE (1898), ss. 195 and 477, S.C. 303, Oudh.

See CRIM. PRO. CODE (1898), s. 202, 14 C. 141.

—Remand of accused to jail without examining witness—*See* CRIM. PRO. CODE (1898), ss. 208, p. 1, 252 and 344. 6 M. 63=2 Weir 409.

—fined by the Magistrate without notice or summons and proceedings recorded subsequently to trial, validity of—*See* CRIM. PRO. CODE (1899), ss. 243, 262, 263, 556, 15 M. 93=2 Weir 326.

Accused person—continued.

See CRIM. PRO. CODE (1898), s. 256, U.B. R. (1897—1901), Vol. I, 74.

—Right of accused to cross-examine witnesses before commitment and to communicate with pleader—*See* CRIM. PRO. CODE (1898), s. 288, 21 C. 642.

—Examination of accused at Sessions trial —*See* CRIM. PRO. CODE (1898), s. 289, S.C. 95, Oudh, 1 O.C. 85.

—Right of accused to examine as witness any person in Court and use as evidence any document in Court—*See* CRIM. PRO. CODE (1898). s. 291, 16 C. 610.

See CRIM. PRO. CODE (1898), s. 341, 3 Bom. L.R. 371.

—Deaf and dumb accused unable to understand proceedings.—*See* CRIM. PRO. CODE (1898), s. 341, 9 C.P.L.R. 38 Cr.

—Object of examination of accused—*See* CRIM. PRO. CODE (1898), s. 342, 9 Bom. L.R. 356=5 Cr. L.J. 332.

—Right of accused to refuse to disclose witnesses to be examined by him in Sessions Court—*See* CRIM. PRO. CODE (1898), s. 364, 14 A. 242.

—Examination of—*See* CRIM. PRO. CODE (1898), s. 342, L.B.R. (1872—1892), 320.

—Examination of accused before a Magistrate—Admissibility in Court of Sessions—*See* CRIM. PRO. CODE (1898), s. 364, 5 M.H.C. Ap. 4.

—Legality of trying accused twice on same facts—*See* CRIM. PRO. CODE (1898), s. 403, 3 L.B.R. 253=5 Cr.L.J. 412.

See CRIM. PRO. CODE (1898), ss. 439, 464, 466, A.W.N., 1900, 47.

See CRIM. PRO. CODE (1898), ss. 464, 466, 2 Weir 581.

See CRIM. PRO. CODE (1898), ss. 464, 466, 470, 2 Weir 580.

See CRIM. PRO. CODE (1898), s. 470, 2 Weir 583.

—Crime committed while suffering from temporary insanity—*See* CRIM. PRO. CODE (1898), ss. 470, 471 (1 and 2), 2 Weir 582.

—Omission to call upon the accused to enter upon his defence, whether cured by s. 537, Cr.P.C.—*See* CRIM. PRO. CODE (1898), s. 537, 23 C. 252.

See DEAF AND DUMB PERSON, 27 C. 368 =4 C.W.N. 421.

—Defended by Counsel making defamatory statements about a witness—*See* DEFAMATION, 15 M. 414=1 Weir 588.

—Effect of omission to prepare charge on acquittal—*See* DISCHARGE OF ACCUSED, 3 A. 129, 12 M. 35.

Accused person—concluded.

—Statements by—*See* EVIDENCE, 2 N.W.P. 336.

—Deposition of—Admissibility in evidence against him in subsequent proceedings, condition of—*See* EVIDENCE, 11 C. 580.

—Record in the presence of the—*See* EVIDENCE—DYING DECLARATION, 8 C. 211= 10 C.L.R. 11.

See FALSE CHARGE, 6 C. 496.

—Judge's notes of evidence and proceedings —Right of accused—*See* HIGH COURT, JURISDICTION OF, 1 M.H.C. 138.

See INSANITY, 2 C. 356.

See IRREGULARITY, 16 C.P.L.R. 9.

—Under 12 years—Duty of Magistrate—*See* PENAL CODE, s. 83, 27 C. 133.

—Lengthy examination of, before prosecution evidence is over—Legality—*See* PENAL CODE, s. 307, 1 P.W.R. 1910 Cr.

See REMAND, 11 M. 98=2 Weir 142.

—Accused's right to be restored to property on acquittal.—*See* RESTORATION OF PROPERTY, 27 A. 415=A.W.N. 1905, 19=2 A.L.J. 64=2 Cr. L.J. 24.

See SECURITY FOR GOOD BEHAVIOUR, 27 C. 656.

—Whether person required to furnish security is—*See* SECURITY TO KEEP THE PEACE, 9 A. 452.

—Good character of the accused—Mitigation of punishment—*See* SENTENCE, 16 C. 310.

—*See* SESSIONS JUDGE, JURISDICTION OF, 1 M.H.C. 4.

—*See* WITNESS, 2 N.W.P. 49, 5 C. 614= 5 C.L.R. 364, 6 C. 714.

—Failure by accused to call material witnesses if unfavourable to accused—*See* WITNESS, 8 C. 121.

See WITNESS—CROSS-EXAMINATION, 20 C. 469.

Acknowledgment of debt.

See ACT I OF 1879, Sch. I, Art. 1, 10 C.P.L.R. 17 Cr.

Acquiescence.

—*Acquiescence of accused will not cure irregularity.*—Mere acquiescence on the part of the accused in an irregularity committed by the Court will not cure the defect. If criminal proceedings are substantially bad, they are not cured by any waiver or consent of the accused. **15 C.P.L.R. 66.**

—Substantially defective criminal proceedings cannot be cured by accused's waiver—*See* ACCUSED PERSON, 2 C. 23, 6 C. 96, 12 C.W.N. 140.

Acquittal.

See 1. APPEAL—APPEALS FROM ACQUITTAL.
2. AUTREFOIS ACQUIT.
3. COMPLAINT.
4. CRIM. PRO. CODE (1898), s. 403.
5. REVISION.

(1)—*Discharge, whether amounts to acquittal* —CRIM. PRO. CODE (1861), s. 250—A discharge under s. 250, Cr. P.C., 1861, does not amount to an acquittal. **4 N.W.P. 23.**

(2)—*When acquittal debars a fresh trial—Crim. Pro. Code (1861), ss. 250, 255.*—Under s. 250, Crim. Pro. Code, 1861, the mere discharge of a person accused of an offence, after his examination by the Magistrate, but before the preparation of the charge, would not enable the accused to plead any previous acquittal, if fresh proceedings be taken against him for the same crime on other evidence before the same authority. In order to plead *autrefois acquit* successfully, the accused must have been once before formally put on his trial after the charge had been legally drawn up, and formally acquitted under s. 255, Crim. Pro. Code. **1 W.R. Cr. Letters, 10.**

(3)—*Crim. Pro. Code (1898), ss. 259, 403.*—The order of discharge under s. 259 is not an acquittal under s. 403 and has not the effect of an acquittal. **28 M. 310=2 Weir 325-A=2 Cr. L.J. 758.**

(4)—*When previous acquittal bars subsequent trial—Acquittal on previous charge if bars subsequent trial for different offence—Prisons Act, s. 45—Per Stuart, C.J.*—Where a person charged with the offence of criminal trespass in having taken food to an under trial prisoner in a *havalat* against the orders of the officer guarding it, was acquitted, *held* that a subsequent trial for an offence under s. 45, Prisons Act, was not barred. **2 A. 301.**

(5)—*Cr. P.C. (1898), s. 403.*—The acquittal of the accused for preparation to commit dacoity is no bar to a subsequent trial on the same facts for collecting men and arms to wage war against the King, under s. 403 (1), Crim. Pro. Code. **1 L.B.R. 340.**

(6)—*Cr.P.C. (1898), s. 403 (1)—No complaint—Order of acquittal—If fresh complaint barred.*—A soldier from Burma (complainant) sent an intimation to the District Magistrate that he had authorised his brother to file a complaint against the accused for enticing away his wife. When the case came on for hearing, it appeared that the brother had no such authority and the Magistrate acquitted the accused. The complainant then filed a complaint personally. *Held*, that the previous acquittal was no bar to the trial of the present complaint, inasmuch as the finding of the Magistrate amounted to this, that there was no complaint before him. **6 A. L.J. 262=9 Cr.L.J. 526=31 A. 317=2 Ind. Cas. 219.** (9 A. 134, F.B., *R.*)

(7)—*Acquittal of some of the accused—Revival of proceedings against others, validity of.*—Where only some of the persons charged with having committed an offence were sent up for trial and acquitted, and an application to issue process against the other persons charged was refused by the Magistrate, on the ground that the case against them was false, *held* that, until this decision was set aside, no order for the prosecution of those persons could be made. **7 C.W. N. 711.**

(8)—Principles which should guide an appellate Court hearing an appeal against an acquittal indicated. **L.B.R. (1893—1900), 42.**

(9)—*Revision by High Court of order of acquittal.*—The High Court will not interfere, in revision, with an order of acquittal. **8 C. 895.** [*R.*, L.B.R. (1893—1900), 41; U.B.R. (1897—1901), Vol. I, 91].

(10)—The Chief Court will generally not interfere with an acquittal, simply because the accused's witnesses were unworthy of credit, but, if it finds that the Court below erred on a point of law, it will revise such order. **10 P.R. 1900 Cr.**

(11)—*Power of High Court to revise order of —Right of appeal by Local Government—Crim. Pro. Code (1882), ss. 417, 439.*—The High Court ordinarily does not interfere with an order of acquittal in the exercise of its revisional jurisdiction, because an appeal can always be made by the Local Government under s. 417 of the Code. **L.B.R. (1893—1900), 126.** (15 B. 349, *F.*)

(12)—*Revision—Penal Code, s. 447—Cr.P.C. (1898), ss. 438, 439.*—Where no appeal has been preferred by the Government, it is very rarely correct to interfere, on revision, with an acquittal. **13 P.W.R. 1907 Cr.=5 Cr.L.J. 438.**

(13)—*Order of acquittal based on incorrect view of law—Revision.*—When an acquittal proceeds on a mistaken view of the law the High Court can interfere in revision. The complainant agreed to receive money which the accused, charged with criminal misappropriation, promised to pay in three days. The Magistrate thereupon acquitted the accused. *Held*, that the acquittal was illegal. **6 A.L.J. 758.**

(14)—*High Court—Revision—Acquittal—Practice and procedure—Cr.P.C. (1898), s. 439.*—Although the High Court does not ordinarily interfere with orders of acquittal in revision, yet, it cannot be expected that it would hesitate to do so, where the acquittal is based, not upon an appreciation of doubtful evidence, but upon a manifest error in law appearing on the face of the judgment. It is not open to the Courts to question the discretion of public bodies, vested in them by law. **9 Bom. L.R. 156=5 Cr.L.J. 171.**

(15)—*High Court's power to remedy improper acquittals.*—The last clause of s. 439, Crim. Pro. Code, 1882, contains nothing to prevent the High Courts from remedying improper acquittals in the exercise of their jurisdiction under this section. For instance, they may reverse an acquittal and order a retrial. **S.C. 191, Oudh.**

Acquittal—continued.

(16)—*Acquittal on appeal to Sessions Court—Revision and order for retrial—Proper tribunal for re-trying the case—Cr. P.C. (1882), s. 439.*—With reference to a person convicted by a Magistrate, but acquitted by the Court of Sessions in appeal, such order of acquittal being reversed by the High Court under s. 439, the order of the High Court must be one directing the re-trial of the proceedings wherein the final order has been found to be bad, and the Sessions Court of appeal is the proper tribunal for the re-trial of the appeal, or such other Court of equal jurisdiction as the High Court might entrust with the trial of the appeal. **9 A. 134, F.B.**

(17)—*Power of Sessions Judge to set aside an order of acquittal—Cr.P.C. (1898), s. 437.*—Where an accused person is acquitted without any charge being framed or any witnesses being produced for the defence, the Sessions Judge is not competent to set aside the order of acquittal. **1 A.L.J. 415.**

(18)—*Power of District Magistrate to set aside acquittal.*—The power of setting aside an order of acquittal is not conferred on District Magistrates by the Upper Burma Criminal Justice Regulation. **U.B.R. (1892-1896), Vol. I, 11.**

(19)—*Magistrate to explain circumstances under which confessing prisoner was acquitted.*—Where a confessing prisoner was acquitted, the officer acquitting him should be called upon to explain under what circumstances he acquitted the prisoner for the information of the Court. **1 W.R.Cr. Letters, 2.**

(20)—*Grounds of commitment to be reported to High Court in cases of acquittals by Jury.*—Case where Sessions Judges and Judicial Commissioners were directed to enter, in the column of "Remarks" of Sessions statement No. 3, whether, in cases of acquittal by a Jury, the verdicts have their approval, and, if they have, or where the trial has been "with Assessors," whether the committing officers had good grounds for making the commitment, a special report of the circumstances being made in any case which appears to call for particular notice. **11 W.R.Cr. Cir. 1.**

(21)—*Acquittal of one of a number of accused the rest of whom have not appealed—Procedure.*—If an appellate Court acquits an accused person on a question of fact on grounds common to the appellant and other accused persons who have not appealed, the Chief Court should acquit the latter on its revision side. **6 P.R. 1867 Cr.; 71 P.R. 1866 Cr.**

(22)—*Of an accused person on the ground of insanity, procedure in case of.*—The finding of a Court should state specially whether the accused committed the act charged or not, if he be acquitted on the ground that, at the time at which he was charged to have committed the offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act charged, or that he was doing what was wrong or contrary to law. **1 W.R.Cr. Cir. 9.**

Acquittal—continued.

(22-a)—*Cr.P.C. (1898), s. 495—Officer appointed to conduct prosecution—Withdrawal of case by Police Inspector not specifically permitted to conduct the prosecution—Acquittal of accused—Illegality.*—Criminal Courts have no jurisdiction to acquit accused persons, on a motion for withdrawal of the case by a Police Inspector, who is not specifically permitted to conduct the prosecution under s. 495, Crim. Pro. Code. **4 Ind. Cas. 132.**

See ABETMENT, 71 P.R. 1866 Cr.

See BOM. ACT III OF 1888, ss. 308, 309, 342, 4 Bom. L.R. 575.

—Acquittal without appeal—*See* APPEAL, 5 P.R. 1869 Cr.

See APPEAL—APPEAL FROM ACQUITTAL, 29 P.R. 1885 Cr., 10 P.R. 1897 Cr., 11 P.R. 1903 Cr.

See COMPLAINT, 7 M. 356=2 Weir 309.

See COMPOUNDING OFFENCE, L.B.R. (1893-1900), 240.

—On an erroneous view of the law—Interference by High Court at the instance of a private prosecutor.—*See* CRIM. PRO. CODE (1898), s. 258, 11 C.L.J. 113.

See CRIM. PRO. CODE (1898), ss. 287, 289, 342, 1 O. C. 85.

—Acquitting prisoner, referring case to High Court and resuming trial, validity of.—*See* CRIM. PRO. CODE (1898), s. 403, 2 C.P.L.R. 66.

See CRIM. PRO. CODE (1898), s. 423, 26 M. 478=2 Weir 483=13 M.L.J. 263.

—Appeal not preferred by Government from—Revision—*See* CRIM. PRO. CODE (1898), ss. 435, 438, 439, 24 A. 346.

—Revision against—*See* CRIM. PRO. CODE (1898), s. 438, 25 A. 128=A.W.N. 1902, 200.

—Interference with an order of—Revisional powers of High Court—*See* CRIM. PRO. CODE (1898), s. 439, L.B.R. (1893-1900), 41.

—High Court's powers of revision—*See* CRIM. PRO. CODE (1898), s. 439, 27 A. 359=A.W.N. 1904, 278.

—Of accused, when illegal—*See* CRIM. PRO. CODE (1898), s. 495, 4 Ind. Cas. 132.

See CRIM. PRO. CODE (1898), ss. 535, 258, A.W.N., 1881, 142.

—Accused's failure to exercise right of appeal—High Court's power to acquit—*See* CRIM. PRO. CODE (1898), s. 550, 14 P.W.R. 1909 Cr.

—Effect on acquittal of omission to prepare charge.—*See* DISCHARGE OF ACCUSED, 3 A. 129.

See DISCHARGE OF ACCUSED, 5 M.H.C. Ap. 2, 3 P.R. 1874 Cr.

Acquittal—concluded.

—Acquittal by District Magistrate.—*See* MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT, 2 N.W.P. 132.

See MURDER, 2 Ind. Cas. 622=8 P.W.R. 1909 Cr.

See PRACTICE AND PROCEDURE, U.B.R. (1897-1901), Vol. I, 91.

—Accused's right to be restored to property on—*See* RESTORATION OF PROPERTY, 27 A. 415=A.W.N. 1905, 19=2 A.L.J. 64=2 Cr. L.J. 24.

—When retrial ordered in case of—*See* RETRIAL, 6 C.P.L.R. 15 Cr.

See REVISION, 9 A. 134, **F.B.**

—On a charge under s. 211, I.P.C.—Subsequent sanction for perjury by the same Magistrate uuder s. 193, I.P.C.—*See* SANCTION TO PROSECUTE, 1 A.L.J. 388.

See SESSIONS JUDGE, JURISDICTION OF, 4 L.B.R. 49=6 Cr.L.J. 287.

Acts.

1. IMPERIAL ACTS.
2. BENGAL ACTS.
3. BOMBAY ACTS.
4. BURMA ACTS.
5. CENTRAL PROVINCES ACTS.
6. MADRAS ACTS.
7. PUNJAB ACTS.
8. UNITED PROVINCES ACTS.

I.—Imperial Acts.

Act II of 1839 (Fines by Magistrates).

[REP., ACT XVII OF 1862.]

See ACT XXVI OF 1850, s. 7, Rat. Un. Cr. C. 58.

See JUDICIAL OFFICERS, LIABILITY OF, 3 B.H.C. App. 1.

Act V of 1840 (Oaths).

[REP., ACT X OF 1873].

—"*Oath*," *meaning of*.—" Oath " means a solemn affirmation under Act V of 1840, taken instead of an oath. **1 W.R.Cr. Letters, 13.**

Act X of 1841 (Indian Registration of Ships).

[REP. IN PART, ACT XVI OF 1874; REP. IN PART AND AMENDED, ACT XI OF 1850; ACT VII OF 1891. AMENDED, ACT V OF 1883, s. 38. DECLARED IN FORCE THROUGHOUT BRITISH INDIA, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, s. 3].

—*Temporary additions to open vessels—"Strake"—Meaning of the term—Rule of measurement made by the Marine Department in 1873.*—As there is no express provision applicable to temporary additions to open vessels either in the Indian Acts XIX of 1838 or X of 1841, or in the Merchant Shipping Act of 1854, the rules of measurement issued in 1873 by the Marine Department are *ultra vires*, so far

I.—Imperial Acts—continued.

Act X of 1841 (Indian Registration of Ships)—*concluded.*

as they require the measurement being taken from the top of a temporary addition to the upper strake. An additional structure of a temporary character to the bulwarks, to be removed at the end of the voyage, does not come within the meaning of "strake," which is a structural portion of the vessel, defined as a "continuous line of planking or plates on a vessel's side reaching from stem to stern." **14 B. 170.**

Act XI of 1841 (Military Courts of Requests).

[REP., ACT VIII OF 1887.]

(1)—*Ss. 2 and 17,—Military Court of Requests, jurisdiction of.*—Act XI of 1841 does not confer jurisdiction on a Military Court of Requests to entertain a suit against the Cantonment Magistrate as representing the Government. It only provides for the trial of suits brought against persons subject to the Articles of War and against settlers, camp followers, and other persons, who may reside and carry on business in a Military bazaar, and who are subject to certain Military regulations. In this sense, the Government cannot be said to reside and to carry on business in the Cantonment. **1 N.W.P. 253.**

(2) S. 17—*See* No. 1, *supra*.

Act XXIX of 1845 (Joint Zilla and Sessions Judges).

[REP., ACT X OF 1872].

—*S. 5—Appointment of Joint Judge.*—The consent of the Governor-General in Council required by Act XXIX of 1845 for the appointment of a Joint Judge must be a *previous* consent. The subsequent ratification of the appointment by the Governor-General in Council would not validate all intervening judicial acts of the Joint Judge appointed by the Local Government, **1 B.H.C. 107.** [*R.*, 9 B. 288, 10 B. 263, 6 Bom. L.R. 131].

Act I of 1846 (Legal Practitioners).

[REP. IN PART, ACT XVI OF 1874; ACT XII OF 1876. REP. IN PART, AND AMENDED, ACT XII OF 1891. AMENDED, ACT XX OF 1853, S. 4. REP. LOCALLY, ACT XX OF 1865; ACT IX OF 1884, S. 9. DECLARED IN FORCE THROUGHOUT THE PRESIDENCIES OF MADRAS AND BOMBAY, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, SS. 4 AND 5].

See PLEADER, 7 B.H.C.A.C. 102.

Act XX of 1847 (Indian Copyright).

[REP. IN PART, ACTS XVII OF 1862; XIV OF 1870; IX OF 1871; XVI OF 1874; XII OF 1874; XII OF 1876 AND I OF 1879. DECLARED IN FORCE THROUGHOUT BRITISH INDIA, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 3].

I.—Imperial Acts—continued.

Act XX of 1847 (Indian Copyright)—*concld.*

See ACT XXV OF 1867.

See ST. 5 AND 6 VIC. C. 45.

(1)—*Ss. 3 and 6—Expunging entry from the catalogue of books kept in Bombay—Jurisdiction of High Court of Calcutta.*—By s. 6 of the Act, the only Court having jurisdiction to deal with the Register of copyright for the purpose of varying or expunging an entry was the Supreme Court in Calcutta. It had, therefore, jurisdiction over the Book of Registry wherever it happened to be kept. By s. 9 of St. 24 and 25 Vic. Cap. 104, the High Court of Calcutta took over all the powers of the Supreme Court, including the powers exercised absolutely in respect of any copyright register. Held that the Calcutta High Court, therefore, has jurisdiction to order the expunging of an entry in the catalogue of books kept in Bombay under s. 18 of Act XXV of 1867. **9 C.W.N. 591=1 C.L.J. 278.**

(2)—S. 6—*See* No. 1, *supra.*

Act I of 1849 (Offences in Foreign States).

[REP., ACT XI OF 1872].

(1)—*Arrest in British territory by H.H. the Nizam's authorities.*—H. H. the Nizam's authorities have no power to make an arrest in British territory. Unless it is clearly alleged by the complainant that the accused had been resident in British India for six months before the offence was committed, the accused should not be imprisoned. In any case, he should not be detained in custody without the orders of Government obtained under Act I of 1849. **Rat. Un. Cr. C. 35.**

(2)—*Ss. 2, 3 and 9—Jurisdiction over offences committed in foreign territory.*—When the accused, who has been living in a foreign territory for six months, is apprehended in foreign territory and delivered to a British Magistrate, *held*, that the Magistrate was competent to hold the preliminary enquiry, but, before trial, he should report the case to the Deputy Commissioner of the Division and obey his orders. **19 P.R. 1868 Cr.**

(3)—S. 3—*See* No. 2, *supra.*

(4)—S. 9—*Breach of trust committed in Goa tried by Sessions Judge of Mangalore, but no order being recorded—New trial.*—Where a tindal of a small vessel had been convicted of criminal breach of trust, which appeared to have been committed in Goa, but no order was recorded by the Sessions Judge of Mangalore who tried the case under s. 9 of Act I of 1849, it was held that there ought to be a new trial. **5 M.H.C. App. 13.**

(5)—S. 9—*See* No. 2, *supra.*

Act XVIII of 1850 (Judicial Officers' Protection).

[DECLARED IN FORCE—THROUGHOUT BRITISH INDIA, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S.3; IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3 AS AMENDED BY REG. III OF 1886;

I.—Imperial Acts—continued.

Act XVIII of 1850 (Judicial Officers' Protection)—*continued.*

IN THE ARAKAN HILL DISTRICT, REG. IX OF 1874, S. 3; IN UPPER BURMA GENERALLY (EXCEPT THE SHAN STATES), ACT XX OF 1886, S. 6; IN BRITISH BALUCHISTAN, REG. I OF 1890, S. 3; IN THE ANGUL DISTRICT, REG. I OF 1894, S. 3; IN CHIN HILLS AS REGARDS HILL-TRIBES, REG. V OF 1896, S. 3.]

See JUDICIAL OFFICERS, LIABILITY OF.

(1)—*Liability of judicial officers—"Jurisdiction," scope of.*—Act XVIII of 1850 not only protects a judicial officer from suits for acts done or ordered to be done by him in the discharge of judicial duties within the limits of his jurisdiction, although the act is done maliciously, with gross and culpable irregularity and without believing, in good faith, that he had jurisdiction to do the act complained of, but also protects him from suits for acts done or ordered to be done in the discharge of judicial duties, without the limits of his jurisdiction, provided that he, at the time of doing the act or ordering it to be done, believed himself, in good faith, to have jurisdiction to do or order the act complained of.

(2)—The term "jurisdiction" means authority or power to act in a matter, and not authority or power to do an act in a particular manner. In the matter of warrants, the protection afforded by the section is not against suits for executing lawful warrants or orders, but against suits for executing warrants or orders, not lawful, provided that such warrants or orders have been issued by a judicial officer in a matter within his jurisdiction, and not merely in a matter in which such judicial officer has authority or power to issue the particular warrant. The term "jurisdiction" should not be construed as meaning authority or power to issue the warrant in a particular matter and in the particular manner in which it is issued. **12 A. 115.** [*Diss.*, 10 M.L.J. 232.]

(3)—*Judicial Officers—Person* bona fide *believed to be dangerously insane*—Bona fide *detention by public servant—Liability.*—The Act is for the protection of judicial officers, acting judicially, and officers acting under their orders, and never for the protection of the Police or a Magistrate in the exercise of Police duties. There is no law which authorises the Police or a Magistrate in the exercise of Police duties, or an officer in command of a cantonment, in consequence of a *bona fide* belief that a person is dangerous by reason of actual lunacy to put him into confinement, in order that he may be visited and examined by medical officers, and to keep him in confinement, until such officers can feel themselves justified in reporting whether the person is a dangerous lunatic or not; *a fortiori*, this cannot be done in the case of a *bona fide* belief of danger from impending lunacy; so that such officer would not be protected from liability in respect of such acts. **9 C. 341=13 C.L.R. 185=9 I.A. 152 (P.C.)=R. and J. No. 69.** (S.C. 19 Oudh, *reversed*).

I.—Imperial Acts—continued.

Act XVIII of 1850 (Judicial Officers' Protection)—*continued.*

(4)—*Policy and scope of Act.*—The protection afforded to judicial officers rests on public policy. And though thereby a malicious Judge or Magistrate may be given a protection designed not for him, but for the public interest, it does not follow that he can exercise his malice with impunity. His conduct can be investigated elsewhere and due punishment awarded. **7 Bom. L.R. 951.**

(5)—*Local nuisance—Jurisdiction of Magistrate.*—A Magistrate is not warranted in convicting and imprisoning a person for disobeying an order, the legality of which was then properly under the consideration of an appellate Court. **2 B.H.C. Cr. 384.**

(6)—Bona fide *discharge of duty by Judicial Officers—Liability of Secretary of State.*—A Magistrate, acting *bona fide*, is not liable for anything done by him in the exercise of his duty, however wrong the act may be. The Legislature, by Act XVIII of 1850, while freeing the agent, the person who actually commits the tort complained of, and who would be the person primarily responsible, from all responsibility, could not have intended to leave the principal liable. **9 C.W.N. 495=1 C.L.J. 355.**

(7)—*Suit for damages against Magistrate for false imprisonment.*—Where an action in trespass for damages was brought against a Magistrate who had ordered the imprisonment of the plaintiff under Reg. I of 1874, while the plaintiff was not a domestic servant falling under the scope of the Regulation, while there was no crime imputed to him and while he had entered a defence of not guilty, *held* that the Magistrate had not acted in good faith believing himself to have jurisdiction, but carelessly, precipitately and without caution, and that Act XVIII of 1850 did not protect him from liability. **3 B.H.C. App. 1.** [*R.*, 13 W.R. 13, 12 A. 115, 6 Bom. L.R. 131].

(8)—*Liability of Magistrate—Order under Criminal Procedure Code (1861), ss. 62, 308.*—Act XVIII of 1850 does not protect a Magistrate who has not acted with due care and attention. The mere absence of *mala fides* is no defence. A Magistrate cannot be said to have "in good faith" believed himself to have jurisdiction to do or order the act complained of, unless he, in arriving at that belief, acted reasonably, circumspectly, and carefully. **4 B.L.R.A.C. 37=13 W.R. 13; 7 B.L.R. 449=16 W.R. 63.**

(9)—A Magistrate would not be personally liable for an act done by him under a misconstruction or misinterpretation of the law, if his proceedings were in other respects regular, and if the misconstruction or misrepresentation were one which might have been put upon the law by a reasonable man, acting with ordinary care and attention. But a Magistrate is not protected by saying he misconstrued the law,

I.—Imperial Acts—continued.

Act XVIII of 1850 (Judicial Officers' Protection)—*continued.*

unless his proceedings have been in other respects regular, and the view of the law taken by him is such as a reasonable and careful man might take. **4 B.L.R.A.C. 37=13 W.R. 13.** [*Expl.*, 15 W.R. 293; *R.*, 16 W.R. 63.]

(10)—When a Magistrate violates the plain language of the law and the very first principles of judicial inquiry, his proceedings presumably are characterized by want of care. **4 B.L.R. A.C. 37=13 W.R. 13.** 7 B.L.R. 449=16 W.R. 63.

(11)—*Cr.P.C. (1861), ss. 68, 212—Liability of Magistrate.*—In a suit for damages against a Magistrate who had ordered the search of the plaintiff's house and detained the plaintiff (woman) till she furnished bail, without any proof of the commission of any offence by her *held* that neither Act XVIII of 1850 nor ss. 68 212 of the Cr. P.C. (1861), protected the Magistrate who had failed to act reasonably, carefully and circumspectly in taking the step complained of in the discharge of his duty as a Magistrate, since such conduct was inconsistent with good faith. **3 B.H.C.A.C. 36.** [*R.*, 13 W.R. 13, 12 A. 115, 6 Bom. L.R. 131].

(12)—*Magistrate acting* bona fide *without jurisdiction.*—Where a Magistrate acts without jurisdiction in the *bona fide* belief that he has jurisdiction, he is protected by Act XVIII of 1850, and no suit will lie. **10 M.L.J. 232.**

(13)—"*Jurisdiction*"—*Order for compensation to the accused—Warrant to bring complainant to hear judgment.*—The act of issuing a warrant for the arrest of the complainant to hear an order, which directed him to pay compensation to the accused, is not an act within the "jurisdiction" of the Magistrate within the meaning of that word, as used in Act XVIII of 1850. **10 M.L.J. 232.**

(14)—*Cantonment officer making* bona fide *mistake in discharging duty.*—The commanding officer in a cantonment is vested, within the cantonment, with all the police powers which a District Magistrate can have in his district and any *bona fide* mistake committed by him in the performance of his duty is excusable in law. **S.C. 19, Oudh.** [*Reversed* 9 C. 341, P.C.].

(15)—*Negligent and wrongful payment of money by a Judge—Cause of action not disclosed—*Locus standi.—A judge knowingly pronouncing illegal orders is responsible to the State only, and cannot be sued so long as he keeps within his jurisdiction, though he may, in certain cases and by a particular procedure, be held criminally responsible. A contrary system would produce great inconvenience by allowing "every losing party of whom there must be one in every suit, to bring an action against the Judge, and the Judge in his turn, if unsuccessful, suing the other Judge who had pronounced against him. **L.B.R (1872—1892), 83.**

I.—Imperial Acts—continued.

Act XVIII of 1850 (Judicial Officers' Protection)—*concluded.*

(16)—*Delay in trial of prisoners—Civil action for damages—S. 22, Crim. Pro. Code (1861).*—A Deputy Magistrate, who, without reasonable cause, delays proceeding with the trial of persons whom he keeps in jail, is liable, notwithstanding the above Act, to an action in damages if the prisoners are eventually acquitted. By s. 22, Crim. Pro. Code (1861), a Magistrate may, by a written order, from time to time, adjourn an enquiry for a period not exceeding 15 days. **11 W.R. Cr. 19.**

See ACT XI OF 1878, s. 25, 8 C.L.J. 75.

See BAIL, 2 M.H.C. 396.

See CRIM. PRO. CODE (1898), ss. 96, 105, 165, 13 C.W.N. 458 = 9 C.L.J. 298 = 36 C. 433 = 5 M.L.T. 367.

Act XXI of 1850 (Caste Disabilities Removal).

[DECLARED IN FORCE—THROUGHOUT BRITISH INDIA, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 3; IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1886; IN THE ARAKAN HILL DISTRICT (WITH MODIFICATIONS), REG. IX OF 1874, S. 3.]

(1)—*Exclusion from caste.*—Exclusion from caste is, after the passing of Act XXI of 1850, not a ground for exclusion from inheritance. **2 N.W.P. 446.**

(2)—*Ss. 49 and 90—Intoxicating drug—"Post."*—"Post" or the poppy head in which opium has been allowed to ripen, and which is expressly grown for the purpose of mixing with water to drink, is an "intoxicating drug." **9 P.R. 1870 Cr.**

(3)—S. 90—*See* No. 2, *supra.*

Act XXVI of 1850 (Improvements in Towns).

[REP. IN PART, ACT XIV OF 1870. REP. (IN N. W. PROVINCES), ACT VI OF 1868, S. 5; (IN PUNJAB), ACT IV OF 1873; (IN BOMBAY), BOM. ACT VI OF 1873; (IN BENGAL AND ASSAM), BEN. ACT V OF 1876; (IN SIND), BOM. ACT I OF 1879; (LOCALLY IN MADRAS), MAD. ACT X OF 1865.]

(1)—*Municipal Commissioner, if public servant.*—A Municipal Commissioner, appointed under the above Act, is a public servant within the meaning of Reg. II of 1827, s. 43. **4 B.H.C. A.C.J. 93.** [*Appr.*, 1 B. 628; *Dist.*, 14 B. 286.]

(2)—*Municipal Chairman, if a public servant—Penal Code, s. 174.*—The Chairman of the Municipal Commission, appointed under Act XXVI of 1850, although a public servant, is not legally competent as such to issue an order for attendance before him. Hence, disobedience to such an order is not an offence within s. 174, I.P.C. **5 B.H.C. Cr. 33.** [*R.*, Rat. Un. Cr. C. 488.]

I.—Imperial Acts—continued.

Act XXVI of 1850 (Improvements in Towns).—*continued.*

(3)—*Fine by pound-keeper whether bars trial under this Act.*—A fine levied by a pound-keeper is not a punishment imposed on conviction for an offence, and it is an error to hold that a person cannot be tried for an offence under the above Act, because he has paid a fine under s. 6 of Act III of 1857. **7 B.H.C. Cr. 55.**

(4)—*Order forbidding nuisance—Power of Magistrate.*—A Magistrate, as the President of a Municipal Committee, has no power to issue an order forbidding as a nuisance, an act not included in the rules passed under Act XXVI of 1850. **1 Agra 34, Cr.**

(5)—*S. 7—Prospective fine.*—Where the accused, being convicted of disobedience to the order of the Municipal Commissioner, was ordered to pay a fine of Rs. 20, and was allowed 8 days within which to comply with the order, but failing to do so, a fine of Rs. 2 was imposed upon him for each day during which such disobedience should be wilfully continued, *held* that the latter portion of the order was not legal. **5 B.H.C. Cr. 103.**

(6)—*Cr. P.C., Act XXV of 1861, s. 61—Conviction under Act XXVI of 1850—Act II of 1839—Fines.*—The provision in s. 61, Cr.P.C., 1861, for imprisonment in default of fine is not applicable to a penalty imposed under the Rules framed under s. 7 of Act XXVI of 1850, since such fines are to be levied under Act II of 1839. It is illegal to pass a sentence of imprisonment until a warrant for distress and sale has been returned unsatisfied. **Rat. Un. Cr. C. 58 = Cr. Rg. 7—12—1871.**

(7)—*S. 7, cl. 5—Rules passed by Town Commissioners—Jurisdiction of Sub-Magistrates.*—A Subordinate Magistrate has no jurisdiction to impose a fine for breach of a rule passed by Town Commissioners under cl. 5 of s. 7 of Act XXVI of 1850. **3 B.H.C. Cr. 36.**

(8)—By virtue of the last para of the schedule, headed "Offences against other laws", added to the Code of Criminal Procedure by Act VIII of 1869, a Subordinate Magistrate, second class, can take cognizance of the offence of a breach of the Municipal rules promulgated under the above Act. **8 B.H.C. Cr. 12.** [*Appr.*, 8 B.H.C. Cr. 39, F.B.]

(9)—The authority to try offenders against such Rules or Bye-laws is vested in the Magistrate of the country, and Subordinate as well as other Magistrates have jurisdiction to try such offenders. **8 B.H.C. Cr. 39.** (8 B.H.C. Cr. 12, *Appr.*).

(10)—*Ss. 7, 10, 12—Municipal Commissioners, if can assume jurisdiction.*—Municipal Commissioners, appointed under the above Act, have not, by that Act, conferred upon them, nor are they entitled to assume judicial powers with reference to the breach of Rules or Bye-law made by them under that Act. **8 B.H.C. Cr. 39.** (5 B.H.C. Cr. 10, *F.*). [*R.*, 8 B.H.C. A.C.J. 213.]

I.—Imperial Acts—continued.

Act XXVI of 1850 (Improvements in Towns),
—*concluded.*

(11)—Rules empowering Municipal Managing Committee to try offenders—*Ultra vires*—Rules made under the above Act, which purported to give the Managing Committee of such Municipal Commissioners power to try offenders against such Rules, or to levy fines upon them are *ultra vires* and illegal. **3 B.H.C. Cr. 39.**

(12)—How far Rule *ultra vires*—Rules of the Municipalities of Balsad, Surat, Malcolmpet and Ahmedabad referred to and commented on. How far a rule, partially *ultra vires* and partially *intra vires*, can be enforced as to the latter portion, considered. **8 B.H.C. Cr. 39.**

(13)—*S. 10—Power of Managing Committee of Municipal Commissioners to fine for breach of rules.*—The Managing Committee of the Municipal Commission has no power to try and convict a person for breach of the rules made under the Act. S. 10 of Act has provided for the recovery of fines by Magistrates. **5 B.H.C. Cr. 10.** [*F.*, 8 B.H.C. 39 Cr.; *R.*, 8 B.H.C. 213.]

(14)—S. 10—*See* No. 10, *supra*.

(15)—S. 12—*See* No. 10, *supra*.

See CONTEMPT OF COURT, 5 B.H.C. Cr. 33.

Act XXXIV of 1850 (State Prisoners).

[REP. IN PART, ACT XII OF 1891. DECLARED IN FORCE—THROUGHOUT BRITISH INDIA, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 3; IN SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1886; IN THE ARAKAN HILL DISTRICT, REG. IX OF 1874, S. 3; IN THE UPPER BURMA GENERALLY (EXCEPT THE SHAN STATES) ACT XX OF 1866, S. 6; IN BRITISH BALUCHISTAN, REG. I OF 1890, S. 3; IN THE ANGUL DISTRICT, REG. I OF 1894, S. 3.]

See BENGAL REG. III OF 1818, 6 B.L.R. 392.

Act VII of 1853 (Jurisdiction of Magistrates).

[REP., ACT X OF 1872.]

—*Jurisdiction—British-born subject—Justice of the Peace—Imprisonment in default of payment of fine*—A Magistrate being also a Justice of the Peace has no jurisdiction to try a British-born subject under the Penal Code. His jurisdiction in the trial of such subjects is governed and limited by 53 Geo. III., C. 155, s. 105, and Act VII of 1853, neither of which gives him power to award imprisonment in default of payment of a fine. **6 B.H.C. Cr. 14.**

Act VII of 1854 (Fugitive Foreign Offenders).

[REP., ACT XI OF 1872.]

(1)—The Act does not govern the procedure relating to the surrender of persons charged with the commission of "heinous offences" within Act VII of 1854 in Independent States

I.—Imperial Acts—continued.

Act VII of 1854 (Fugitive Foreign Offenders).
—*concluded.*

conterminous with the Punjab who took refuge in British territory. The rules of the Chief Commissioner of the Punjab framed in 1856 and declared applicable to the States mentioned by the Judicial Commissioner's circular apply to such words. **4 P.R. 1870 Cr.** [*R.*, 21 P.R. 1886 Cr.]

(2)—*S. 23—Act XVII of 1862—Warrants—Repeal—Treaty with Gaikwar—Arrest of accused*—S. 23 of Act VII of 1854 was not repealed by Act XVII of 1862. The section applies to cases of delivery of accused persons upon requisition by the Gaikwar of Baroda, and the British Government would not be justified in delivering up such persons without holding a preliminary inquiry into his guilt. A warrant, therefore, issued under the section, directing an accused person to be produced before the British Resident at Baroda, should state whether such an inquiry has been held or is about to be held. But it may be presumed in the case of such a warrant that the intention was that the Resident might institute such an inquiry as is required by the section. **8 B.H.C. Cr. 13.**

Act XVII of 1854 (Post Offices).

[REP., ACT XIV OF 1866.]

(1)—*S. 50 (=s. 52 of the Post Office Act VI of 1898)—Jurisdiction of Magistrate.*—A conviction and sentence recorded by a Magistrate, F. P., under s. 50 of the Post Office Act, XVII of 1854 (corresponding with s. 48 of the Act of 1866) were held to be illegal; as the Magistrate had no jurisdiction finally to dispose of the case, but was bound to have committed it for trial before the Court of Session. **3 B.H.C. Cr. 8.**

(2)—*Separate sentences for offences arising out of the same transaction.*—Where a person had been previously committed and sentenced on a charge of fraudulently secreting a letter under s. 50 of the above Act, his subsequent conviction upon the charge of having fraudulently made away with the same letter upon the same occasion was held to be invalid. **2 Weir 454=1 M.H.C 83.**

Act XVIII of 1854 (Railways).

[REP., ACT IV OF 1879.]

(1)—*Railway passenger travelling in higher class—Act XVII of 1854 (Railways)—Penal Code, s. 417.*—A railway passenger travelling in a class higher than that for which he had paid his fare is not liable to be convicted of cheating under s. 417, I.P.C. **1 B.H.C. 140.**

(2)—*S. 3—Return ticket—Transfer—Attempt.*—The act of buying the unused half of a return ticket does not in itself amount to an attempt to travel within the meaning of the Indian Railways Act, 1854. *Quære*:—Whether it is fraud in A to travel with a ticket purchased by B—albeit the words "not transferable" are printed thereon? **Rat. Un. Cr. C. 123.**

I.—Imperial Acts—continued.

Act XVIII of 1854 (Railways)—*continued.*

(3)—*S. 17—Jurisdiction of Subordinate Magistrate.*—A Subordinate Magistrate (First Class) has no jurisdiction to punish for an offence under s. 17 of Act XVIII of 1854. It was suggested that the Act in this respect required amendment so as to give Subordinate Magistrates such jurisdiction. **3 B.H.C. Cr. 54.**

(4)—*S. 25 — Jurisdiction of Magistrates*—Accused was tried and convicted by a Magistrate of an offence under s. 25 of Act XVIII of 1854, punishable with transportation for life or imprisonment for any term not exceeding seven years. Upon a reference, held that by virtue of Madras Act III of 1865, the Sub-Magistrate had jurisdiction, that Act not being repealed by the schedule attached to Act VIII of 1869. **7 M.H.C. App. 8.**

(5)—*S. 26 — Jurisdiction.*— A full power Magistrate has no jurisdiction to convict a person of an offence punishable under s. 26 of Act XVIII of 1854. **3 B.H.C. Cr. 10.**

(6)—*Jurisdiction of Magistrates—Madras Act III of 1865, s. 1.*—Although all offences under s. 26 of the Railways Act (XVIII of 1854), should, under that Act, be committed to the Sessions, yet s. 1 of the Madras Act III of 1865 operates to remove this bar to the Magistrate's jurisdiction and renders every Magistrate competent to take cognisance of offences against any special or local law, notwithstanding any provision to the contrary in any Act or Regulation, provided only that the several grades of Magistrates do not exceed the limits of their ordinary jurisdiction as to the amount of punishment they may inflict. **4 M.H.C. App. 9.**

(7)—*Crim. Pro. Code (1861), s. 435.*—A Sessions Judge has no authority to direct a fresh trial of a charge of an offence under s. 26 of the Railway Act which has been dismissed by the Magistrate. **6 M.H.C. App. 41.**

(8)—*S. 27—Railway Police—Neglect of duty.*—The Railway Police, who are in the pay of a Railway Company, are amenable for neglect of duty to the provisions of the above section, notwithstanding that they hold commissions from the Commissioner of Police under s. 9, Bom. Act VII of 1867. **Rat. Un. Cr. C. 51.**

(9)—*See* ACT XVIII OF 1862, 1 M.H.C. 193.

(10)—*See* BOMBAY ACT VII OF 1867, s. 9, Rat. Un. Cr. C. 51.

(11)—*S. 29—Railway accidents—Duty of Guard.*—Where some coolies were employed in assisting a ballast train into motion at a Railway station, and one of them, after pushing the train or in attempting to do so, fell and was so injured that he afterwards lost his life, held that the evidence did not show that it was the duty of the guard to see that no one got up on the train when in motion. **8 W.R. Cr. 43.**

(12)—*Ss. 30, 35—Cr. P.C., Act X of 1872, s. 2—Jurisdiction.*—S. 30 of Act XVIII of 1854, and s. 2 of the Cr. P.C., show that offences under the former Act, punishable with fine exceeding twenty rupees, are not triable by Magistrates inferior to a First-class Magistrate. **Rat. Un Cr. C. 83 = Cr. Rg. 28—7—74.**

(13)—*S. 34—Fine, how to be recovered.*—S. 34 of Act XVIII of 1854 prescribes the mode in which fines are to be recovered by distress and sale. It is only on the return of the warrant of distress unsatisfied, or on the Magistrate being otherwise satisfied that no sufficient distress exists, that imprisonment can be imposed. **6 M.H.C. App. 37.**

(14)—*S. 35—Jurisdiction.*—By s. 35 of the Act, District Police Officers in the Presidency of Bombay could punish, to the extent of the powers conferred upon them, in petty offences, any offence made punishable under the Act, by fine not exceeding Rs. 20. But s. 5 of Reg. II of 1827 (authorising the appointment of District Police Officers), and s. 41 of the same Reg. (defining the limits of their jurisdiction) being both repealed by Act XVII of 1862, *held* that a Subordinate Magistrate had no jurisdiction to impose a fine under s. 17 of the Railways Act. **3 B.H.C. Cr. 54.**

(15)—*See* No. 12, *supra.*

(16)—Attempt to evade payment of railway fare, when amounts to an attempt to cheat—*See* ATTEMPT, 6 P.R. 1868 Cr.

Act II of 1855 (Evidence).

[REP., ACT I OF 1872.]

See EVIDENCE ACT (II OF 1855).

See PLEADER AND CLIENT, 8 B.H.C. Cr. 126.

(1)—S. 32—*See* CONFESSION, 8 B.H.C. Cr. 103.

(2)—S. 48—*See* EVIDENCE ACT (I OF 1872), s. 45, 2 Weir 759.

Act XIII of 1855 (Indian Fatal Accidents).

[REP. IN PART, ACT IX OF 1871. DECLARED IN FORCE—THROUGHOUT BRITISH INDIA, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 3; IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1886; IN THE ARAKAN HILL DISTRICT, REG. IX OF 1874, S. 3; IN UPPER BURMA GENERALLY (EXCEPT THE SHAN STATES), ACT XX OF 1886, S. 6; IN THE ANGUL DISTRICT, REG. I OF 1894, S. 3].

See COMPENSATION, 7 P.R. 1877 Cr., and 17 P.R. 1898 Cr., F.B.

Act XXII of 1855 (Ports and Port-dues).

[REP., ACT XII OF 1875.]

(1)—*Ss. 46, 62—"Magistrate"—Jurisdiction.*—The word "Magistrate" in s. 62 of Act XXII of 1855 may be construed as including a Subordinate Magistrate. He has, therefore, jurisdiction to try the master of a vessel for an offence under s. 46 of the Act. **5 B.H.C. Cr. 14.**

(2)—S. 62—*See* No. 1, *supra.*

I.—Imperial Acts—continued.

Act XV of 1856 (Hindu Widows' Re-marriage).

[DECLARED IN FORCE—THROUGHOUT BRITISH INDIA, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 3; IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1886; IN THE ARAKAN HILL DISTRICT, REG. XI OF 1874, S. 3; IN THE ANGUL DISTRICT, REG. I OF 1894, S. 3.]

See DEFAMATION, 6 M. 381=1 Weir 595.

Act III of 1857 (Cattle Trespass).

[REP., ACT I OF 1871.]

See ACT I OF 1871 (CATTLE TRESPASS).

See CATTLE TRESPASS.

(1)—*Repeal of Act by Act I of 1871—Procedure.*—Where a prisoner was properly convicted on the evidence of illegally seizing cattle, but was sentenced under the old law (III of 1857), but that Act had been repealed by Act I of 1871, the High Court declined to interfere with the sentence as the latter Act was in force at the time of the conviction and sentence, and no injustice had been done. **16 W.R. Cr. 12.**

(2)—S. 6—*See* ACT XXVI OF 1850, 7 B.H.C. Cr. 55.

(3)—*S. 13—Act XVII of 1862—Effect of repeal.*—The latter portion of s. 13 of Act III of 1857 having been repealed by Act XVII of 1862, the offences created by that section can be dealt with by the ordinary criminal tribunals subject to the Crim. Pro. Code. **4 B.H.C. Cr. 13.**

(4)—*Jurisdiction of Magistrate.*—A Magistrate has no jurisdiction, under this section, to punish, except for an act of forcible opposition to the seizure of cattle-damage feasant. **7 W. R. 155.**

(5)—*Procedure—Witness for defence—S. 262, Crim. Pro. Code (1861).*—In a case of forcibly rescuing cattle under this section of the Act, in which the accused did not summon any witnesses, it was held that, even if the accused wanted them summoned, the Magistrate under s. 262, Crim. Pro. Code (1861), need not have summoned them, unless persuaded that they were likely to give material evidence, and that they would not attend voluntarily. **10 W. R. Cr. 42.**

(6)—*Imprisonment in default of payment of fine.*—Although s. 13 of Act III of 1857 had not provided for awarding imprisonment in default of payment of fine, the High Court refused to interfere with a sentence of 15 days' imprisonment and fine or in default additional imprisonment for seven days, as unconditional imprisonment for six months in addition to fine would have been valid under the Act. **5 M. H. C. App. 21.** [*Overruled*, 7 M. H. C. App. 22.]

(7)—*See* ACT XVII OF 1862, 1 B.H.C. 100.

I.—Imperial Acts—continued.

Act III of 1857 (Cattle Trespass)—*concluded.*

(8)—*S. 14—Illegal seizure of cattle and detention of cattle—Complaint—Stamp.*—The illegal seizure and detention of cattle, to which s. 14 of Act III of 1857, refers, is not an "offence" within the meaning of s. 31 and Sch. II, No. 1, cl. (*b*), of the Court Fees Act, VII of 1870. Complaints of such illegal seizure and detention do not require a stamp. If such complaints be stamped, it is not competent for the Court to direct that the accused shall repay the amount of such stamp to the complainant. **8 B.H.C. Cr. 22.**

(9)—*S.17—Mischief—Cattle-trespass—S.425, I.P.C.*—S. 425. I.P.C., supposes that the destruction was caused with the intention to cause wrongful loss or damage, and does not apply to cases of mere carelessness; and s. 17 of Act III of 1857 supposes the mischief (cattle-trespass) was done intentionally, and not by negligence. **10 W.R. Cr. 29.**

(10)—*S. 18—Jurisdiction of first-class Magistrate.*—By virtue of s. 21, Crim. Pro. Code, 1861, a Sub-Magistrate of the first class has jurisdiction to try an offence under s. 18 of the above Act, there being no provision in that Act as to the authorities by which offences committed under it are to be tried. **5 B.H.C. Cr. 13.**

(11)—*S. 18—Pigs—Public road—Damage—Trespass—Mischief.*—Where a person, through neglect, permitted a public road to be damaged, by allowing his pigs to trespass thereon, it was held that it amounted to an offence under s. 18 of Act III of 1857. *Held*, also, that the conviction was not illegal, because the land damaged was a public road, and that the right to use a public road is limited to the purposes for which the road is dedicated. **4 B.H.C. Cr. 14.**

Act VI of 1857 (Acquisition of Land for Public purposes).

[REP., ACT X OF 1870.]

—S. 2—*See* MANDAMUS, 2 Ind. Jur. N.S. 24.

Act XI of 1857 (State Offences).

[REP. IN PART, ACT XVII OF 1862; ACT XII OF 1876. DECLARED IN FORCE—THROUGHOUT BRITISH INDIA EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 3; IN THE ARAKAN HILL DISTRICT, REG. IX OF 1874, S. 3; IN UPPER BURMA GENERALLY (EXCEPT THE SHAN STATES) ACT XX OF 1886, S. 6; IN BRITISH BALUCHISTAN, REG. I OF 1890, S. 3; IN THE ANGUL DISTRICT, REG. I OF 1894, S. 3; IN KACHIN HILL-TRACTS AS REGARDS HILL-TRIBES, REG. I OF 1895, S. 3; IN CHIN HILLS AS REGARDS HILL-TRIBES, REG. V OF 1896, S. 3.]

(1)—*Abetting the waging of war against the Queen—Forfeiture, Retrospective effect of—Act XXV of 1857, s. 3.*—The property of a judgment-debtor convicted of an offence under Act

I.—Imperial Acts—continued.

Act XI of 1857 (State Offences)—*concluded.*

XI of 1857, which has been attached intermediately between the time of the commission of the offence and the time of conviction, is property forfeited to the Crown under s. 3 of Act XXV of 1857. The forfeiture relates back to the time of the commission of the offence. **17 W. R. 80=8 B.L.R. 83.**

(2)—*S. 1—Conviction for rebellion—Remission of punishment—Effect of Queen's Proclamation.*—Where two persons were convicted of rebellion under Act XI of 1857, s. 1, and sentenced, the former to be transported for life and have all his property confiscated and the latter to have all his property confiscated, held that the sentence of confiscation, was absolute, and did not depend upon the amount of punishment, and the fact of the punishment being remitted by the Governor-General did not restore the property. The Government having left the property of the convicts in the hands of the Administrator-General as administrator to the estate of the convicts' father whence it was derived, in whose hands it was allowed to accumulate pending a separate litigation in respect of that estate, while it asserted its right by virtue of the confiscation to the other property of the convicts the title to which was undisputed, held that the Government had sufficiently declared and acted upon its intention to enforce the confiscation. The Queen's proclamation of amnesty (November 1858), coming after the conviction and confiscation, was held not to have the effect of re-vesting in the convicts the property confiscated. *Held*, also, that the property in question, being Government paper, was liable to confiscation; and lastly, that the widow of the first convict was not entitled to maintenance out of the property confiscated by the State. **2 Ind. Jur. N.S. 124.** [*R.*, 1 C. 365, 2 B. 494.]

Act XIII of 1857 (Opium).

[REP. IN PART, ACT XIV OF 1870; ACT I OF 1878; ACT XII OF 1891. REP. (IN ASSAM), ACT V OF 1897. DECLARED IN FORCE—THROUGHOUT BENGAL AND THE N.-W. PROVINCES, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, SS. 6 AND 7; IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN THE CENTRAL PROVINCES (SS. 21 TO 23, 25 TO 29), ACT XX OF 1875, S. 3; IN OUDH (WITH MODIFICATIONS) ACT XVIII OF 1876, S. 3, AS AMENDED BY ACT XII OF 1891.]

(1)—*S. 24, Crim. Pro. Code (1882), ss. 4, 155, 156, 165—Non-cognisable offence—Offence under s. 9, Opium Act (I of 1878)—Illegal search—Act XIII of 1857, s. 24.*—An offence under s. 9 of the Opium Act is not one for which a Police Officer may arrest without a warrant, as it is a non-cognisable offence. He cannot, therefore, investigate the case without the order of a Magistrate, nor can he make a search in respect of it. Therefore a Police Officer making a search under s. 9 of Act I of 1878, without being authorised to investigate into the offence, is liable to be sued for damages. **24 C. 691.**

I.—Imperial Acts—continued.

Act XIII of 1857 (Opium)—*concluded.*

(2)—*Crim. Pro. Code (1882), s. 4—Power of arrest.*—S. 24 of Act XIII of 1857 does not authorise a Police Officer, unconditionally to arrest a person against whom the information mentioned in that section has been received. It only authorises a Police Officer to take security from the person informed against, and the power to take such person into custody arises only upon his default in giving security that may be demanded of him. But the power of arrest, under s. 4 (*q*), Crim. Pro. Code, is an unqualified power. **24 C. 691.**

Act XXV of 1857 (Forfeiture).

[REP. IN PART, ACT V OF 1869; ACT IX OF 1871. REP. IN PART AND AMENDED ACT XII OF 1891. SUPPLEMENTED, ACT IX OF 1859. DECLARED IN FORCE—THROUGHOUT BRITISH INDIA EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

(1)—*Attachment against forfeited property.*—A judgment-creditor, who has *bona fide* attached property, at the time when the property of the debtor become forfeited to Government under the above Act, is entitled in priority to Government. **Marsh 259=2 Hay 117.**

(2)—*Ss. 2 and 7.*—The plaintiff joined with the rebels and took a leading part with them. A reward was set upon him as a rebel leader and, after a time, he was captured; no formal proceedings were taken, under ss. 2 and 7 of the Act, for adjudicating his property (which consisted of little more than annuity) to be forfeited. The property charged with the annuity was in the hands of the Collector as the Manager under the Court of Ward, the annuity was withheld and was no longer regarded as a charge on the estate but was treated as merged. *Held* that the mere withdrawal of the payment of annuity by these who had the management of the estate which was charged with the payment would be an illegal act in no way affecting the plaintiff's right, but, as the withholding of the payment was under the authority and direction of the official who was authorized to make the attachment of the rebel's property, it was with reference to the nature of the property equivalent to an attachment or seizure and could not be questioned except under the provisions of s. 18 of Act IX of 1859, notwithstanding there had been no adjudication of forfeiture. **3 Agra 281.**

(3)—*S. 3—See* ACT XI OF 1857, 17 W.R. 80 =8 B.L.R. 93.

(4)—*Ss. 3 and 9—Grants for maintenance—Mitakshara Law—Impartible estates—Limitation—Infants—Custom.*—A person who was in possession of an estate was found to be guilty

I.—Imperial Acts—continued.

Act XXV of 1857 (Forfeiture)—*concluded.*

of rebellion. All his property was forfeited to the Government, and he was subsequently sentenced to death and executed. A suit was eventually instituted on behalf of his infant son for the restoration of the land and the house which had been confiscated. The case made had two aspects :—One, that the estate, which had been granted towards maintaining the title and dignity of the Thakur was inalienable ; the other, that it was subject to the Mitakshara Law, modified by the family-custom of primogeniture, and that the plaintiff became, on his birth, a co-sharer with his father : *Held* that the grant being for maintenance, and the descent being to the heirs male, did not make the estate inalienable. So long as there was an heir male, the grantor or his heirs could not resume such an estate ; but a particular law or custom is necessary to convert an estate, which is conditional upon there being an heir male, into an estate which cannot be aliened : *Held* that the Mitakshara, by which each son has by birth a property in the ancestral estate, is inconsistent with the custom that the estate is impartible, and descends to the eldest son, and was not applicable to this estate :

Held that the suit was barred by s. 9 of Act XXV of 1857, which contains no exception in favour of infants, and that the right of action, having been extinguished, was not revived by the repeal of the Act. **22 W.R. 17 = 13 B.L.R. 445.** [*Appr.*, 3 C. 331 ; *F.*, 4 C. 283, 13 M. 197 ; *R.*, 22 M. 383, 1 C.L.J. 557 ; *D.*, 3 C.L.J. 521.]

(5)—*S. 7—Seizure and attachment of the property of rebels—Procedure.*—The procedure in regard to the seizure and attachment of property under Act XXV of 1857, and the adjudication of claims to such property under Act IX of 1859, pointed out. *Held* that it was not incumbent on a party aggrieved by acts done under these laws to bring a suit at all ; but if he brought a suit, it must be brought within a year of the attachment or seizure complained of. A seizure within the meaning of s. 20, Act IX of 1859, meant such a taking possession of the property forfeited, as was referred to in s. 7, Act XXV of 1857—not only formal but actual. **14 W.R. 114.**

(5-*a*)—*See* No. 2, *supra.*

(6)—*S. 8.*—If a Special Commissioner appointed under the Act makes an order under s. 8 acquitting a person and directing the release of his property, he cannot afterwards on his own motion cancel such order. **A.W.N. 1897, 129.**

(7)—*S. 9—See* No. 4, *supra.*

Act X of 1858 (Confiscation, etc., for Rebellion).

[REP., ACT VIII OF 1868.]

—*Effect of forfeiture.*—The confiscation of a village under the above Act cancels the right of the tenants, and the fact that they were permitted to retain their holding on rent and

I.—Imperial Acts—continued.

Act X of 1858 (Confiscation, etc., for Rebellion).

—*concluded.*

enjoy the produce of the trees for some years subsequent to the confiscation does not revive the rights which are absolutely avoided by the confiscation. **2 Agra 324.**

Act XXXVI of 1858 (Indian Lunatic Asylums).

[REP. IN PART, ACT XVI OF 1874. REP. IN PART AND AMENDED, ACT XX OF 1889. AMENDED, ACT XVIII OF 1886. DECLARED IN FORCE—THROUGHOUT BRITISH INDIA, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 3 ; IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3 ; IN THE ARAKAN HILL DISTRICT, REG. IX OF 1874, S. 3 ; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4 ; IN BRITISH BALUCHISTAN, REG. I OF 1890, S. 3 ; IN THE ANGUL DISTRICT, REG. I OF 1894, S. 3.]

(1)—*Duty of Magistrate—Illegal confinement—Safeguards against designing people.*—A Magistrate has no power to consign a lunatic to an asylum or a jail on his own mere unprofessional opinion. He must have before him the deliberate statements of a Medical Officer. Even then he has to form his own judicial opinion on the question of lunacy ; and if he commits, the lunatic comes at once into a custody superintended by the Chief Commissioner. A long experience has shown that, if these safeguards are lost sight of, designing or careless people will use the Court's process against the alleged lunatic for nefarious purposes. In the case of females, the hardship and danger are more to be feared than in the case of men. **L.B.R. (1872—1892), 87.**

(2)—*See* ACT XXII OF 1864, 9 C. 341 = 13 C.L.R. 185 = 9 I.A. 152 = R. and J. No. 69 (P.C.).

Act I of 1859 (Indian Merchant Shipping).

[REP. IN PART, ACT XV OF 1863 ; ACT XIV OF 1870 ; ACT XVI OF 1874 ; ACT IV OF 1875 ; ACT XII OF 1876. AMENDED, ACT XIII OF 1876, SS. 9 AND 10 ; ACT V OF 1883, SS. 34 TO 37 ; ACT VI OF 1891, SS. 1 TO 5 ; ACT XII OF 1891 ; ACT VI OF 1906. DECLARED IN FORCE THROUGHOUT BRITISH INDIA, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 3.]

(1)—*Crim. Pro. Code (1861), s. 409 (s. 408, proviso, of the Code of 1898)—Sentences under Merchant Seamen's Act—Appeal.*—Sentences of Justices of the Peace under the Merchant Seamen's Act (I of 1859) are appealable, and the Courts of Sessions are, therefore, competent to entertain such appeals. **2 Weir 461 = 2 M. H.C. 473.**

(2)—*S. 83, clauses 1 and 2—Liability of seamen in Calcutta to imprisonment for desertion.*—The amendment of clauses 1 and 2 of s. 243 of the Merchant Shipping Act, 1854, by 43 and 44 Vic., C. 16, does not affect the liability of seamen in Calcutta, under s. 83 of Act I of 1859, to imprisonment. **12 C. 438.**

I.—Imperial Acts—continued.

Act I of 1859 (Indian Merchant Shipping)—*concluded.*

(3)—*S. 83 (4)—Magistrate of Cochin—Justice of the Peace—Jurisdiction.*—Where the Magistrate of Cochin, a Justice of the Peace but not a European British subject, convicted and sentenced a merchant seaman, a European British subject, for the offence of wilful disobedience to orders under cl. 4, s. 83 of the Act, it was held that, by force of s. 72 of the Criminal Procedure Code, 1872, the Magistrate had no jurisdiction. **2 Weir 578=7 M.H.C. App. 32.**

(4)—*S. 83 (5)—European British subjects—Jurisdiction of Magistrate.*—A Magistrate has no jurisdiction to try an European British subject for an offence under s. 83 (5) of Act I of 1859. The jurisdiction to try the case vests only in the High Court. **4 M.H.C. App. 23.**

(5)—*Applicability of Merchant Shipping Act, 17 and 18 Vic., Ch. 104, to India.*—The Merchant Shipping Act, 17 and 18 Vic., Ch. 104 has no application to British India. Where the offence mentioned in that section is committed in India, the punishment must be under s. 83 (5) of Act I of 1859. **1 Weir 898=8 M.H.C. 85.**

(6)—*S. 83 (5) (7)—Combining to disobey.*—Where two or more persons wilfully disobey lawful commands, they cannot be convicted both of combining to disobey and also of disobedience, under cls. 5 and 7 of s. 83 of Act I of 1859, the transaction being one and the same. **3 Bom. L.R. 539.**

(7)—*S. 111—Deposition of absent witness.*—The deposition of a person, other than a merchant seaman, is not admissible in evidence under the above section of the Act. **1 Hyde 195.**

Act XIII of 1859 (Workman's Breach of Contract).

[REP. IN PART, ACT XVI OF 1874.]

(1)—*Preamble—Scope of preamble.*—Where the language of the enacting sections of a statute is clear, the terms of a preamble cannot be called in aid to restrict their operation or to cut them down. The purpose for which a preamble to a statute is framed is to indicate what in general terms was the object of the Legislature in passing the Act, but it may well happen that these general terms will not indicate or cover all the mischief which in the enacting portions of the Act itself is found to be provided for. **11 A. 262=A.W.N. 1889, 85.** [*R.*, 26 B. 759, 16 C.P.L.R. 99.]

(2)—*Strict construction of the Act—Advance essential.*—Act XIII of 1859 being a Penal Act must be construed strictly. An advance of *money* is an essential preliminary to the creation of an obligation under the Act. **1 Weir 693; 6 Bom. L.R. 255.**

(3)—Act XIII of 1859 only applies where there has been "an advance of money on

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

account of any work," which words do not include mere loans or old debts, and the language used shows plainly that the interference of the Magistrate is limited to cases where the neglect or refusal to perform is wilful and without lawful and reasonable excuse. As a rule, a mere breach of contract ought not to be an offence, but only to be the subject of a civil action. Act XIII of 1859 is, like Ch. 19, I.P.C., an exception. But the Magistrate has to use a judicial discretion and to consider whether any excuse averred is lawful and reasonable. And a man cannot be treated as a criminal for not performing a contract which could not be enforced against him by civil process. **16 B. 368.** (8 W.R. Cr. 69, 9 B.H.C. 171, 2 M.H.C. 427, 11 A. 262, 14 W.R. Cr. 29, 18 W.R. Cr. 53, 7 B. 379, 7 M. 131, 3 A. 744, 11 M. 332, *R.*) [*F.*, Rat. Un. Cr. C. 874.]

(4)—*Advance, nature of.*—Unless it is shown that money has been received in advance from the complainant, no case arises to which the provisions of the Act can become applicable. The supply of material, with which work is to be done, cannot be treated as equivalent to payment of money, and the fact that the material was a precious metal cannot make any difference. **1 Weir 692.**

(5)—*Provision for payment of penalty, no bar to Act's operation.*—The provision for payment of penalty in the contract does not bar the operation of Act XIII of 1859. **1 Weir 674.**

(6)—*Breaches of contract under the Act, whether offences.*—The term "offences" must be construed according to its natural meaning, in the absence of any clause restricting the meaning. Act XIII of 1859 is intended to provide for breaches of contract and to inflict penalties. The matter to which these penalties are attached are offences. **1 Weir 697.**

(7)—*Advance essential for operation of Act.*—Unless it is shown that money has been received in advance from the complainant, no case arises to which the provisions of the Act can become applicable. The supply of material with which work is to be done cannot be treated as equivalent to payment of money and the fact that the material was a precious one cannot make any difference. **1 Weir 692.**

(8)—*Advance to labourer must be on account of work.*—Under Act XIII of 1859, there must be an advance of money on account of work which a labourer has contracted to perform; though the labourer might lawfully consent to take paddy in lieu of money, it is essential that the advance should be on account of the work to be performed. **1 Weir 683.**

(9)—Where sovereigns were advanced to the accused, not in payment of the work, but as material to be worked up, *held*, that there was no advance within the meaning of Act XIII of 1859. **1 Weir 693.**

1.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

(10)—Where money is advanced to a workman, not in payment of work to be done, but merely to be used as raw material, the money advanced is an advance within the meaning of Act XIII of 1859. **1 Weir 701=6 M.H.C. App. 24.** [*R.*, 1 Weir 692.]

(11)—*Power of Magistrate to enforce a contract to labour outside British India.*—Although a contract for work is made in British India, the Courts in British India have no power to proceed under Act XIII of 1859, if the work contracted for is to be performed in a foreign territory. **1 Weir 671.** [*F.*, 1 Weir 671=10 M. 21.]

(12)—Where a Magistrate had directed a man, who had contracted for work in Travancore, to pay up a sum under Act XIII of 1859, and, in default, ordered him to be kept in rigorous imprisonment for one month, *held*, that the order was illegal, inasmuch as the work was to be performed in a foreign territory. **10 M. 21=1 Weir 671.**

(13) *Contract in foreign territory for labour in British territory—Arrest of the person in foreign territory—Jurisdiction of British Courts.*—Where a person, having contracted in a foreign territory to work for the complainant in British territory, and, having been arrested in the foreign territory and brought into British territory, was convicted under s. 2 of Act XIII of 1859 and was ordered to do the work contracted for, *held*, that the Court had no jurisdiction over him. **7 M. 354=1 Weir 672.**

(14)—*Cases falling under provisions of Act—Contract to do or get work done on supply of materials.*—An agreement to do or get done a specific work within a given time, and to do that work with the tools supplied by the employer, falls within the scope of the Act. **1 Weir 686.**

(15)—*Advance of money by employer.*—In consideration of the accused agreeing to work for wages in a tannery, the proprietor advanced to him Rs. 10, which was to be worked off, annas 8 *per* week being deducted from the wages which would accrue due. *Held*, that the provisions of Act XIII of 1859 would apply to such a case. **7 M. 131=1 Weir 685.** [*R.*, 16 B. 368, 23 M. 203.]

(16)—The accused, cobblers, received from the complainant an advance of Rs. 25, promising to work under him till the sum advanced was worked off by deducting the value of the shoes stitched by him, *held*, that the contract was within the purview of Act XIII of 1859. **1 Weir 687.**

(17)—*Advance of money by employer to be repaid out of wages.*—Where an employer advanced a sum of Rs. 10 to a workman, which was to be repaid out of the wages earned by instalments of 1 rupee in each month, *held*, that the money should be regarded as money advanced

1.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

on account of work to be performed and the provisions of Act XIII of 1859 were applicable to the case. **23 M. 203=1 Weir 687.**

(18)—*Contract to supply labour and to get labour performed.*—A contract to supply labourers and to get labour performed, although the nature and extent of the work to be performed are not clearly specified, comes under the provisions of Act XIII of 1859. **1 M. 280=1 Weir 675.**

(19)—*Agreement for personal service on default in such cases.*—An agreement by a person, in consideration of an advance of money, to collect coolies to work on a coffee-estate, and to pay penalty for every day's delay in supplying labour and to serve as a cooly for five years in the event of the contract not being fulfilled, was held to be an agreement within the scope of Act XIII of 1859. The penalty prescribing personal service would not taken the case out of the scope of the Act, inasmuch as, even if that part of the agreement was invalid, the complainant was still entitled to claim the performance of the substantive agreement, if still capable of performance, or the re-payment of the advance. **8 M. 379=1 Weir 679.** [*R.*, 1 Weir 686, 3 L.B.R. 33.]

(20)—*Contract to get work performed.*—Where the accused agreed to get performed three weeks' plantation work with 25 coolies, *held*, that the contract was not merely one for the supply of coolies, bnt was one for the performance of a specific work and, therefore, would be covered by the provisions of s. 2 of the Act. **1 Weir 675=3 M.H.C. App. 25.** [*F.*, 1 Weir 675=1 M. 280.]

(21)—*Contract under the Act, what constitutes.*—Only a contract to supply coolies which amounts also to a contract to work or to get certain work performed, comes within the provision of s. 2 of Act XIII of 1859. **1 Weir 677.**

(22)—*Coolies in Assam.*—Coolies in Assam, who have received advances in contemplation of work to be done, may be proceeded against under the Act. **8 W.R.Cr. 6.**

(23)—*Artificer, labourer or workman, who is.*—A person who, in the ordinary course, would himself take part in the work he contracted for, is an artificer, labourer or workman, within the scope of the Workman's Breach of Contract Act, 1859. The terms of a contract were as follows: "The petitioner should provide the materials and labour and the sum was fixed at Rs. 269. Out of this sum Rs. 100 had already been paid and Rs. 50 were to be paid when the payment of the ghat contracted to be done was begun. The work was to be completed within a month; and if it should be washed away in the monsoon, the petitioner was to re-build it. If the complainant herself had to finish the work, the petitioner would pay her." *Held* that the petitioner came within the scope of the Act. **Rat. Un. Cr. C. 204=Cr. Rg. 24—7—1884.**

S. N. DAR, B.A. LL.B.
Vakil High Court,
SRINAGAR (Kashmir)

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

(24)—*Liability of contractor.*—As the Act applies to cases in which a workman has undertaken to get work performed, as well as to cases in which he undertakes personally to perform it, there may be cases in which a contractor is liable to proceedings under the Act. But the contractor must himself be a workman. A person whose ordinary business is that of a contracting bricklayer, and who does not himself work, is not a workman within the meaning of the Act with reference to the contract for earth-work. **7 M. 100=1 Weir 690.** [*F.*, 10 B. 96, U.B.R. (1903), 4th Qr., Workman's Breach of Contract, 3; *R.*, U.B.R. (1904), 1st Qr., Workman's Breach of Contract, 1.]

(25)—Act XIII of 1859 applies to cases in which the workman has undertaken to *get work performed*, as well as to cases in which he undertakes *personally to perform* it, so that there may be cases in which a contractor is liable to proceedings under the Act. But, in such cases, the contractor must be himself a workman. The Act does not apply to a contract made by a person who is not himself an artificer, workman, or labourer, but merely a contractor. **1 U.B.R. (1902—1903), Vol. I, 3.** (7 M 100, *R.*)

(26)—*Cooly gaung.*—A cooly gaung may be a workman or labourer within the terms of the above Act, even though such cooly does none of the work with his own hands. **U.B.R., 1904, 1st Qr., Workman's Breach of Contract, 1.**

(27)—*Cases not coming under provisions of Act—Scope of Act.*—The Act does not contemplate a contract involving a service extending over a long period, in the circumstances which would probably leave the contractor, at the close of the period, indebted to the employer and make it necessary for him to rearrange himself for a further period, a result which would practically countenance a kind of slavery. **1 Weir 681.**

(28)—The Act has no application to cases in which the work has actually been completed at the time of the complaint. **1 Weir 670.** [*F.*, 1 Weir 671-A=28 M. 37=2 Cr.L.J. 149.]

(29)—*Contract for work—Indefinite terms, effect of.*—Where the accused engaged to cut a channel and received advance in money and grains, but the contract did not contain any definite term in accordance with which the work was to be executed, *held*, that there was no contract for the breach of which the accused would be liable under Act XIII of 1859. **1 Weir 692.**

(30)—*Applicability to domestic servants.*—Act XIII of 1859 does not apply to private domestic servants, *e.g.*, a horsekeeper, but applies only to artificers, workmen or labourers. **1 Weir 688.** [*F.*, 1 Weir 689.]

(31)—This Act does not apply to contracts to serve as domestic servants, but to contracts to serve as an artificer, workman, or labourer. **12 W.R. Cr. 26=2 B.L.R.A.Cr. 32.**

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

(32)—Act XIII of 1859 does not apply to domestic servants, *e.g.*, a cook. **1 Weir 689.**

(33)—The words "an artificer, workman or labourer" in s. 492, I.P.C., do not apply to domestic servants. **20 P.R. 1876 Cr.**

(34)—*Clerk.*—A clerk, who has executed a bond to work as such, under the complainant, does not come within the provisions of Act XIII of 1859. **1 Weir 689.**

(35)—*Factory labourer.*—A labourer, who contracted with the manager of a silk-factory for a money consideration to work at the factory for four months in a year for a period of three years, and broke the terms of the contract, was held liable to a prosecution under the Act, and the order of the Magistrate, holding that such a contract was an unreasonable one, and, therefore, one which ought not to be enforced by him, was set aside. **14 W.R. Cr. 29.** [*R.*, 16 B. 368.]

(36)—Case where the High Court declined to exercise its powers of revision, on the ground that Act did not apply to this contract, which was a contract to work at a certain factory. **18 W.R. Cr. 53.** [*R.*, 16 B. 368.]

(37)—*Temple servants.*—The Act is not applicable to temple servants holding the positions of *stanik* and *othuvar* in the temple. **1 Weir 689.**

(38)—*Butchers.*—A butcher contracting to supply skins is not within the Act. **1 Weir 690=7 M.H.C. App. 12.**

(39)—*Contract to serve as actor in theatrical Company.*—The words "artificer, workman or labourer," in s. 492, I.P.C., and in s. 2, Act XIII of 1859 have reference to the occupations in which manual labour, *i.e.*, the use of muscles and sinews, is an essential element, and this is most, if not exclusively so, in the connotation of "labourer," less so in "workman," which has the most extended signification of all, and least so in "artificer," which connotes a special class of work requiring skill and power of contrivance. Further, the word "artificer" has reference to the industrial arts and not to the fine arts. Hence, a contract to serve as an actor in a theatrical company does not fall within the purview of the Act. **23 P.R. 1904 Cr.** (12 W.R, 76 Cr., 4 B L.R. App. 1, 7 B. 379, 14 W.R. Cr. 29, *R.*)

(40)—*Surety of workmen*—Act XIII of 1859 does not extend to a surety for the "artificer, workman or labourer." **1 Bom. L.R. 523.**

(41)—*Cooly sirdar or recruiter, whether an artificer, workman or labourer.*—A cooly sirdar or recruiter is not an artificer, workman or labourer within the meaning of s. 2 of Act XIII of 1859. **6 C.L.J. 180=6 Cr L.J. 191.**

(42)—*Contract to supply coolies.*—A contract to bring labour to a certain estate is not a contract within the provisions of Act XIII of 1859. **1 Weir 676.** [*D.*, 1 Weir 676=1 M. 280.]

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

(43)—*Contract to supply labour.*—A person who merely undertakes to supply labour, but does not undertake to be present and see the work done, is not a labourer within the meaning of the Act. **1 Weir 678.**

(44)—*Sub-contractor.*—A sub-contractor, who does not actually work, is not a workman, labourer or artificer within the meaning of s. 2 of Act XIII of 1859. **10 B. 96.**

(45)—*Breach of contract to supply wood.*—A breach of contract to supply wood does not fall within the purview of the Act, the contractor being not an artificer, a workman or labourer. **4 B.L.R. App. 1=13 W.R. Cr. 1.** [*F.*, 20 W.R. Cr. 23, 10 C.W.N. 775; *R.*, 6 M. 63, 18 A. 380.]

(46)—*Contract to carry wood—Workman.*—A person who contracts only to convey wood is not an artificer. workman, or labourer within the meaning of the Workman's Breach of Contract Act. **Rat. Un. Cr. C. 537=Cr. Rg. 9 of 1891.** (Rat. Un. Cr. C. 349, 13 M. 351, *F.*)

(47)—*Agreement to supply goods.*—Where the accused did not undertake to give his personal labour to the complainant, but only agreed to supply lime for him, *held*, that his contract did not fall within the scope of Act XIII of 1859. **1 Weir 691.**

(48)—*Contractor or commission agent.*—A person undertaking to do work as a contractor or a commission agent does not make himself amenable to the penal provisions of Act XIII of 1859, and it makes no difference that he was seen, on occasions, taking part in the work contracted to be done. **2 Bom. L.R. 801.**

(49)—*Cart-men.*—A cart-man does not come under any of the three clauses, *viz.*, artificers, workmen, and labourers, and the Act is not, therefore, applicable to him. **1 Weir 690.** [*F.*, 1 Weir 691=13 M. 351.]

(50)—*Contract for the bringing and letting of carts.*—The letting of carts, whether at the place where the bargain is made or elsewhere, at a specified rate for the journey is not a contract for the employing of an artificer, workman, or labourer, within the meaning of the Act. **Rat. Un. Cr. C. 349=Cr. Rg. 39 of 1887.** [*F.*, Rat. Un. Cr. C. 537.]

(51)—An agreement by a village *lambardar* owning a cart, which he worked through his son or a servant and not personally, to cart certain bricks but not by personal labour, was held not to fall within the purview of s. 2, Workman's Breach of Contract Act, 1859, as such *lambardar* would not be a workman or labourer within the section. **28 P.R. 1908 Cr.=9 Cr.L.J. 107.** (13 M. 351, *F.*)

(52)—*Agreement to carry salt by boat.*—A contractor for the transport of salt from certain factories entered into an agreement with another

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

to convey salt by boat taking an advance. *Held*, that the contract did not fall within the provisions of Act XIII of 1859, as there was nothing to show that the defendant pledged himself to render personal labour, nor the complainant could be considered as an employer of labour. **13 M. 351=1 Weir 691.** [*F.*, Rat. Un. Cr. C. 537.]

(53)—*Mahout, whether an artificer.*—A mahout or elephant driver does not come within the provisions of Act XIII of 1859. **8 C.L.R. 254.**

(54)—*Contract of service for agricultural and other purposes.*—A contract by which a person, in consideration of receiving Rs. 45, bound himself to render service for agricultural and other purposes for a period of one year, was held not to be covered by the provisions of Act XIII of 1859. **7 B. 379.** [*R.*, 9 B. 100, 16 B. 368, 28 P.R. 1904, Cr.]

(55)—*Contract of loan on condition that debtor will work for complainant.*—Where an accused received an advance from the complainant and contracted that he would work for a year under the complainant and would then repay the advance, *held*, that the Act does not apply to a contract of this nature. The contract was a loan, with a condition attached that the borrower should work for the complainant. The Act applies only where there has been a contract for work, with money given as wages in advance. **4 Cr. L.J. 200=3 L.B.R. 187.** (3 A. 774, *F.*)

(56)—Such a construction of the Act as would enforce a contract in violation of law of a more stringent nature must not be adopted. Where a labourer agreed, in consideration of an advance of money received from the complainant, to work for the latter until the repayment of the amount advanced, *held*, that the contract was not within the Act. **1 Weir 680=7 M.H.C. App. 30.** [*F.*, 1 Weir 680, 1 Weir 681, Rat. Un. Cr. C. 754; *D.*, 1 Weir 686.]

(57)—*Contract to work in consideration of previous debt.*—Where the accused agreed to serve the complainant for 972 months in consideration of money due to the complainant on account of former debts, but left the service after three months, *held* that there was no fraudulent breach of contract within the meaning of Act XIII of 1859, so as to render the accused liable to be dealt with criminally, and that the Act was not applicable, as no money was received in advance, the consideration for the agreement to work being an old debt. **9 B.H.C. 171.** [*F.*, 16 B. 368.]

(58)—The accused took, from the applicant, Rs. 170 in advance under a written agreement, whereby he agreed, in consideration of the loan, to work at the latter's factory as a shoe-maker for three years. The Magistrate discharged the accused on the ground that the contract was

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

not for work to be done, but was in order to bind the accused down to work for a period of three years. *Held*, setting aside the order of discharge, that the terms of the contract were clear and brought it within the provisions of the Act. **9 Bom. L.R. 362=5 Cr. L.J. 337.**

(59)—Where the accused bound himself to work for the complainant, until the repayment of a sum found due to the complainant on a settlement of accounts in respect to certain personal and ancestral debts, *held*, that such a contract did not come under the provisions of Act XIII of 1859. **1 Weir 680.**

(60)—Where the accused, who owed a certain sum to the complainant, agreed to work upon the complainant's estate for a certain period, and the complainant, in order to make the contract a valid one, advanced the amount to the accused, who received it and immediately returned it to the complainant, *held*, that there was no advance within the meaning of the Act. **1 Weir 685.**

(61)—*Bond—Repayment of sum by instalments.*—Where the money was not advanced on account of work contracted to be done, but was a mere loan to be repaid by monthly instalments out of the wages earned during the contracted period of service, such a contract was held to be not one within the provisions of the Act. **Rat. Un. Cr. C 754.**

(62)—The defendant executed a deed of contract, whereby he agreed, in consideration of Rs. 62 paid in advance, to work as a weaver for 31 months repaying each month Rs. 2 out of the wages he might earn, and the bond extended the time of service in case of default of payment. For a breach of this contract without repaying the amount, the Magistrate directed the defendant to perform the work according to the terms of the contract, under s. 2 of Act XIII of 1859. *Held* that the contract was not within the Act, as the sum of Rs. 62 was not money advanced on account of work contracted to be performed; it was a loan to be repaid by monthly instalments of Rs. 2 each, out of the wages earned during the contracted period of service. In case of any default, the time of service was extended. The case came within the purview of such a case as that reported in 7 M.H.C. App. 30. **Rat. Un. Cr. C. 754=Cr. Rg. 18 of 1895.**

(63)—The provisions of the Act in question can only apply to the case of a workman, who has received from his employer an advance of money on account *of any work* which he has contracted to perform; they do not apply to a case, in which the workman has only received a loan from his master or employer, without any reference to his wages for the work which he has agreed to do, and the loan has to be repaid by monthly instalments extending over a certain period, without any deductions being made from the wages in respect of those instalments. The Act (XIII of 1859) which is of a penal nature has to be construed very strictly. **9 P.R. 1910 Cr.**

(64)—*Advance of money to be repaid without interest.*—Where an employer advanced a sum of Rs. 100 to the accused, who bound himself to work for the complainant with his wife for a certain period, during which he received wages both for himself and for his wife and after which the loan was to be repaid without interest, *held*, that the contract was not one contemplated by Act XIII of 1859. **1 Weir 681.** [*F.*, 1 Weir 682, 1 Weir 683, 1 Weir 687=23 M. 203.]

(65)—Where an advance without interest was made to the accused, on condition that he should perform service, but not on account of work to be performed, *held*, that the provisions of Act XIII of 1859 were not applicable to that contract. **1 Weir 684.**

(66)—*Preamble and s. 5.*—Where, in a suit under the Act by an employer at Mirzapur City against certain workmen, it was found that the money advanced by him was by way of loan and had no reference to the wages of such workmen, and that no deduction on account of such advance was ever made from their wages or the payments made to them; *held* that the contract between the parties was not one contemplated by the Act, which, therefore, was inapplicable to the case. *Held*, also, that it was not certain whether the Act applied to the City of Mirzapur, as the Local Government had extended the Act only to the "station" of Mirzapur. **3 A. 744=A.W.N. 1881, 50.** [*F.*, 3 L.B.R. 187=4 Cr. L.J. 200; *R.*, 16 B. 368.]

(67)—*Loan given to labourer on condition that the latter should enter into a contract of service.*—Where, by a written agreement entered into with the proprietors of a certain estate, a number of workmen agreed to work on that estate for a period of four years and one month for an initial advance of one rupee each, in respect of which it was expressly stipulated that it should not be repaid till after the expiration of the agreement, *held*, that the sum of one rupee given on the date of the agreement was not "money advanced on account of work to be performed," but rather a loan, made without interest, on the condition that the defendants would enter into a contract of service for the duration of the loan, namely, four years and one month. The provisions of Act XIII of 1859 were, therefore, held to be inapplicable to that loan. **23 M. 203=1 Weir 687.**

(68)—Where a cooly received from the complainant, a maistry, a certain sum, and agreed to work for nine months in an estate, receiving four annas a day for his wages and to repay the money advanced after the fulfilment of the contract, *held*, that the sum of money paid to the accused was not money advanced on

1.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

account of work to be performed, but it was a payment made on condition that the defendant would enter into a contract of service for nine months, to which the Act was not applicable. **1 Weir 682.** [*F.*, 1 Weir 683, 1 Weir 687 = 23 M. 203.]

(69)—Where an advance is made to a person to induce him to enter into a contract of service, but not for work which such person contracts to perform, the contract is not one within the meaning of Act XIII of 1859. **1 Weir 684.**

(70)—*Advance made to labourer for marriage expenses.*—Where a certain amount of money was advanced to the accused for marriage and other expenses, but not for work to be performed, *held*, that the advance was not one within the meaning of Act XIII of 1859. **1 Weir 684.**

(71)—*S. 1—Fraud, whether an essential ingredient of an offence under the section.*—It is the wilful, and without lawful and reasonable excuse, neglecting or refusing to perform the contract entered into by the persons whom the Act concerns, that constitutes the offence under s. 2 of the Act. Notwithstanding the preamble of the Act, which speaks of "fraudulent breach of contract," fraud is not an essential ingredient of that offence. **11 A. 262 = A.W.N. 1889, 85.** [*R.*, 16 B. 368, 27 C. 131.]

(72)—This Act relates to fraudulent breaches of contract, and does not apply where an advance has not only been worked off by a labourer, but an actual balance is due to him. **8 W.R. Cr. 69.** [*Diss.*, 11 A. 262; *R.*, 16 B. 368.]

(73)—A entered into an agreement with K to work for K as a grinder and polisher of surgical instruments, on a salary of Rs. 30. He was entitled to get the work done by contract. He was also entitled to get a statement of accounts annually, and to receive a certain percentage of the profits, and in the event of the company being wound up, to a percentage of the reserve fund. A left his employment, as, according to him, his employers failed to perform their part of the agreement. *Held*, that A was entitled to privileges far above those of an ordinary artificer or labourer, and that the Act (XIII of 1859) had no application.

That a *fraudulent* breach is a condition precedent to the operation of the Act, and that the breach was not fraudulent in this case. The preamble shows that the Act aims at the prevention of fraudulent breaches of contract. Though the preamble is not to be considered as part of the Act, yet the words "shall wilfully and without lawful or reasonable excuse—etc.," in s. 1 are, for all practical purposes, equivalent to the expression "fraudulent breach," in the preamble. **36 C. 917.**

(74)—*Whether proceedings under Act are "trial."*—The proceedings of the Magistrate up to and inclusive of the passing by him of an order for either the repayment of the advance or the performance of the contract do not constitute a "trial" for any offence as defined in Criminal Procedure Code. **6 Bom. L.R. 255.**

(75)—*Joint advance to three labourers.*—S. 1 of Act XIII of 1859 deals with advances to individuals, not with cases of advances to several persons jointly. **2 Bom. L.R. 545.**

(76)—*Several contracts—Procedure.*—Where the contracts are several, each defendant should be proceeded against separately. **1 Weir 707.**

(77)—*Inquiry under the Act—Terms of contract should be ascertained.*—In a proceeding under the Workman's Breach of Contract Act, 1859, the first thing to be ascertained is, whether the artificer, workman or labourer entered into a valid contract, and if so, has, wilfully and without lawful or reasonable excuse, neglected or refused to perform work according to the terms of the contract. In order that this may be ascertained, it is quite clear that the terms and circumstances of the contract must be accurately ascertained. **12 Bom. L.R. 135.**

(78)—*Contract entered into with Secretary of State to work in Government rubber plantations, Burma—Neglect of labourer to do work contracted for—Right of Secretary of State to proceed under the Act.*—Certain persons were proceeded against under the Workman's Breach of Contract Act, 1859, for having neglected to perform work which they had contracted to do in Government rubber plantations, Burma, under contracts entered into by them in Madras Town with the Secretary of State for India in Council, represented by an Extra Assistant Conservator of Forests in Burma. The following question was referred to the Full Bench for decision. "Is the Secretary of State for India or the Government of India or the Local Government of any Province of India a master or employer resident or carrying on business in any place to which the Act applies within the meaning of s. 1 of that Act?" *Held* (*per* THIRKELL WHITE, C.J.).—The words "any master or employer" in the enacting part of the statute should not be construed so as to limit them to masters or employers of the classes specified in the preamble. The fact that the Government cannot be considered as a person or entity of the same class as a manufacturer or tradesman does not preclude it from being a master or employer within the meaning of the section. Further, in conducting the rubber plantations on commercial principles, the Secretary of State is carrying on business for gain, not of course for his personal gain, but for the pecuniary gain of the State which he represents. Consequently, the reference should be answered in the affirmative. *Per* FOX and BIRKS, JJ.—No doubt the Secretary of State is a "master or employer" within the

I.—Imperial Acts – continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

meaning of the Act, but he does not carry on the business in a place to which the Act extends. For, in dealing with matters relating to the general public, statutes are presumed to use words in their popular sense. The words "carrying on business" mean, in ordinary language, that the person, who is engaged in the business, does it with the object of acquiring gain or profit for himself or for himself and those jointly concerned with him. This view is strengthened by the preamble to the Act. Therefore, the question referred to should be answered in the negative. **3 L.B.R. 33, F.B.**

(79)—*Ss. 1, 2 (1)—Whether Government officer is 'person carrying on business'—Competency to prefer complaint—Construction of preamble—Object of the Act.—Held*, that the provisions of the Workman's Breach of Contract Act are applicable to a contract made with the Government, and that the Deputy Conservator of Forests was carrying on forest business on behalf of Government in the locality in question, and was competent under s. 1 of the Act to prefer a complaint as an employer under the Act. The preamble of the Act cannot be construed as limiting the operation of the Act to (private) manufacturers, etc., carrying on business (for their private gain). The mischief aimed at is the breach of contract by workmen, artificers and labourers, who have received money in advance for work they have contracted to perform, and the insufficiency of the remedy open to the master or employer by way of civil suit. Proceedings under s. 2 (1) of the Act are not in the nature of a regular case at all, but of miscellaneous proceedings, in which the appropriate order would be one dismissing the complaint. **U.B.R. 1909, 2nd Quarter, Workman's Breach of Contract, 1.**

(80)—*Applicability of s. 83, Crim. Pro. Code (1882), to warrants under Act XIII of 1859.*—S. 83, Crim. Pro. Code, is applicable to warrants issued under the provisions of Act XIII of 1859. **20 A. 124 = A.W.N. 1897, 220.**

(81)—Act XIII of 1859 authorises the Magistrates, on a complaint being made, to issue a warrant, and the provisions of the Crim. Pro. Code apply to that warrant. Therefore, s. 83 of the Crim. Pro. Code (1882) is applicable to warrants issued under the provisions of Act XIII of 1859. **20 M. 235**; 20 M. 457. [*F.*, 20 A. 124 = A.W.N. 1897, 220; *R.*, 6 Bom. L.R. 255.]

(82)—*Condition precedent for issuing a warrant.*—Before a warrant is issued under Act XIII of 1859, a Magistrate should inquire into the fact and satisfy himself that a good *prima facie case* is made out. When such case is made out, the Magistrate is bound to issue process and should not refer the complainant to a Civil Court. **17 P.R. 1896 Cr.**

(83)—*Proceedings under the Act—Jurisdiction of Magistrate.*—Either the Court within whose

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local limits, a workman, labourer or an artificer resides, or the Court within whose local limits the refusal to perform his contract occurs has jurisdiction to hear the complaint. The warrant issued by the latter Court may be executed outside its local jurisdiction. **17 P.R. 1896 Cr.**

(84)—Proceedings under the Act can be instituted either in the Court of the Magistrate, within the limits of whose local jurisdiction the defendant resides, or in a Court within whose local limits the refusal to perform the contract has taken place, and not where the contract has been actually made and money received. **13 P.W.R. 1910, Cr.** (17 P.R. 1896 Cr., 10 M. 21, *F.*; 25 C. 637, 24 M. 660, 28 M. 37, 4 C. W.N. 253, *D.*)

(85)—*Madras Act III of 1865.*—Madras Act III of 1865 authorises any Magistrate to take cognizance of any offence against any special or local law in force, notwithstanding any provision to the contrary in any existing Act or Regulation, and *inter alia* of offences under Act XIII of 1859. But as to the amount of punishment, he shall be restrained within the limits of his ordinary jurisdiction. **4 M.H.C. App. 64.**

(86)—*Ss. 1, 4—Jurisdiction of Presidency Magistrate—Breach of contract beyond jurisdiction—Crim. Pro. Code (1882), s. 3.*—Under s. 3, Crim. Pro. Code, the expression "Magistrate of Police" in s. 1, Act XIII of 1859, shall be deemed to mean Presidency Magistrate. A Presidency Magistrate of Calcutta has jurisdiction, under s. 1 of Act XIII of 1859, in respect of a contract made in Calcutta, but the breach of which has taken place beyond his local jurisdiction. **25 C. 637.**

(86-*a*)—*S. 1—See* CRIM. PRO. CODE (1898), ss. 5, 83, 11 P.R. 1898 Cr.

(87)—*Ss. 1 and 2—Gist of the offence created by the Act.*—The offence created by the Workman's Breach of Contract Act is not a neglect or refusal of the workman to perform his contract, but the failure by the workman to comply with an order made by the Magistrate that the workman do re-pay the money advanced or perform the contract. **24 M. 660 = 1 Weir 673.** [*F.*, 1 Weir 671 *b* = 2 Cr. L.J. 149 = 28 M. 37.]

(88)—*Ss. 1, 2 and 5—Applicability of the Act.*—Employer resident or carrying on business at any place outside Presidency Towns. *Held* that the Act applies to cases in which money has been advanced by masters or employers, resident carrying on business in the Punjab and not in one of the places, specified in the first section of the Act. The object of s. 5 of that Act is not merely to enable employers, resident or carrying on business in places specified in s. 1, to prosecute, at other places, persons who have received advances, but to

I.—Imperial Acts—continued.

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extend all the provisions of the Act to other places and to confer a remedy on employers, resident or carrying on business in such other places; and the effect of the section is to interpolate into s. 1 of the Act the name of any place to which the Act is extended. **66 P.L.R. 1902, F.B.**

(89)—*Ss. 1 and 2—Summary trial of an offence under sections—Cr. P.C. (1882), s. 260.*—A Magistrate has jurisdiction to try a case under s. 2 of Act XIII of 1859 summarily **11 A. 262 =A.W.N. 1885, 85.** [*Diss.*, U.B.R. 1902, 3rd Qr., Workman's Breach of Contract, 1, 2 L.B.R. 163, 6 Bom. L.R. 255; *R.*, 16 B. 368, 27 C. 131.]

(90)—The offence of criminal breach of contract under Act XIII of 1859 is triable summarily. **1 Weir 694.**

(91)—An offence under the Workman's Breach of Contract Act, cannot be tried summarily. **6 Bom. L.R. 255.** (4 M. 234, *F.*; 1 Weir 694, 11 A. 262, *Not F.*; [*F.*, 10 Bom. L.R. 1126.]

(92)—An offence under the Workman's Breach of Contract Act, 1859, cannot be punished summarily. **10 Bom. L.R. 1126=33 B. 25 =8 Cr.L.J. 409=1 Ind. Cas. 387.** (6 Bom. L.R. 255, *F.*)

(93)—*Inquiry under the section, nature of.*—When a complaint has been made against an artificer, workman, labourer, under Act XIII of 1859, that, having received an advance, he has failed without reasonable excuse to perform his contract, the inquiry to be made under the first part of the second section of the Act is not an inquiry into an offence which may be tried summarily. It is an inquiry of a special character, which, in some cases, may require to be conducted with much care and patience. **4 M. 234=1 Weir 695.** [*F.*, U.B.R.(1902) Workman's Breach of Contract Act, 1, 2 L.B.R. 163, 6 Bom. L.R. 255; *R.*, 20 M. 235, 27 C. 131.]

(94)—*Enquiry under the Act, nature of.*—The enquiry to be made, under s. 2 of Act XIII of 1859, is not an enquiry into an offence triable summarily. **1 Weir 696.**

(95)—Proceedings under ss. 1 and 2 of the Act should not be tried summarily. **2 L.B.R. 163.** (4 M. 234, *F.*; 11 A. 262, *Diss.*).

(96)—Ss. 1 and 2—*See* SANCTION TO PROSECUTE, 2 L.B.R. 300.

(97)—*S. 2—Nature of the offence created by the section.*—The offence created by the Act is not the neglect or refusal of the workman to perform his contract, but the failure of the workman to comply with an order made by the Magistrate that the workman do re-pay the money advanced or perform the contract. **28 M. 37=1 Weir 671=2 Cr. L.J. 149.**

(98)—*Scope of the section.*—S. 2 of the Act empowers a Magistrate, at the option of the complainant, either to order that the money advanced to a labourer be re-paid, or that the work be performed. The section only applies

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when the work is uncompleted when the complaint is made. If the work has been completed when the complaint is made, the Magistrate has no jurisdiction under this section. In other words, an employer, by doing the work himself, or employing a third party to do it for him, loses his right to proceed under the section. In such a case, the employer's civil remedy is, of course, open to him, but he cannot avail himself of the penal enactment. **28 M. 37=1 Weir 671 =2 Cr. L.J. 149.**

(99)—*Receipt of advance of money on promise to supply coolies—Penal Code, ss. 406 and 450.*—Where the accused received an advance from the complainant for the purpose of bringing a number of coolies to the complainant's estate, but failed to bring the coolies and also denied that he had ever received the money, *held*, that the accused was neither guilty under s. 2 of Act XIII of 1859, nor, under s. 406 of the Penal Code, of criminal breach of trust, but would be guilty of cheating under s. 415 of the Penal Code. **1 Weir 677.**

(100)—*S. 2, cl. 1 and s. 3—Nature of the trial under the Act—Crim. Pro. Code (1898), s. 370.*—A proceeding under the first clause of s. 2 and under s. 3 of Act XIII of 1859 is not a criminal proceeding. Therefore, s 370 of the Crim. Pro. Code does not apply to a case under those sections, because no offence has been committed and there is no accused; and a Presidency Magistrate is not bound to frame his record in such a case in accordance with the provision of s. 370 of the Code. **27 C. 131=4 C.W.N. 201.** [*R.*, U.B.R. (1902), 3rd Quarter, Workman's Breach of Contract, 1.]

(101)—*Ascertainment of complainant's wishes.*—Under s. 2, the Magistrate should ascertain from the complainant which of two orders, *viz.*, either to finish the work, or to repay the advance, he desires, and should pass that order. The complainant has the option. In an enquiry under s. 2 of the Act, the procedure for trying offences in a summary trial should not be adopted, especially in Upper Burma, where the Act has been recently brought into force. **1 U.B.R. (1902—03), Work. Br. Cont., 1** (11 A. 262, 27 C. 131, 4 M. 234, *R.*)

(102)—*Breach of contract of service—Previous conviction—Further conviction for not returning to service on the same contract.*—A servant, who has once been convicted for a breach of contract of service under Act XIII of 1859, cannot be again convicted on the same contract for a further breach for not returning to service. In cases under the Act, a Magistrate's order should, at the option of the complainant, be either for repayment of the advances made, in whole or in part at the Magistrate's discretion, or performance of the contract, and it is only on failure to comply with such order that a sentence of imprisonment can be passed. **21 C. 262.**

(103)—*Award of imprisonment without interval for obeying Magistrate's order.*—S. 2 clearly

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Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

implies that, after the order is passed for repayment under the first part thereof, an interval should occur in order to see whether he should comply with it or not. The imposition of punishment without any such opportunity being afforded is illegal, inasmuch as no offence was committed at the time of the passing of the order. *Per Pargiter, J.* The order which was passed under the second clause of s. 2 concurrently with an order under the first portion of the section is within the jurisdiction of the High Court to deal with. *Per Woodroffe, J.* **35 C. 1036, Note=9 Cr.L.J. 188.** (5 M. 376, *F.*; 27 C. 131, *D.*; 23 C. 121, *R.*)

(104)—*Ss. 2 and 3—Period of imprisonment exceeding period of contract—Contract upheld against weight of evidence.*—Where the period of imprisonment imposed under s. 2 of the Act exceeds the period for which the accused is under a contract to work, and where no interval is granted for the order to be complied with, such order is illegal. On the District Magistrate referring to the circumstance that the contract was upheld in spite of the evidence against it, *held* that it was unnecessary to say the point.—*Per Stephen, J.*, that the contract was illegally upheld and that circumstance also occasioned a serious miscarriage of justice.—*Per Holmwood, J.*, **35 C. 1035=9 Cr.L.J. 187.**

(105)—*Order for re-payment of advance and simultaneous sentence in default.*—A Magistrate ordering an artificer, workman or labourer to repay the money advanced, or any part thereof, or to perform or get performed the work according to the terms of the contract, under s. 2 of the Workman's Breach of Contract Act, cannot, at the same time sentence him to imprisonment in case he should fail to comply with the order. Such a sentence cannot be passed until the failure is proved to have occurred. **Rat. Un. Cr. C. 380=Cr. Rg. 31 of 1888.**

(106)—A Magistrate, in convicting a person under s. 2 of Act XIII of 1859 for neglecting to perform work, and ordering him to work for a certain period, has no jurisdiction to add that, in case he fails to do so, he should suffer rigorous imprisonment for some time, for the failure has not occurred and has not been proved. **4 B.H.C. Cr. 37.** [*F.*, Rat. Un. Cr. C. 375; *R.*, 18 B. 636.]

(107)—A Magistrate can, under s. 2 of the Workman's Breach of Contract Act, only order a person to perform the work undertaken; he cannot, then, also order that, in default, the workman should suffer a sentence. **Rat. Un. Cr. C. 375=Cr. Rg. 24 of 1888.**

(108)—Where an order has been passed for repayment of the advance, an order for imprisonment in default can only be passed on a complaint of non-compliance and after allowing the defendant to make any defence which he may have. **1 Weir 701=6 M.H.C. App. 24.**

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

(109)—S. 2, Act XIII of 1859, does not authorise a Magistrate to order imprisonment in anticipation of non-compliance with an order to perform work. The sentence of imprisonment can only be passed on a complaint of non-compliance with the Magistrate's order, after hearing any defence which the accused may have to make. **1 Weir 702.**

(110)—Where a Magistrate ordered a person, who had made default in fulfilling his contract to work, to work from the date of the order to a certain date, and, in case of default, during that period, to work for an extra number of days for such default, *held*, that it was not competent for the Magistrate to make the order in anticipation of a default. **1 Weir 707.**

(111)—*Conviction without complaint and without taking statements from accused, validity of.*—Upon complaint that the accused refused to perform work for which they had received advances from the complainant, an order was made by a Magistrate, under s. 2 of Act XIII of 1859 that the work should be performed, the order being made upon the last day on which the work under the contract should be performed. The accused in their defence having stated their inability to perform the work, the Magistrate, without complaint having been made that his order had been disobeyed, and without taking any statements from the accused, sentenced them to 10 days' rigorous imprisonment. *Held*, that the procedure of the Magistrate was irregular and illegal. **5 M. 376 =1 Weir 702.**

(112)—*Order for imprisonment without directing the repayment of the advance or completion of work.*—Where a Magistrate sentenced the accused to imprisonment, without first ordering the accused, at the option of the complainant, to pay the sum advanced to him or to work, *held*, that the order was bad and that the Magistrate should be directed, after giving due notice to both parties, to pass a fresh order according to law. **1 Weir 703.**

(113)—*Order under the section without notice to the accused—Harsh terms in a contract, effect of.*—The accused agreed to work for five years, receiving an advance of Rs. 15 and getting nothing more in the way of wages than his food. He worked for 18 months and then left working, because his son was beaten by the complainant. The Magistrate passed an order under s. 2 directing him to work for the remaining period without giving the accused an opportunity of proving his defence. *Held*, that the accused was entitled to have an opportunity of proving his defence. *Held*, also, that the contract, though harsh in its terms, should be enforced, for the Act did not confer any discretion on the Magistrate with reference to the terms of the contract, but he could, in dealing with such a contract, take the terms into

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

consideration in framing the order against the defendant. **1 Weir 703.**

(114)—Where an order for repayment of money advanced has not been complied with, the Magistrate in sentencing the accused to imprisonment for a certain term under s. 2, Act XIII of 1859, should also specify that the imprisonment is to continue "until the amount ordered to be repaid be sooner repaid." **1 Weir 699.**

(115)—*Order for immediate repayment of advance.*—An order to repay the advance on the spot is not absolutely illegal, provided the Magistrate has passed the order in accordance with the option of the complainant. **1 Weir 699.**

(116)—*Agreement to complete a specific work within a specified time.*—Where a carpenter agreed to build, in a month's time, a bandy out of the materials to be supplied to him, and a Magistrate, on default being made, ordered him to perform the contract 8 months afterwards, *held*, that the order was legal, inasmuch as the essential part of the agreement was that a certain specific article should be made within a reasonable time, the month being fixed as a guide to what would be a reasonable period. **1 Weir 705.**

(117)—*Contract of service for limited period.*—Where the defendant received an advance of Rs. 6 and agreed to work as an agricultural labourer for a period of one year, *held*, that there was nothing illegal in the contract, because the period was a limited one. **1 Weir 706.**

(118)—*Contract to work for a specific period and for a further period in case of default.*—Where the accused receiving an advance, agreed to work with a cooly on the plaintiff's estate from the 4th June, 1884 to the 30th April, 1885, and to continue to work for as many days after the 30th April as he should have made default in working during the term, *held*, that the special agreement to work for an additional number of days after the 30th April, 1885, in case of default was not bad in law. A Magistrate, on such default occurring, should specify the number of days the accused was bound to work after the 30th April, 1885. **1 Weir 707.**

(119) *Contract to work for a year after reasonable time from the date of the contract.*—Where the defendant contracted to do plantation work for a year, such year to commence at or within a reasonable time after the date of the contract, *held*, that an order under s. 2 of Act XIII of 1859, made three years after the date of the contract was illegal, since the time contracted for had expired. **1 Weir 706.**

(120)—*Order subsequent to the expiry of period of contract—Right of employer to repayment of advance.*—On the 7th January, 1907, the

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

respondent received an advance from the petitioner, and signed an agreement to work for him up to the 8th January, 1908. On the 20th December, 1907, petitioner applied to the Magistrate for a warrant under s. 2 of the Act, alleging that the respondent had worked for about 15 days only and had subsequently absconded, and the petitioner had "now" learned where he was hiding. The warrant was issued the same day, and the case fixed for the 30th December, but, on that day, it was adjourned to 7th January at the request of the respondent's pleader, *i.e.*, the last day of the period of contract. On the 8th January, the case was dismissed on the ground that no order could be made after the expiry of the term for which the respondent had engaged to work. *Held* that the delay in the disposal of the case did not defeat the petitioner's right to compel the refund of the money advanced. **4 L.B.R.270.** (11 C.W.N. 247, *Diss.*)

(121)—*Ss. 2 and 3—Contract, breach of—Expiry of term—Recovery of advance and enforcement of contract after term expired—Successive complaints, dismissal of—Effect.*—When the term of a contract coming within Act XIII of 1859 expires, the contract cannot be specifically enforced, nor can the money advanced be recovered, by a proceeding before the Magistrate under that Act. When successive complaints against a workman were dismissed, *held*, that any remedy the complainant might have had under the Act was barred. **11 C.W.N. 247=5 Cr.L.J. 66.** [*Diss.*, 4 L.B.R. 270.]

(122)—*Order for compensation, validity of—Part performance of contract—Order for refund of money.*—An order for payment of compensation made under Act XIII of 1859 is illegal. In the terms of s. 2, there is no provision as to what is to be done in case the contract has been partly performed and partly not performed. It appears to be left to the discretion of the Magistrate to say whether it is just and proper that the whole sum advanced or any and what part thereof ought to be paid. But such portion of the money advanced as has been appropriated to the fulfilment of the contract or as could justly be set off against a part fulfilment of the contract, ought not to be ordered to be refunded. **1 Weir 698=4 M.H.C. App. 67.**

(123)—*Cr. P.C., Act X of 1882, s. 560.*—Act XIII of 1859 makes punishable, not the failure to do work according to contract, but the failure to obey the Magistrate's order. A complaint under the Act is not a complaint of an offence, and an order for compensation under S. 560 of the Cr.P.C., is illegal. **Rat. Un. Cr. C. 617=Cr. Rg. 40 of 1892.**

(124)—*Breach of contract whether amounts to an offence—Order for compensation—Crim. Pro. Code (1898), ss. 4 and 250.*—A breach of contract under the first part of s. 2 of Act XIII of

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

1859, is not an offence within the meaning of s. 4, Crim. Pro. Code. No compensation can, therefore, be legally awarded. **4 C.W.N. 253.** [*R.*, 2 L.B.R. 300.]

(125)—An order directing compensation under the Act is illegal. Such portion of the money advanced to the defendant as has been appropriated to the fulfilment of the contract, or as could be justly set off against a part fulfilment of the contract, ought not to be ordered to be refunded. **4 M.H.C.App. 68.**

(126)—*Advance by employer of grain and money—Order for repayment of advance received in kind.*—Where an employer of labour offers the advance to a labourer in money and the labourer asks to have part of the advance in grain as the equivalent of money, there will be a sufficient compliance with the requirements of the Act, inasmuch as the advance may in such case be treated as an advance in money, part of which was exchanged for grain supplied by the employer at the request of the labourer; where the facts of the case do not warrant such an inference, the Court is bound to adhere to a strict interpretation of the Act, which is of a penal character. Where there was not sufficient evidence to justify the Court in holding that there was an actual offer, by the employer, of the money equivalent to the grain accepted in advance, *held*, that it was not competent for a Magistrate on failure by the labourer to complete the work, to direct repayment of the balance of the advance (not worked off by the labourer inclusive of the advance) in grain. He could only order a repayment of the advance in money. **8 M. 294=1 Weir 700.**

(127)—*Agreement to repay advance by deduction from wages accruing due.*—Where in an agreement for work there was a clause that the advance was to be repaid by a deduction from wages that were to accrue due for services, *held*, that there was nothing oppressive in the contract, as the clause for re-payments by deduction from wages was controlled by the agreement to work only for a specific number of months in the aggregate, and as a breach of the agreement, at a time when the wages due were in excess of the advance remaining unpaid, would not be fraudulent though wrongful. **1 Weir 707.**

(128)—*Enforcement of contract—Extent of enforcement.*—A contract coming under Act XIII of 1859 can only be enforced according to its term. Where the defendant agreed with the complainant, receiving an advance, to work with four coolies on the complainant's estate for ten months between a specified period, and on default being made, the Magistrate ordered the defendant to work with the four coolies for ten months from the date of his order, *held*, that, as the agreement was not to do work for any ten months, but for a specific season, the order of the Magistrate should be confined to directing the accused to work for the residue of the

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

period originally contracted for, remaining after the date of his order. **1 Weir 704.** [*F.*, 1 Weir 705; *R.*, 12 C.W.N. 869]; **1 Weir 705** [*R.*, 12 C.W.N. 869; *D.*, 1 Weir 705.]

(129)—*Jurisdiction of Magistrate, to what confined—Power to order delivery of jewel.*—Under s. 2 of Act XIII of 1859, a Magistrate has only power to order the repayment of the money advanced or to order the performance of the work. He has no power to order the delivery of a jewel contracted to be made. **3 M.L.T. 292=7 Cr.L.J. 359.**

(130)—*Order for return of money advanced and of goods.*—The payment of the money advanced to a workman and the return of the goods given to be worked on are not provided for in the Act directly. It is only by an order to perform the contract and enforcing the performance that the return of the goods and money can be got. **1 Weir 700.**

(131)—*Order for refund of stamp-duty and process-fees.*—A Magistrate, convicting a person under s. 2 of Act XIII of 1859, should pass an order for the refund of stamp-duty and process-fees. **1 Weir 697.**

(132)—*Liability of workman to pay Court-fee in addition to the penalty imposed—Court Fees Act, s. 31.*—The punishment under the Act is for the disobedience of the Magistrate's order and not for the fraudulent breach. So, where the workman admits the advance and repays the same, it is not open to the Magistrate to make him pay to the complainant the Court fee paid on the petition of complaint; for, no penalty can be imposed till the person complained against had disobeyed the order for the payment of the sum advanced to him by the complainant. **6 Bom. L.R. 255.** (20 M. 235, *R.*).

(133)—*Re-payment of sum advanced and of Court-fee.*—An accused person ordered, under s. 2 of the Act, to repay the sum advanced to him, cannot also be ordered to pay the Court-fee on the complaint under s. 31 (1) of the Court Fees Act, since such an order could be made only in addition to a penalty imposed while none had been imposed in the case. **Rat. Un. Cr. C. 534=Cr. Rg. 2 of 1891.**

(134)—*Cr. P.C. (1882,) s. 545—Compensation for costs of suit.*—An order calling on the accused to pay the complainant a sum of money for his costs cannot be made in a case under Act XIII of 1859. **Rat. Un. Cr. C. 625=Cr. Rg. 52 of 1892.**

(135)—*Imprisonment of defendant by order of Magistrate whether bars jurisdiction of Civil Court.*—An order of a Magistrate for the repayment of the money advanced under Act XIII of 1859 is not so satisfied by the subsequent imprisonment of the defendant, as to deprive the plaintiff of his remedy by a civil suit. **2 M.H.C. 427.** [*R.*, 16 B. 368.]

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

(136)—*Claim barred in Civil Court—Prosecution also barred.*—Where a bond to work as weaver for 13 months or in default to pay back the sum advanced could not be enforced in a Civil Court on account of lapse of time, it cannot be made the basis of a prosecution under Act XIII of 1859. **Rat. Un. Cr. C. 874 = Cr. Rg. 50 of 1896.**

(137)—*Applicability of Limitation Act.*—Act XIII of 1859 is a penal enactment, and the Limitation Act is no bar to the enforcement of a penal provision. A plea of limitation, which is available only in civil suits, cannot be taken to bar punishment for what is an offence. The Limitation Act is not, therefore, a bar to recover an advance made to a labourer. **11 M. 332 = 1 Weir 672.** [*R.*, 16 B. 368, 1 Weir 671-*a* = 28 M. 37; *Diss.*, Rat. Un. Cr. C. 874.]

(138)—*Advances paid to labourers—Application for recovery of same-Limitation.*—The mere fact that an advance was made to a labourer so long ago that the money could not be recovered by a civil action is no sufficient ground for refusing altogether to give effect to the penal provisions of the Act. **16 M. 347 = 1 Weir 672 = 3 M.L.J. 180.**

(139)—*Contract under the Act—Liability of third parties.*—Where a contract for labour is made with one. who dies before the fulfilment of the contract, persons, who are not parties to the contract, cannot be made liable under Act XIII of 1859, even though they acknowledge a joint responsibility with the deceased for the money advanced. **1 Weir 694.**

(140)—*Liability of undivided co-parcener of the workman.*—Where a person, who had received an advance of a sum and agreed to perform certain work, died before he could complete the agreement, *held*, that the deceased's undivided brother could not be proceeded against under s. 2 of Act XIII of 1859, although he had undertaken to complete the work. **1 Weir 693.**

(141)—*Magistrate's power to reconsider order.*—Where a Magistrate has made an order in the first stage of a proceeding under s. 2 of the above Act for the repayment of the money advanced to the workman by the complainant, it must always be open to him to reconsider the legality of his order when it becomes necessary for him to inflict a penalty for failure to obey the first order. **Rat. Un. Cr. C. 537 = Cr. Rg. 9 of 1891.**

(142)—*Order under the Act, whether appealable.*—An order, under Act XIII of 1859, directing the repayment of money advanced is appealable, for, although no sentence in the proper sense has been passed, yet, it is open to the Magistrate, if default is made in the payment of the money, to pass a final sentence. **1 Weir 694.**

(143)—*Order directing payment of money advanced without fixing time.*—An order directing the payment of the sums of money received by the workman in advance, without specifying any time within which those sums were to be paid back, is bad for uncertainty. **1 Weir 696.**

(144)—*Time for repayment.*—It is not competent to a Magistrate, under s 2 of Act XIII of 1859, to fix a time within which the money advanced is to be paid. **Rat. Un. Cr. C. 418 = Cr. Rg. 85 of 1888.**

(145)—*Submission of calendar.*—A calendar should be submitted to the Appellate authority immediately after an order under the first part of s. 2 of Act XIII of 1859 is passed. When further proceedings under the latter part of the section are taken, it will suffice to send a simple copy of the order containing a reference to the calendar. **7 M.H.C. App. 1.**

(145-*a*)—*S. 2*—*See* Nos. 87, 88, 89, 95, 96, *supra*; and 148, *infra*.

(145-*b*)—S. 2 (1)—*See* No. 79, *supra*.

(146)—*S. 3—Order for bail for repayment of money advanced.—Scope of section*—S. 3 refers only to finding bail for compliance with an order directing an artificer, workman, or labourer to perform or cause to be performed the work for which he has contracted. An order, therefore, directing a workman to enter into recognisances for the repayment of the money advanced is illegal. **1 Weir 699.**

(146-*a*)—*See* Nos. 100, 104, 121, *supra*.

(146-*b*)—S. 4—*See* No. 86, *supra*.

(147)—*S. 5—Scope of the Act.*—The Act applies to cases where money has been advanced by employers resident or carrying on business in the Punjab. It is not necessary that they should reside in any of the places specified in the first section. **11 P.R. 1902 Cr., F. B.**

(147-*a*)—*See* No. 88, *supra*.

(148)—*S. 5 and 2—Extension of the Act under s. 5—Effect—Money advanced, whether recoverable when contract expired.*—When Act XIII of 1859 is extended to a certain place under the provisions of s. 5 of the Act, a master or employer residing or carrying on business in the place has the same rights as are conferred by the Act on masters or employers resident or carrying on business in any Presidency Town. *Per Stephen, J.*—Under s. 2 of Act XIII of 1859, a master or employer can enforce the repayment of the money advanced, by a proceeding under the Act, even after the term of the contract has expired. *Per Holmwood, J.* (contra) —When the term of the contract has expired, a master or employer cannot enforce the repayment of the money advanced by a proceeding under Act XIII of 1859. **12 C.W.N. 869 = 8 Cr. L.J. 134 = 8 C.L.J. 312.**

(149)—*S. 5—Exercise of powers under Act outside the Presidency towns.*—Powers under Act XIII of 1859, outside the Presidency towns, can

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1.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*concluded.*

only be exercised under s. 5 by officers who have been specially appointed. **Rat. Un. Cr. C. 701=Cr. Rg. 32 of 1894.**

Act XIV of 1859 (Limitation).

[REP. (EXCEPT PART OF S. 15), ACT IX OF 1871. RESIDUE REP. (EXCEPT AS TO SCHEDULED DISTRICTS), ACT I OF 1877. THE UNREPEALED PART OF S. 15 DECLARED IN FORCE IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3.]

—S. 1, cl. 7—*See* ACT XV OF 1877, ART. 47, **3 N.W.P. 171.**

—*S. 15—Possessory suit under section barred by award under Cr. P.C.—See* ACT I OF 1877, **20 W.R. 12.**

Act XXVII of 1839 (Collection of Debts on Successions).

[REP., ACT VII OF 1889.]

(1)—*Jurisdiction—Dispute as to succession to a mutt—Certificate.*—A Magistrate cannot proceed under s. 318, Crim. Pro. Code (1861), in case of a dispute arising out of a right of succession to a *mutt* and its appurtenances, but should apply to the Judge, under the provisions of Act XIX of 1841 (Succession, Property Protection) to appoint a curator, or make some order with regard to the property, till the right of succession is determined. The grant of a certificate under this Act does not decide the title to such land. **11 W.R. Cr. 23=2 B.L.R. A. Cr. 27.**

(2)—*Certificate of administration—Cr. P.C. (1872), s. 530.*—The grant of a certificate under Act XXVII of 1860 is not sufficient proof of possession to entitle the holder to an order under Cr. P.C. (1872), s. 530, declaring him to be in possession. **25 W.R. Cr. 16.**

Act XXXI of 1860 (Arms).

[REP., ACT XI OF 1878.]

See ACT XI OF 1878.

(1)—*Ss. 5 and 35—Jurisdiction to try an offence under s. 5 of the Act.*—Under s. 35, Arms Act, a Sub-Magistrate of the First Class has no jurisdiction to try an offence under s. 5 of the Act. **3 P.R. 1869 Cr.**

(2)—*Ss. 5, 44—Manufacturing and selling gunpowder without license—Imprisonment in default of payment of fine.*—As s. 5, Act XXXI of 1860, gives the power to imprison or fine a person for manufacturing or selling gunpowder without a license, a Magistrate can legally pass a sentence of fine or imprisonment in default. **5 M.H.C. App. 23.** [*Overruled*, 7 M.H.C. App. 22].

(3)—*Ss. 19 (f), 29 and 32 (2)—S. 32 (2) not extended to Lower Burma—Prosecution for possessing arms—Sanction of District Magistrate essential.*—No prosecution can be instituted for the possession of arms under s. 19, cl. (*f*) of the Indian Arms Act, without the previous sanction of the District Magistrate. The mere possession of arms, other than those mentioned in s. 14, is not a punishable offence. **L.B.R. (1872-1892), 536.**

(3-*a*)—S. 29—*See* No. 3, *supra.*

(4)—*S. 32—Possession of arms without a license.*—The proceedings of the Magistrate directing the issue of a summons to appear, and of a warrant of arrest, against a person for the possession of arms without a license under the Act were held to be illegal. The mere possession of certain arms without a license would be an offence, only if the provisions of s. 32, Act XXXI of 1860, had been extended to and were still in operation in the district. **9 B.L.R. Ap. 34=18 W.R. Cr. 1.**

(5)—The mere possession of arms without a license is no offence whatever under the Arms Act, where the provisions of s. 32, have not been extended to a district. **18 W.R. Cr. 26.**

(6)—*Conviction in a place where the provisions of the section were in force.*—In a place where the prohibitory and penal clauses of s. 32, Act XXXI of 1860, were not in force, a conviction under that section was set aside. **119 P.R. 1866 Cr.**

(7)—*S 32 (1 and 2)—XI of 1878, ss. 15, 19—Unlicensed possession of arms.*—S. 32 (2) of Act XXXI of 1860 can be said to apply, in any specific sense, to a certain Taluka, only if one or other of these conditions has been fulfilled, that is, if either:—(*a*) an order of disarmament has been duly published, or (*b*) a general search for arms has been ordered. If there is also no notification in the local official gazette extending s. 15 of Act XI of 1878 to the Taluka, the possession of arms without a license in that place is not punishable under s. 19. **9 B. 478.**

(8)—*S. 32 (2)—Unlicensed possession of saltpetre.*—The unlicensed possession of saltpetre is not an offence, under the Arms Act, as it is not an ammunition within the meaning of the Act, notwithstanding the rules of the Chief Commissioner to the contrary. **25 P.R. 1869 Cr.**

(9)—*See* Act XI of 1878, ss. 19 (*b*) and 29, 1 Weir 663.

(9-*a*)—*See* No. 3, *supra.*

(10)—*S. 32 (6)—Possession of arms—Illegality of search.*—When the mere possession of arms was made an offence in a certain district, the accused would be punished for the illegality of their possession, if there were satisfactory evidence that the prisoners were in possession of arms, notwithstanding that the police might have also committed an illegality in their procedure in conducting the search. **2 N.W.P. 57.**

(11)—*Fine—Imprisonment.*—A sentence of fine only, or imprisonment only, under s. 32 (6) is a legal sentence. **1 B. 308, F.B.** [*R.*, 16 B. 689.]

1.—Imperial Acts—continued.

Act XXXI of 1860 (Arms)—*concluded.*

(12)—*S. 35—Jurisdiction of Magistrate—Cr. P.C. (1872), s. 2.*—The term "Magistrate," in s. 35 of Act XXXI of 1860, applies only to the Magistrate of a District as defined in s. 2 of the Cr.P.C. **Rat. Un. Cr. C. 80=Cr. Rg. 15—1—74.**

(12-*a*)—*See* No. 1, *supra.*

(12-*b*)— S. 44—*See* No. 2, *supra.*

(13)—*S. 46—Imprisonment in default of fine.*—Only when it has been ascertained in the manner provided in s. 46, that no sufficient distress can be had, can an order for imprisonment in default of fine be passed. **120 P.R. 1866 Cr.**

Act XXXII of 1860 (Income-tax).

[REP., ACT VIII OF 1868.]

See ACT IX OF 1869, 2 N.W.P. 113.

Act XXXVI of 1860 (Stamps).

[REP., ACT X OF 1862.]

(1) *Act X of 1862—Unstamped instrument made in Australia, dated 26th May, 1862, sought to be used in Madras—Penalty under Act I of 1879.*—An unstamped instrument, comprising an assignment by will and also a power of attorney executed in Australia and dated 26th May, 1862, is not chargeable either under Act XXXVI of 1860 or Act X of 1862 with stamp duty. Consequently no penalty can be levied under Act I of 1879. **14 M. 255.**

(2)—Ss. 26, 37—*See* CONVICTION, 3 B.H.C. Cr. 34.

(2-*a*)—S. 37—*See* No. 2, *supra.*

(3)—*S. 52—Non-compliance—Irregularity.*—A conviction under the Stamp Act is illegal where the procedure under s. 52 is not complied with. **3 B.H.C. Cr. 36 (Note).**

Act XLV of 1860 (Penal Code).

See PENAL CODE.

Act V of 1861 (Police).

[REP. IN PART, ACT IX OF 1871; ACT XVI OF 1874; ACT X OF 1882. REP. IN PART (IN BENGAL), BEN. ACT VII OF 1869; REP. IN PART (IN RANGOON), BUR. ACT IV OF 1899, S. 2, WHEN NOTIFIED (AND SEE SS. 3 AND 4). AMENDED, ACT III OF 1888; ACT VIII OF 1895; ACT I OF 1903; LOCALLY REG. VII OF 1901. SUPPLEMENTED, BEN. ACT VII OF 1869. PORTIONS EXTENDED TO CALCUTTA AND SUBURBS, WITH MODIFICATIONS, BEN. ACT I OF 1898. DECLARED IN FORCE IN—SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; THE ARAKAN HILL DISTRICT, EXCEPT S. 11, REG. IX OF 1874, S. 3; UPPER BURMA GENERALLY (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4; BRITISH BALUCHISTAN, REG. I OF 1890, S. 3; THE ANGUL DISTRICT, REG. I OF 1894, S. 3; THE CHITTAGONG HILL-TRACTS, REG. I OF 1900, S. 4.]

1.—Imperial Acts—continued.

Act V of 1861 (Police)—*continued.*

(1)—*Penal Code, ss. 99, 351 and 353—Assault on a police officer—Police officer trying to secure thumb impression of a surveille—Assault to deter the police officer from taking the impression—Police Code—Rule regarding surveille.*—A rule of the Police Code, to the effect that when any *surveille* is at home, proof of his presence can be secured by taking a thumb impression on the report, does not impose an obligation upon him to give a thumb impression when required, and he cannot be forced to do so, if he objects. Where a *surveille*, on a domiciliary visit to him by a Sub-Inspector of Police, objected to the taking of the impression, and when the police officer extended his hand to take the impression, he produced a *lathi* and said that he would not allow the impression to be taken and that, if any one asked for it, he would break his head, *held*, that the act did not amount to an offence under s. 351, Penal Code, and that, had the act amounted to an offence by itself, s. 99 would have been applicable. **30 C. 97=6 C.W.N. 342.**

(2)—*Society for the Prevention of Cruelty to Animals, officers of—Public servants—Penal Code, s. 21.*—Officers of the Society for the Prevention of Cruelty to Animals, appointed under Act V of 1861, are public servants within the meaning of the Indian Penal Code. The mere fact that the certificates of appointment given to such officers are not strictly in conformity with the form prescribed in the Schedule to Act V of 1861, does not invalidate their appointment or take them out of the category of public servants. **3 C.L.J. 475=10 C.W.N. 727=3 Cr. L.J. 420.**

(3)—*Appeal from convictions under Police Code*—Convictions under this Act are appealable like other convictions. Where the appellants were convicted by an officer exercising the powers of a Magistrate and sentenced to imprisonment exceeding the limit prescribed by s. 411, Crim. Pro. Code, 1861, the appeal lies to the Sessions Court. **5 W.R. Cr. 22.**

(4)—*Appeal.*—Act V of 1861 is a special law on the subject of police, and persons charged with offences punishable under that law must be tried under the provisions of the Crim. Pro. Code. Convictions under Act V of 1861 are appealable in the same way as other convictions. **5 W.R. Cr. Cir. 1.**

(5)—*Jurisdiction of Magistrate to direct enquiry by police officer.*—A Magistrate is competent, under s. 133, CRIM. PRO. CODE (1861), to direct an enquiry to be made by a police officer into an offence punishable under a Local Act, such as the Police Act. **14 W.R. Cr. 41.**

(6)—*Police officer committing offence, while not on duty.*—A police constable is liable to be punished under the Penal Code, and not under the Police Act. if he commits any offence when not on duty. **96 P.R. 1866 Cr.**

1.—*Imperial Acts*—continued.

Act V of 1861 (Police)—*continued.*

(7)—*Applicability to unauthorised playing of music at night.*—Where it does not appear that an occasion, such as that furnished by playing music at midnight on a marriage ceremony without permission, required any intervention or interference on his part, or that he issued any direction or gave any order in the matter of the playing of music, the Police Act does not apply. **5 C.P.L.R. 92.**

(8) S. 4—*See* SANCTION TO PROSECUTE, 6 P.R. 1910 Cr.

(9)—Ss. 4, 7, 24 and 42—*See* DEFAMATION, 4 P.W.R. 1910 Cr.

(10)—*Ss. 5 and 36—Crim. Pro. Code (1898), ss. 195, 439—Complaint to the Inspector-General, Police—Investigation by District Superintendent of Police—Its dismissal—Sanction to prosecute—Revision.*—Where H.D. sent to the Inspector-General of Police a few specific charges of bribery against the Sub-Inspector of Police and asked for investigation, the Inspector-General, who is a Magistrate under s. 5 of Act V of 1861 and is empowered by s. 36 of the Act to enquire into and determine as a Magistrate any charge against a police officer above the rank of a constable, ordered the District Superintendent of Police to investigate, and that officer forwarded the result of his investigation to the District Magistrate. *Held* that a false charge of an offence, preferred to a person empowered to order investigation by the Police, though not followed by further proceedings in any Court, brings the matter of the charge within the 1st part of s. 211, I.P.C. **9 P W.R. 1908 Cr. =7 Cr. L.J. 291.** (14 P.R. 1879 Cr., 3 P.R. 1888 Cr., *F*; 5 C. 281. 6 C. 620, *R*; 5 P.R. 1888 Cr., 17 C. 574, *D.*).

(10-*a*)—S. 7—*See* No. 9, *supra.*

(11)—*Ss. 7 and 29—Suspension and confinement for unlimited term—Cumulative punishment, legality of.*—An order for the suspension and confinement of a police officer for an unlimited period of time exceeding the limits laid down in cl. (*b*) of s. 7 of Act V of 1861, is illegal, and is not such an order as a District Superintendent of Police can legally pass at all, nor one which he can pass in the alternative under s. 7 of the Act; and no conviction under s. 29, for disobeying such order, is maintainable. **2 C.L.J. 616=3 Cr. L.J. 110.**

(12)—*Ss. 13 and 15—Levy of cost of Police from individuals.*—A Magistrate has no power to realize the cost of a constable from an individual. **1 W.R. Cr. 15.**

(12-*a*)—S. 15—*See* No. 12, *supra.*

(13)—*S. 17—Object of appointing special constables—Refusal to serve—Penal Code, s. 173.*—The only legitimate object for appointing special constables is to strengthen the ordinary Police force by the addition of suitable persons to their number, when the ordinary force find themselves too few to meet an emergency. In a case of dispute as to proprietary rights, it is an abuse

1.—*Imperial Acts*—continued.

Act V of 1861 (Police)—*continued.*

of the law and an act of oppression to appoint active men on one side as special constables, in order to prevent their asserting their alleged rights and so to give an advantage to the other party. A refusal to serve as such is no offence under s. 173, I.P.C., and proceedings could not be taken under that section. **10 C.W.N. 82=2 C.L.J. 555=3 Cr. L.J. 169.** [*R.*, 10 C.W.N. 322, 12 C.W.N. 727.]

(14)—*Ss. 17 and 19—Penal Code, ss. 147, 149 and 353—Refusal to accompany a police officer to police station to receive appointments and badges of special constables—Resistance to police-officers in the arrest of such men.*—Refusal to accompany a police officer to the Police Station, situated at some distance, not for any purpose of police duty, but simply to obtain the authority of appointment to serve as special constables and the necessary badges and arms, does not amount to a refusal to serve as special constables, and it does not, therefore, constitute an offence under s. 19 of the Police Act An arrest made by a police officer on such a refusal is not lawful, and any resistance offered to such an arrest does not amount to an offence under s. 353, although it may amount to an offence under s. 147. **28 C. 411 =5 C.W.N. 134.**

(15)—*Ss. 17 and 19—Special constables—Appointment, circumstances justifying—Disobedience of order under s. 17—No offence under s. 19.*—The circumstances which justify the appointment of special constables under s. 17 of Act V of 1861 are that a disturbance of the peace is apprehended and that the police force available is insufficient to preserve the peace and protect the inhabitants of the place where the disturbance is apprehended. In the absence of those circumstances an order under s. 17 of Act V of 1861 is improper and there should be no conviction of the persons appointed special constables for disobedience of the same. **12 C.W.N. 366=7 Cr. L.J. 186=35 C. 454.**

(16)—*Ss. 17 and 19—Appointment of Special Constables—Circumstances justifying appointment—Refusal to comply with an improper order of appointment.*—The circumstances which justify an order under s. 17 of Act V of 1861 are that a disturbance of the peace is apprehended and that the police force available is insufficient to preserve the peace, and protect the inhabitants of the village where disturbances are apprehended.

In a case where it was not clear that there was any danger of a disturbance of the peace or that, if there was such a danger, the ordinary police force available was not sufficient to cope with it, *held* that the appointment of the petitioner as a special constable was unnecessary and inexpedient, *held*, further, that the petitioner should not be prosecuted under s. 19 of Act V of 1861 for his refusal to act in accordance with such appointment. **12 C.W.N. 727=8 C. L.J. 66=7 Cr. L.J. 507.** (12 C.W.N. 366, 10 C.W.N. 82=2 C.L.J. 555, *F.*).

1.—Imperial Acts—continued.

Act V of 1861 (Police)—*continued.*

(17)—*Ss. 18, 19, 29—Special constables—Order of appointment—Interference by High Court on revision—Object of appointment—Executive order—Refusal to act—Punishment—Prosecution.*—A person, who has refused to act as a special constable, cannot be prosecuted under s. 29 of the Police Act. The provisions of that section were not intended to apply to special constables and cannot be interpreted as so applying by the operation of the provisions of s. 18. **10 C.W.N. 322.**

(17-*a*)—S. 19—*See* Nos. 14 to 17, *supra*.

(18)—*S. 20—Crim. Pro. Code (1882), s. 14—Power of police officers to exercise Magisterial authority—Local Government should confer special power.*—S. 20 of the Police Act and the last part of s. 14 of the Code of Criminal Procedure preclude police officers from exercising authority as Magistrates. Paragraph III of the Schedule of the Criminal Justice Regulation enables the Local Government to confer Magisterial powers on police officers notwithstanding these provisions, but such powers would have to be specially conferred and for particular purposes. **U.B.R. (1892—96), Vol. I, 10.**

(19)—*S. 23—Arrest—Duty of police officer.*—Under this section a police officer is not bound to arrest a person against whom no proceedings have been directed, if he believes that he has not sufficient grounds for apprehending him. **26 W.R. Cr. 8.**

(20)—*Order to purchase material for repairing thana, if an order under section.*—Where money was given to a police constable by the assistant *moharir* of his *thana* to purchase rafter and bamboos for repair of the *thana*, held that the order to purchase rafters, etc., was not an order of the kind contemplated by this section. **A.W.N. 1891, 179.**

(21)—S. 24.—*See* CRIM. PRO. CODE (1898), ss. 190 (1) (*b*) and 4 (1) (*h*), 1 L.B.R. 18.

(21-*a*)—*See* No. 9, *supra*.

(22)—*S. 25—Timber washed on to an estate—Unclaimed property.*—Timber claimed by a landowner as having been washed on to his estate by a river is not unclaimed property within the meaning of s. 25 and the following sections of the Act. **9 W.R. 97.**

(23)—S. 26—*See* LOST GOODS, 1 U.B.R. (1902-03), Police, 1.

(24)—*S. 29—Scope of section.*—S. 29 of the Police Act has no application to persons who are not police officers. **10 C.L.R. 521.**

(25)—The framers of s. 29 of Act V of 1861 could never have intended it to apply to a case, where the offence charged is absence from special constable's parade on certain dates without permission. The section is an exceedingly stringent provision of the law which should

1.—Imperial Acts—continued.

Act V of 1861 (Police)—*continued.*

not be put in force except in extreme cases, and where milder remedies have been tried and failed. **10 C.W.N. 79=2 C.L.J. 565=3 Cr. L. J. 178.**

(26)—The section deals with offences constituted either by any violation of duty, or wilful breach, or neglect of any rule or regulation, or lawful order, made by competent authority on the part of a police officer. Any neglect of duty short of a violation of duty does not amount to an offence under the section. **12 C. 427.**

(27)—*Offence under section, if cognisable*—An offence under the above section is not a cognizable offence. **U.B.R. (1892-96), Vol. I, 295.**

(28)—"*Lawful order*," *construction of.*—The words "lawful order" in s. 29 of the Police Act mean an order which the authority mentioned therein is competent to make; so that they would not cover an order for *extra drill*, given by a District Superintendent of Police to his constables, for their failing to cut down the jungle in the vicinity of their lines as per his orders. **12 C. 427.**

(29)—*Violation of duty must be deliberate.*—Before a police officer can be convicted of an offence under s. 29 of the Act, it must be found that he is guilty, not of mere neglect, but of deliberate and intentional violation of duty. **17 W.R.Cr. 34=8 B.L.R. App. 60.** [*F.*, 19 W. R. Cr. 7.]

(30)—The accused, a Sub-Inspector of Police, was charged with an offence under the section for carelessness in conducting an inquiry. The facts proved against him were, that he failed to record the statements of certain parties till late in his enquiry; that he did not search the house of one Bakhti, that he did not keep a proper look-out to ascertain whence the said Bhakti got certain ornaments found in her possession. On these findings, he was convicted and sentenced to pay a fine of Rs. 100. *Held* that the findings did not constitute any offence punishable under the section, for, under the Act, it is only wilful neglect or violation of duty that constitutes a criminal offence. **A.W.N. 1883, 42.**

(31)—Mere rashness or negligence on the part of a police officer, before ordering the search of a man's house for stolen property, does not constitute an offence amounting to a violation of duty under s. 29 of the Act. The violation there intended must be wilful, intentional violation of some clear duty, or other. **19 W. R. Cr. 7.** (17 W.R. 34 Cr.=8 B.L.R. App. 60, *F*).

(32)—*Acts or omissions punishable under the Act.*—Acts or omissions punishable, under s. 29 of the Act, come within the category of "offences punishable under any law other than the Indian Penal Code" and those offences likewise fall within the terms of s. 148 of the same Code. **25 W.R. Cr. 20.**

I.—Imperial Acts—continued.

Act V of 1861 (Police)—*continued.*

(33)—*Refusal to turn out for drill, if an offence.*—Refusal to turn out for drill on being ordered to do so by a head constable in charge of the *thana* is an offence under s. 29 of the Act. **A.W.N. 1896, 105.** [*Diss.*, 20 A. 70].

(34)—*Overstaying of leave by a constable.*—Where a constable obtained leave of absence for one month, a substitute being appointed, and overstayed his leave by 29 days, *held*, that such overstaying of one's leave would not amount to a "withdrawal from the duties of his office," within the meaning of s. 29 of Act V of 1861. **6 A. 495 = A.W.N. 1884, 215.** [*D.*, Rat. Un. Cr. C. 279.]

(35)—A police constable overstaying his leave without permission cannot be convicted under s. 29 of the Police Act. **6 C. 625 = 8 C.L.R. 56.**

(36)—*Deputing subordinate if amounts to neglect of duty.*—When a police officer is authorised by law to depute his subordinate to proceed to a place where a crime is reported to have been committed, he cannot be supposed to have contravened the law by not proceeding to the spot himself; under such circumstances, the conviction of the prisoner on a charge of wilful violation of duty is illegal. **1 Agra Cr. 1.**

(37)—*Police officer under suspension if can be convicted for withdrawing from duty without leave.*—A police officer under suspension cannot be convicted, under s. 29, of withdrawing from the duties of his office without permission. **17 W.R. Cr. 12 = 8 B.L.R.App. 58.** [*F.*, 10 A. 459.]

(38)—The provisions contained in s. 29 of Act V of 1861 contemplate that the person, to be charged with an offence under that section, must have been, at the time of his doing the act in respect of which the charge is preferred, a police constable within the meaning of that statute. A suspended police officer ceases to be a police officer. Where a police constable was suspended, and was ordered to remain in the lines during the suspension, *held*, that he was not guilty under s. 29, for absenting himself therefrom without leave. **10 A. 459 = A.W.N. 1888, 169.**

(39)—*Police officer making negligent or incorrect report of local investigation.*—A police officer negligently or improperly submitting an incorrect report of a local investigation may be punished under s. 29 of the Act in cases where the proof is sufficient to bring the case under s. 218 of the Penal Code. **15 W.R. Cr. 17.**

(40)—*Jurisdiction over police officers of Deputy Magistrate exercising full powers of Magistrate.*—A Deputy Magistrate exercising the full powers of a Magistrate has jurisdiction under this section, to fine police officers for violation of duty. **4 W.R. Cr. 2.**

(41)—*Jurisdiction of Magistrate to try cases under Act.*—A Magistrate only, and not a Sessions Judge, has power to try cases under the above section. S. 152, Crim. Pro. Code

I.—Imperial Acts—continued.

Act V of 1861 (Police)—*continued.*

(1861), does not apply to cases in which there has not been a continuous detention for 24 hours. **1 W.R. Cr. 5.** [*R.*, 19 A. 465].

(42)—*Jurisdiction of Cantonment Magistrate.*—A Cantonment Magistrate has power to try cases, under this section without complaint. **1 Agra Cr. 24.**

(43)—*Crim. Pro. Code (1898), s. 556—Trial by a District Magistrate of case of breach of order of Inspector.*—*Held*, that a District Magistrate is not precluded under s. 556, Cr. P.C., on account of his being the head of the Police in the District, from trying a person under s. 29 of Act V of 1861, for a breach of an order issued by a Reserve Inspector. **22 A. 340.** [*R.*, 24 M. 238 = 2 Weir 238.]

(44)—*Jurisdiction over European British subjects.*—S. 29 of Act V of 1861 does not give a Magistrate jurisdiction over European British subjects. Where, in a prosecution under s. 29, the plea of being an European British subject is raised by the accused, the Magistrate is bound to enquire into and determine that plea. **3 N.W.P. 128.**

(45)—*Crim. Pro. Code (1898), s. 263—Summary trial of an offence under s. 29—Duty of Magistrate.*——In a summary trial of an offence under s. 29 of Act V of 1861, it is not sufficient to state that it consisted in the absence from special constable's parade on certain dates without permission, but it is necessary to state that the act consisted of a breach of duty lawfully imposed, and to specify how the duty was created, and in what act or omission the breach consisted. **10 C.W.N. 79 = 2 C.L.J. 565 = 3 Cr. L.J. 178.**

(46)—The summary conviction and punishment of two police officers under this section, by a Cantonment Magistrate, without formal trial, was held to be irregular and illegal. **1 Agra. Cr. 24.**

(47)—*Power to make rules—General rules issued by District Superintendent—Validity—Disobedience to such rules.*—There is no express power given by the Act to any officer, save the Inspector-General of Police, to make rules; he can do so under s. 12 for, amongst other purposes, preventing abuse or neglect of duty. Such rules must be made subject to the approval of the Local Government. Therefore, a disobedience of an order of the District Superintendent to the effect that constables are to be within the lines at 9 P.M. is not an offence under s. 29 of the Act. **15 C. 194.**

(48)—*Special Rule by the District Superintendent of Police.*—*Semble*, such a general rule made by a District Superintendent would not come under the Act; probably a special order requiring the presence of an officer or of certain officers within the Police lines, issued expressly to him or each of them "would come under s. 29" as being not a "rule or regulation," but

1.—Imperial Acts—continued.

Act V of 1861 (Police)—*continued.*

"a lawful order" made by a competent authority and relating to the duties of the officer, one of which is to be at hand when required for service. **15 C. 194.**

(49)—*See* PENAL CODE, S. 221, 11 P.R. 1874 Cr.

(50)—*See* PENAL CODE, S. 463, U.B.R. (1897—1901), Vol. I, 356.

(51)—*See* POLICE, L.B.R. (1872—1892), 150.

(51-*a*)—*See* Nos. 11 and 17, *supra*, and No. 66, *infra*.

(52)—*Ss. 29—42—Prosecution of police officer under the Act—Sanction—Notice.*—Any person aggrieved by the acts of police officers can prefer a charge under s. 29 of Act V of 1861, without the sanction of the Government or other competent authority and without any previous notice in writing as required by s. 42, that section being applicable only to civil actions. **2 P.R. 1868 Cr.**

(53)—S. 30—*See* PENAL CODE, S. 153, 29 A. 569 = A.W.N. 1907, 171 = 6 Cr. L.J. 14.

(54)—*Ss 30 and 31.—Singing in the streets at night*—S. 30 of the Police Act, 1861, as amended by Act VIII of 1895, only authorises the police to regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies. Neither s. 30 nor s. 31 empowers the police to issue a general order prohibiting any singing in the streets at night. **L.B.R. (1893—1900), 394.**

(54-*a*)—*S. 31—See* No. 54, *supra*.

(55)—*S. 34—Placing* tanbans *in a public thoroughfare.*—Persons placing *tanbans* in a public thoroughfare are guilty of an offence under s. 34 of Act V of 1861. But a Magistrate is not competent on his own motion to set on foot a prosecution. **2 N.W.P. 5.**

(56)— *Penal Code, ss. 268 and 290—Public nuisance—Definition—Temporary obstruction of public thoroughfare.*—M placed a board in front of his house over the water channel and a considerable portion of the road-way, leaving only a small space by which persons could pass by his house. On this board he sat writing and delivering to a large crowd of persons vouchers for bets which they had made with him about the Government opium sales. *Held*, that, under these circumstances, although M could not properly be convicted under s. 34 of Act V of 1861, he was liable to a conviction under ss. 268 and 290 of the Penal Code. **A.W.N. 1906, 317 = 4 Cr. L.J. 492 = 4 A.L.J. 44.**

(57)—*Slaughtering of cow in open verandah—Meaning of the term "open place."*—The words "open place," coupled with "road," "street" or "thoroughfare" must not be interpreted *ejusdem generis*. The addition of the words "open place" by the Amending Act (VIII of 1895) gives the section a wider significance, and this is shown by another amendment in the same section made at the same time, in which the annoyance, etc., caused must not be to the "residents *and* passengers," but to "residents *or* passengers." The intention of the Legislature was, therefore, to extend the Act not only to passengers who would be on such a road, street or thoroughfare, but also to residents, who are not passengers. The slaughtering of a cow in an open verandah, so as to cause annoyance to the residents of that locality, and in spite of their remonstrances, constitutes a breach of s. 34 of the Act. **27 C. 655.**

(58)—*Overloading an* ekka.—Having in an *ekka* six persons besides the accused, the *ekka* driver, was held not necessarily an offence punishable under s. 34, Act V of 1861. **28 P.R. 1885 Cr.**

(59)—*Imprisonment imposed under the above section, nature of.*—Imprisonment imposed substantively under the above section must be simple. It follows, under s. 66 of the Penal Code, that imprisonment in default of payment of fine under the same section must also be simple. **U.B.R. (1897—1901), Vol. I, 363.**

(60)—A sentence of imprisonment under s. 34, whether substantive or in default of payment of fine, must be simple. **L.B.R. (1872—92), 434.**

(61)—*Riot in a Municipal bazaar.*—The Municipal bazaar, though it is not a street or a road, is possibly a thoroughfare, and a riot committed in the bazaar comes under the above section. **U.B.R. (1892—96), Vol. I, 296.**

(62)—*S. 34, cl. (2)—Cruelty to animals.*—The attention of one of the petitioners had been called by the District Superintendent of Police to the condition of two horses and he had been warned not to drive them. Evidence was let in to show that they were bleeding from collar galls badly galled and bleeding from both shoulders, and also suffering from running *barseti* sores and that the attention of the petitioners had been called to it. The petitioners were convicted of an offence under s. 34 of the Act. *Held*, on revision, that the conviction was proper on the ground that the using of the horses was a cruel one and that the *barseti* sores and the matter running from them were likely to be productive of damage and risk to the public and would cause annoyance to any person who saw them being driven. **A.W.N. 1887, 67.**

(63)—*Retrial of offender discharged of offence under s. 277, Penal Code.*—Where an offender is discharged on a complaint under s. 277 of the Penal Code, he cannot be retried on the same facts under s. 34, cl. 7, of Act V of 1861. **Colm. Dig. Cr. 50 of 1876.**

(64)—*Ss. 34, 37 to 40—Imprisonment in default of payment of fine.*—The accused in this case was convicted of an offence under s. 34, Act V of 1861 and sentenced to pay a fine of Rs. 2, or in default to 4 days' rigorous imprisonment, *Held* that the sentence of imprisonment in default was illegal and must be set aside. The Police Act lays down a special procedure for realization of fines imposed under the Act. **L.B.R. (1872—1892), 473.**

1.—Imperial Acts—continued.

Act V of 1861 (Police)—*concluded.*

(64-*a*)—S. 36—*See* No. 10, *supra.*

(64-*b*)—S. 37—*See* No. 64, *supra.*

(64-*c*)—S. 38—*See* No. 64, *supra.*

(64-*d*)—S. 39—*See* No. 64, *supra.*

(64-*e*)—S. 40—*See* No. 64, *supra.*

(65)—*S. 42—Scope of.*—The prosecutions referred to in this section are for acts done or purporting to be done by a police officer in the execution of his duty as a police officer, and not for acts done apart from the execution of his duty. **U.B.R. (1897—1901), Vol. I, 365.** (7 N.W.P. 237, *R.*).

(65-*a*)—*See* Nos. 9 and 52, *supra.*

(66)—*Ss. 42, 29—Scope.*—Ss. 42 has no bearing or connection with s. 29 of the Act. **7 N.W.P. 237.** [*R.*, U.B.R. (1897—1901), Vol. I, 365.]

(67)—*Detention in custody for more than 24 hours—Cr.P.C. (1861), s. 152.*—Three police officers detained a person, suspected of having committed theft, in custody without a special order for more than 24 hours for the purpose of enabling the officer in charge of the police station, who was absent, to go into the case. He was further detained in contravention of the provisions of s. 152, Cr. P. C. *Held*, per Cunningham and Campbell, JJ. that they were answerable for detention only until the return of the superior officer. *Held, per* Lindsay, J., dissenting, that the prosecution instituted, more than three months after the detention, was barred by s. 42, Act V of 1861. **36 P.R. 1870 Cr.**

(68)—*Suit against police officer.*—In a suit against a police officer, the objection under this section, that one month's notice has not been given, must be taken in the lower Court; and the objection, if not taken advantage of and pleaded in the first intance, cannot be made use of as a ground of appeal. **8 W.R. 425.**

(69)—*S. 44—Police officer—Penal Code, s. 177—Omission to give information.*—Under the above Act, a police officer is bound to communicate information to his superior officer regarding the commission of a riot affecting the public peace, and to make an entry thereof in the diary which he is required by s. 44 to keep, and the omission to give such information brings him within the purview of s. 177, Penal Code. **21 W.R. Cr. 30.**

Act IX of 1861 (Minors).

[REP., ACT VIII OF 1890.]

See MINOR—CUSTODY OF MINOR.

(1)—*Girl of sixteen, whether can legally consent to leave guardian's protection.*—A girl under sixteen years of age has not such a discretion as enables her, by giving her consent, to protect any one from the criminal consequences of inducing her to leave the protection of a lawful guardian; but where the return to the writ of *habeas corpus* stated that a girl was above the age of 16 (though her mother stated her to

1.—Imperial Acts—continued.

Act IX of 1861 (Minors)—*concluded.*

be of the age of thirteen years and nine months), the Court held that she was of years of discretion to choose for herself under whose protection she would remain. **5 B.L.R.O. Cr. 418.** [*R.*, 5 B.L.R. 557, 9 M. 391.]

(2)—*Pegu—European British minors.*—This Act applied to Pegu, and also to minors, the lawful children of European natural-born British subjects. **3 W.R. Rec. Ref. 5.**

Act XVI of 1861 (Stage Carriages).

[REP. IN PART, ACT XIV OF 1870. AMENDED, ACT XVI OF 1876. REP. IN PART AND AMENDED, ACT I OF 1898.]

(1)—*Scope of Act.*—The Act does not apply to a carriage which is not ordinarily used for a journey of a greater distance than 20 miles. **Rat. Un. Cr. C. 364=Cr. Rg. 7 of 1888.**

(2)—*S. 7—Carriages plying in a town—Bom. Act, VI of 1863, (Public Conveyances Act).*—The Stage Carriages Act, 1861, does not apply to a carriage plying only within a town and its suburbs, to which the Bombay Public Conveyances Act would apply if extended thereto. **Rat. Un. Cr. C. 327=Cr. Rg. 17 of 1887.**

(3)—*Ss. 7, 9, 21—References, under ss. 7 and 9—Cr. P.C. (1882), s. 29.—Jurisdiction of Magistrate to try offences under Act.*—Reading the first para of s. 29, Cr. P.C., with s. 21 of Act XVI of 1861, it will be seen that all Magistrates have jurisdiction to try offences against ss. 7 and 9 of the Act. **Rat. Un. Cr. C. 364 =Cr. Rg. 7 of 88.**

(4)—*S. 8—Running a horse not passed by the police or permitting stage carriages to be drawn by coolies not an offence.*—Running a horse which had not been passed by the police in breach of a rule made by the District Magistrate or permitting a stage carriage to be drawn by coolies was not an offence under s. 8 of the Act. **A.W.N. 1883, 228.**

(5)—*Ss. 8, 9—Jurisdiction of second class Magistrate.*—A Magistrate of the second class has no jurisdiction to try an offence under ss. 8 and 9 of Act XVI of 1861. The offence is triable only by a Magistrate of the District or a Magistrate of the first class. **7 P.R. 1879 Cr.**

(6)—S. 9—*See* Nos. 3 and 5, *supra.*

(7)—*Ss. 9 and 10*—Whether or not a horse used in a licensed stage carriage has been overdriven should be decided from the facts of each case, and it was *ultra vires* of the Local Government to prescribe by a rule made for enforcing the provisions of the Act, as amended by Act XVI of 1876, that a person who drives a horse more than two stages of a certain distance within 24 hours will be considered to have overdriven the horse so as to render himself liable to the penalty prescribed by the Act. **A.W.N. 1897, 27.**

(8)—S. 10—*See* No. 7, *supra.*

(9)—S. 21—*See* No. 3, *supra.*

1.—Imperial Acts—continued.

Act XXIII of 1861 (Code of Civil Procedure).

[REP., ACT X OF 1877.]

See ACT X OF 1877.

See ACT XIV OF 1882.

—S. 16—*See* CRIM. PRO. CODE (1898), s. 478, 7 B.H.C. Cr. 29.

Act XXIX of 1861 (Native Articles of War).

[REP., ACT V of 1869.]

—*Art. 85—Summary power of flogging.*—Enlisted store *lascars* attached to the Royal Artillery are not a native detachment within the meaning of Art. 85 of Act XXIX of 1861; so that the officer commanding the Artillery is not competent to inflict upon them summary flogging under that Act. **11 P.R. 1868 Cr.**

Act X of 1862 (Stamp-duties).

[REP., ACT VII of 1870.]

See ACT VII OF 1870.

(1)—*Stamp duty on mere acknowledgment.*—An acknowledgment that a sum of money was due, without any express promise to pay, need not be stamped. **43 P.R. 1867 Cr.**

(2)—*Unstamped instrument—Liability of parties.*—The writer of a document, if he is not a party to it, and the witnesses to the document are not liable, if the document is not properly stamped. The person, in whose favour the document is made, is not also liable, if he was not a party to its execution. **15 P. R. 1869 Cr.**

(3)—*Reward to informer as to improperly stamped document.*—A reward cannot be given to the reader or other ministerial officer of a Court who brings to notice that a document is improperly stamped. He is not an informer within the meaning of the Stamp Act. **13 P.R. 1875 Cr.**

(4) *See* ACT I OF 1868, s. 6, 1 Weir 781=7 M.H.C. App. 8.

(5)—*See* PENAL CODE, ss. 21 (9), 161, Rat. Un. Cr. C. 36.

(6) *S. 3—Scope of the section.*—The restrictive words in s. 3 "unless in any case in which a higher penalty is imposed by this Act" mean "unless a penalty higher than that imposed by this section is imposed by some other part of this Act" and they apply both to a penalty exceeding Rs. 100 and to one higher than ten times the value of the omitted stamp. **3 M.H.C. App. 27.**

(7)—*Engrossing deed on unstamped paper.*—The mere engrossing of a deed on an unstamped paper does not constitute an offence under s. 3 of Act X of 1862. **2 B H.C. 129.**

(8)—*Liability of attesting witnesses for deficient stamp.*—Attesting witnesses to the execution of a document and persons who draft it do not come within the words "make, execute, sign, or be a party to," as used in s. 3. **3 M.H.C. App. 27.**

(9)—*See* COMPLAINT, 5 B.H.C. Cr. 48.

1.—Imperial Acts—continued.

Act X of 1862 (Stamp-duties)—*concluded.*

(10)—*S. 3 (a)—Signing unstamped deed as witness.*—The mere signing of an unstamped deed as a witness does not constitute an offence under s. 3 (*a*) of Act X of 1862. **2 B.H.C. 129.**

(11)—*Ss. 3 and 52—Prosecution under s. 3, when may be instituted.*—A prosecution under s. 3 of Act X of 1862, if it is not authorised by the Collector, or by any other officer specially authorised by Government to direct a prosecution, is irregular under the provisions of s. 52 of the Act. **2 N.W.P. 188.**

(12)—*Ss. 3 and 54—Engrossing document on unstamped paper.*—Persons who have merely engrossed documents liable to stamp duty on unstamped papers are not liable to be fined under s. 54, Act X of 1862. **1 B.H.C. 37.**

(13)—*S. 14—Copies of records of criminal trial—Stamp.*—With the exception of the depositions of witnesses and the documentary evidence and final sentences or orders in the cases falling within the Governor-General's notification of 8th January, 1863, copies of any part of the record of a criminal trial, whether authenticated or unauthenticated, can only be furnished to applicants on stamp paper. **4 M.H.C. App. 57.**

(14)—*Authentication of copies.*—Copies of documents which the law requires to be on stamp paper, copies of orders which fall within the exemption of the Governor-General's notification, and copies which the law requires Courts to furnish to the parties, must in all cases be authenticated. **4 M.H.C. App. 57.**

(15)—S. 15—*See* ACT XXXVI OF 1860, 14 M. 255.

(16)—*S. 50—Procedure—Collector—Sanction of Civil Court.*—A Collector, to whom an application is made for a new stamp under cl. 2 of this section, is not a Court, Civil and Criminal, and the application, therefore, not being a document given in evidence in any proceeding of a Court, s. 170, Cr. P.C., does not cover such a case. **11 W.R.Cr. 48=3 B.L.R.A. Cr. 6.**

(17)—S. 52—*See* No. 11, *supra.*

(18)—S. 54—*See* No. 12, *supra.*

Act XV of 1862 (Amending the Code of Criminal Procedure).

[REP., ACT VIII OF 1869.]

See ACT VIII OF 1869.

(1)—*S. 1—Imprisonment—Transportation—Penal Code, s. 59*—An officer, exercising the powers described in s. 1 of the Act, is competent, under the provisions of s. 59 of the Penal Code, to pass a sentence of transportation for seven years instead of awarding a sentence of imprisonment. **9 W.R. Cr. 6=B.L.R. Sup. Vol. 869.**

(2)—*See* CRIM. PRO. CODE (1861), s. 455, 32 P.R. 1868 Cr.

1.—Imperial Acts—continued.

Act XVII of 1862 (Repealing Enactments relating to Criminal Law).

[REP., ACT X OF 1872.]

See CRIM. PRO. CODE.

(1)—*Jurisdiction of Subordinate Magistrate—Act III of 1857, s. 13.*— The repealing section of Act XVII of 1862 does not affect the power of a Subordinate Magistrate under s. 13 of Act III of 1857. **1 B.H.C. 100.**

(2)—*Legality of conviction—Offences committed before Act XVII of 1862.*—In the case of a conviction in 1876 of a prisoner, under Regulation IV of 1797, for an offence of culpable homicide committed in 1861, before the Penal Code came into operation, *held*, the conviction was illegal, inasmuch as Regulation IV of 1797 was repealed by Act XVII of 1862 and the latter Act was wholly repealed by Acts VIII of 1868 and X of 1872 and inasmuch as s. 6 of Act I of 1868, which provided that the repeal of any Act or Regulation shall not affect any offence committed before the Repealing Act came into force was not applicable to the case. **2 C. 225, F.B.** [*Appr.*, 1 A. 599.]

(3)—*S. 1—Scope.*—S. 23 of Act VII of 1854 is not repealed by the schedule to Act XVII of 1862. **8 B.H.C.Cr. 13.**

(4)—*Ss. 1, 2, 4—General Clauses Act (I of 1868)—Penal Code—Offence committed prior to 1st January, 1862.*—A person could not be convicted of an offence committed prior to the 1st January, 1862, under Act XVII of 1862, because that Act was a repealing Act and not an Act providing for the punishment of such offences. But it is another question whether persons who have committed offences prior to 1st January, 1862, are not amenable to punishment under the Regulations. To the several repealing Acts, passed since the General Clauses Act came into operation, the provisions of s. 6 of the General Clauses Act apply, and the repeal of a Regulation subsequently to the passing of the Act does not relieve offenders from the penalties to which they were liable under the Regulations. It is a more difficult question whether the right of reference given by s. 3 of Reg. IV of 1797 remains after the repeal of Act XVII of 1862, if that right had not accrued before the Act was repealed, and the conviction had not taken place till after the repeal of the Act. **1 A. 599.** (2 C. 225, F.B., *Appr.*)

(4-*a*)—S. 2—*See* No. 4, *supra*.

(4-*b*)—S. 4—*See* No. 4, *supra*.

(5) *See* ACT XVIII OF 1854 s. 35, 3 B.H.C. Cr. 54.

(6)—*See* ACT III OF 1857, s. 13, 1 B.H.C. Cr. 100, 4 B.H.C. Cr. 13.

Act XVIII of 1862 (Criminal Procedure Supreme Courts).

[REP., ACT X OF 1882.]

(1)—*S. 1—Amendment of charge—Prisoner prejudiced on merits.*—Under s. 1 of this Act, the Court has power to order the amendment

1.—Imperial Acts—continued.

Act XVIII of 1862 (Criminal Procedure Supreme Courts)—*continued.*

of a charge involving a change in the ownership of stolen property, provided such amendment does not prejudice the accused in his defence upon the merits.

In cases where there is a doubt as to whether an amendment of a charge will or will not prejudice the accused in his defence upon the merits, the amendment ought not to be made. **6 B.H.C.Cr. 76.** [*R.*, 22 C. 391.]

(2)—S. 1—*See* CHARGE—ALTERATION OF CHARGE, 6 B.H.C.Cr. 76.

(3)—*S. 27—Defamation—Good faith—Onus probandi.*—This Act refers only to the High Court in its original criminal jurisdiction, and is not applicable to mofussil Courts. S. 27 of the Act requires proof of the existence of the circumstances relied on as a defence, before good faith can be presumed in a case of defamation. The *onus* of proving good faith is on the person making the imputation. Before such person can claim the benefit of exception 9, s. 499, Penal Code, he must show that he has exercised due care and caution. **4 W. R. Cr. 22.** [*R.*, A.W.N. 1907, 235, 4 A.L.J. 605].

(4)—*S. 35—Scope of the section.*—The proper construction and effect of s. 35 of Act XVIII of 1862 is, that, if a person is accused of an offence committed whilst on a journey or voyage, he may be tried, if a part of the journey or voyage, during which the offence, which the person accused is alleged to have committed, is within the local limits of the Court's jurisdiction. **1 M.H.C. 193.**

(5)—*Drunkenness whilst on duty.*—The offence of drunkenness of a guard in charge of a train, whilst on duty, is one of the offences contemplated by s. 35 of Act XVIII of 1862. **1 M.H.C. 193.**

(6)—*S. 41—Omission in the charge to state that property obtained was property of complainant.*—Under s. 41, Crim. Pro. Code, 1861, an omission to state, in an indictment for an offence under Ss. 415 and 420 of the Penal Code, that the money, which, it was alleged, the prisoner had, by deceit, fraudulently induced the prosecutor, to pay to him, was the property of the prosecutor, was held to be defective for uncertainty. The objection to such indictment, in order to be valid, should be taken before the jury was sworn. **1 Weir 471 = 1 M.H.C. 31.**

(7)—*Charge—Ground for arrest of judgment.*—It ought to appear on the face of the charge that it had been delivered to the Clerk of the Crown, by a Justice of the Peace or by a Magistrate, but its not so appearing is a formal defect only, to which the objection could only be taken under s. 41 of Act XVIII of 1862 before the jury has been sworn, and it was not a ground for arrest of judgment. **1 B.L.R.O. Cr. 1.**

I.—Imperial Acts—continued.

Act XVIII of 1862 (Criminal Procedure Supreme Courts)—*concluded.*

(8)—*Caption of charge.*—Where the High Court could have directed the preliminary investigation of a charge against N by a Deputy Magistrate, but it did not appear in the caption of the charge or in evidence that the Court had so directed it, *held* that it was no ground for arrest of judgment, but the objection might have been raised before the jury was sworn under s. 41 of Act XVIII of 1862. **4 B.L.R.O Cr. 15 = 15 W.R. Cr. 71 (note).** [*R.*, 16 W.R. Cr. 21, 17 W.R. Cr. 35, 19 A. 390, F.B.]

(9)—*Amendment of charge.*—The indictment may be amended at any stage of the trial. **1 Ind. Jur. O.S. 94.**

Act XX of 1863 (Religious Endowments).

[REP. IN PART, ACT VII OF 1870; ACT XIV OF 1870; ACT XVI OF 1874. S. 3, AMENDED, ACT XII OF 1891. EXTENDED TO THE KANARA DISTRICT, BOM. ACT VII OF 1865].

See RIGHT OF SUIT—TRUSTS.

See RIGHT OF SUIT—ENDOWMENTS.

—*S. 20—Reg. VII of 1817, s. 16—Jurisdiction of ordinary Criminal Courts—Criminal breach of trust by trustee of temple—Permission of committee, whether necessary before prosecution.*—The ordinary criminal law is not excluded by Reg. VII of 1817 or by Act XX of 1863. The permission of the Board of Revenue or the Committee of a temple is required only for the procedure prescribed in the special Acts, and the special provisions cannot be taken out of the Acts and applied as restrictions to the ordinary operation of the Criminal Law. Therefore, the trustee and manager of a temple can be prosecuted for criminal breach of trust, and the permission of the Committee appointed under Act XX of 1863 is not necessary. **1 M. 55 = 1 Weir 755.**

Act III of 1864 (Foreigners).

[REP. IN PART, ACT XII OF 1876. S. 24, AMENDED, ACT XII OF 1891. DECLARED IN FORCE—THROUGHOUT BRITISH INDIA, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 3; IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN THE ARAKAN HILL DISTRICT, REG. IX OF 1874, S. 3; IN UPPER BURMA GENERALLY (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S 4; IN BRITISH BALUCHISTAN, REG. I OF 1890, S. 3; IN THE ANGUL DISTRICT, REG. I OF 1894, S. 3.

(1)—*Cantonment Act III of 1864, Ch. III, r. 50—Lattice work to keep fowl.*—A structure of lattice work erected in the compound of a house, to keep fowl in, is not a house or hut within the meaning of r. 50, Ch. III of the Cantonment Act. **Rat. Un. Cr. C. 609 = Cr. Rg. 29 of 1892.**

I.—Imperial Acts—continued.

Act III of 1864 (Foreigners)—*concluded.*

(2)—*Ss. 3 and 4—Validity and scope of Act—Warrant under section—Form.*—Act III of 1864 was not *ultra vires* of the Governor-General of India in Council. *Per Bayley, J.*—The Act applies to all foreigners, although their residence in Bombay may not be likely to affect or endanger the peace and security of British India. *Per Starling, J.*—The Government would be the sole judges of what was necessary for the peace and security of British India, and if they acted in accordance with the letter of the Act, the High Court could not enquire into the sufficiency or otherwise of their reasons for so acting.

A warrant issued under ss. 3 and 4 of Act III of 1864, should not comprise two distinct orders, one to the foreigner to remove himself from British India, the other to arrest him in case it is not duly obeyed. There should be a separate order directing him to remove himself from British India which should be duly served upon him. Then, in case of his refusal or neglect to comply with its terms, there should be a further order by the Governor in Council authorizing his arrest and detention in jail. The persons named in the warrant should be described with sufficient certainty and particularity. The particular route to be specified in the order referred to in s. 3 of Act III of 1864, is intended to be a route in British India and not a route beyond the High Seas. In the absence of statutory provision, the absence of a seal will render a warrant void. **18 B. 636.**

(3)—S. 4—*See* No. 2, *supra.*

Act VI of 1864 (Whipping).

[REP. IN PART, ACT X OF 1872; ACT XVI OF 1874; ACT X OF 1882. REP. IN PART AND AMENDED, ACT V OF 1900. AMENDED, ACT III OF 1895, S. 5. REP., ACT IV OF 1909].

See SENTENCE—WHIPPING.

See JUVENILE OFFENDERS.

See CRIM. PRO. CODE (1898), SS. 390 to 395.

(1)—*Number of stripes.*—The number of stripes cannot exceed thirty and the punishment cannot be executed by instalments. **82 P.R. 1866 Cr.**

(2)—*Time limit for executing sentence of whipping.*—It is imperative to carry out a sentence of whipping in addition to imprisonment immediately on the expiry of 15 days from the date on which it was passed, unless an appeal be made within that time. **31 P.R. 1878 Cr.,** 54 P.R. 1866 Cr., 34 P.R. 1880 Cr.

(3)—*S. 1—Application of the Act.*—The Whipping Act applies to offences under the Penal Code only. **U.B.R. (1897—1901), Vol. I, 392.**

1.—Imperial Acts—continued.

Act VI of 1864 (Whipping)—*continued.*

(4)—*Penal Code and Criminal Procedure Code to be read with this Act.*—The Penal Code and the Code of Criminal Procedure must be read as if the Whipping Act formed a part of the Penal Code from the date of its enactment, and s. 46 of the Code of Criminal Procedure (1861) is applicable to all offences and punishments as prescribed by the Penal Code in its present and amended form. **15 W.R.Cr. 89=7 B.L.R. F.B. 165.**

(5)—*Postponement of sentence of whipping.*—It is not competent to a Judge to postpone the sentence of whipping till after the expiry of sentence of imprisonment imposed upon the accused. **4 Bom. L.R. 929.**

(6)—It is illegal to order a sentence of whipping to be inflicted on the prisoner at the time of release from jail. **54 P.R. 1866 Cr.** *See, also,* 31 P.R. 1878 Cr., 34 P.R. 1880 Cr.

(7)—A person was convicted, on a trial before a Magistrate, of theft under s. 379, I.P.C., and was sentenced to rigorous imprisonment for two years, and to receive thirty stripes on the day of his release from prison. *Held* that that portion of the Magistrate's order directing him to be whipped, when his sentence of imprisonment expired, was illegal and improper, and must be quashed. **A.W.N. 1881, 138.**

(8)—In passing a sentence of whipping in additon to six months' imprisonment, a Deputy Magistrate ordered that the prisoner should be brought before him at the termination of the imprisonment, and that the sentence of whipping should then be carried out. *Held* that the sentence of whipping should be cancelled as having become inoperative and incapable of being carried out. **20 W.R. Cr. 72.** (6 M.H.C. App. 36, *F.*)

(9)—Where the term specified for the execution of a sentence of whipping has expired, and the punishment has not been inflicted, the sentence is no longer operative and should be cancelled. **34 P.R. 1880 Cr.** *See, also,* 54 P.R. 1866 Cr., 31 P.R. 1878 Cr.

(10)—Where a sentence of whipping is passed as a sole punishment under the section (Act III of 1895, s. 5), it is not necessary first to pass a sentence provided for the offence under the Penal Code, and then to convert such sentence into one of whipping. S. 390, Crim. Pro. Code, authorises the Court passing a sentence of whipping, only to fix the place and time and for its execution, but it does not contemplate a postponement of the execution of the sentence to a future day. **Rat. Un. Cr. C. 906=Cr. Rg. 17 of 1897.**

(11)—*Crim. Pro. Code (1898), ss. 391 and 407—Sentence of whipping by a Magistrate--Application for postponement of sentence until hearing of appeal.*—The Code makes no provision whereby a Magistrate imposing a sentence of whipping only can suspend its execution, nor does it

1.—Imperial Acts—continued.

Act VI of 1864 (Whipping)—*continued.*

provide for the detention of a person so sentenced to allow of his appealing, nor for his re-arrest to undergo the whipping if the sentence is confirmed on appeal. It is only when whipping is added to imprisonment in an appealable case, that whipping may, and ought to, be postponed. **26 M. 465=2 Weir 447.**

(12)—When the accused is convicted of two offences, for one of which he is sentenced to imprisonment and for the other to whipping, it is not permissible to postpone the whipping, merely because the accused appeals against the conviction of the first sentence. **4 Bom. L.R. 436.**

(13)—*District Magistrate, interference of in cases of whipping—Cr. P.C. (1898), s. 395.*—The words, "the Court which passed the sentence," in s. 395, Cr. P.C. (1898), do not mean the same officer who inflicted the punishment of whipping originally and, in the absence of the officer who originally passed the sentence, the District Magistrate can be held to be "the Court" which passed the sentence. **33 P.R. 1901 Cr.**

(14)—*Jurisdiction of second class Magistrate to pass sentence of whipping.*—A person, appointed as a Magistrate of the second class under Act X of 1872, is incompetent, since the coming into force of Act X of 1882, to pass a sentence of whipping, unless he is specially empowered so to do according to the provisions of s. 32 of the latter Act. **7 B. 303.**

(15)—*Whipping in default of payment of fine.*--Whipping cannot be awarded in default of payment of fine. **5 P.R. 1866 Cr.**

(16)—*Appeal—Cr. P.C. (1861).*—Appeals from sentences of whipping are regulated by the Criminal Procedure Code, and not by the Whipping Act. **29 P.R. 1866 Cr.**

(17)—*Penal Code, Act XLV of 1860, s. 511—Attempt.*—A sentence of whipping cannot be passed on a conviction for an attempt to commit house-breaking with intent to commit theft. **3 B.H.C. Cr. 37.**

(18)—A sentence of whipping may not be passed for an attempt to commit an offence which is punishable with whipping under that Act. **L.B.R. (1872—1892), 399.**

(19)—*Whipping not authorized by the Act in cases of—S. 75, Penal Code, inapplicable to offences punishable under s. 511.*—The Whipping Act does not deal with attempts to commit offences punishable with whipping, and s. 75 is not applicable to offences punishable undes s. 511 which appears in Chapter XXIII of the Code and not in either of the chapters referred to in s. 75. **L.B.R. (1872—1892), 531** (3 A. 773, *R.*)

(20)—*Liability to whipping—Grounds of liability to be stated both in charge and judgment—See* **CRIM. PRO. CODE** (1898), s. 221, **5 M. 158.**

1.—Imperial Acts—continued.

Act VI of 1864 (Whipping)—*continued.*

(21)—*S. 2—Scope.*—S. 2 of the Act refers to the commission of the offences, not to attempts to commit offences. **12 C.P.L.R. 1 Cr.**

(22)—Attempts to commit offences, punishable under s. 2 of Act VI of 1864, not being also offences specified in the second schedule to the Burma Laws Act, 1886, are not punishable with whipping. **U.B.R. (1892-1896), Vol. I, 332.**

(23)—*Theft in dwelling-house, etc.—Whipping.*—Whipping may be substituted for any other punisbment for the offence of theft in a dwelling-house, etc. **3 W.R. Cr. 36.**

(24)—*Sentence in lieu of whipping, Magistrate's power to award.*—A Magistrate cannot inflict a sentence in lieu of whipping, when that sentence, together with the substituted sentence, is in excess of the maximum which he is competent to inflict. **87 P.L.R. 1901 = 11 P.R. 1901 Cr.** (21 A. 25, *F.*)

(25)—*Solitary confinement, legality of,—Imprisonment in lieu of whipping.*—An award of solitary confinement to a person sentenced to rigorous imprisonment in lieu of whipping is not illegal. **14 P.R. 1899 Cr.**

(26)—*Whipping only in lieu of other punishment.*—In the case of adults on a first conviction, or in the case of juvenile offenders-whether for a first or for any other offence, whipping can only be *in lieu* of any other punishment. **W.R. 1864, 38.** [*R.*, 13 W.R, Cr. 40.]

(27)—*"Punishment," meaning of.*—The word "punishment" as used in s. 2 of the Act means the total of punishments awardable for the offence; otherwise, it would be possible to substitute a whipping for the fine and to inflict imprisonment in addition. **11 C.P.L.R. 13 Cr.** (16 B. 357, *F.*).

(28)—In s. 2 of the Whipping Act, which contains no mention of s. 53, I.P.C., the word "punishment" is used in a different sense from the word "punishments" in the preceding section, and may be interpreted to mean the total punishment awardable, *i.e.*, in a case under s. 379, I.P.C., imprisonment and whipping. So, if the sentence of whipping is inflicted under s. 2 of the Whipping Act, no other punishment as prescribed by the Penal Code, either imprisonment, or fine or both, can be legally inflicted. **16 B. 357.** [*F.*, 11 C.P.L.R. 13 Cr., U.B.R. (1897-1901), 391 Cr., 5 L.B.R. 22; *Appl.*, 6 C.P.L.R. 34 Cr.]

(29)—*House-breaking in order to commit theft—Theft—Separate sentences.*—In this case the prisoner was convicted of "house-breaking in order to commit theft," and of "theft," both offences being portions of one continuous criminal act, and was sentenced, on the first charge to one year's rigorous imprisonment, under s. 457 of the Indian Penal Code, and, on the second charge, to receive twenty stripes,

1.—Imperial Acts—continued.

Act VI of 1364 (Whipping)—*continued.*

under s. 2 of the Whipping Act. The separate sentences, though not illegal, were disapproved of as being contrary to the spirit and intention of the Whipping Act. **5 B.H.C. Cr. 83.** [*R.*, Rat. Un. Cr. C. 564 = 16 B. 357.]

(30)—*Groups A and D—Previous conviction of offence of same Group—House-theft—Subsequent house-breaking.*—In s. 2 of the Whipping Act, an offence under Group D is distinguished from that under Group A, though lurking house-trespass or house-breaking is not punishable with whipping under s. 2, unless committed with a view to commit an offence punishable with whipping such as theft. In the case of a previous conviction for house-theft, a subsequent conviction for house-breaking will not render the offender liable to whipping, though the house-theft was included in the house-breaking. **1 L.B.R. 149.** [*F.*, 3 L.B.R. 161, F.B.].

(31)—*Whipping whether can be inflicted for offences under s. 2 in addition to other punishments.*—The law does not authorise the sentence of whipping for offences specified in s. 2 of the Whipping Act, *in addition to* any other punishment to which the offender may be liable under the Penal Code, unless where the offence has been committed after a previous conviction for the same offence. **3 B.H.C. Cr. 38.** [*F.*, 7 B.H.C.R. 70, 25 B. 712 = 3 Bom. L.R. 419; *D.*, 2 L.B.R. 14.]

(32)—A sentence of fine or imprisonment in addition to whipping under s. 2 is illegal. **U.B.R. (1897—1901), Vol. I, 391.**

(33)—*Whipping in addition to imprisonment, when legal.*—In this case, the question was referred to the Full Bench, whether a sentence of whipping and imprisonment would be legal on a finding that the accused committed "house-breaking by night and theft of property," an offence punishable under s. 457 of the Penal Code and had been previously convicted of theft under s. 380. *Held*, though, under the circumstances, it was open to the Magistrate to have selected s. 380 or s. 457 for convicting the accused under, and, if he had selected the former, he could have imposed both imprisonment and whipping on account of the previous conviction under s. 380, yet, since the conviction in question, as it stood, was solely one under s. 457, for the reasons stated in 1 L.B.R. 149 the sentence of imprisonment and whipping in this case is illegal. (IRWIN, J. *dissenting*). **3 L.B.R. 161, F.B.**

(34)—*Whipping and fine—Legality of sentence.*—Where an accused person is sentenced to whipping, it is not legal to sentence him also to pay a fine, the sentence being opposed to s. 2 of the Whipping Act. **Rat. Un. Cr. C. 564.** (5 B.H.C. 83 Cr., *R.*)

(35)—*Ss. 2 and 3—Condition for whipping to be in addition to imprisonment.*—A person convicted under s. 457, Penal Code, cannot be

1.—Imperial Acts—continued.

Act VI of 1864 (Whipping)—*continued.*

punished with whipping in addition to imprisonment, if he has not been previously convicted either of the same offence or of any offence falling under the group of offences specified in s. 2, Act VI of 1864. **2 A.L.J. 173 = 2 Cr. L.J. 105.**

(36)—*Penal Code, ss. 378, 411.—Held*, that, on conviction for dishonestly receiving stolen property, the accused could not be sentenced to be whipped in addition to rigorous imprisonment, on the ground that he had been twice previously convicted of theft, as the offence of theft, is not the same as that of dishonestly receiving stolen property. **1 A 666.**

(37)—*Penal Code, ss. 380, 379, 411.*—In order to justify a sentence of whipping in addition to a sentence of imprisonment under s. 380, I.P.C., for any of the offences mentioned in s. 2 of the Act, the previous conviction must have been for the same offence. **L.B.R. (1872—1892), 336.**

(38)—*Ss. 2 to 5—Juvenile offenders.*—S. 5 of Act VI of 1864 is not meant to supersede ss. 3 and 4, but to be applied in the proper cases alternately with those sections. Ss. 2 to 4 apply also to juvenile offenders. **Rat. Un. Cr. C. 78.**

(39)—*S. 3—Juvenile offender, applicability to—S. 3 applies to juvenile as well as to adult offenders.*—But the section does not apply to cases in which the second conviction is for an offence committed previously to the first conviction. **7 B.H.C. Cr. 70.** [*Appr.*, 25 B. 712, 3 Bom. L.R., 419.]

(40)—*Object of the section.*—The addition of whipping for a second offence is apparently intended as a further deterrent to otherwise incorrigible offenders, for whose reform imprisonment alone had already proved insufficient. Whipping cannot be awarded on a second conviction, when the latter is for an offence committed previous to the former conviction. **1 Weir 931.**

(41)—"*Previously convicted*"—*Meaning*. The expression "previously convicted" in s. 3 of the Act is used in the sense of "convicted before the commission of the second offence." **U.B.R. 1907, 3rd Qr. Whipping, 3 = 7 Cr. L.J. 212 = 14 Bur. L.R. 186.**

(42)—A previous conviction for the purpose of s. 75, Penal Code, and s. 3 of Act VI of 1864, is a conviction the penalty following which had been undergone by the accused (in whole or in part) at the time when he committed the offence for which he is being tried. **8 C.P.L.R. 17 Cr.**

(43)—*Meaning of the expression "the same offence."*—The words "the same offence" in s. 3 of the Act are to be construed literally. **6 C.P.L.R. 19 Cr.**

(44)—*Theft in a dwelling house and simple theft.*—An offence under s. 378 is distinct from one under s. 380, and a person convicted of theft in a dwelling house, who has been previously convicted of simple theft, is not liable to whipping. **7 B.H.C. Cr. 68.**

(45)—A sentence of whipping can legally be awarded in a case where the accused, who has been previously convicted of theft, is subsequently convicted of theft in a building. **51 P.R. 1867 Cr.**

(46)—*Simultaneous conviction for two offences—Sentence of whipping.*—A simultaneous conviction for two offences of the same character does not warrant the sentence of whipping in addition to other punishment for one of them. **8 P.R. 1885 Cr.** *See, also*, 9 P.R. 1885 Cr. (22 P.R. 1872 Cr , *R.*)

(47)—*Evidence of previous conviction necessary for awarding whipping.*—As a rule, before flogging is given as an additional punishment, there ought to be formal evidence upon the record of the previous convictions relied on. The conviction and the identity of the prisoner ought to be proved in the regular way. A mere kyfeut is no evidence whatever. **15 W.R. Cr. 52.**

(48)—*Crim. Pro. Code (1882), s. 221—Previous conviction to be set out in charge.*—If it is intended to use a previous conviction for the purpose of applying the Whipping Act, it must be set out in the charge. **L.B.R. (1872-1892), 337.**

(49)—*When whipping awardable in addition to imprisonment.*—In order to warrant a sentence of whipping in addition to imprisonment, the previous conviction should have been for the same specific offence as the subsequent conviction. **5 M.H.C. App. 1.**

(50)—To justify the award of whipping in addition to imprisonment or fine, the previous conviction must have been for the same offence. **5 M.H.C. App. 33.**

(51)—*Cases in which whipping in addition to other punishment cannot be awarded.*—Whipping cannot be added to a sentence of imprisonment in the case of a first conviction for the offence under punishment. **1 W.R. Cr. 24.**

(52)—This section does not allow of whipping in addition to imprisonment in the case of a fresh conviction. **2 W.R. Cr. 63.**

(53)—The sentence of whipping passed in addition to imprisonment under s. 457 of the Indian Penal Code, on an accused person who was previously convicted under s. 380, Penal Code, is illegal. **6 C.P.L.R. 19 Cr.**

(54)—*Previous conviction of house-breaking—Subsequent conviction for attempt to commit house-breaking—Whipping.*—A person, previously convicted of house-breaking and subsequently convicted of an attempt to convict the same offence, should not be sentenced to whipping in addition to imprisonment. **42 P.R. 1880 Cr.**

1.—Imperial Acts—continued.

Act VI of 1864 (Whipping)—*continued.*

(55)—*Previous conviction for dishonestly receiving stolen property*—A previous conviction for dishonestly receiving stolen property does not justify the infliction of whipping in addition to a sentence of imprisonment on a subsequent conviction for theft. **39 P.R. 1880 Cr.**

(56)—The law does not authorize the infliction of whipping in addition to another punishment, unless where the offence has been committed after a previous conviction for the same offence. **20 P.R. 1886 Cr.** (8 P.R. 1885 Cr., and 9 P.R. 1885 Cr., *R.*)

(57)—*Previous conviction for theft in foreign territory—Subsequent conviction for theft in British India.*—A previous conviction of theft in a foreign territory does not justify a sentence of whipping in addition to imprisonment on a conviction for the same offence in British India. **4 P.R. 1881 Cr.**

(58)—*Penal Code, ss. 379, 380.*—An attempt to commit the offence of theft is not punishable with whipping. A conviction first of an attempt under s. 379, I.P.C., and then a conviction of an effected theft under s. 379, I.P.C., will not justify a double sentence of imprisonment and whipping. **L.B.R. (1872—1892), 338.**

(59)—*Previous conviction quashed by Appellate Court.*—Where a previous conviction was reversed on appeal and, a few days after, the subsequent conviction was upheld on appeal, the sentence of imprisonment and whipping inflicted by the lower Court being also upheld, *held* that the Appellate Court should not have upheld the sentence of whipping, as there was no previous conviction on the date of the Appellate Court's judgment. As the sentence of whipping had been inflicted, *held*, that the sentence of imprisonment should be quashed. **16 P.R. 1875 Cr.**

(60)—*Crim. Pro. Code (1861), s. 46*—Unless there has been a previous conviction, whipping cannot be awarded as one of two or more punishments awarded under s. 46, Cr.P.C., 1861. **17 P.R. 1870 Cr.**

(61)—*Previous conviction for theft.*—It is doubtful when a previous conviction for theft that had occurred 14 days after the date of the theft for which the accused was subsequently charged would come within the provisions of s. 3. Act VI of 1864, so as to render a sentence of whipping in addition to imprisonment legal. **39 P.R. 1882 Cr.** (19 P.R. 1872 Cr., F.B., *R*).

(62)—*Conviction for two or more offences—Whipping, whether awardable as punishment for one of them.*—The effect of the Whipping Act is to make whipping a punishment under the Penal Code, and it is, therefore, competent to the Magistrate on a second conviction at the same trial to award a sentence of whipping

1.—Imperial Acts—continued.

Act VI of 1864 (Whipping)—*continued.*

either in substitution for, or in addition to imprisonment, subject to the restrictions in the Whipping Act itself. Therefore, a Court is not precluded from sentencing a prisoner, convicted at one time of two or more offences punishable under the Penal Code, to rigorous imprisonment in one case and to whipping in the other. **5 M.H.C. App. 18.** [*F.*, 2 L.B.R. 14.]

(63)—*Cases where whipping can be awarded in addition to other punishments.*—Only in cases where a person is convicted a second time for the *same* offence, and not merely of a *similar* offence, can whipping be awarded in addition to imprisonment. **5 P.R. 1866 Cr.**; 54 P.R. 1866 Cr., 95 P.R. 1866 Cr., 35 P.R. 1869 Cr.

(64)—*Whipping on conviction for two offences at the same time.*—When the accused is convicted at the same time of two offences, he may be punished with whipping. **22 P.R. 1872 Cr.** But *see*, 8 P.R. 1885 Cr., 9 P.R. 1885 Cr., 20 P.R. 1886 Cr.

(65)—*Subsequent conviction for an offence prior to that on which accused was convicted.*—Whipping in addition to imprisonment is awardable when the second conviction is for an offence committed prior to the offence on which the accused was first convicted. **19 P.R. 1872 Cr.** (41 P.R. 1867 Cr. and 29 P.R. 1869 Cr., *overruled.*)

(66)—*Previous conviction subsequent to commission of offence—Whipping in addition to imprisonment, legal.*—A sentence of whipping, in addition to imprisonment under s 3 of the Act, is lawful when the previous conviction is subsequent to the commission of the offence for which the prisoner is being tried. **2 L.B.R. 14.** (5 M.H.C. App. 18, *F.*; 3 B.H.C. Cr. 38, 7 B.H.C. Cr. 70, 4 B.L R.A. Cr. 5, *Diss.*)

(67)—*Whether previous punishment for same offence necessary for awarding whipping.*—There is nothing in the language of the Act to support the contention that, in order that a person may be liable to whipping in addition to imprisonment, he should once before have been not only convicted of, but actually punished for, the same offence. The Act does not even require that the offence should have been committed after previous conviction, and certainly not that the sentence, which followed upon the conviction, shall have been undergone. **1 Weir 932 (Foot-note).** [*Overruled*, 1 Weir 931.]

(68)—*Previous convictions in Berar.*—Previous convictions had in Berar cannot be taken into consideration for the purpose of affecting the punishment, which a Court would be competent to award on a second conviction, either under the provisions of s. 75, of the Penal Code, or under those of the Whipping Act. **7 C.P.L.R. Cr. 24.**

I.—Imperial Acts—continued.

Act VI of 1864 (Whipping)—*continued.*

(69)—*Offence committed before previous conviction.*—S. 3 of the Act is inapplicable when the second conviction is for an offence committed before the conviction. **7 B.H.C. Cr. 70.** (3 B.H.C. Cr. 38, *F.*)

(70)—*Sentence of whipping when the period of imprisonment is less than three months—Legality of.*—This section, as amended by Act III of 1895, is to be read subject to the provisions of s. 391 (3) of the Criminal Procedure Code; so a sentence of whipping, when imprisonment for less than three months is given, is illegal. **4 Bom. L.R. 436.**

(71)—*House-breaking by night—Previous convictions of theft—Double sentence of imprisonment and whipping, legality of—Power of appellate Court to alter findings so as to legalise the sentence.*—The accused was found in possession of stolen property, and, in consequence, was convicted of house-breaking by night with intent to commit theft. On his admitting two previous convictions for theft, he was sentenced to eighteen months' rigorous imprisonment and twenty lashes. On appeal the sentence of whipping was set aside by the Sessions Judge as illegal. *Held*, on revision, the double sentence of imprisonment and whipping was quite illegal as a sentence under s. 457, I.P.C., because the previous convictions were of theft; but, on the facts of the particular case, it was obviously open to the Sessions Judge to alter the conviction and to convict the accused of both house-breaking by night and theft in a house. The double sentence would then be legal as a sentence for theft. **3 L.B R. 112 = 3 Cr. L.J. 348.**

(72)—*Suspension of sentence.*—A Sessions Judge has no authority to suspend a sentence in the absence of an appeal. **5 M.H.C. App. 1.**

(73)—*See* CRIM. PRO. CODE (1898), s. 222, 2 Weir 267.

(74)—*See* PENAL CODE, s. 382, Rat. Un. Cr. C. 537.

(75)—*See* PREVIOUS CONVICTION, 8 C. P.L.R. 17 Cr.

(76)—*See* SENTENCE—ENHANCEMENT OF SENTENCE, L.B.R. (1893—1900), 315.

(77)—*See* SENTENCE—ENHANCEMENT OF SENTENCE, L.B.R. (1893—1900), 378.

(78)—*See* SENTENCE—WHIPPING, 1 Weir 39.

(79)—*See* SENTENCE—WHIPPING, L.B.R. (1892—1900), 310.

(80)—*See* Nos. 35, 36, 37, *supra*.

(81)—Ss. 3 and 4—*See* BURMA REG. XIV OF 1887, s. 6, U.B.R. (1897—1901), Vol. I, 388.

(82)—*See* SENTENCE—WHIPPING, 1 N.L.R. 137.

I.—Imperial Acts—continued.

Act VI of 1864 (Whipping)—*continued.*

(83)—*Ss. 3 and 5—Juvenile offender, if liable to whipping and imprisonment.*—No sentence of whipping on a juvenile offender can be passed with imprisonment under s. 5 of the Act. But such a combined sentence may be passed under s. 3. **U.B.R. (1892—1896), Vol. I, 331.**

(84)—*S. 4—Previous conviction essential for ordering whipping.*—No whipping can be ordered where the accused had not been previously convicted of the same offence, in the case of an offence under s. 4 of the Whipping Act. **4 B.H.C. Cr. 5.**

(85)—A sentence of whipping under s. 4 can only be inflicted in addition to other punishment on a second conviction of the offences specified therein, when the first offence was committed sometime previous to the second conviction, though after the passing of the Indian Penal Code. **12 W.R. Cr. 68.**

(86)—*Offence must be same in both convictions.*—In order to legalize whipping in addition to imprisonment in the case of a second conviction, the offence must be the same in both cases. **4 W.R. Cr. 20.**

(87)—*And not merely similar—Dacoity committed prior to previous conviction.*—Under the above section, a sentence of whipping in addition to imprisonment is not legal where the conviction was in respect of a dacoity committed prior to the previous conviction for a similar offence. **3 Bom. L.R. 419 = 25 B. 712, F.B.** (12 W.R. Cr. 68, 3 B.H.C. 38, *R.*).

(88)—*When whipping may be awarded in addition to other punishments.*—Held (Kemp and Phear, JJ. *dissenting*) that, notwithstanding s. 46 of the Code of Criminal Procedure, 1861, a person convicted at the same time of two or more offences punishable under the Penal Code, may, in addition to the punishments prescribed by the Penal Code, be sentenced to whipping under Act VI of 1864. **15 W.R.Cr. 89; 7 B.L.R., F.B., 165.**

(89)—When a person, who has been previously convicted, is a second time convicted at one time of two or more offences, he may be punished with only one whipping in addition to any other punishment to which, under s. 46 of the Code of Criminal Procedure, 1861, he may be liable. **14 W.R. Cr. 7.** [*R.*, Rat. Un. Cr. C. 955.]

(90)—*When whipping cannot be awarded in addition to other punishments—Whipping—Cumulative sentence.*—In this case, the Magistrate, in exercise of the powers conferred by s. 46 of the Criminal Procedure Code, 1861, passed a cumulative sentence against a person convicted at one and the same time of two or more offences punishable under the Indian Penal Code; *held* that he cannot, in addition to the penalties prescribed by the Penal Code, sentence the prisoner to whipping under the above Act, nor can he exceed twice the extent of

1.—Imperial Acts—continued.

Act VI of 1864 (Whipping)—*continued.*

his ordinary jurisdiction as defined by s. 22 of the Criminal Procedure Code. (Per Peacock, C.J ; Phear and Seaton-Karr, JJ.).

In the case of hardened offenders, a Magistrate can award whipping in addition to the maximum of imprisonment which he is competent to award. (Per Seaton-Karr, J.)

The Magistrate may, in such a case, in addition to awarding double the punishment which may be awarded for a single offence, award the punishment of whipping ; but only one whipping can be awarded. (Per Macpherson and Jackson, JJ.) **B.L.R. Sup. Vol. 951=9 W.R. Cr. 41.** [*F.*, Rat. Un. Cr. C. 564, 955, 14 W.R. Cr. 7, 16 B. 357.]

(91)—*Penal Code, ss. 456, 457.*—Where an accused, previously convicted of an offence under s. 456 of the Penal Code. is again convicted of an offence under s. 457 of the Indian Penal Code, he is not liable to whipping in addition to the imprisonment. **14 C.P.L.R. 16.**

(92)—*Validity of adding fine or imprisonment to sentence of whipping.*—In a case where an accused person is sentenced to whipping under the Act, the punishment of fine, or imprisonment, or both cannot be legally inflicted under the Penal Code in addition to the whipping. **16 B. 357.** [*F.*, 11 C.P.L.R. 13 Cr., U.B.R. (1897—1901), Vol. I, 391, 5 L.B.R. 22 ; *Appl.*, 6 C.P.L.R. 34 Cr.]

(93)—*Illegal punishment of whipping—Chief Court's power.*—Where whipping is illegally inflicted in addition to other punishments, the Chief Court should remit the latter punishment. **121 P.R. 1866 Cr.** *See*, also, 35 P.R. 1869 Cr. and 16 P.R. 1875 Cr.

(94)—*See* Nos. 81, 82, *supra*.

(95)—*S. 5—Scope—Penal Code - Special Acts.*—This section applies only to cases of offences under the Penal Code and not to cases under any special law and a sentence of whipping in these cases is illegal. **Rat. Un. Cr. C. 190=Cr. Reg. 16—8—83.**

(96)—S. 5 of the Act applies only to offences punishable under the Indian Penal Code, and not to those punishable under the Railway Act. **11 C.P.L.R. 8 Cr.**

(97)—*Meaning of juvenile offender.*—A juvenile offender under Act VI of 1864 is a person under sixteen years of age. **8 B.H.C. Cr. 9.** [*R.*, 6 A. 482, L.B.R. (1893-1900), 79.]

(98)— *Crim. Pro. Code (1882), s. 392—Act IX of 1875 (Majority Act), ss. 3 and 4.*—The words "juvenile offender" in s. 5 of the Act mean an offender under 16 years of age. **L.B.R. (1872—1892), 355.**

(99)—The words "juvenile offender" mean a person under sixteen years of age. **7 C.P.L. R. 32 Cr.**

1.—Imperial Acts—continued.

Act VI of 1864 (Whipping)—*continued.*

(100)—Ss. 5, 10—Unless an accused person is found to be under sixteen years of age, he cannot be punished as a "juvenile offender" under the provisions of s. 5 of Act VI of 1864. **6 A. 482 =A.W.N. 1884, 213.** [*F.*, 7 C.P.L.R. 32 Cr., L.B.R. (1893-1900), 79.]

(101)—*Whipping can be awarded only in lieu of other sentences in case of juvenile offenders.*—In the case of juvenile offenders, whipping can be awarded in *lieu* of the other punishment and not in *addition* to it. **A.W.N. 1885, 178.**

(102)—Under s. 5 of Act VI of 1864, the punishment of whipping is inflicted on a juvenile offender "in lieu of any other punishment to which he may, for such offence, be liable" under the Indian Penal Code. Hence, a sentence of fine in addition to whipping is illegal. **6 C.P.L.R. 34 Cr.** (16 B. 357, *R.*)

(103)—*Substitution of whipping for imprisonment in cases of juvenile offenders.*—When the accused, a lad of fourteen years, was convicted of an unnatural offence under s. 377, I.P.C., and sentenced to imprisonment, the Chief Court held that the punishment of whipping was far more suitable for a juvenile offender, convicted of bestiality, than the sentence of imprisonment which had been inflicted and that it was competent to the Appellate Court to alter the nature of the sentence by setting aside the sentence of imprisonment and substituting whipping for the same. **3 P.R. 1884 Cr.**

(104)—"*In lieu of any other punishment,*" *meaning of—Commutation of other sentence, one of whipping.*-Under the Whipping Act, the Court cannot, after passing a sentence of imprisonment, commute it to a sentence of whipping, which ought to be passed directly.

Under s. 5, a juvenile offender may be punished with whipping in lieu of any other punishment to which he may be liable, but the words "in lieu of—" mean in lieu of the whole of the punishment to which he is liable. So, it is illegal to pass a sentence of whipping, in lieu of imprisonment, under the Whipping Act, and, at the same time, to pass a sentence of fine under the I.P.C. **5 L.B.R. 22=2 Ind. Cas. 620.**

(105)—*Legality of sentence of whipping for attempt to commit house-breaking by night.*—In the case of a conviction for attempting to commit house-breaking by night, with intent to commit theft, a sentence of whipping was annulled as being illegal. **3 B.H.C. Cr. 37.**

(106)—*See* JUVENILE OFFENDER, L.B.R. (1893-1900), 79.

(107)—*See* Nos. 38, 83, *supra*.

(108)—*S. 7—Scope.*—A sentence of whipping cannot, with reference to Act VI of 1864, s. 7, be passed on a conviction for theft, as s. 7, only provides for sentences of imprisonment for a term not exceeding three years. **21 W.R.Cr.40.**

1.—Imperial Acts—continued.

Act VI of 1864 (Whipping —*continued.*

(109)—The meaning of the law in s. 7 of the Whipping Act is that the status of women and that of persons under the sentence of death or of transportation or of penal servitude or of imprisonment for more than five years render it illegal to inflict the punishment of whipping. The words of the section are perfectly general. They do not touch the legality of the sentence, but only the legality of the punishment. If the sentence of whipping is passed before the sentences mentioned in the section, it might be a legal sentence; but the subsequent passing of the latter sentences renders the infliction of the punishment of whipping illegal. **1 M. 56 =2 Weir 448.**

(110)—*S. 9—Time when it can be inflicted.*—Whipping cannot be inflicted until after the expiry of 15 days from the date of the sentence and must be inflicted immediately on the expiry of 15 days. **6 M.H.C. App. 38.** [*Appl.*, 7 M.H.C. App. 29.]

(111)—*Sentence of whipping to be inflicted on the expiry of the sentence of imprisonment illegal.*—The order of a Magistrate directing a prisoner to be whipped on the day his sentence of imprisonment expired was held to be illegal and improper. **A.W.N. 1881, 138.**

(112)—*Appeal—Carrying out of the sentence.*—When a Court, whose sentence is open to revision, pronounces a sentence awarding whipping in addition to imprisonment, it must be carried out immediately after the expiry of 15 days from the date of the sentence, or, if an appeal be made within that time, then, immediately on the receipt of the order of the Appellate Court confirming the sentence, if such order shall not be received within 15 days. It is illegal to direct in the sentence that the whipping shall be carried out at the expiration of the term of imprisonment. **Rat. Un. Cr. C. 68.**

(113)—*Crim. Pro. Code (1872), s. 310.*—The rule that a sentence of whipping could not be postponed beyond the terms specified in s. 9 of Act VI of 1864 was held to be applicable to s. 310, Crim. Pro. Code, 1872. **7 M.H.C. App. 29.**

(114)—*S. 10—House-trespass when punishable with whipping.*—Whipping can be inflicted under s. 2, sub-ss. 9 and 10 of the above Act, only when the house-trespass or house-breaking is in order to the committing of an offence punishable with whipping under that section. **U.B.R. (1897—1901), Vol. I, 354.**

(115)—*See* No. 100, *supra*.

(116)—*Ss. 11 and 12—Scope of the sections.*—Under ss. 11 and 12, a man, though sentenced to whipping, is not to be whipped unless in a fit state to suffer that punishment. The whipping is not to be commenced, if he is unfit to bear it at all, and then he is to be kept in custody, till the Court can revise the sentence. But if it be commenced, it is not to be continued longer than the man is fit to bear it, and when the man has had all he can bear, in the opinion of the Medical Officer, the whipping is to be stopped, and the sentence has been fully satisfied, for it cannot be executed by instalments. **3 M.H.C. App. 1.**

1.—Imperial Acts—continued.

Act VI of 1864 (Whipping)—*concluded.*

(117)—*See* No. 116, *supra*.

Act XIII of 1864 (Emigration of Native Labourers).

[REP., ACT VII OF 1871].

(1)—*Contract to carry coolies by ship.*—Where a contract is entered into for the carriage of coolies, the shipowner would be held guilty of breach of contract, if he appoints a master who was prohibited by an order of Government from commanding a ship carrying emigrants. **1 Ind. Jur. N.S. 131.**

(2)—*S. 71—False pretence by recruiters of emigrants—Jurisdiction—Place of trial.*—The offence of holding out false pretences to the labourers and thereby inducing them to enter into a contract, by recruiters of emigrants, must be tried in the place wherein such inducement was made. **4 M.H.C. App. 4.**

Act XXII of 1864 (Military Cantonments).

[REP., ACT III OF 1880].

See ACT III OF 1880.

See ACT XIII OF 1889.

See BOM. ACT III OF 1867.

See MAD. ACT I OF 1866.

See CANTONMENT CODE (1899).

(1)—*Lunatic Asylums Act (XXXVI of 1858), s. 4, direction of proceedings under.*—Acting *bona fide* in the discharge of a public duty and under the belief that a person was dangerous by reason of lunacy, the commanding officer of a cantonment, who has control and direction of the police, would be justified in directing proceedings to be taken by the Police under s. 4, Act XXXVI of 1858. **9 C. 341 = 13 C.L.R. 185 = 9 I.A. 152, P.C. = R. and J. No. 69.**

(2)—*Ss. 3, 5, 17 and 20—Assistant Cantonment Magistrate officiating as Cantonment Magistrate with second class powers—Trial of Breaches of Cantonment Rules.*—An Assistant Cantonment Magistrate, appointed to act as Cantonment Magistrate with second class powers, is only an Assistant Cantonment Magistrate under s. 5. He has, therefore, no jurisdiction under s. 20 to try persons for breaches of Cantonment Rules. **17 P.R. 1878 Cr.**

(3)—S. 5—*See* No. 2, *supra*.

(4)—*S. 17—Compound not a "public place."*—A compound is not a public place within the meaning of Rule 63 of Chapter III of the Cantonment Rules made under s. 17 of Act XXII of 1864 and kept in force by s. 2 of Act III of

I.—Imperial Acts—continued.

Act XXII of 1864 (Military Cantonments) —*concluded.*

1880. Consequently, convicting a person for being drunk and riotous in his master's compound is unsustainable. **A.W.N. 1887, 19.**

(5)—*See* CRIM. PRO. CODE (1898), s. 438, A.W.N. 1887, 219

(6)—*See* No. 2, *supra*.

(7)—*Ss. 17 and 19 (f)—Rules 6 and 29 framed under the sections—Unregistered prostitutes.*—Where certain women, arrested by the police on the Railway platform on a charge of having contravened the provisions of Rule 6 (that no woman not being a registered prostitute shall practice public prostitution within the limits of Cantonments), were fined by the Deputy Commissioner with a direction to have their names entered in the register and for their examination by the Civil Surgeon, *held*, that the arrest was not proper, as it did not conform to the provisions of Rule 29 and that the Deputy Commissioner had no authority to direct the examination of the women after their receipt of tickets. **25 P.R. 1870 Cr.**

(8)—*Ss. 17, 19 and 25.—Extension of rules framed under clause 7 of s. 19 outside cantonment limits—Jurisdiction of ordinary criminal Courts.*—Where rules made under clause 7 of s. 19, Act XXII of 1864, are extended to places outside the limits of cantonments by the Governor-General in Council under s. 25 of that Act, trials of breaches of rules should be conducted by the Criminal Courts under the general jurisdiction conferred by the Crim. Pro. Code, there being no authority specially mentioned in the above Act for holding such trials. **12 P.R. 1870 Cr.** [*Appr.*, 2 P.R. 1885 Cr.]

(9)—*Ss. 17, 20—Jurisdiction of Magistrate.*—A District Magistrate, not being a Cantonment Magistrate, has no jurisdiction to try for breaches of rules made under s. 17 of Act XXII of 1864. **A.W.N. 1882, 52.**

(10)—S. 19—*See* No. 8, *supra*.

(11)—S. 19 (*f*)—*See* No. 7, *supra*.

(12)—S. 20—*See* Nos. 2 and 9, *supra*.

(13)—S. 25—*See* No. 8, *supra*.

(14)—*S. 29—Unauthorized sale of spirituous liquor to an apothecary.*—The sale of spirituous liquor to an apothecary in a Military Hospital, without the permission of the Commanding Officer, is not an offence. **23 P.R. 1870 Cr.**

(15)—*Previous conviction—Confiscation of liquor.*—Where a person had not been previously convicted, an order directing the confiscation of wine and liquor in his possession would be illegal and must be quashed. **20 P.R. 1872 Cr.**

(16)—Ss. 29 and 30—*See* CONFISCATION, 20 P.R. 1872 Cr.

(17)—S. 30—*See* No. 16, *supra*.

(18)—*See* ACT XIII OF 1889, ss. 2, 5 and 7, 1 P.R. 1897 Cr.

I.—Imperial Acts—continued.

Act V of 1865 (Indian Marriage).

[REP., (EXCEPT AS TO STRAITS SETTLEMENTS), ACT XV OF 1872. NOT IN FORCE IN BRITISH INDIA.]

—*Ss. 6 and 56—Hindu priest solemnising marriage between parties, one of whom being Christian.*—A Hindu priest solemnising a marriage between parties, one of whom admittedly professes the Christian religion, is, *prima facie*, liable under s. 56 of the Act. **1 Weir 801=6 M.H.C. App. 20.** [*F.*, 1 Weir 813=17 M. 391.]

Act VII of 1865 (Government Forests).

[REP., ACT XII OF 1891.]

(1)—*Ss. 3 and 5—Confiscation—Fine—Legality.*—It is illegal to impose a fine where the Forest Act provides the penalty of confiscation. **Col. Dig. Cr. 69 of 1877.**

(2)—*S. 5—Felling or removing trees from forest, whether punishable under Penal Code.*—Felling or removing trees from a forest is either punishable under the Forest Act, or not punishable at all. The provision of the Penal Code relating to theft and mischief does not apply to such cases. **22 P.R. 1876 Cr.** [*Disappr.*, 10 P.R 1885 Cr.]

(3)—*Penalty not provided for—Punishment under Penal Code.*—Where the Local Government had framed no rule, as contemplated by the Forest Act, 1865, for punishing infringement of the rules, *held* that the accused should be tried under the Penal Code. **4 P.R. 1869 Cr.**

(4)—*See* No. 1, *supra*.

Act XIII of 1865 (High Courts' Criminal Procedure Code Amendment).

[REP., ACT X OF 1875.]

(1)—*S. 3—Duty of committing Magistrate or justice of the peace.*—A justice of the peace or Magistrate, committing a prisoner for trial before the High Court was bound, under the above section, to frame and send up, with the depositions, a specific charge against the prisoner. **1 Ind. Jur. N.S. 404.**

(2)—*Ss. 22 to 46—Sessions Judges and Magistrates to pay attention to these.*—Sessions Judges and Magistrates should pay attention to ss. 22 to 46 of the Act, which have reference to the sittings under a commission of a Judge of the High Court, either alone or with an associate Judge, in the exercise of Original Criminal Jurisdiction, in places other than the usual places of the sitting of such Court; and especially, the attention of the Sessions Judge to ss. 35 and 41, and of Magistrates to ss. 28, 30 and 31 of the same law. **3 W.R. Cr. Cir. 1.**

(3)—Ss. 23 to 46—*See* No. 2, *supra*.

(4)—*See* ACT XVIII OF 1862, 1 B.L.R.O. Cr. 1, 15 and 15 W.R. Cr. 71, note.

Act XVIII of 1865 (Stamp-duties).

[REP., ACT VII OF 1870.]

See ACT X OF 1862, s. 14, 4 M.H.C. App. 57.

I.—Imperial Acts—continued.

Act XX of 1865 (Pleaders, Mooktears and Revenue Agents).

[REP., ACT XVIII OF 1879.]

See PLEADERS.

,, MOOKTEARS.

,, ACT XVIII OF 1879.

(1)—*Dismissal of mooktears—Powers of Magistrate.*—A Magistrate has no power to dismiss a mooktear generally, unless he be convicted of an offence involving moral turpitude or infamy. **1 W.R. Cr. 34.**

(2)—*Evidence to justify removal of mooktear from profession.*—Evidence, which does not support a conviction on a criminal charge, cannot justify a removal from the profession of a mooktear. **9 W.R. Cr. 29.**

(3)—*S. 5—"Act," meaning of.*—The word "act" in this section signifies the doing something as the agent of the principal party which shall be recognized or taken notice of by the Court as the act of that principal. Nothing in the words of the Act or in its spirit prevents a person as a private agent from going between the prisoner or the duly authorised vakil upon whom the real responsibility of the defence rests. **19 W.R. Cr. 8.** [*R.*, 6 C. 585, 14 C. 556, F.B., 26 A. 380.]

(4)—*S. 11—Mooktear "acting" in Criminal Court.*—The mere writing of a petition for a party, who afterwards presents that petition himself, is not "acting" as a mooktear in a Criminal Court within the meaning of this section. **9 B.L.R. App. 18=18 W.R. Cr. 27.** [*R.*, 6 C. 584, 14 C. 556, F.B.]

(5)—*S. 14—Charge against pleader—Nature of enquiry.*—When conduct is charged against any pleader of a Subordinate Court which, if proved, would amount to an offence, the conduct should be enquired into, not simply as improper conduct, but as an offence to be made the ground (if established) of his dismissal under the above section. **13 W.R. 456.**

(6)—*Unprofessional conduct—Commission to mooktears—Criminal offence.*—If a mooktear, who is paid for his services by his employer, were to receive in addition, without the knowledge of his employer, a percentage or commission from the pleader, he would be answerable, not only in the Civil Court, but also in the Criminal Court, to a charge of obtaining money improperly from his employer. **11 B.L.R. 312.**

(7)—*S. 15—"For any other reasonable cause" meaning of.*—A *mooktear* may be suspended or dismissed for any reasonable cause, the words "for any other reasonable cause" in s. 15 referring to cases of other than professional misconduct. When a mooktear is alleged to have committed some impropriety for which he could not be criminally prosecuted, and which does not come under the denomination of professional misconduct, the High Court may institute inquiries *suo motu*, and, if it thinks that any reasonable cause other than professional has been established, may suspend or dismiss the mooktear without the necessity of either a written charge or notice, so long as the *mooktear* had every facility for knowing what he was charged with and for making his answer. **16 W.R. Cr. 15=7 B.L.R. 179.** [*F.*, 27 C. 1023; *R.*, 29 C. 890.]

(8) *S. 16—Charge of misconduct against pleaders and mooktears.—Report to High Court.*—Any charge of misconduct against a pleader or mooktear holding a certificate under the Act, other than a recorded conviction of a criminal offence, must be made and substantiated, and a report submitted to the High Court as provided by s. 16. **7 W.R. 316.**

(9)—*Initiating proceedings against pleader—Jurisdiction of Zilla Judge—Place of inquiry.*—A Zilla Judge is incompetent to initiate proceedings against a pleader of the lower grade under the above section, which requires that the inquiry should be made by the Court in which the pleader committed the act of misconduct. **11 W.R. 127.**

(10)—*Suspension of High Court pleader by Zilla Judge.*—A Zilla Judge has no power under the Act to suspend a pleader of the High Court from practising in the Courts of his district on the ground of incompetency. His proper course is to make a representation to the High Court. **14 W.R. 217.**

(11)—*Power of Zilla Judge to dismiss pleaders.*—A Zilla Judge has no power, after the 1st January, 1866, to make an order under Act XVIII of 1852 dismissing a pleader. He should proceed under s. 16 of Act XX of 1865, and refer the matter, with his report, to the High Court. Even under Act XVIII of 1852, under which the Judge erroneously acted in this case, a pleader was liable to dismissal, only on proof of conviction of a criminal offence by a competent Court, or on proof of a declaration or finding by a competent Court (in a suit or proceeding to which the pleader was a party) that he was guilty of a breach of trust, or for fraudulent or dishonest conduct in the discharge of his professional duty; and this, also, after notice and adjudication as prescribed by s. 4. **6 W.R. Mis. 5.** [*F.*, 27 C. 1023].

(12)—*Power of Magistrate to suspend mooktear.*—Where a Magistrate suspended a mooktear for three months for wilfully making a false statement, it was held that the Magistrate had no power to suspend the mooktear under the Act, and his suspension was set aside. **17 W.R. Cr. 6.**

(13)—Held that a magistrate had no power to suspend a mooktear under the Act. **21 W.R. Cr. 41.** [*F.*, 7 C.L.R. 168].

(14) *Suspension or dismissal of mooktears—Procedure.*—The procedure under s. 16 refers only to cases of professional misconduct, the words "any such misconduct as aforesaid"

I.—Imperial Acts—continued.

Act XX of 1865 (Pleaders, Mooktears and Revenue Agents)—*concluded.*

being connected with the words "grossly improper conduct in the discharge of his professional duty." **16 W.R. Cr. 15=7 B.L.R. 179.**

(15)—*Notice.*—Before a Magistrate can suspend a mooktear from practice, he must observe the requirements of the above section, and furnish the mooktear with a copy of the charge against him, and a notice fixing a day on which such charge will be taken into consideration. **15 W. R. 171=6 B.L.R. App. 83.** [*R.*, 16 W.R. Cr. 15].

(16)—*Using improper expressions during argument—Procedure.*—In this case the High Court declined to strike a pleader off the rolls for using improper expressions during the argument of a case before a Zilla Judge, who recommended, after observing the requirements of s. 16 of the Act, that such punishment should be awarded. The Zilla Judge should have called the pleader to order, and required him to apologize. **14 W.R. Cr. 53.**

(17)—*Acquittal of pleader.*—In a case tried under the provisions of the above section, where the subordinate Court is of opinion that the pleader should be acquitted, it is not necessary that there should be any report to the Judge. **13 W.R. 67.**

(18)—*Omission to examine record before applying for stay of execution proceedings—Not verifying statement of parties.*—The omission of a pleader to examine the record of the case before making an application to stay execution proceedings upon the ground of a compromise was held not to amount to grossly improper conduct. But his not verifying the statement of the parties who came to him and made their statements (one of them being a mooktear) was considered, at the most, to amount to carelessness but not grossly improper conduct; whilst his omission to obtain the authority or concurrence of the senior pleader in the case could not be said to be improper conduct within the meaning of the Act—certainly not such grossly improper conduct as called for the punishment of suspension for six months. **17 W.R. 405.**

Act XIV of 1866 (Indian Post Office).

[REP., ACT VI OF 1898.]

See ACT VI OF 1898.

(1)—*Abetment—Penal Code, s. 109.*—This Act does not provide for the punishment of abetting an offence under it. Under s. 109, I.P C., the abetment must be of an offence punishable under that Act, and not of an offence punishable under a distinct and special law. **7 W.R. Cr. 54.**

(2)—*Ss. 2, 47, 53—Jurisdiction over offences under s. 47.*—Under the provisions of s. 53 of Act XIV of 1866, with the interpretation given

I.—Imperial Acts—continued.

Act XIV of 1866 (Indian Post Office)—*ctd.*

in s. 2 of that Act, a subordinate Magistrate is competent to convict of an offence under s. 47. **5 B.H.C.Cr. 36.**

(3)—*S. 37—Postage stamps issued by the Government for the purpose of Revenue—Twice using them if an offence—Penal Code, s. 262.*—Under the provisions of s. 37 of the above Act, postage stamps are stamps issued by Government for the purpose of revenue within the meaning of the Penal Code. Hence, a person is punishable under s. 262, I.P.C, for using a postage stamp twice. **5 C.P.L.R. 43 Cr.**

(4)—*S. 47—Jurisdiction of Subordinate Magistrate.*—A Subordinate Magistrate has jurisdiction to try a prisoner for an offence under the above section. **5 B.H.C.Cr. 36.**

(5)—*Penal Code, s. 166—Post-master absenting himself from the station without notice.*—A post-master, absenting himself from the station without giving notice and thereby causing delay in the despatch of the mail, is guilty of an offence under s. 47 of the Post Office Act, and not under s. 156, Penal Code. **1 Weir 72.** *See, also*, 1 Weir 860.

(6)—*See* No. 2, *supra.*

(7)—*S. 48—Opening of a newspaper by a person employed in the Post Office.*—The opening of a newspaper by a person employed in the Post Office and replacing it in its envelope, does not constitute an offence under the above section as it could not be said that the accused stole, fraudulently appropriated, wilfully secreted, destroyed or threw away any letter or other article sent by post. **19 W.R. Cr. 4.**

(8)—There must be a fraudulent intention in the act of the accused before he can be convicted under the above section. **19 W.R. Cr. 4.**

(9)—*Person assisting sorting clerk secreting bearing letters to be given to delivery peon for the purpose of sharing the bearing postage—Penal Code, ss. 378 and 403.*—The accused, being in the employ of a Post Office, assisted the sorting clerk in sorting letters, and secreted two bearing letters with the intention of giving them to the delivery peon and to share with him the bearing postage which the latter would collect. *Held*, that the accused did not intend to wilfully secrete the letter within the meaning of s. 48, Indian Post Office Act, as there was not such secreting or concealment of letters as would frustrate or tend to frustrate their delivery to the addressees. *Held*, further, that he was guilty of stealing and of fraudulently appropriating the letters within the meaning of that section, and also of theft and of attempt to commit dishonest misappropriation of property within the meaning of the Penal Code. **14 M. 229=1 Weir 860.**

(10)—*Solitary confinement if can be awarded as part of sentence.*—Solitary confinement cannot be awarded as part of a sentence passed under s. 48, Post Office Act. **24 P.R. 1879 Cr.**

1.—Imperial Acts—continued.

Act XIV of 1866 (Indian Post Office)—*cld.*

(11)—*See* ACT XVII OF 1854, 3 B.H.C. Cr. 8.

(12)—*S. 50 (=s. 55 of Act VI of 1898)—Scope of the section.*—The word "prepare" in s. 50 of the Act includes the obtaining of signatures to a book that a postman is bound to keep in proof of his having visited the villages in his capacity as postman. **1 Weir 862.**

(13)—S. 53—*See* No. 2, *supra*.

Act XX of 1866 (Indian Registration).

[REP., ACT VIII OF 1871.]

See ACT VIII OF 1871.

See ACT III OF 1877.

(1)—*S. 91 (=s. 82, Act III of 1877)—Offence under section not triable by Jury.*—An offence under the above section ought not to be tried with the assistance of a Jury. Where, however, such offence was tried with the assistance of a Jury, and the verdict of the Jury, who were unanimous in convicting the prisoner, was approved of by the Sessions Judge, the High Court considered it unnecessary to quash the proceedings. **14 W.R. Cr. 32.**

(2)—*False statement before Sub-Registrar—Penal Code, s. 423.*—A vendor, to defeat the claims of pre-emptors, stated in the sale-deed that the purchase money was more than he actually received, but contradicted himself before the Sub-Registrar and admitted what he really received. The vendee, however, stated he was in fault, and, on the same day, brought the rest of the money to the Sub-Registrar, who refused either to receive it, or to register the deed. *Held* that the vendor was guilty of an offence under the section and that the vendee, though he had neither committed an offence under the section nor abetted one, was guilty of an offence under s. 423, Penal Code. **23 P.R. 1869 Cr.**

(3)—*Ss. 91, 95 (=ss. 82 and 83, Act III of 1877)—Commitment to Sessions.*—The commitment to the sessions of a case of an offence under s. 91 of the Act is not illegal. **5 B.H.C. Cr. 7.**

(4)—*Ss. 93 and 94 (=ss. 82 and 83, Act III of 1877)—Cheating by personation—Registering document.*—Where A intended to register a deed, but was too ill to do so, and B, who was known to A, personated A. and had the deed registered in her name, it was held that, in the absence of anything to prove that it was intended to defraud anybody, A was not guilty of cheating by personation under s. 419, I.P.C., but of an offence under s. 93 of the Registration Act. C and D, who abetted A, were convicted of an offence under s. 94 of the Act. **11 W.R. Cr. 24=2 B.L.R. 25 Cr.** [*R.*, 13 B. 506, 32 C. 775 =1 C.L.J. 469=9 C.W.N. 807; *F.*, 5 Bom. L. R. 138.]

(5)—Three persons, who put up a fourth to personate one whose authority was required to complete a conveyance of immoveable property, were held guilty under the above section. **7 W.R. Cr. 99.**

1.—Imperial Acts—continued.

Act XX of 1866 (Indian Registration)—*cld.*

(6)—Ss. 93 and 95—*See* ACT III OF 1877, s. 82, 8 B.L.R. 422=17 W.R. Cr. 39.

(7)—*S. 94 (=ss. 82 and 83 of Act III of 1877)—False personation before registering officer triable exclusively by Court of Session.*—The offence of abetting false personation before a Registering Officer, punishable under s. 94 of the Act with imprisonment for a term which may extend to seven years, is triable exclusively by a Court of Session. **Rat. Un. Cr. C. 51.**

(8)—Under the above section, an abettor may be punished more severely than his principal can be. **8 W.R. Cr. 16.**

(9)—*See* ACT III OF 1877, s. 83, 15 W.R.Cr. 58=6 B.L.R. 692, F.B.

(10)—*See* No. 4, *supra*.

(11)—*S. 95 (=s. 83, Act III of 1877)—Offence.*—A Sub-Registrar under the Act has no power to investigate into the committal of an offence committed before him in the registration of any document, but should cause the complainant to proceed, under s. 66, Crim. Pro. Code (1861), before the Magistrate, or before an officer authorised to receive such complaint. The sanction of the Registrar, under the above Act, relates to a prosecution to be instituted by the Sub-Registrar for an offence under the Act. **4 B.L.R. App. 69.**

(12)—*See* ACT III OF 1877, s. 83, 10 W.R. Cr. 21=6 B.L.R. 692 note.

(13)—*See* Nos. 3 and 6, *supra*.

Act III of 1867 (Public Gambling).

[REP. IN PART, ACT XVI OF 1874; PREAMBLE AND S. 2 AMENDED, ACT XII OF 1891; REP. (IN BURMA), BUR. ACT I OF 1899; DECLARED IN FORCE IN CERTAIN RAILWAY LANDS, ACT XIV OF 1874, S 10; IN BRITISH BALUCHISTAN, REG. I OF 1890, S. 3.]

See BEN. ACT II OF 1867.

See BOM. ACT III OF 1866.

See BOM. ACT IV OF 1887.

See BOM. ACT I OF 1890.

See BUR. ACT XVI OF 1884.

See BUR. ACT I OF 1899.

(1)—*Construction of Act.*—The Gambling Act is a penal law, and one of a very stringent character, and so its provisions are to be very closely interpreted; and are not to be extended so as to meet cases which do not strictly fall within them. **L.B R. (1872—1892), 53 and 86.**

(2)—*S. 1—Common gaming house defined.*—Where the occupier of a house, wherein games of chance are played, derives his profits, not from any charge for the use of the house, or of the instruments of gaming or in any manner *ejusdem generis*, but from the game itself, the house is a common gaming house. **27 A. 567 =A.W.N. 1905, 106=2 Cr. L.J. 245.**

1.—*Imperial Acts* - continued.

Act III of 1867 (Public Gambling)—*continued.*

(3)—Common gaming-houses are houses, etc., in which instruments of gambling are kept or used for the profit or gain of the owner or occupier, whether by way of charge for the use of the instruments of gaming or of the house, or otherwise howsoever. **3 N.W.P. 134.**

(4)—*Ss. 1 and 3—Garden enclosed with hedge.*—A garden enclosed with a hedge or ditch, where gambling takes place, cannot be considered as a "common gaming house." **14 P.R. 1896 Cr.**

(5)—*Ss. 1 and 4—Lottery-tickets if instruments of gaming.*—Lottery-tickets, by reference to which it is to be decided whether the holder or purchaser wins the whole, or any part, of any stakes, are instruments of gaming within the above sections; and they are instruments of gaming of a nature similar to cards. **12 W. R. Cr. 34.**

(6)—*Issuing a warrant of search on information given in general terms—Illegal.*—A Magistrate, on a report made by the police that a great deal of gambling was going on and that it gave rise to numerous offences, issued a warrant directing the search of a certain house which the police report did not state was used as a common gaming house, and the owner of which was only accused of gambling. On searching the house, the accused was found with other persons seated round the board and dice. The accused was convicted under s. 4 of the Act. *Held* that the Magistrate was wrong in issuing a warrant upon the information given by the police in general terms and that there was nothing to show that the house was a common gaming house as defined in s. 1 of the same Act. **A.W.N. 1889, 162.**

(7)—*S. 2—Limits within which Act in force—Municipal boundaries—Subsequent alteration of Municipal boundaries.*—Where the Lieutenant-Governor, under the powers conferred by Act III of 1867, declared by notification that the Act should be in force within the boundaries of the Municipality of Mirzapur and those boundaries were subsequently revised, and an offence was committed within the boundaries as existing at the time of the notification under Act III of 1867, but without the boundaries as revised, *held*, that the boundaries for the purpose of Act III of 1867 must be taken to be those as existing at the time of the notification under that Act. **A.W.N. 1906, 133=3 Cr.L.J. 439.**

(8)—*Notification extending provisions of the Act—Validity.*—The Notification in the Punjab Gazette, extending the whole of the provisions of the Act to a town, are not ineffectual by reason of their defining the limits of the town. **12 P.R 1886 Cr.**

(9)—*Notification extending the provisions of Act to a town—Cantonment not included.*—A notification, extending the provisions of the Act to a "town," cannot be held to include an extension of the Act to the cantonment. **23 P.R. 1887 Cr.**

1.—*Imperial Acts*—continued.

Act III of 1867 (Public Gambling)—*continued.*

(10)—*Ss. 2, 3 and 4—Extending provisions of Act to a place—Notification in one issue of Gazette.*—The Act, or any of its provisions, cannot be extended to a town or place, to which the Act does not *ipso facto* apply under the terms of s. 2, by the mere publication of a notification in one issue of the Gazette only. **3 P.R. 1885 Cr.**

(11)—*S. 3—Evidence of use of instruments of gaming essential for conviction.*—In order to support a conviction under s. 3, Act III of 1867, of keeping a common gaming house as defined by s. 1 of that Act, there must be evidence that instruments of gaming were kept or used. **L.B.R. (1872—1892), 532.**

(12)—The mere finding of cards, dice, etc., is not evidence that the house is a common gaming house. The owner or tenant must derive profit or gain from the gambling. **19 P.R. 1871 Cr.**

(13)—*See* CRIM. PRO. CODE (1898). s. 556, U.B.R. (1897-1901), Vol. I, 125.

(14)—*See* Nos. 4, 10, *supra.*

(15)—*Ss. 3 and 4—Common gambling-houses—Keeping such houses and gambling in them by owner- -Separate convictions.*—A man, who keeps a common gaming-house and gambles in it himself, cannot be convicted and separately sentenced under ss. 3 and 4 of the Act. **L.B.R. (1893—1900), 459.**

(16)—*Right of house-owner.*—In a case under ss. 3 and 4 of the Gambling Act, the owner of the house should be allowed to prove that the house was not used as a common-gaming house. **L.B.R. (1872—1892), 53.**

(17)—*Convictions under sections, essential for.*—In order to sustain a conviction under ss. 3 and 4 of Act III of 1867, it must be shown that the house in which the alleged offence was committed was a common-gaming house within the meaning of s. 1 of the Act. **46 P.R. 1867 Cr.**

(18)—*Misjoinder of charges—Discretion of Chief Court to hear pleader in revision.*—Held, that, a person accused under s. 3 of the Gambling Act cannot be tried together with the persons accused under s. 4 of the Act, on the ground of misjoinder of charges. *Obiter*:—When the District Magistrate has refused to appoint a legal practitioner to represent the Crown in revision, the Chief Court must decline to hear him. **5 P.W.R. 1910 Cr.**

(19)—*Conviction when sustainable.*—Before a conviction could be had under s. 3 or s. 4 of Act III of 1867, it should be proved that cards, dice, tables or other instruments of gaming were "kept or used for the profit or gain of the person owning, occupying, using or keeping the house." **6 C.P.L.R. 17 Cr.**

(20)—*Sentence of imprisonment and fine.*—A sentence of imprisonment and fine under s. 3 or s. 4 of the Act is illegal. **L.B.R. (1872—1892), 434.**

I.—Imperial Acts—continued.

Act III of 1867 (Public Gambling)—*continued.*

(21)—Fine is a more appropriate form of punishment for a first offence under s. 4 than imprisonment. A Magistrate should strongly mark the distinction between offences under s. 3 and s. 4 of this Act. **L.B.R. (1872—1892), 428.**

(22)—*Ss. 3, 4, 5 and 6—Gambling not an offence* per se—Gambling in itself is not an offence and only becomes punishable as an offence, when it takes place in a common gaming house or in a public place. **S.C. 203, Oudh.**

(23)—*Ss. 3, 4 and 6—Search warrant—Credible information—Presumption.*—When a search warrant purported to be issued upon credible information and after enquiry signed by the District Superintendent of Police, *held*, that it was open to the Magistrate to presume, until the contrary was made to appear, that the warrant was issued on credible information after sufficient enquiry and that the prosecution need not give evidence, in the first instance, of the information laid, and of enquiry, if any, held thereupon. **29 P.R. 1881 Cr.** (19 P.R. 1871 Cr. and 9 P.R. 1876 Cr., *R.*)

(24)—*Ss. 3, 5, 6—Common gambling house, presumption as to—Search warrant—Judge importing his own knowledge into case—Signing warrant with pencil—Credible information, warrant issued on receipt of.*—A person was convicted under s. 3, with seven others under s. 4 of the same Act. His house was entered and searched under a warrant, signed by the Magistrate with a pencil, reciting that the Magistrate had reason to believe upon credible information that the house was used as a common gaming house, and authorising a police officer to enter and search it. The police officer was examined as a witness, and, in cross-examination, deposed that he informed the Magistrate that he had received "credible information that gambling was going on." The Magistrate in his judgment stated that "the search-warrant obtained by the City Inspector was signed by me on credible information received from him to the effect that the house was used as a common gaming house." *Held* that "a Judge ought not, without giving evidence as a witness in the usual way, import into a case his own knowledge of particular facts," and that, therefore, the Magistrate ought not to have imported into the case his own knowledge as to the circumstances under which the warrant was issued; also, that there was evidence that the warrant was legally issued, for, it stated that it was issued upon information that the house was used as a common gaming house, and there was a presumption that such statement was true; further, that the statement of the police officer in cross-examination did not necessarily convey the meaning that he gave the Magistrate such information only; and the presumption that the statement in the warrant was true was not rebutted by the statement; held, further, that the absence of circumstances, under which alone

I.—Imperial Acts—continued.

Act III of 1867 (Public Gambling)—*continued.*

the presumption referred to in s. 5 can be drawn, is a ground for holding that the presumption cannot properly be drawn, but the absence of such circumstances has not the effect of making all the evidence taken in the case inadmissible and of vitiating and rendering the conviction illegal; *held*, also, that it was objectionable to sign search warrants with a pencil. **5 O.C. 37.**

(25)—*Ss. 3, 6—Imperfect description of house to be searched.*—A warrant was issued under Act III of 1867, for the search of "house No. 169 belonging to Jhunni Bakkal, *mohalla* Baniapara." The house in fact searched was a house in the occupation of Jhunni Bakkal, bearing No. 169, but in *mohalla* Shahnathan. But Shahnathan and Baniapara were adjoining *mohallas* and in *mohalla* Baniapara there was no No. 169. There was further evidence to show that the house which was searched under this warrant was the house concerning which information had been given and the house which the police intended to search. Held, that the wrong description given to the house, namely, that it was a house in *mohalla* Baniapara, was merely a misdescription which did not vitiate the warrant, nor prevent the presumption provided for by s. 6 of the Act from arising. **A.W.N. 1905, 105=2 Cr. L J. 243.**

(26)—*Common gambling houses—Presumptive evidence.*—It is only in the case of a house searched under the provisions of s. 5 of the Gambling Act that a presumption arises, under s. 6, from the mere discovery of cards, dice, or other instruments of gaming, that it is a common gaming house. **L.B.R. (1872—1892), 548.**

(27)—*Ss. 3, 4, 5 and 14—Jurisdiction of Magistrate—Act XVI of 1884 (Gaming), s. 5—Crim. Pro. Code (1882), ss. 33 and 204*—Although a Second-Class Magistrate may not have been empowered under s. 5 of the Gaming Act, 1884, to proceed under s. 5 of the Gambling Act, 1867, there is no doubt that he has power, under s. 14 of the Gambling Act, 1867, and s. 204, Crim. Pro. Code (1882), on information given to him that an offence had been committed under ss. 3 and 4 of the Gambling Act (1867), to take cognizance of the same and to issue a summons upon the accused. **L.B.R. (1872—1892), 486.**

(28)—*Ss. 3, 4, 13, 16—Rewards to informers.*—There is no justification in s. 16 for the payment of any portion of a fine imposed under s. 13 to the informer. There is no authority for rewarding an arresting officer out of the fine imposed under ss. 3 and 4 of the Act, or out of the moneys or sale proceeds of articles seized and ordered to be forfeited under the Act. **L.B.R. (1872—1892), 407.**

(29)—*Ss. 3, 4 and 15—Question of what provision of the Act has been extended to a particular locality—Whether a question of law or fact—Evidence Act, s. 44*—Whether or not portions of the Act had been extended to a

I.—Imperial Acts—continued.

Act III of 1867 (Public Gambling)—*continued.*

particular locality, and whether the steps taken in this view were sufficient in law to effect it, are questions of law and fact, which the Criminal Court has to decide for itself before convicting the accused. When once a decision has been arrived at, the point cannot be re-opened in a subsequent case, except where the facts of a particular case bring it within s. 44, Evidence Act. **41 P R. 1885 Cr.**

(30)—*Ss. 3, 4 and 16—Fines—Rewards—Magistrate, jurisdiction of.*—When fines are inflicted under s. 3 or s. 4 and moneys or articles are forfeited, the Magistrate trying the case may award part or all of either the fines recovered, or the moneys or sale proceeds of articles forfeited, to the informer, but he cannot award both the fines and the moneys and sale proceeds of articles forfeited. The use of the disjunctive "or" in s. 16 puts it out of the power of the Magistrate to award both the fine and the confiscated property to the informer. **L.B.R. (1872—1892), 378.**

(31)—*Ss. 3 and 5—Common gaming house—Seizure of money on the persons of gamblers—Confiscation.*—The order of a Magistrate confiscating the money found on the accused, while gambling in a common-gaming house, is illegal, if there is no evidence to show that there was reasonable ground for suspecting that such money was used, or was intended to be used, for the purpose of gaming **L.B.R. (1872—1892), 281.**

(32)—*Ss. 3 and 15—Magistrate incompetent to pass sentence exceeding Rs. 400, or six months' rigorous imprisonment.*—Under ss. 3 and 15 of the Act, a Magistrate is incompetent to pass any sentence exceeding Rs. 400, or six months' rigorous imprisonment, and a sentence of fine of Rs. 600 or imprisonment for one year cannot be passed on the accused, until he had been convicted at one trial of two or more offences. **A.W.N. 1881, 111.**

(33)—*S. 4—Accused not found in the gaming house.*—A conviction under this section is unsound, when the accused is not found in a common gaming house. **Colm. Dig. Cr. 63 of 1876.**

(34)—"*Being found in a common gaming house.*"—A person seen actually in a gaming house by the officer executing the warrant and his subordinates, at the time of their reaching the house is "found" in the house within the meaning of s. 4. It is not necessary that he should be actually arrested in the house. **22 P.R. 1895 Cr.** (35 P.R. 1894 Cr., *Expl.*)

(35)—*Ss. 4 and 6—Gambling in a common gaming house.*—Persons who were not found in a common gaming house, but in another house, under circumstances which warranted a presumption that they had been gambling in the common gaming house were held not liable to be convicted under ss. 4 and 6. In order to support a conviction, the accused must actually be found in the house when search was made. **35 P.R. 1894 Cr.**

I.—Imperial Acts—continued.

Act III of 1867 (Public Gambling)—*continued.*

(36)—*Gambler being found in a common gaming-house—Magistrate acting upon information supplied by private individual.*—In order to make a person punishable under s. 4, it is not necessary either that he should be found by a Magistrate or by a police officer acting in the manner provided by s. 5, or that information should be given by a police officer. A Magistrate may take action under s. 4 upon information given by a private individual, and may convict upon the evidence of a private individual. **L.B.R. (1893—1900), 321.** (L.B.R., 1872—1892, 486, L.B.R., 1893--1900, 251, *D.*).

(37)—*Imprisonment in default of fine—Penal Code, s. 65—General Clauses Act (1897), s. 25.*—As the maximum term of imprisonment under s. 4 of the Gambling Act is one month, the accused could not, under s. 65, I.P.C., be sentenced to more than one week's imprisonment in default of payment of fine. S. 65 has been made applicable to fines imposed under the Gambling Act by s. 25 of the General Clauses Act, 1897. **L.B.R. (1893—1900), 335.**

(38)—*See* Nos. 5, 6, 10, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, *supra.*

(39)—*Ss. 4 and 5—Conviction of owner or keeper of a common gaming house when there is illegality in warrant.*—A charge of being the owner or keeper of a common gaming house may be proved and conviction on it sustained, even if there has been no legal warrant and search. **22 P.R. 1895 Cr.**

(40)—*Search-warrant--Conditions for issuing.*—Before issuing a search warrant under s. 5, the officer, whether Magistrate or Police, shall have, upon credible information, reason to believe that the premises to be searched are used as a common gaming house. It is not necessary that the informant should be examined upon oath or affirmation, or that further enquiry should be made or that a record should be prepared. **7 P.R. 1882 Cr., F.B.** (19 P.R. 1871 Cr. and 9 P.R. 1876 Cr., *R.*)

(41)—*Search by officer other than the one named in the search warrant.*—The only person authorized to make a search is the officer named in the warrant. The officer named in the warrant is not competent to authorize any one else to make the search. **22 P.R. 1895 Cr.**

(42)—*Ss. 4, 5 and 6—Common gaming house—Evidence—"Credible information"—Held,* that when a house is searched by the Police on information that it is a common gaming house, the finding of instruments of gaming will be admissible evidence that the house is used as a common gaming house, notwithstanding that the warrant under which the search is conducted is defective, though the finding of such articles may not be evidence to the extent mentioned in s. 6 of Act III of 1867. *Held,* also, that the words "credible information" as used in s. 5 of Act III of 1867 have not the same meaning as "credible evidence." The "credible

1.—Imperial Acts—continued.

Act III of 1867 (Public Gambling)—*continued.*

information" there mentioned need not be in writing. **A.W.N. 1905, 257=28 A. 210.** [*R.*, 5 A.L.J. 59=A.W.N. 1908, 9=30 A. 60 =7 Cr. L.J. 19.]

(43)—*Ss. 4 and 13—Gambling in a private house.*—S. 13 punishes gambling in a public street or place. S. 4 punishes gambling in a common gaming-house. Gambling in a private house is not an offence under the Act. **2 N.W.P. 289.**

(44)—*Ss. 4 and 15—Limit of sentence.*—A person who had been seven times previously convicted under the Gambling Act was convicted of the offence of being found in a gaming house and was sentenced, under ss. 4 and 15 of the Act, to rigorous imprisonment for six months. *Held* that the utmost punishment allowed by the law being a fine of Rs. 200 or rigorous imprisonment for two months, the sentence passed was illegal. **A.W.N. 1881, 129.**

(45)—*S. 5—Jurisdiction of Magistrate to leave execution of warrant to discretion of police.*—A Magistrate cannot issue a warrant of search under s. 5, leaving it to the discretion of the police to determine whether it shall or shall not be executed. **L.B.R. (1872-1892), 86.**

(46)—*Search of two or more houses.*—Two or more houses may be specified in one warrant, provided that they are clearly disunited in it **17 P.R. 1897 Cr.**

(47)—*Warrant addressed to several Police Officers.*—A warrant in the alternative to different police officers is not bad. **17 P.R. 1897 Cr.**

(48)—*Signing a warrant—Meaning.*—When a warrant, signed by a District Superintendent of Police, contained the following words "there is reason to believe," *held*, that the signatory had reason to believe, and acted upon credible information. within the meaning of s. 5 of the Gambling Act. **17 P.R. 1897 Cr.**

(49)—*Illegal warrant, what is.*—*Held*, that a warrant issued in the particular case, was bad for the following defects—(1) that it was not signed by a Magistrate or a District Superintendent of Police; (2) that, notwithstanding the presence of a Deputy Inspector of Police, it was addressed to a sergeant; (3) that there was no proof that the warrant was issued on credible information or upon enquiry; (4) and that it was a general warrant. **11 P.R. 1895 Cr.**

(50)—*Credible information, whether should be taken upon oath or affirmation.*—The term "credible information" includes any information which, in the judgment of the officer to whom it is given, appears entitled to credit and which he believes. It is not necessary that such information should be taken upon oath or affirmation. **7 P.R. 1882 Cr., F.B.** (19 P.R. 1871 Cr. and 9 P.R. 1876 Cr., *R.*)

1.—Imperial Acts—continued.

Act III of 1867 (Public Gambling)—*continued.*

(51)—*Search warrant, whether can be issued on police report.*—A search warrant cannot be issued on the mere report or information of a police officer, as such information does not amount to "credible information." **9 P.R. 1876 Cr.**

(52)—*Entry and search under the section, when justified.*—To justify action under the section, the Magistrate must have "credible information" and reason to believe that the house is used as a "common gaming house" within the meaning of the term. **2 N.W.P. 476.** [*R.*, 9 Bom. L.R. 695=31 B. 438.]

(53)—Where a warrant did not show that the officer issuing it (the District Superintendent of Police) had reason to believe that the house, in respect of which it was framed, was a common gaming house, and there was nothing on the record to show that such belief was entertained "upon credible information," and where the accused, who were in the house at the time of the search, were charged with and convicted of offences under the Act, *held* that the convictions and sentences obtained and imposed under the above circumstances could not be sustained. **A.W.N. 1891, 111.**

(54)—A warrant did not state that credible information had been received that the house in question was used as a "common gaming house," but merely that it was one in which "gambling frequently took place" and no further evidence appeared on the record to show that credible information had been received that the house was a "common gaming house." *Held* that the warrant was informal; and the instruments of gaming found as above described were not found in pursuance of a search conducted in accordance with the provisions of s. 5 of the Act; and, consequently, their finding could not be taken as evidence that the house was a common gaming house. **A.W.N. 1890, 226.**

(55)—*Finding of cards, etc., without search warrant, whether evidence.*—The mere finding of cards, dice, etc., without the house being searched under the provision of s. 5, Act III of 1867, is not evidence that the house is a common gaming house. A search warrant can only be issued on credible information that the house is a common gaming house. **19 P.R. 1871 Cr.** *See, also*, 9 P.R. 1876 Cr.

(56)—*Finding of cards when* prima facie *evidence.*—Only when a house is entered and searched under the provisions of s. 5 is the finding of cards, dice, etc., sufficient evidence against the accused, until the contrary is made to appear. **2 N.W.P. 476.**

(57)—*See* Nos. 22, 24, 26, 27, 31, 39, 40, 41, 42, *supra* and 64, 65, *infra*.

(58)—*Ss. 5 and 6—Non-compliance with the provisions of s. 5—Finding of money.*—Where the provisions of s. 5 of the above Act had not been complied with, the simple fact that some money

1.—Imperial Acts—continued.

Act III of 1867 (Public Gambling)—*continued.*

in a small earthen pan and some cowries were found in the house of the accused is not sufficient evidence, under s. 6 of the fact that the house was a common gaming house. **A.W.N. 1882, 132.** [*R.*, 18 A. 23 ; *D.*, 16 A. 420.]

(59)—*Search warrant—Irregularity in issuing—Cr. P. C. (1882), s. 537.*—In this case a first-class Magistrate issued a warrant authorising a Sub-Inspector of police to enter and search the shop of the accused, on the ground that he had received credible information that it was being used as a common gaming house, whereas under Notification No. 201-A, dated the 25th April, 1867, (issued by the Lieutenant-Governor) the warrant should have been issued to an Inspector. *Held* that the irregularity would be covered by s. 537, Crim. Pro. Code. **A.W.N. 1884, 59.**

(60)—The issue of a search warrant to a Sub-Inspector instead of an Inspector (as provided by the Government Notification) is an irregularity which would render s. 6 of the Gambling Act inapplicable to the case. But the irregularity would not render the things found (instruments of gambling, etc.) inadmissible, if they were otherwise relevant and admissible, in evidence. **A.W.N. 1884, 286.** [*R.*, 9 A. 528.]

(61)—The mere fact that a warrant issued under the above Act was defectively worded and was rather a warrant of arrest than a search warrant has not the effect of vitiating the trial. *Quære.*—Whether such defect makes the provisions of sections 5 and 6 inapplicable? **A.W.N. 1884, 291.**

(62)—*Ss. 5, 6--Search warrant issued to Police Officer by Magistrate—Such Police Officer endorsing it for execution to another Police Officer—Legality of execution of search by the Police Officer.*—Search warrants issued under Act III of 1867 (Gambling Act) are governed by those provisions of the Code of Criminal Procedure which provided for the issue of the warrants in general. Consequently, a search warrant may be endorsed by a Police Officer, to whom it was originally directed, to another who is not of a rank below that authorized under the Act to enter and search. **5 A.L.J. 59 = A.W.N. 1908, 9 = 7 Cr. L.J. 19 = 30 A. 60.** (28 A. 210 = A.W.N. 1905, 257, *R.*)

(63) - *S. 6—Presumption under the section, when arises.*—It is only when a house is duly entered and searched, under the provisions of s. 5, under a warrant signed by an officer having authority to issue it, that the presumption referred to in s. 6 arises. But the fact of a certain house being a gaming house can be proved *aliunde*. **1 A.L.J. 115.**

(64)—It is only when the house is searched under the provisions of s. 5 that the presumption allowed by s. 6 arises. **L.B.R. (1872—1892), 53.**

(65)—*Ss. 6 and 5—When presumption under section arises.*—The presumption of s. 6 does not arise, unless the search is conducted in strict accordance with s. 5 of the Act. **L.B.R. (1872—1892), 407.**

(66)—"*Cowries,*" *whether instruments of gaming.*—Although cowries can be used for the purpose of gambling, they are not "instruments of gaming" within the meaning of s. 6, Act III of 1867. **18 A. 23.**

(67)—Although cowries are not, ordinarily, instruments of gaming, yet, if they are used in a particular case as instruments of gaming, they are instruments of gaming ; that is to say, the mere finding of cowries in a house would not raise the presumption that the house was used as a common gaming-house, but evidence that cowries were used in a particular house as a means whereby to carry on gaming would bring the case within the section. **19 A. 311 = A.W.N. 1897, 117.** (A.W.N. 1895, 139, *R*) [*R.*, 25 C. 432.]

(68)—*Instruments of gaming—Cowries.*—*Cowries* are not instruments of gaming. **3 P.R. 1896 Cr.**

(69)—Cowries cannot be taken to be instruments of gaming for the purpose of s. 6 of the Act. **6 C.P.L.R. 17 Cr.** ; 16 A. 23 = 15 A.W.N. 139.

(70)—*Issue of search warrant, condition for.*—It is an absolutely necessary preliminary to the issue of a search warrant under s. 6 of the Act, that the Magistrate or the District Superintendent of Police should have reason to believe on credible information that the house which it is proposed to search is used as a "common gaming-house." **S.C. 203, Oudh.**

(71)—*See* Nos. 22, 23, 24, 25, 26, 35, 42, 58, 59, 60, 61, *supra.*

(72)—*Ss. 8 and 11—Confiscation of property, when can be ordered.*—Forfeiture of property can be ordered only in cases where there is a conviction and is restricted to property belonging to convicted persons. **5 P.R. 1898 Cr.**

(73)—*Ss. 10, 11—One of the accused examined as a witness against others.*—Where the police, in making a search under Act III of 1867, were merely trespassers, owing to the warrant of search not being a legal one, *held*, that one of the co-accused could not be examined as a witness, as the entry into the house was not under the provisions of the Act. **1 A.L.J. 115.**

(74)—S. 11—*See* Nos. 72, 73, *supra.*

(75)—*Tharra.*—A *tharra*, part of a private house by the side of, but outside, a public street, is not a public place. **11 P.R. 1890 Cr.**

(76)—The accused were found to have gambled in an open piece of ground outside a town and far away from the road. Though, in general, people were allowed to make use of the place without interference, it had not been dedicated to the public. It was, further, the private property of a particular individual. The

1.—Imperial Acts—continued.

Act III of 1867 (Public Gambling)—*continued.*

accused were convicted of an offence under s. 13 of the Act. *Held*, under the circumstances, the conviction could not stand, the reason being that the land had not been dedicated to the public. **9 P.R. 1905 Cr. = 2 Cr. L.J. 46 = 123 P. L.R. 1905.** (17 P. R. 1882 Cr., 8 C.W.N. 592, 31 C. 542, *R.*)

(77)—*Gambling in a grove.*—A person found gambling in a grove which is private property cannot be convicted under s. 13, as that section only refers to gambling in a public street, place or thoroughfare. **1 A.L.J. 129.**

(78)—Gambling in a zamindar's grove near a village, the gambling taking place off the foot-path running through the grove and commonly used by the tacit permission of the zemindars as a public way, was not gambling in a "public place" within the meaning of s. 13 of Act III of 1867. **A.W.N. 1904, 92.**

(79)—*What are public places—Kwin.*—A "kwin," or field from which the crops have been reaped, is a "public place" within the meaning of s. 13, Act III of 1867, as amended by s. 6, Act XVI of 1884. **L.B.R. (1872—1892), 317.**

(80)—*Chabutra of a temple.*—The *chabutra* of a temple, to which all classes of the public except the lowest classes have access, is a public place within the meaning of s. 13 of the Act. **A.W.N. 1895, 127.**

(81)—*Fighting cocks not instruments of gaming.*—Fighting cocks are not instruments of gaming within the meaning of s. 13 of the Act. **L.B.R. (1872—1892), 407.** (L.B.R., 1872—1892, 317, *F.*)

(82)—*Fighting birds, bulls, or any other animals.*—Fighting birds, bulls, or any other animals are not "instruments of gaming," and Magistrates cannot order their destruction. **L.B.R. (1872—1892), 317.**

(83)—*Tossing for pice—Instrument of gaming.*—An instrument of gaming means an implement devised or intended for that purpose. Coins are not instruments of gaming within the meaning of s. 13 of the Gambling Act. In this case, a conviction for tossing for pice on a public road was set aside. **L.B.R. (1872—1892), 155.** (6 B. 19, *F.*)

(84)—*Bullock race not an offence under the Act.*—Holding a bullock race and betting thereon is not an offence punishable under s. 13 of the Gambling Act. **L.B.R. (1872—1892), 541.**

(85)—*Hindu temple.*—A Hindu temple does not fall under the definition of "place," although the temple is situated in a thoroughfare and can be looked at from the road. **13 P.R. 1882 Cr.**

(86)—"*Public place*"—*Meaning.*—A place to which persons are in the habit of going, even without having any strict legal right to do so, is a public place. **S.C. 91, Oudh.**

1.—Imperial Acts—continued.

Act III of 1867 (Public Gambling)—*continued.*

(87)—The words "any public street, place or thoroughfare" in s. 13 of Act III of 1867 does not include the verandah of a private house facing such street, place, or thoroughfare. **Colm. Dig. Cr. 1 of 1871.**

(88)—A "public place" is a place appropriated to the use of the public. A place near a public road and exposed to public view is not a public place. **17 P.R. 1882 Cr.**

(89)—*What are not public places—Verandah attached to a room.*—A verandah attached to the room of a private house, looking on an alley, is not a "public place" within the meaning of s. 13. **A.W.N. 1881, 17.**

(90)—*The chabutra of a shop.*—The *chabutra* of the shop of one of the accused, which was a part of his own premises, is not a "public place" within the meaning of s. 13 of the Act. **A.W.N. 1881, 8; A.W.N. 1887, 8.**

(91)—*Gambling when punishable.*—Gambling is not punishable under s. 13 of the above, if it is not shown to have been carried on in any public street, place or thoroughfare. **S.C. 63, Oudh.**

(92)—Gambling is not ordinarily punishable as an offence. It is only so punishable when carried on in a common gaming house, or in a public street or place. **3 N.W.P. 1.**

(93)—Gambling is not punishable by law, unless it be carried on in public places or thoroughfares or in common gaming-houses. **3 N.W.P. 134.**

(94)—*Magisterial proceedings against persons not apprehended by the police on the spot.*—Although a Magistrate is not restrained from trying an offence punishable under s. 13 of the Act when the police have failed to exercise the power of arrest without warrant conferred upon them in respect of offences punishable under s. 13, yet it is not indiscreet and ill-advised for a Magistrate to issue a warrant of arrest against a person found gambling, who was apprehended by the police on the spot. **L.B.R. (1893—1900), 231.**

(95)—*Money found with gamblers—Confiscation of instruments of gaming.*—Though a Magistrate is empowered by s. 13 to order any instruments of gaming that may have been seized by the police to be destroyed forthwith, he is not authorized to confiscate all the money the gamblers may have about them. **S.C. 63, Oudh.**

(96)—*Forfeiture of money and payment of reward.*—In convicting the accused under s. 13 for gambling in a public thoroughfare, *held*, that the Magistrate was not competent to order the forfeiture of money found on the spot, and to direct the payment of certain rewards out of the fine. **18 P.R. 1891 Cr.**

(97)—On a conviction under s. 13, the Magistrate may order all instruments of gaming found in a public place, or on the

1.—Imperial Acts—continued.

Act III of 1867 (Public Gambling) – *concluded.*

persons of those arrested, to be forthwith destroyed, but that section contains no provision such as is found in s. 8, authorising the forfeiture of the money seized. **26 A. 270.**

(98)—*Order for award to Police.*—An order for award to the Police Officer, who arrested, of half the fine imposed under s. 13, Act III of 1867, is illegal. **Colm. Dig. Cr. 93 of 1877.**

(99)—*Fine and imprisonment.*—Under s. 13 of Act III of 1867, it is not legal to impose double punishment of fine and imprisonment. **25 P.R. 1880 Cr.**

(100)—*See* ARREST, L.B.R. (1893 - 1900), 256.

(101)—*See* COCK-FIGHTING, L.B.R. (1872—1892), 163.

(102)—*See* SECURITY FOR GOOD BEHAVIOUR, A.W.N. 1906, 13 = 3 Cr.L.J. 91.

(103)—*See* Nos. 28, 43, *supra.*

(104)—S. 14—*See* No. 27, *supra.*

(105)—S. 15—*See* Nos. 29, 32, 44, *supra.*

(106)—*S. 16—Fine—Payment out of it to police officer for his efforts.—Held* that a Magistrate was not competent to order payment of a portion of the fine imposed upon the accused, on conviction under s. 13, to the police officer for his efforts in the case. **2 P.R. 1870 Cr.**

(107)—*See* Nos. 28, 30, *supra.*

Act XII of 1867 (Presidency Jails).

[REP., ACT V OF 1871.]

—*S. 14—Procedure on warrants.*—Where a prisoner was arrested by a sheriff under a writ of *Ca., sa.*, it was held that it was necessary to bring him before the Court without delay, under this section. **2 Ind. Jur. N.S. 340.** [*Doubted*, 7 C. 421, 12 C. 629.]

Act XXI of 1867 (Licensing Professions and Trades).

[REP., ACT IX OF 1868.]

—*S. 15—Imprisonment in default of payment of fine.*—Where a Magistrate sentenced a person, who had neglected to take license, under the above section of the Act and Act XXIX of 1867, s. 3, to pay a fine of ten rupees, and, in default of payment, to suffer seven days' simple imprisonment, held that so much of the sentence as awarded imprisonment should be reversed as the trying Magistrate had, under the Act, no power to make such an order. **5 B.H.C. Cr. 44.**

Act XXV of 1867 (Press and Registration of Books).

[REP. IN PART, ACT XIV OF 1870; REP. IN PART AND AMENDED, ACT X OF 1890; ACT XII OF 1891. DECLARED IN FORCE—THROUGHOUT BRITISH INDIA, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT

1.—Imperial Acts—continued.

Act XXV of 1867 (Press and Registration of Books)—*continued.*

XV OF 1874, S. 3; IN THE SANTHAL PARGANAS, REG. III OF 1882, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN UPPER BURMA GENERALLY (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

See ACT XX OF 1847.

(1)—*Copyright whether infringed by translation.*—A person by translating a book into another language does not render himself guilty of an infringement of copyright. **14 B. 586.** [*F.*, 19 B. 557.]

(2)—Translations are not copies; and a person by translating a book does not infringe the author's copyright. **19 B. 557.**

(3)—*Ss. 1, 3 and 12—"Publisher," who is—Penal Code. ss. 484, 486—Cr.P.C. (1882), s. 439—Revisional powers of High Court.*—In this case, the accused caused to be printed copies of certain books, which previously had been printed at the Government Press, Allahabad, and offered them for sale and sold some of them. Some of these books did not contain the name of the printer and the place of printing, or the name of the publisher and the place of publication. Other books had printed upon them the words "Government Press, Allahabad." *Held*, that, in respect of the former set of books, the accused was properly convicted of an offence under s. 12 of the Act, for a man who causes a book to be printed and offers it to the public for sale is a publisher within the meaning of ss. 3 and 12 of the Act. *Held* further, that, in respect of the latter set of books the prisoner was guilty of an offence under s. 12, but not under s. 486, I.P.C. The High Court is competent, in revision, to alter a finding of conviction, maintaining the sentence. **A.W.N. 1887, 95.**

(4)—*S. 3—Scope of the section.*—The intention of the section, in requiring that the name of the printer and the place of printing and the name of the publisher and the place of the publication should be printed legibly on every book or paper was to inform the public who the responsible printer or publisher was and to convey that information on the face of the paper. Words, which contained no such information, would not amount to a sufficient compliance with the requirements of s. 3. The intention was not simply to provide some facility or other, but to provide a specific facility on the face of the paper. Where a newspaper was printed and published bearing the following words, "printed and published at Cochin for the Malabar Economic Company at the said Company's Goshree Vilasam Press," *held*, that these words were not a sufficient compliance with the requirements of s. 3, inasmuch as there was no name of the printer as required by the Act. *Per* Collins, C.J., and Muttusamy Ayyar, J. Under s. 3 of Act XXV of 1867, it is not necessary that the actual name of the printer should be given. So long as a name or

I.—Imperial Acts—continued.

Act XXV of 1867 (Press and Registration of Books)—*continued.*

style, which sufficiently designates the printer is given, it does not matter that it is not the actual name of the printer. It is sufficient that it is the name under which he chooses to do business and is generally known. Unless it can be said that the words do not convey to an ordinary reader the information required by the Act, the conviction for a non-compliance of the provisions of s. 3 cannot be supported. *Per* Shephard, J. **16 M. 443=3 M.L.J. 201=1 Weir 862.**

(4-*a*)—*See* No. 3, *supra*.

(5)—*Ss. 3 and 12—Meaning of "publisher"—Booksellers.*—The word "publisher" has been used in the Act in a restricted sense, and does not include a vendor of a newspaper or book. S. 12 read with s. 3 clearly indicates that such persons are not included in the word "publisher." for s. 3 enjoins the printing of the names of the printer and publisher. **23 C. 414.**

(6)—*Names of printer and publisher, not printed as such*—Where a copy of a vernacular newspaper contained the following words printed on the margin of the front page "*ba ihtimam Ram Saran Datt printer. Hindustan Steam Press, Lahore men, Lala Bhawani Das Manager ke liye chapa.*" *Held* that they do not contain a clear intimation as to the publisher, as required by s. 3 of Act XXV of 1867. The rule in s. 3 of the Act requires that every paper printed and published in British India shall have legibly printed on it the name of the printer and the place of printing and the name of the publisher and place of publication, as such. An omission to comply with s. 3 is punishable under s. 12. Ss. 3 and 12 do not deal with intention. Printers and publishers cannot be allowed to select for themselves the description to be used in professing to comply with the Act, but they must use the descriptions prescribed by the Act. **5 P.R. 1909 Cr.=15 P.W.R. 1909=10 Cr. L.J. 195=2 Ind Cas. 978.**

(7)—*S. 4—Change of place of printing press—New declaration.*—The Act does not require a new declaration in cases where a press, as to which the printer has made the declaration prescribed by s. 4, is changed to another locality within the same local jurisdiction as the former place. **9 P.R. 1889 Cr.**

(8)—*Ss. 4, 5, 13—Offence of keeping printing press without making required declaration, if triable summarily—Necessity for a new declaration under s. 4, on change of place of printing.*—Where an accused person convicted on a summary trial of an offence under s. 13, Act XXV of 1867, had removed his press, as to which he had made the declaration prescribed by s. 4 of the Act, from the building, in which it was originally kept, to another building and had not made a fresh declaration under s. 4 as to the new premises, on the ground that no fresh declaration was necessary, *held*, that the offence was not triable summarily, and that

I.—Imperial Acts—continued.

Act XXV of 1867 (Press and Registration of Books)—*continued.*

where the new place of business is within the same local jurisdiction as the former place, a fresh declaration was unnecessary; there is no clause in s. 4 of the Act (corresponding to the provision in s. 5) requiring a new declaration as often as a change of place takes place. **9 P.R. 1889 Cr.**

(9)—*S. 5—Penal Code, ss. 499 and 500—Defamation by newspaper—Liability of printer and publisher—Presumption—Burden of proof.*—Although s. 499 requires proof of publication in order to support a conviction for defamation, the intention of Act XXV of 1867 was to constitute the declarations made by a person that he was the printer and publisher of a newspaper into *prima facie* evidence of publication and to throw on the accused the burden of showing that the actual publisher of the libel was not the person mentioned in the declaration. The presumption could be rebutted if such person showed that he entrusted in good faith the temporary management of the newspaper to a competent person during his absence, and that the libel was published without his authority, knowledge or consent. **9 M. 387=1 Weir 576.** [*R.*, 22 B. 152].

(10)—*See* No. 8, *supra*.

(11)—*S. 7—Declaration by printer—Liability of printer.*—A person, who subscribes to the declaration under the Printing Presses and Newspapers Act, must be presumed, under this section, to be cognisant of all that he was printing and publishing and, in the absence of any evidence to the contrary, his liability in the matter cannot be gainsaid. **7 C.L.J. 49 = 7 Cr. L.J. 10=35 C. 141=2 M.L.T. 500.**

(12)—*Liability of printer or publisher for seditious matter appearing in his newspaper.*—This section, which applies both to civil and criminal proceedings, makes the printer or publisher responsible for whatever may appear in a newspaper, whoever the writer of the article in it may be; and, therefore, a prosecution may proceed against the printer, unless he can prove absence from the newspaper office in good faith and without knowledge that the seditious articles would be published during his absence. But it is not absence in good faith for a printer, to go away knowing very well what is going to happen in his absence, and for the purpose of shirking his liability. **35 C. 945.**

(13)—*Responsibility of printer—Publication of seditious matter—Want of knowledge or intention, or absence not a good defence.*—The registered printer of a paper, so long as he continues such printer, cannot escape from criminal liability for publication therein, of a seditious article, by the plea that he was temporarily absent from the station when the article was printed, or that he was ignorant of the contents thereof, or that he had no intention of committing any offence. **1 P.R. 1905 Cr.=2 Cr. L.J. 31=69 P.L.R. 1905.**

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1.—Imperial Acts—continued.

Act XXV of 1867 (Press and Registration of Books)—*concluded.*

(14)—*See* PENAL CODE, s. 124-A, 5 M.L.T. 415 = 32 M. 338 = 9 Cr. L.J. 506=2 Ind. Cas. 193.

(15)—S. 12—*See* Nos. 3, 5, 6, *supra.*

(16)—S. 13—*See* No. 8, *supra.*

(17)—S. 18—*See* ACT XX OF 1847, 9 C.W. N. 591=1 C.L.J. 278.

Act XXIX of 1867 (Amending Act XXI of 1867).

[REP., ACT IX OF 1868.]

See ACT IX OF 1868.

See ACT XXI OF 1867.

(1)— *S. 3—Illegal assessment—Jurisdiction of Criminal Courts.*—If a person thinks that he has been illegally assessed or assessed twice over for the same period with income and license tax, his remedy is first to pay the tax and then to take proceedings in the Revenue Department for its refund. Proceedings can only be taken in the Criminal Court, when a person fails or refuses to take out or pay for a license. The only points which the Magistrate is competent to consider, in such proceedings, are whether the accused has been assessed for license tax, whether he has been served with the prescribed notice and whether, thereupon, he has failed to take out license. He is not competent to enquire whether the assessment has been rightly or wrongly made. **29 P.R. 1868 Cr.**

(2)—*Person once fined, if liable to further fine or demand.*—Under the above section, a person once fined for not taking out a license is not liable to a second fine or to any further demand for the tax. **9 W.R. Cr. 64.** [*R.*, 18 W.R. Cr. 11, 7 C. 385.]

(3)-- *See* ACT XXI OF 1867, S. 15, 5 B.H.C. Cr. 44.

(4)—*S. 15—Fine, amount of—Examination of accused.*—Under the above section, the fine to be imposed for non-payment of the tax cannot be less than the amount stated in the notice. A Deputy Magistrate is bound to examine the accused under s. 266 of the Code of Criminal Procedure (1861), in answer to the charge brought against them. **9 W.R. Cr. 62.**

Act I of 1868 (General Clauses).

[REP., ACT X OF 1897.]

See ACT X OF 1897.

(1)—*S. 1, cl. 13—Village Munsiff, whether Magistrate—Evidence Act, s. 26.*—The word "include" in cl. 13 and other clauses of s. 1 of Act I of 1868 is intended to be enumerative, and not exhaustive. When it is intended to exhaust the significance of the word interpreted, the word "mean" is used. Therefore, there is nothing in Act I of 1868 to restrict the

1.—Imperial Acts—continued.

Act I of 1868 (General Clauses)—*continued.*

meaning of the word 'Magistrate' to a Magistrate within the meaning of the Criminal Procedure Code in force at the date of its enactment. The provisions of s. 26 of the Evidence Act are to the same effect. A Village Munsiff in the Madras Presidency is, therefore, a "Magistrate." **2 M. 5=2 Weir 123.** [*R.*, 22 B. 235; *D.*, 17 B. 485.]

(2)—*S. 2 (8)—Upper Tanamal—British India.*—Upper Tanamal is an integral part of British India within the meaning of clause 8 of s. 2 of Act I of 1868. **6 P.R. 1878 Cr.**

(3)—*S. 2 (18)—Crim. Pro. Code, 1882, s. 488—Imprisonment, nature of.*—Looking to the terms of s. 2 (18) of the General Clauses Act, "imprisonment" in s. 488, Cr. P. C. (1882), may be either "simple or rigorous." **9 A. 240=7 A.W.N. 54.** [*R.*, U.B.R. (1892—1896), Vol. I, 70.]

(4)—*See* ACT XXII OF 1881, s. 35, 17 P.R. 1889 Cr.

(5)—*S. 5—Application of.*—S. 5 of the General Clauses Act applies only to offences and sentences passed under Acts which came into force after the General Clauses Act came into force. **L.B.R. (1872—1892), 473.**

(6)—*Cr. P.C., Act XXV of 1861, ss. 21, 61—Fines.*—S. 5 of the General Clauses Act does not apply to fines levied under Regulations and Acts passed prior to the passing of that Act. But s. 21 of the Cr. P.C., 1861, has the effect of making s. 61 thereof applicable to the levy of such fines whether imposed under the Penal Code or under any special or local law, unless such law prescribed a method of levying of such fine. **Rat. Un. Cr. C. 57=Cr. Rg. 5—10—71.**

(7)—*See* ACT IX OF 1869, 7 B.H.C. Cr. 76.

(8)—*See* ACT IX OF 1890, s. 113, Rat. Un. Cr. C. 871.

(9)—*See* BURMA ACT III of 1889, s. 13, L.B.R. (1893—1900), 141.

(10)—*See* MADRAS ACT I of 1866, s. 22, 8 M. 350.

(11)—*S. 6, Crim. Pro. Code (1882), s. 555—Person charged with offences, some triable by jury, others by assessors under the Code of 1872—Change of procedure, effect of, on pending trial.*—Where a person was tried, under the Code of 1872, by a Sessions Court, with the aid of assessors on charges some of which were triable by assessors, others by jury, and before the conclusion of the trial, the Code of Criminal Procedure, 1882, making such cases triable by jury, came into force, *held*, that reading s. 6 of the General Clauses Act with s. 555, Crim. Pro. Code, 1882, the functions of the assessors appointed at the commencement of the trial should continue to be those of assessors and were not converted into those of jurors and that the Judge was wrong in having treated the case as having been tried by a jury. **6 M. 336.**

1.—Imperial Acts—continued.

Act I of 1868 (General Clauses)—*concluded.*

(12)—*Offence under Stamp Act, X of 1862.*—An offence committed under the Stamp Act (X of 1862), while it was in force (but since repealed), is still an offence and may be tried under that Act. **1 Weir 781=7 M.H.C. App. 8.**

(13)—*Repeal of a repealing enactment, effect of.*—The mere repeal of a repealing Act or the repealing portion of a repealing Act does not, by itself, revive the original Act or the repealed portion thereof. **1 Weir 781=7 M.H.C. App. 8.**

(14)—*See* ACT XVII OF 1862, 1 A. 599 and 2 C. 225.

(15)—*See* ACT VIII OF 1871, 18 W.R. Cr. 3.

Act IX of 1868 (Taxing Professions and Trades).

[REP., ACT IX OF 1869.]

See ACT IX OF 1869.

(1)—*Ss. 13 and 17—Dismissing complaint owing to want of evidence that accused's names were included in list—Procedure.*—A Magistrate was held to have acted rightly in dismissing a complaint under s. 17 of the Act, because there was no evidence that the names of the accused were included in the list mentioned in s. 13. In prosecutions under this Act, a Magistrate must proceed in the manner laid down in Ch. XV of the Code of Criminal Procedure (1861), and must require proof of all the facts which go to constitute the offence. **11 W.R. Cr. 56.**

(2)—*S. 17—Fine, amount and remission of—License—Service of notice.*—A Magistrate is bound, under the above section, to impose on every offender, on conviction for not taking out a license, after notice served on him, a fine equal to twice the sum mentioned in the notice, and cannot remit any portion of the fine. The service under the Act must be personal, wherever personal service is practicable. **2 B.L.R. App. 40=11 W.R. Cr. 13.**

(3)—*Jurisdiction of Collector where penalty levied.*—If it is sought to recover the penalty described by s. 17 of Act IX of 1868 from any person who omits to take out a certificate, the Collector, who issued the notice, should prefer a complaint before a Magistrate, but should not prefer the complaint before himself in his capacity as a Magistrate. **4 M.H.C. App. 61.**

(4)—*See* No. 1, *supra.*

Act XIV of 1868 (Contagious Diseases).

[REP., ACT IX OF 1888.]

(1)—*Common prostitute registered under the Contagious Diseases Act—Right to have name removed from the register on desire to discontinue business.*—Every woman registered as a common prostitute under the Contagious Diseases Act has an absolute right to have her name removed "from the book," if she is desirous of ceasing to carry on such business; and any rule or portion of a rule, purporting to be made under the Act, which raises any obstacle to the exercise of such right is *ultra vires.* **6 C. 163=7 C.L.R. 197.**

1.—Imperial Acts—continued.

Act XIV of 1868 (Contagious Diseases)—*cld.*

(2)—*S. 11—Prosecution of prostitute for non-attendance for examination—Plea of application for removal of name from register.*—A woman prosecuted under s. 11 of the Act is not precluded from pleading that she has ceased to carry on the business of a common prostitute and that she has taken the proper steps to have her name removed from the register. **6 C. 163=7 C.L.R. 197.**

(3)—*No appeal.*—There is no appeal from a conviction under the above section for a registered prostitute neglecting to appear for examination. **17 W.R. Cr. 11.**

(4)—*Ss. 11 and 21—Registration of prostitutes when to be made.*—Under this Act, the police are not empowered to put a woman on the register of "common prostitutes" against her will. The penalty prescribed by s. 11, for disobedience of any of its rules is for a "woman who *voluntarily* registers herself as a common prostitute." The mere possession of a registration ticket, under the Act, does not necessarily make the holder of it a registered public prostitute under it, or the rules framed by the Government under the Act. The registration must be voluntary, and the mere fact that a woman appears in answer to a summons issued by the police, and answers questions put to her, is not sufficient to bring her within the Act. **12 W.R. Cr. 55; 3 B L.R. Cr. 70.**

(5)—S. 21—*See* No. 4, *supra.*

Act VIII of 1869 (Code of Criminal Procedure Amendment).

[REP., ACT X OF 1872.]

See CODE OF CRIMINAL PROCEDURE.

See CRIM. PRO. CODE (1898), ss. 436, 437, 438 (1); 7 B.H.C. Cr. 72.

S. 445-A—*See* PENAL CODE, s. 75, 31 P.R. 1872 Cr.

S. 445-B.—*See* COMMITMENT TO SESSIONS COURT, 30 P.R. 1869 Cr.

See ACT XVIII OF 1854, s. 25, 7 M.H.C. App. 8.

See CONFESSION, 8 B.H C. Cr. 103.

Act IX of 1869 (Income-Tax).

[REP., ACT XVI OF 1870.]

(1)—*Income-Tax Act IX of 1869 and XXIII of 1869—General Clauses Act I of 1868, s. 5—Imprisonment in default of fine.*—The Income-Tax Act being one passed after Act I of 1868, s. 5 of the latter authorizes the infliction of imprisonment in default of payment of fine for not paying the additional tax imposed on a person by the Income-Tax Act. **7 B.H.C. Cr. 76**

(2)—*Ss. 3, 25—Non-payment—Jurisdiction—Magistrate.*—Under ss. 3 and 25 of the Income-Tax Act, a subordinate Magistrate of the second class has no jurisdiction to convict a person for non-payment of the income-tax. **Bor. Cr. C. 37.**

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1.—Imperial Acts—continued.

Act IX of 1869 (Income-Tax)—*continued.*

(3)—*S. 19—False statement—Penal Code, s 193.*—The accused, who was assessed with an income-tax of Rs. 500-0-0, objected to the tax on the ground that the tax which he paid for the previous years was only Rs. 225, that there was no increase in the income in the year in question. When asked to produce evidence in support of his statement, he withdrew his objection. His books, when examined, showed that the accused had lent between Rs. 5,000 and Rs. 6,000 to various villagers, but there was nothing to show the rate of interest. *Held*, that, as the accused had failed to prove his allegation that his income was not more than Rs. 225, and that as his books showed that he had lent a large sum for interest, the usual rate ranging between 12 and 24 per cent, the accused was rightly convicted under s. 193. **7 P.R. 1870 Cr.**

(4)—*Power of Tahsildar to hear petition under s. 19—False statements in that petition.*—*Held*, that a Tahsildar was not an officer empowered to receive a petition under s. 19 of Act IX of 1869, and, therefore, a person making a false statement in such a petition cannot be convicted of perjury. **5 M.H.C. 326.**

(5)—*Ss. 24, 25 - Conviction under the section—Appeal—Duty of Appellate Court.*—Although there are grounds for holding that the Legislature intended that convictions under ss. 24 and 25, Act IX of 1869, should be summarily disposed of by the Magistrate, the right of appeal conferred by the Crim. Pro. Code is not taken from persons convicted under the Income-Tax Act. It is not competent to a Judge, on appeal from a conviction under ss. 24 and 25 of Act IX of 1869, to reverse the conviction merely because he regards it as one of hardship, nor has he to determine whether or not the failure to pay the tax was in pursuance of an intention to avoid payment. Where the tax-payer fails to pay the amount within the time specified by the notice, he is guilty of an offence within the terms of s. 25 of Act IX of 1869, and subsequent payment would not take the case out of the provision of s. 25. **2 N.W.P. 113.**

(6)—*Imprisonment in default of payment of fine—Competency of Magistrate to award.*—A Magistrate has no power under the above section to sentence to imprisonment in default of the payment of fine imposed for not paying the income tax. **14 W.R. Cr. 70.** [*F.*, 22 W.R. Cr. 51, 19 A. 462.]

(7)—*Appeal against fine to Sessions Court.*—No appeal lies to a Sessions Judge from the order of a Magistrate finding a defaulter under s. 25 of the Act. **14 W.R. Cr. 71.**

(8)—*See* Nos. 2, 5, *supra*

(9)—*Ss. 25, 27—Prosecution under s. 25—Collector's duty to institute prosecution.*—The provisions of s. 27 seem to imply that the Collector ought in each case to exercise his

1.—Imperial Acts—continued.

Act IX of 1869 (Income-Tax)—*concluded.*

discretion as to whether a prosecution should be instituted. The mere sending of the Tahsildar's report, containing an expression of the Collector's general desire to prosecute defaulters, cannot be held to tantamount to the institution of a prosecution at the instance of the Collector. **2 N.W.P. 113.**

(10)—S. 27—*See* No. 9, *supra.*

Act XI of 1869 (Land-Customs, Madras and Bombay).

[REP., ACT XI OF 1882.]

—*See* ACT XVIII OF 1879, ss. 13 and 14, 27 C. 1023=4 C.W.N. 389.

Act XV of 1869 (Prisoners' Testimony).

[REP., ACT III OF 1900].

(1)—*Applicability of Act—Evidence Act, s. 118—Conviction for theft—Subsequent trial of witnesses for receiving stolen property—Evidence of person convicted of theft.*—Two *sonars* A and B were convicted of theft and duly sentenced. R and G, who had given evidence as witnesses against them, were afterwards prosecuted under s. 411, I. P. C., in connection with the same property, and convicted on the evidence of A and B. *Held* (1) that the Prisoner's Testimony Act had no bearing on the point for decision and the two convicts were competent and compellable witnesses, there being no exclusion of them, nor privilege given them by law; (2) that, in the absence of any pardon or suggestion by any judicial authority of pardon, R and G had no privilege against prosecution or against the evidence of any admissible witness being used against them. Even if, as witnesses against A and B, they made full confessions of crime as being dishonest receivers, they would have no privilege, which can only be conferred by a special enactment of the Legislature as in the case of confessing Mamlatdars by Act XIV of 1839. **Rat. Un. Cr. C. 776=Cr. Rg. 41 of 1895.**

(2)—*S. 3—Convict—Attendance as accused.*—A Magistrate can, under s. 3 of Act XV of 1869, procure the attendance of a convict as an accused person without the intervention of the High Court. If the convict is in a jail in a District other than that in which he is required, the procedure to be adopted is under s. 3 of the Act. **Rat. Un. Cr. C. 66.**

(3)—*Ss. 3, 4, 7—Prisoners confined in jail within High Court's Ordinary Original Civil Jurisdiction—Power to take them out to answer charges*—No Court subordinate to the High Court has power to take away a prisoner, confined in a jail within the local limits of its Ordinary Original Civil Jurisdiction, to answer a criminal charge. **1 Weir 866.**

(4)—S. 4—*See* No. 3, *supra.*

(5)—S. 7—*See* No. 3, *supra.*

1.—Imperial Acts—continued.

Act XVIII of 1869 (General Stamps).

[REP., ACT I OF 1879.]

See ACT I OF 1872.

See ACT II OF 1899.

(1)—*Intention to evade duty.*—Omitting to stamp an instrument is not punishable under the Stamp Act, if there is no intention to evade payment of the proper duty. When a Court, before which an unstamped instrument is produced, decides the question of intention to evade payment, that decision is final. If the decision is against the party, the Collector is bound to prosecute, and in such prosecution the question cannot be again considered. And the debtor who acknowledges a debt in his creditor's book is liable, in such cases, to be prosecuted as a principal and the other party as an abettor. **23 P.R. 1876 Cr.**

(2)—*See* PENAL CODE, ss. 21 (9), 161, Rit. Un. Cr. C. 36.

(3)—*S. 3—Entries of loans in account books.*—Entries of loans in account books cannot be treated as bonds within the meaning of cl. 5, s. 3 of Act XVIII of 1869. **2 N.W.P. 453.**

(4)—*Ss. 20 and 29—Scope of the section—Intention to evade payment—Liability of donee under insufficiently stamped document.*—S. 20 of Act XVIII of 1869 has reference only to civil Court, and its provisions are purely fiscal and inapplicable to a criminal prosecution. Intention to evade payment is not an essential ingredient in the offences described by s. 29 of Act XVIII of 1869. A donee under an insufficiently stamped deed of gift is not liable to punishment under s. 29 of the Act. **6 M.H.C. App. 5=1 Weir 900.**

(5)—*Ss. 24, 29 and 44—Procedure.*—That which the Magistrate has to adjudicate upon, on a prosecution coming before him under s. 24 of the Stamp Act, is whether an offence against the Act has been committed, and whether the prosecution has been brought before him by the proper officer. Any person who makes himself liable by committing an offence within the terms of s. 29 and the following sections, and who is prosecuted by the Collector or other officer duly empowered, may be convicted by the Magistrate under s. 44. If an instrument called a promissory note or other document of that kind, and as such liable to the duty imposed by the Act, is not duly stamped, the person subject to penalty is the person who makes it, and not the person in whose favour it is made. The Magistrate of the District should not himself try a case in which he instituted the prosecution as Collector. **24 W.R. Cr. 1.** [*F.*, 3 C. 622; *R.*, 20 A. 440.]

(6)—*S. 28—Acceptor of unstamped receipt.*—The maker of an unstamped receipt is punishable, but not the acceptor unless it can be shown that he abetted the making of the receipt. **S.C. 33, Oudh.**

1.—Imperial Acts—continued.

Act XVIII of 1869 (General Stamps)—*cld.*

(7)—*S. 29—Art. 38 (=Art. 31 of Act of 1899)—Intention to evade s. 29.*—Where, out of lands bought by a certain person under a sale-deed, he transferred to the vendors some portions, getting, in lieu of such portions, certain other lands of the vendors and executed an instrument reciting the said transfer on a stamp paper of 8 annas, it was *held* that such document was an instrument of exchange chargeable under this article. For the purpose of ascertaining whether any and what penalty should be imposed, a Magistrate is bound to consider the question whether a person, prosecuted under this section, had any intention to defraud the Government by evading payment of stamp duty. **2 C. 399, F.B.** [*D.*, 12 M. 231.]

(8)—*See* Nos. 4, 5, *supra*.

(9)—*S. 43—Competency of prosecuting Magistrate to try offenders—Procedure.*—A Magistrate, authorised by the Collector of a district to prosecute offenders against the Stamp law, is not competent to try them for the same offence. The Collector should employ the Government Pleader or some person other than a Magistrate to conduct the prosecution under s. 43 of the Stamp Act. **3 C. 622=2 C.L.R. 179.** (24 W. R. Cr. Rul. 1, *F.*)

(10)—*Offence against the Stamp Act—Jurisdiction.*—As the Stamp Acts of 1869 and 1879 recognise the Collector as primarily responsible for the institution of prosecutions for offences against them, he should not himself try, in his capacity as a Magistrate, a person charged with an offence under that Act. **2 A. 803.** [*D.*, L.B.R. (1872-1892), 403.]

(11)—S. 44—*See* No. 5, *supra*.

(12)—S. 48—Sale of Court-fee stamps without a license.—*See* ACT I OF 1879, s. 68, 4 A. 216, F.B.

Act XXII of 1869 (Garo Hills).

[REP., ACT XIV OF 1874.]

S. 9—*See* LEGISLATURE, POWERS OF, 3 C. 63, F.B.=1 C.L.R. 161 and 4 C. 172 P.C.=5 I.A. 178=3 C.L.R. 197.

Act XXIII of 1869 (Income-tax).

[REP., ACT XVI OF 1870.]

—*See* ACT IX OF 1869, 7 B.H.C. Cr. 76.

Act VII of 1870 (Court Fees).

[REP. IN PART, ACT XIV OF 1870; ACT VIII OF 1871; ACT XIII OF 1889; ACT VIII OF 1890. REP. IN PART (IN PUNJAB), ACT XVII OF 1887. REP. IN PART AND AMENDED. ACT XX OF 1870; ACT VI OF 1889, S. 18; ACT XII OF 1891; ACT V OF 1908. AMENDED, ACT XV OF 1872, S. 2; ACT XIII OF 1875, S. 6; ACT VII OF 1889, S. 13; ACT XI of 1899, SS. 2, 3; ACT X OF 1901; ACT VI OF 1905; (IN PUNJAB), ACT XVIII OF 1884, S. 71 (AS AMENDED BY ACT XXV OF

1.—Imperial Acts—continued.

Act VII of 1870 (Court Fees)—*continued.*

1899, S. 6, AND BY ACT IX OF 1900 ; AMENDED (IN LOWER BURMA), ACT XI OF 1889, S. 84 ; ACT VI OF 1900, S. 47 ; (IN UPPER BURMA), REG. I OF 1896, S. 36 ; REG. V OF 1903 ; (IN BENGAL), BEN. ACT III OF 1898, S. 7.]

(*a*)—S. 18—*See* No. 36, *infra*.

(1)—*S. 19 (xvii)—Petition by accused in his defence—Charge of Court fee—Summons case.*—Clause (xvii) of s. 19 of the Court Fees Act exempts from the charge of a fee a "petition" by a prisoner, or other person in duress or under restraint of any Court "or its officers," but otherwise a petition from an accused person in his defence, at least in summons cases, appears to be liable to the payment of a Court-fee. **U.B.R. (1892—1896), Vol. I, 9.**

(2)—*See* SURETY BOND, Rat. Un. Cr. C. 126.

(3)—*Ss. 19 and 31—Court fees on complaint by Municipal Officers.*—S. 31 of the Court Fees Act must be read with s. 19. No process fee is leviable under s. 19 on complaints made by Municipal officers, and the accused are not liable to refund what was illegally levied from the complainants as such fees. **16 M. 423=1 Weir 723.**

(3-*a*)—S. 20—*See* No. 6, *infra*.

(4)—S. 20, cl. 2—*See* MAINTENANCE, 16 M. 234=2 Weir 252.

(5)—*Cattle Trespass Act (I of 1871), s. 22—Award of compensation and costs of the prosecution.*—The words in s. 22 of Act I of 1871, "compensation for the loss caused by seizure and detention" do not necessarily refer only to such special damage as is sustained by the seizure and detention prior to the release of the cattle, but also include all expenses necessarily incurred by reason of such seizure and detention, though it may be after such release. The language is wide enough to include the Court and process fees necessarily paid on account of the refusal to make compensation or refund the fine paid. Where a Magistrate, on convicting two persons under s. 22, Cattle Trespass Act, directed the accused to pay not only the sum which the complainant had paid to procure the release of his cattle, but also the Court and process fees paid by the complainant in prosecuting the case under s. 31, Court Fees Act, *held* that the order for costs could not be made under s. 31, Court Fees Act, but was valid under s. 22, Cattle Trespass Act. **7 M. 345 =1 Weir 713.** [*R.*, L.B.R. (1872-1892), 515, 22 C. 139, 11 C.P.L.R. 10 Cr.]

(6)—*Ss. 22, 20—Penal Code, s. 186—Nazir delegating the authority to execute a warrant to peon—Obstruction—Civil Pro. Code, s. 251.*—Under the law and practice obtaining in the mofussil, a Nazir has authority to execute processes addressed to him through his deputies and subordinates. He is not debarred from delegating the authority to execute a warrant of attachment to a peon. The endorsement of the peon's name on the back of the warrant is sufficient *prima facie* evidence of the delegation, although the authority might well be conferred in more clear and explicit terms. A person obstructing the execution of attachment by such peon will be guilty of an offence under s. 186 of the Penal Code. The Court Fees Act distinctly contemplates that the peons are to be employed, not only for the service of summonses, notices or orders, but for the execution of other processes, such as warrants of arrest or of attachment and distress. The number of the peons to be employed for the service and execution of processes in each district is, by s. 22, Court Fees Act, fixed by the District Judge and the remuneration is, by s. 20, settled by the High Court. The words "to be executed" in s. 251 of the Civ. Pro. Code (1882), would seem to imply that it was not intended that the "proper officer" should himself execute all warrants sent to him. There is nothing in the Code which indicates in any way that warrants of arrests, or of attachment or for distress and sale are to be executed by the "proper officer" in any manner different from the service of summonses. **22 C. 596.** [*F.*, 22 C. 759.]

(7)—*S. 31—Scope of the section.*—S. 31 of the Act is applicable to cases in which an offence other than the one, for which police officers may arrest without warrant, is the subject of complaint. **7 M. 345=1 Weir 713.**

(8)—*Applicability of the section to criminal trespass under s. 447, Penal Code*—Criminal trespass under s. 447, Penal Code, is an offence for which the arrest may be made without warrant, and, therefore, s. 31, Act VIII of 1870, does not apply. **1 Weir 721.**

(9)—*Magistrate bound to award complainant the cost of the fee paid on the complaint—Crim. Pro. Code (1882), s. 545.*—Under s. 31, Court Fees Act, a Magistrate is bound to award to a complainant the cost of the fee paid on the complaint and the fees paid for the processes, and to direct the accused to pay the amount in addition to the fine. He can recover the amount as if it were a fine, but has no authority to order imprisonment in default. If, in addition to these costs, he wishes to award compensation to the complainant, he can only do so by awarding it out of the fine imposed. **L.B.R. (1872—1892), 595.**

(10)—*Court fee and the process fee to be paid in addition to fine imposed.—Cr. P.C. (1898), s. 545.*—Under s. 31 of the Act, the payment of the Court fees on the complaint and of the process fees incurred by the complainant should be made *in addition* to the fine imposed and not *out of* the fine imposed on the accused. The other costs of the prosecution incurred by the complainant may, under s. 545, Cr. P.C., be ordered to be paid *out* of the fine. **1 L.B.R. 209.** (L.B.R., 1872—1892, 595, *F.*)

(11)—*Crim. Pro. Code, s. 545—Order for repayment of Court and process fees.*—In cases

1.—Imperial Acts--continued.

Act VII of 1870 (Court Fees)—*continued.*

to which s. 31 of the Court Fees Act applies, there ought to be an order for the repayment to the complainant of the fee paid by him in addition to the fine. The direction for the application of the fine, when realised, to the purposes indicated in s. 545, Crim. Pro. Code, is a matter of discretion with the Court. **1 Weir 722.**

(12)—*Conviction for cognizable offence—Court-fees of complainant—Crim. Pro. Code (1882), s.545.*—Where a person accused of a non-cognizable offeuce is convicted of a cognizable offence, the Court cannot legally direct him to pay the expenses incurred by the complainant under s. 31, Court Fees Act, as that section applies only to cases where the accused has been convicted of a non-cognizable offence. The expenses so incurred can, however, be awarded to the complainant as compensation under s. 545, Crim. Pro. Code. **Rat. Un. Cr. C. 397 = Cr. Rg. 56 of 1888.**

(13)—*Court-fee on power of attorney—Subsistence allowance and travelling expenses of witnesses—Accused not liable to be charged—Magistrate cannot award costs—Crim. Pro. Code (1898), s. 545*—An accused convicted under s. 352, I.P.C., and sentenced to pay a fine cannot be ordered to pay the costs of the prosecution. If the Magistrate desires to make the accused pay for the expenses for the prosecution, he should impose a sufficient fine out of which compensation can be awarded under s. 545, Crim. Pro. Code. Neither the amount of Court-fee on a power of attorney, nor the subsistence allowances and travelling expenses of witnesses could be charged to the accused. The former is not allowable under s. 31 of the Court Fees Act, and there is no authority for charging the latter. **U.B.R. (1892—1896), Vol. I, 7.**

(14)—*Complaint of cognisable offence—Order for costs.*—Where a complaint is made of a cognisable offence, a Magistrate is not competent to direct the accused, on conviction, to pay the amount expended by the complainant on Court fees. **1 Weir 721.**

(15)—*Order for repayment of fees.*—S. 31 permits the Magistrate to order repayment of fees in non-cognisable cases "in addition to the penalty imposed." Therefore, a Magistrate should not order the repayment of fees out of the fine realised. **1 Weir 723.**

(16)—*Crim. Pro. Code (1898), s. 545—Order for costs of the complainant.*—The duty of a Magistrate to order payment of Court and process fees under s. 31 of the Court Fees Act is imperative; whereas under s. 545 of the Code of Crim. Procedure, he has a discretion to award the expenses of the prosecution or to refuse to do so. It follows that s. 545 of the Crim. Pro. Code must be taken to exclude those expenses in regard to which the Court has no discretion. A Magistrate, on convicting a person and sentencing him to pay a fine, ordered the accused to pay the complainant's

1.—Imperial Acts—continued.

Act VII of 1870 (Court Fees)—*continued.*

costs of the prosecution. The Magistrate issued a warrant for a collection of a sum of Rs. 2-4, Court and process fees paid to the complainant, and Rs. 10 paid to a medical officer for a certificate and for giving evidence in the case, from the accused. *Held*, that the order of the Magistrate, as regards the Court and process fees, was properly made under s. 31 of the Court Fees Act, but that the order as to Rs. 10 was unsustainable, for, although the medical officer's fees were expenses properly incurred in the prosecution, they could only be awarded to the complainant out of the fine levied from the accused and could not be levied from the accused in addition to the fine. **24 M. 305 = 2 Weir 722.**

(17)—*Order to pay fine under section—When payable to complainant under s. 144, Crim. Pro. Code of 1861 (s. 545 of 1898).*—A fee, which a Court may order to be repaid to a complainant under s. 31, Court Fees Act, is an integral part of the sentence and must be treated as a fine imposed by the Court under s. 144, Crim. Pro. Code, 1861; and such fines must be in deposit pending an appeal, where an appeal lies. **5 M. H.C.App. 28 = 2 Weir 723.** [*F.*, 22 M. 153 = 1 Weir 724; *D.*, 26 M. 421 = 2 Weir 488.]

(18)—*Order to repay fees.*—An order to repay the fees, under s. 31, Court Fees Act, is an integral part of the sentence, and the fee should be treated as a fine imposed by the Court. **1 Weir 724.** [*F.*, 22 M. 153 = 1 Weir 724; *D.*, 26 M. 421 = 2 Weir 488.]

(19)—*Crim. Pro. Code (1882), s 423, cl.(b)—Order of Appellate Court awarding further costs, if fine.*—Where a Magistrate convicting the accused persons directed, out of the fines imposed upon them, the payment of Rs. 2 to the complainant as process fees, and, on appeal, the Deputy Magistrate directed the accused to pay a further sum in addition to the fine already imposed on them as being the expenses incurred by the complainant for process fees, etc., under s. 31 of the Court Fees Act, *held*, that, an order to pay a fee under s. 31 being an integral part of the sentence, such fee should be treated as a fine imposed by the Court and the Deputy Magistrate had, therefore, enhanced the sentence which was illegal. **22 M. 153 = 1 Weir 724.** [*Diss.*, 26 M. 421, 29 M. 188.]

(20)—*Fees ordered to be repaid under the section, nature of.*—The fees ordered to be repaid under s. 31, Court Fees Act, are not fines within the meaning of s. 413, Crim. Pro. Code. Nor can they be held to be fines, in default of payment of which, imprisonment can be awarded under s. 33, Crim. Pro. Code. **1 Weir 724.**

(21)—*Crim. Pro. Code (1898), s. 423—Conviction of two persons with order to pay Court and process fees in equal shares to the complainant—Acquittal of one of them on appeal—Enhancement of sentence.*—Where two persons were sentenced and were also ordered to pay a certain sum in equal proportion on account of Court and process fees and, on appeal, the Magistrate altered

1.—Imperial Acts—continued.

Act VII of 1870 (Court Fees)—*continued.*

the conviction in the case of one of them, but confirmed the sentence, and quashed the conviction of the other, the whole amount of the Court and process fees being ordered to be paid by the person whose conviction was confirmed, *held*, that the action of the appellate Magistrate was legal under s. 423, cl. (*b*), Crim. Pro. Code, and it did not amount to an enhancement of sentence within the meaning of s. 423 (*b*). Under s. 31, cl. 4 of the Court Fees Act, the fees ordered to be repaid under the section are to be recovered as if they were fines imposed by the Court, but there is no warrant for treating the same as part of the fine imposed as a punishment for the offences. **26 M. 421 = 2 Weir 483.** (5 M.H.C. App. 28 = 22 M. 153, *D.*)

(22)—*Crim. Pro. Code (1882), s. 413—Order directing the accused to pay court fee, if a fine.*—An order under s. 31 of the Court Fees Act directing an accused person to pay the complainant the court fee paid on his petition is no part of the sentence so as to make it a sentence of fine within the terms of s. 413 of the Crim. Pro. Code. **20 C. 687.** [*F.*, 1 Weir 724 and *Appr.*, 29 M. 188.]

(23)—*Two accused—Order for refund of fees on one only.*—Where two persons are convicted of an offence, the Magistrate cannot order one only of the two persons to refund the fee paid on the petition of complaint. The repayment should be ordered to be made by both jointly. **Rat. Un. Cr. C. 61 = Cr. Rg. 11—1—72.**

(24)—*Sessions Court—Order for repayment to complainant.*—When a case to which s. 31 of the Court Fees Act applies is disposed of by a Court of Session, such Court and not the committing Magistrate is the proper authority to order re-payment to the complainant of the fee paid by him for his petition of complaint. **Rat. Un. Cr. C. 49.**

(25)—*Power of Appellate Court to order payment of fees.*—The fees under s. 31 should be awarded by the Court of First Instance. But a Court of Appeal cannot make such an order. But the High Court, in revision, can make the order that ought to have been made by the Court of the First Instance. **1 Weir 723.**

(26)—*See* ACT XIII OF 1859, s. 2, 6 Bom. L.R. 265.

(27)—*See* ACT XIII OF 1859, Rat. Un. Cr. C. 534 = Cr. Rg. 2 of 1891.

(28)—*See* ACT VII OF 1878, Rat. Un. Cr. C. 695.

(29)—*See* ACT XIII OF 1880, s. 18, 6 Cr. L.J. 124 = 4 L.B.R. 12

(30)—*See* ACT IX OF 1890, ss. 113, 132 and 133, U.B.R. (1892—1896), Vol. I, 300.

(31)—*See* APPELLATE COURT, 31 M. 547 = 5 M.L.T. 223 = 9 Cr.L.J. 83.

(32)—Court fees and process fees to be paid in addition to fine—*See* COSTS, L.B.R. (1872-1892), 616.

1.—Imperial Acts—continued.

Act VII of 1870 (Court Fees)—*concluded.*

(33)—*See* CRIM. PRO. CODE (1898), s. 423. 29 M. 188 = 3 Cr.L.J. 460.

(34)—*See* No. 3, *supra.*

(35)—*and sch. II, No. 1, cl. (b)—Complaint of seizure of cattle—Act III of 1857, s. 14.*—A complaint of illegal seizure and detention of cattle such as is referred to in s. 14 of Act III of 1857 is not an offence referred to in s. 31 and sch. II, No. 1, cl. (*b*) of the Court Fees Act. The complaint does not require a stamp, as the words "plain paper" in the section are not repealed by the Court Fees Act. **8 B.H.C. Cr. 22.**

(36)—*Ss. 31, 18—Complaint of offence of wrongful restraint—Order for Court fees, validity of.*—S. 31, Court Fees Act, does not apply to the offence of wrongful restraint, as the offence is an offence in which the police may arrest without a warrant, notwithstanding the fact that s. 18 makes specific mention of that offence. **1 Weir 721.**

(37)—*S. 34—Stamp Act, II of 1899, s. 69—Sale by thief of stolen stamps.*—The words "sells or offers to sell" in s. 69 of Act II of 1899, and s. 34 of Act VII of 1870, include the case of a thief, who exchanges a stolen stamp for a sum of money, although such person cannot give a legal title in regard to the stamp stolen by him. **24 M. 319 = 1 Weir 725.**

(38)—*Stamp given on promise that another of equal value would be returned—Transaction, whether amounts to sale.*—A mukhtear, not having any use for a Court-fee stamp of eight annas, which he had purchased for a client, transferred it to another client who promised to return him another Court-fee stamp of the same value. *Held*, that the mukhtear had not sold a stamp within the meaning of s. 34 of the Court Fees Act and could not be convicted under that section. **30 C. 921 = 7 C.W.N. 704.**

(39)—Sale of Court-fee stamps without a license.—*See* ACT I OF 1879, s. 68, 4 A. 216, F.B.

(40)—Sch. II, Art. 1 (B)—*See* MAINTENANCE, Rat. Un. Cr. C. 488.

(41)—*Sch. II, Art. 10—One wakalathnama by several persons—One case—Fee of eight annas only.*—Art. 10 of sch. II of the Act requires a fee of eight annas for each *mukhtearnama* or *wakalathnama* presented for the conduct of any one case to any of the Courts or officers mentioned in cl (*a*). The *mukhtearnama* or *wakalathnama* may be executed by one person or by several persons, but, if it is only for the conduct of one case, it only requires a fee of eight annas. **L.B.R. (1893—1900), 385.**

Act VIII of 1870 (Female Infanticide Prevention).

[AMENDED IN BOMBAY PRESIDENCY, AND DECLARED TO EXTEND TO THAT PRESIDENCY, BOM. ACT III OF 1897.]

1.—Imperial Acts—continued.

Act VIII of 1870 (Female Infanticide Prevention)—*concluded.*

—*S. 2—Rule VI of Rules framed by N.W.P. Government—Liability of heads of families.*—Though Rule VI of the Rules framed under s. 2, Act VIII of 1870, requires the *chowkidar* of a village to immediately report to the officer in charge of a police station, among other things, "also...on the occasion of his periodical visit to the police station other deaths, removals and arrivals," the last duty, *viz.*, of reporting "other deaths, removals and arrivals is, though it may be a duty cast upon him under s. 8 (3) (*f*) of Act XVI of 1873 (Village and Rural Police) not a duty cast upon him by the provisions of Act VIII of 1870 and Rule VI is not, on this point, consistent with the Act. The heads of proclaimed families are not bound, by any of the rules framed under the Act, to give information to the *chowkidar* regarding the departure of the women of their families. **6 A. 380.**

Act XI of 1870 (Indian Weights and Measures).

[REP., ACT XII OF 1873.]

—*S. 2—Act X of 1871, ss. 19, 63—Selling spirituous liquor retail*—Ser, *meaning of.*—S. 19 of Act X of 1871 provides that the quantity of country liquor, which unlicensed vendors may sell, should not be more than one "*Ser.*" Regarding the weight of one "*ser*," it was held that the weight of one *ser* as given in Act XI of 1870, s. 2, *viz.*, a weight of metal in the possession of the Government of India, which weight when weighed in vacuum is equal to the weight known in France as the "*Killogrammedes Archives*" was not very intelligible, and the contention of the Government that a *ser* was equivalent to 80 tolas, would not supersede the customary weight of a *ser* weight, which was 95 tolas. Therefore, when an unlicensed vendor was in possession of only 96 tolas of country liquor, *held*, that the excess of one tola over the local weight is not sufficient to warrant the presumption of the accused's guilt. **3 A. 404.**

Act XII of 1870 (Native Passenger Ships).

[REP., ACT VIII OF 1876.]

—S. 70—*See* MISCHIEF, A.W.N. 1908, 55=5 A.L.J. 159=7 Cr. L. J. 296.

Act XXVI of 1870 (Prisons).

[REP., ACT IX OF 1894.]

See ACT IX OF 1894.

(1)—*Act XXVI of 1870 and Reg. XIV of 1816—Power of Superintendent of jail to convict watchman for aiding escape of a prisoner.*—A Superintendent of a jail has no power under Act XXVI of 1870 to convict a night-watchman on a charge of aiding and abetting the escape of a prisoner. **4 N.W.P. 4.**

(2)—*Lock-up not a prison.*—A lock-up is not a prison within the meaning of Act XXVI of 1870. **L.B.R. (1872—1892), 596.**

1.—Imperial Acts—continued.

Act XXVI of 1870 (Prisons)—*concluded.*

(3)—*S. 3—Havalat, whether a prison.*—Held by Spankie and Oldfield, JJ. (Stuart, C.J., *dissenting*) that a *havalat* or lock up, in which prisoners under trial are confined, is a prison within the meaning of that term in s. 3 of the Act. **2 A. 301.**

(4)—*Ss. 45, 54—Taking food for an under-trial prisoner—Penal Code, s. 442—House trespass.*—Per Stuart, C. J.—Food is not an article within the meaning of s. 45. Per Stuart, C.J., and Oldfield, J. (Spankie, J., *dissenting*).—The act of conveying or attempting to convey food to a man confined in the *havalat* and under trial, does not amount either to house-trespass or to an offence punishable under s. 45 of the Prisons Act. **2 A. 301.**

(5)—*S. 47—Inspector-General of Prisons, acting as a Magistrate, bound to try under s. 260, Crim. Pro. Code (1882), and not summarily.*—One A, a prisoner in the Gorakpore Jail, and employed in some brick-fields outside the jail, attempted to escape but was re-captured. After a formal trial of a summary nature, he was sentenced by the Inspector-General of Prisons to receive 30 stripes under s. 47 of the Prisons Act. *Held* (1) that the offence committed was one punishable under s. 224 of the Penal Code and not under s. 47 of the Prisons Act, (2) that the offence was not triable summarily under s. 260, Cr. P. C., (3) and that the Inspector-General of Prisons acting as a Magistrate should try the case according to the procedure laid down in the Crim. Pro. Code, for the trial of warrant cases. **A.W.N. 1894, 176.**

(6)—S. 54—*See* No. 4, *supra.*

Act XXVII of 1870 (Indian Penal Code Amendment).

[REP. IN PART, ACT X OF 1872, REP. IN PART AND AMENDED, ACT XII OF 1891; ACT IV OF 1898. VIRTUALLY AMENDED—ACT VIII OF 1882; ACT X OF 1886, SS. 21 (1) AND 24 (1).]

—*S. 10—Sanction of Government—Lottery office.*—The sanction of the Local Government is necessary before a charge for keeping a lottery office under s. 10, Act XXVII of 1870, can be instituted. **15 W.R. Cr. 2=6 B.L.R. Ap. 98.**

—*Agreement to secure payment under* kuri—*Penal Code, s. 294-A.*—Where a number of persons subscribe, each a certain sum, by periodical instalments, with the object that each in his turn (to be decided by lot), shall take the whole subscription for each instalment, all such persons getting back the amount of their contributions, and the common fund being lent to each subscriber in turn, *held*, that the transaction was neither illegal in itself nor rendered so by s. 294-A, Penal Code. **22 M. 212.** (1 M.H.C. 448, *F.*)

—*Penal Code, s. 294-A—Lottery—Scope—"Publisher," meaning of.*—The words "any

1.—Imperial Acts—continued.

Act XXVII of 1870 (Indian Penal Code Amendment)—*concluded.*

such lottery " in s. 294-A mean any lottery not authorised by Government. It does not matter in the least, where a lottery is to be drawn, whether in British India or out of it. If it is one, "not authorized by the Government," any one who publishes such a proposal, as is therein contemplated, relating to it, renders himself liable to be punished under para 2 of the section. Both the person sending the proposal and also the proprietor of a newspaper publishing such proposal as an advertisement, are publishers within the meaning of the section and liable to be punished under it. Therefore, the proprietor of an Indian newspaper publishing an advertisement relating to a foreign lottery is liable to be punished under s. 294-A., I.P.C. **10 B. 97.**

Act I of 1871 (Cattle Trespass).

[AMENDED, ACT I OF 1891. SUPPLEMENTED, SS. 4 (*o*) AND 260 (1) (*m*), ACT V OF 1898].

See ACT III OF 1857.

„ CATTLE TRESPASS.

(0)—S. 8—*See* No. 20, *infra.*

(1)—*S. 10—Persons having power to seize cattle.*—Where an indigo factory supplies the seeds, pays for the labour of sowing, and gives compensation to raiyats growing indigo on their own land, but no advance in cash has been made, *held*, that, although the indigo is grown for the factory, a servant of the factory is not a person authorised under s. 10 of the Act, to seize cattle doing damage to the indigo. **9 C.W.N. 624=2 Cr. L.J. 345.**

(2)—*Ss. 10 and 20—Seizure of cattle, when legal.*—Where a cattle, which trespasses on another's land, is not doing any damage, the owner of the land is not entitled to impound the cattle. **1 Weir 709.**

(3)—*Ss. 10 and 20—Impounding of cattle.*—It is only when cattle are actually trespassing that they can be seized and impounded under s. 10. **1 Weir 709.**

(4)—S. 11—*See* ACT VII OF 1878, s. 69, 22 B. 933.

(5)—*Ss. 11 and 24.—Rescue of cattle seized under s. 11.*—It is not necessary that a person, who seizes or causes cattle to be seized, must take them in person to the pound, in order that the rescuing of the cattle may amount to an offence under s. 24 of the Act. **12 P.R. 1882.**

(6)—S. 12—*See* ACT VII OF 1878, ss. 25 and 66, 19 P.R. 1885 Cr.

(7)—*S. 18—Jurisdiction—Crim. Pro. Code (1861), s. 21.*—As no special provision is made in Act III of 1857 as to the authority by which offences under s. 18 of that Act are to be tried, s. 21, Crim. Pro. Code, 1861, gives jurisdiction to the First Class subordinate Magistrate. **5 B.H.C. Cr. 13.**

1.—Imperial Acts—continued.

Act I of 1871 (Cattle Trespass)—*continued.*

(7-*a*)—S. 19—*See* CRIMINAL BREACH OF TRUST, 8 B.L.R. Ap. 1=16 W.R. Cr. 52.

(8)—*S. 20—Illegal seizure of cattle, complaint of—No claim for compensation—Refund of fee paid on complaint and process fees.*—The complainant, who makes no claim for compensation for loss caused by the illegal seizure of cattle, is not entitled to any compensation. But he is entitled to a refund of the expenses incurred in procuring the release of the cattle from the pound-keeper and is also entitled under s. 31, Court Fees Act, to the refund of the fees paid on the complaint and the process fees which he had paid, because the word "offence" in the Crim. Pro. Code, includes any act, in respect of which a complaint may be made under s. 20 of the Cattle Trespass Act. **4 L.B.R. 11=6 Cr. L.J. 122.**

(9)—*S. 20—Complaint of illegal seizure of cattle—Compensation to accused, whether can be ordered—Crim. Pro. Code (1882), ss. 4 (a) and 250.*—The illegal seizure of cattle is not an offence within the meaning of the Crim. Pro. Code, and the order for compensation to the accused, under s. 250 of the Code, cannot be made. **9 M. 374=2 Weir 315.** [*F.*, 23 C. 248; *R.*, 18 A. 353=16 A.W.N. 98, 23 C. 442.]

(10)—*Crim. Pro. Code (1882), s. 250—Frivolous complaint of illegal seizure of cattle—Compensation.*—The illegal seizure of cattle under colour of Act I of 1871 is not constituted an offence under that Act or otherwise, and, therefore, a Magistrate is not competent to award compensation, under s. 250, Crim. Pro. Code, to the accused on a frivolous and vexatious complaint in respect of such alleged illegal seizure. **9 M. 102=2 Weir 315.** [*F.*, 13 C. 304, 23 C. 248; *R.*, 18 A. 353=16 A.W.N. 98].

(11)—S. 20—The term "charges" in s. 20 of the above Act is used as equivalent to "complaint." **11 C.P.L.R. 10 Cr.**

(12)—S. 20—*See* COMPENSATION, 13 C. 304 and 18 A. 253.

(13)—S. 20—*See* OFFENCE, 29 M. 517=5 Cr. L.J. 86.

(14)—S. 20—*See* Nos. 2, 3, *supra.*

(15)—*Ss. 20, 21, 22, 23—Illegal seizure of cattle not a criminal offence.*—The illegal seizure of cattle under the Act is not a criminal offence. **L.B.R. (1872—1892), 515.**

(16)—*Ss. 20 to 23—Nature of jurisdiction—Applicability of Crim. Pro. Code—Crim. Pro. Code, ss. 1 and 192—Transfer of cases.*—The jurisdiction conferred by ss. 20 to 23 of Act 1 of 1871 is a special jurisdiction and as such, it is by s. 1, Crim. Pro. Code, unaffected by the provisions of the Code. S. 192 of the Code does not, therefore, authorise the transfer of a case to which ss. 20 to 23 of Act I of 1871 apply. **23 C. 300.** [*Overruled*, 34 C. 926=6 Cr. L. J. 633; *R.*, 11 C.P.L.R. 10 Cr; *D.*, 31 C. 350.]

1.—Imperial Acts—continued.

Act I of 1871 (Cattle Trespass)—*continued.*

(17)—*Ss. 20 to 23—Appeal in cases under the sections.*—There is no provision for an appeal in a case to which ss. 20 to 23 of Act I of 1871 apply, which is *quasi* civil, the jurisdiction being intended to be limited to the Magistrate specially referred to. **23 C. 300.**

(18)—*Ss. 20 to 23—Illegal seizure of cattle—Summary trial—Crim. Pro. Code (1882), s. 4(p) and Chap. XXII.*—The illegal seizure and detention alluded to in ss. 20 to 23 of Act I of 1871 are not offences within the meaning of s. 4 (*p*) of the Crim. Pro. Code, and the cases connected therewith are accordingly not triable by the summary procedure described in Chap. XXII of the Code. Where the accused charged under s. 22, Act I of 1871, was tried summarily and sentenced by a First-Class Magistrate, the High Court declined to interfere, as the defendant had had an adequate trial, and Act I of 1871 had not prescribed any particular procedure. **23 C. 248.** [*R.*, 18 A. 353, 11 C.P.L. R. 10 Cr.]

(19)—*Ss. 20 to 23—Special jurisdiction—Illegal seizure of cattle—"Offence"—Crim. Pro. Code (Act V of 1898), ss. 4 (o,) 192 (1), and last clause, sch. II—Power of District or specially empowered Magistrate to transfer such cases—Power of subordinate Magistrate to try the same.*—The illegal seizure of cattle, mentioned in s. 20 of the Cattle Trespass Act (I of 1871), is an "offence" under s. 4, cl. (*o*) of the Crim. Pro. Code, and, according to the last clasue of sch. II thereof, any offence, punishable with imprisonment for less than one year or with fine only, is triable by any Magistrate. Though a complaint under s. 20 of the Cattle Trespass Act must be entertained either by a District Magistrate or a Magistrate specially authorised, such Magistrate has now power under s. 192, sub-s. (1) to transfer the case, after taking cognizance of it, to any Subordinate Magistrate. Shama v. Lechhu Shekh, (23 C. 300) and Ragu Singh v. Abdul Wahab, (23 C. 442) appear to have been overruled by the legislature. **34 C. 926** (23 C. 300, 23 C. 442, *overruled.*)

(20)—*Ss. 8, 20 and 22—Compensation awarded by Magistrate not qualified—Crim. Pro. Code (1882), ss. 529 and 537.*—An order awarding compensation under s. 22 of the Act by a Magistrate not coming under s. 20 of the Act is illegal, and is not protected by s. 529 of the Code, as the illegal seizure of cattle does not amount to an offence; nor is it covered by s. 537 as the action of the Magistrate amounts to an illegality and as the Magistrate is not a Court of competent jurisdiction. **23 C. 442.** [*R.*, 31 C. 350, 11 C.P.L.R. 10 Cr.; *overruled*, 34 C. 926.]

(21)—Ss. 20 and 22—*See* CRIM. PRO. CODE (1898), ss. 4 (*o*), 250, 29 M. 517 = 5 Cr.L.J. 86.

(22)—*Ss. 20 and 23—Transfer of case under s. 20 of the Act—Crim. Pro. Code (1872), ss. 44 and 141.*—A Magistrate receiving a complaint under s. 20 of Act I of 1871 may transfer the

1.—Imperial Acts—continued.

Act I of 1871 (Cattle Trespass)—*continued.*

case to a Subordinate Magistrate for disposal. There is nothing in the provisions of Act I of 1871, which excludes the operation of ss. 44 and 141, Crim. Pro. Code (1872). **26 P.R. 1879 Cr., F.B.**

(23)—*S. 21—Complaint of seizure of cattle, by whom to be made.*—The person entitled to complain, under s. 21 of the Cattle Trespass Act, 1871, is either the complainant in person or an agent personally acquainted with the circumstances; hence, where the cattle belonging to one person are in the custody of another, and are seized from his custody, the owner, if he is not personally acquainted with the circumstances, is not entitled to institute a complaint under s. 21 of the Cattle Trespass Act, 1871. **5 Bom. L.R. 205.**

(24)—*S. 21—Illegal seizure of cattle—Sentence of imprisonment in default of payment of fine.*—A sentence of fine for illegal seizure of cattle and a sentence of imprisonment in default of payment of fine or compensation awarded for illegal seizure is illegal. **L.B.R. (1872—1892), 515.**

(25)—S. 21—*See* Nos. 15, 16, 17, 18, 19, *supra.*

(26)—*Ss. 21, 22—Illegal seizure of cattle, whether a criminal offence—Compensation—Fine—Imprisonment in default of payment of compensation.*—Illegal seizure of cattle is not an ordinary criminal offence. Jurisdiction is given to certain Magistrates to adjudicate compensation to any person complaining of, and proving such, seizure for the loss caused by the seizure and detention, as well as any fines and expenses incurred by the complainant in procuring the release of the cattle. Court-fees paid by the complainant may form part of such compensation. [*R.*, 23 C. 300, 23 C. 442.]

The person illegally seizing cattle cannot be subjected to a fine, nor can he be imprisoned in default of payment of the compensation. **2 C.L.R. 507.** [*F.*, 22 C. 139].

(27)—*Ss. 21 and 23—Illegal seizure of cattle—Compensation.*—In awarding compensation for illegal seizure of cattle, the complainant's costs incurred in prosecuting his complaint may be included in the compensation awarded. **L.B.R. (1872—1892), 515.**

(28)—*S. 22—Compensation - Appeal.*—No appeal lies from an award of compensation passed under s. 22, Cattle Trespass Act. **3 N.W.P. 200.** [*F.*, 15 C. 712.]

(29)—*S. 22—Order awarding compensation—Appeal.*—No appeal lies from an order awarding compensation under s. 22 of the Act, for wrongful seizure of cattle. **15 C. 712.** [*F.*, 19 M. 238.]

(30)—*S. 22—Compensation for illegal seizure of cattle—Appeal.*—No appeal lies from an order passed under s. 22 of Act I of 1871, awarding compensation for illegal seizure of cattle. **Rat. Un.Cr.C. 520 = Cr.Rg. 44 of 1890.** (10 B. 230, *R.*)

I.—Imperial Acts—continued.

Act I of 1871 (Cattle Trespass)—*continued.*

(31)—*S. 22—Penal Code, ss.40 and 67*—When the accused is not convicted of an "offence" within the meaning of s. 40 of the Penal Code. the provisions of s. 67 thereof do not apply to it. S. 22 of the Act does not provide a punishment for an offence, and, therefore, a compensation order made under that section cannot be followed by a sentence of imprisonment in default under s. 67, I.P.C. **L.B.R. (1872—1892), 429.**

(32)—*S. 22—Nature of proceedings—Joint liability to pay fine.*—A proceeding under s. 22 of the Act is not a regular criminal proceeding but a *quasi* civil proceeding in which a Magistrate is authorised to assess and enforce, in a summary manner, compensation for an injury, for which a civil action might be brought. Where such compensation is ordered to be paid by two persons, without specifying the proportionate amount payable by each, they are jointly and severally liable to pay it. **14 C. 175.**

(33)—*S. 22—Illegal seizure of cattle—Fine on conviction, legality of—Compensation—Imprisonment in default, whether proper.*—A Magistrate is not competent, under s. 22 of the Cattle Trespass Act, to pass any sentence of fine. He can only award compensation for an illegal seizure of cattle. An award of imprisonment, in default of payment of fine, is also illegal. **27 C. 992 = 5 C.W.N. 32.**

(34)—*S. 22—Illegal seizure of cattle—Penal Code, ss. 378 and 379—Theft.*—Where an accused person was found to have loosened the complainant's cattle at night and to have driven them to the pound with the object of sharing with the pound-keeper the fees to be paid for the release, *held*, that the accused was not liable under s. 22 of the Cattle Trespass Act, inasmuch as there was no illegal seizure and detention of the cattle. The accused was ordered to be charged and tried for theft. **22 C. 139.** [*R.*, 22 C. 669.]

(35)—*S. 22—Compensation, amount of.*—Compensation for wrongful seizure of cattle, under s. 22 of Act I of 1871, should be by way of reasonable compensation for the costs caused by the seizure and detention of cattle; and not by way of penalty, or of an award of general damages to the complainant. **25 P.R. 1878 Cr.**

(36)—*S. 22—Compensation, amount of—Damage to reputation.*—S. 22, Act I of 1871, does not contemplate the award of compensation for damages to the reputation of the complainant, nor does it warrant the infliction of a penalty upon the person complained against, in addition to the compensation awarded. **37 P. R. 1878 Cr.**

(37)—*S. 22—Compensation, amount of.*—The imposition of a penalty, in excess of the sum awarded to the complainant as compensation, is legal. **36 P.R. 1878 Cr.**

I.—Imperial Acts—continued.

Act I of 1871 (Cattle Trespass)—*continued.*

(38)—*S. 22—Penalty, amount of.*—A Magistrate has no power to impose any penalty under s. 22 in excess of the sum which he has awarded to the complainant as compensation. **5 P.R. 1880 Cr.**

(39)—*S. 22—Appeal from order under the section.*—A person against whom an order is passed under s. 22 of the Act, directing payment of compensation for illegal seizure of cattle, is not a person convicted on a trial, and, therefore, no appeal lies from the order. **10 B. 230.** [*F.*, 15 C. 712, Rat. Un. Cr. C. 520, 19 M. 238.]

(40)—*S. 22—Order for compensation—Appeal.*—No appeal lies against an order made under s. 22 of Act I of 1871. **11 M. 359 = 1 Weir 712.**

(41)—*S. 22—Order for compensation—Appeal—Crim. Pro. Code (1882), s. 404.*—No appeal lies against an order under s. 22 of the Cattle Trespass Act. Where, in a case, there was evidence that the seizure of cattle was illegal and the trying Magistrate believed it, the High Court, as a Court of Revision, refused to interfere with the order of the Magistrate awarding compensation, for, the effect of weighing evidence in such a case would, in effect, be to admit an appeal, where the law did not allow it. **19 M. 238 = 2 Weir 461.** [*R.*, 3 M.L.T. 230 = 31 M. 133 = 7 Cr. L.J. 267 = 18 M.L.J. 57.]

(42)—*S. 22—Default in payment of compensation—Order for imprisonment, validity of.*—Order for imprisonment in default of payment of compensation awarded, under s. 22, Cattle Trespass Act, is illegal. **19 M. 238 = 2 Weir 461.** [*R.*, 11 C.P.L.R. 10 Cr.]

(43)—*S. 22—Fine in addition to compensation.*—S. 22 does not provide for a fine in addition to compensation. **1 Weir 710 = 7 M.H.C. App. 24.**

(44)—*S. 22—Fine, whether leviable under the section.*—A Magistrate is not authorised under s. 22 to fine, but only to award compensation. But he is also authorised to add to the compensation, fines and expenses paid to the pound-keeper by the owner on releasing the cattle, and order them to be paid by the party who made the seizure. **1 Weir 710.**

(44-*a*)—*S. 22—Power of Magistrate—Seizure of cattle and dispute as to ownership of land.*—Where there was a dispute as to the ownership of land on which the complainant's cattle were found, the complainant stating the land belonged to A, who gave him the right to graze his cattle there, and the party charged (who had seized and impounded the cattle) claiming the land as his own, it was held that the order of the Magistrate referring the parties to the Civil Court was illegal, and that he should have disposed of the case himself under the Cattle Trespass Act, I of 1871, s. 22. **23 W.R. Cr. 2.**

(45)—*S. 22—Illegal seizure of cattle—Offence.*—The illegal seizure of cattle under Act I of 1871 is not an offence. (But now, according

I.—Imperial Acts—continued.

Act I of 1871 (Cattle Trespass)—*continued.*

to the Crim. Pro. Code, s. 4, sub-s. (*o*), the term "offence" includes also illegal seizure of cattle). **1 Weir 710.** [*F.*, 1 Weir 711.]

(46)—*S. 22—Illegal seizure of cattle—Offence.*—An illegal seizure of cattle is not an offence. **1 Weir 711.** [*D.*, 1 Weir 712.]

(47)—*S. 22—Order for compensation for illegal seizure of cattle—Appeal—Crim. Pro. Code, ss. 4 (o), 241, 243, 245, 246, 407, 439.*—Under s. 22, Cattle Trespass Act, an order for compensation for wrongful seizure of cattle is a conviction within the meaning of the Crim. Pro. Code and under s. 407 of the Code, an appeal lies against the order. **4 L.B.R. 10=6 Cr.L.J. 121.**

(48)—*S. 22—Imprisonment in default of payment of compensation.*—A Magistrate is not competent to direct the imprisonment of the defendant in default of payment of compensation awarded under s. 22 of Act I of 1871. **1 Weir 712.**

(49)—*S. 22—Complaint under s. 20 of the Act—Offence—Appeal—Crim. Pro. Code (1898), s. 4 (o).*—By s. 4 of the Code of Crim. Procedure, 1898, the word "offence" includes an act in respect of which a complaint may be made under s. 20 of the Cattle Trespass Act. It follows, therefore, that a person against whom an order under s. 22 of the Cattle Trespass Act is made is a "a person convicted on a trial." An appeal against the conviction lies, therefore, under s. 407, Crim. Pro. Code. **1 Weir 712.**

(50)—*S. 22—Crim. Pro. Code (1898), s. 250—Applicability of the section to compensation awarded to the complainant under s. 22 of Act I of 1871.*—S. 250, Crim. Pro. Code, applies to a case in which the compensation is awarded to an accused person, because a frivolous complaint has been made against him. But where compensation is awarded not to the accused but to the complainant under s. 22 of the Cattle Trespass Act, s. 250, Crim. Pro. Code, is not applicable. **1 Weir 712.**

(51)—*S. 22—Order for compensation—Court and Process Fees.*—Under the head of compensation for the loss caused by the seizure and detention of cattle, it is open to a Magistrate to include the Court and process fees. **1 Weir 715.**

(52)—*S. 22—Compensation in addition to sum allowed on account of fines paid and expenses incurred in procuring release of cattle—Sufficiency of the amount allowed.*—Where some compensation was awarded in addition to the sum allowed on account of the fines and "expenses" or other charges incurred in procuring the release of the cattle, *held*, that the High Court would not consider the sufficiency or insufficiency of the amount allowed. **1 Weir 715.**

(53)—*S. 22—Order under s. 22—Verbal irregularity in naming the order, effect of.*—Where

I.—Imperial Acts—continued.

Act I of 1871 (Cattle Trespass)—*continued.*

an order under s. 22 directed that the amount mentioned be paid to the complainant as compensation for the cost and damages incurred by him, and the words with which the decretal part of the judgment began was, namely, "I therefore fine the accused," *held*, that latter portion was a mere surplusage and that, although the order was inaccurately worded, the intention to award compensation was clear. **1 Weir 715.**

(54)—*S. 22—Crim. Pro. Code, Act X of 1882, Ch. XXII—Applicability to Act I of 1871 (Cattle Trespass), s. 22.*—The summary procedure laid down in Ch. XXII of the Crim. Pro. Code, is applicable to the trial of offences under s. 22 of the Cattle Trespass Act. **A.W.N. 1896, 136.**

(54-*a*)—S. 22—*See* ACT VII OF 1870. 7 M. 345.

(55)—S. 22—*See* APPEAL, 3 N.W.P. 200, 10 B. 230.

(56)—S. 22—*See* CRIM. PRO. CODE (1898), ss. 4 (*o*), 250, 29 M. 517.

(57)—S. 22—*See* Nos. 15, 16, 17, 18, 19, 20, 21, 26, *supra*.

(58)—*Ss. 22 and 27—Imprisonment in default of payment of compensation, validity of.*—S. 23 of the Cattle Trespass Act provides that the compensation awarded under s. 22 may be recovered in the same manner as fines imposed by a Magistrate. The procedure which should be adopted, in default of payment of the compensation, is, therefore, the procedure described in s. 307. Crim. Pro. Code, 1872 (s. 386 of the Code of 1898). Therefore, a Magistrate is not competent to pass a sentence of imprisonment in default of payment of fine. But where a Magistrate passes such an illegal sentence, no appeal lies against it. **1 Weir 711.** [*F.*, 1 Weir 712].

(59)—*S. 23—Appeal from compensation order.*—No appeal lies against an order, under s. 23, Ch. V, Act I of 1871, awarding compensation for the illegal seizure of cattle. **22 P.R. 1886 Cr.**

(60)—S. 23—*See* Nos. 15, 16, 17, 18, 19, 22, 27, *supra*.

(61)—*S. 24—Seizure of cattle escaped from pound.*—Certain cattle impounded in a cattle pound escaped: the next day they were found grazing in charge of their owner. The Police patel attempted to seize them again, when the owner resisted. The Police patel, thereupon, instead of attempting to seize the cattle, lodged a complaint before a Magistrate, who under s. 24 of the Cattle Trespass Act, fined the accused. *Held* that to resist the seizure of the cattle under the circumstances was not an offence punishable under s. 24 of the Act. **Rat. Un. Cr. C. 294=Cr. Rg. 38 of 1886.**

(62)—*S. 24—Opposition to unlawful seizure of cattle.*—Where the complainant was induced by a lie to refrain from seizing cattle grazing.

1.—Imperial Acts—continued.

Act I of 1871 (Cattle Trespass)—*continued.*

within the precincts of a *rakh*, and was opposed in his attempt to seize the cattle, which had meanwhile left the *rakh* and were at a private well, *held*, that the accused was not guilty of an offence under s. 24, Act I of 1871. **4 P.R. 1891 Cr.**

(63)—*S. 24—Forest Act VII of 1878, s. 25 (d)—Trespass—Meaning.*—The word "trespass" in s. 24 of the Cattle Trespass Act does not mean that the cattle should enter into the forest themselves and not be driven into it by some person. **Rat. Un. Cr. C. 602=Cr. Rg. 22 of 1892.**

(64)—*S. 24.—Frivolous and vexatious complaint of illegal seizure of cattle—Compensation to accused.*—In cases of frivolous and vexatious complaints of illegal seizure of cattle, compensation may be awarded to the accused. **1 P.R. 1872 Cr.**

(65)—*S. 24—Removing of cattle from a pound with intention of returning it to the owner.*—Where a person removed cattle from a cattle-pound and returned them to their true owner, *held*, that the accused was guilty under s. 24, Act I of 1871 but not of theft in a building. **1 Weir 716.**

(66)—*S. 24—Rescue of cattle, when amounts to an offence.*—A conviction under s. 24 of Act I of 1871 can only be supported if the cattle were "liable to be seized" under the Act. If not, their rescue is no offence. Where the officers of the Public Works Department seized certain cattle and there was no evidence that the land on which the cattle were seized was public property in charge of that Department, *held*, that the person rescuing such cattle could not be convicted under s. 24 of the Act. **24 M. 318=1 Weir 716.**

(67)—S. 24—*See* No. 5, *supra.*

(68)—Ss. 25 and 26—*See* MISCHIEF, Rat. Un. Cr. C. 60.

(69)—*S. 26—Proof of neglect of owner.*—There can be no conviction under s. 26 of the Cattle Trespass Act, unless it is proved or can be inferred from the circumstances of the case that the owner has been guilty of neglect. **Rat. Un. Cr. C. 867=Cr. Rg. 36 of 1896.**

(70)—S. 26—*See* No. 68, *supra.*

(71)—*S 27—Penal Code, ss. 409, 511—Pound-keeper—Falsifying accounts.*—Where a pound-keeper having levied a charge of Rs. 5, gave receipt for only Rs. 4 and entered only the latter figure in the account, but, before the money was paid into the Treasury, altered the figure in the account into Rs. 5, *held* that no offence was committed under s. 27 of the Cattle Trespass Act, but that the conviction should be for an offence under ss. 409 and 511 of the Penal Code. **Rat. Un. Cr. C. 632=Cr. Rg. 2 of 1893.**

1.—Imperial Acts—continued.

Act I of 1871 (Cattle Trespass)—*concluded.*

(72)—*S. 21—Pound-keeper.*—A person, who was not himself a pound-keeper, but had been merely entertained, by a Police Patel, who was *ex officio* the pound-keeper, was not a pound-keeper within the meaning of s. 27 of Act I of 1871, and could not, therefore, be convicted under that section. **9 B.H.C.A.C. 164.**

(73)—S. 27—*See* COMPENSATION, 1 P.R. 1872 Cr.

Act IV of 1871 (Coroners).

[REP. IN PART, ACT IX OF 1871; ACT X OF 1873; ACT XII OF 1873; ACT XVI OF 1874; ACT XII OF 1891. REP. IN PART AND AMENDED—ACT X OF 1881; ACT V OF 1889.]

(1)—*Coroner's Act IV of 1871—Inquiry by Coroner—Jurisdiction of Presidency Magistrate.*—The jurisdiction of a Presidency Magistrate is not ousted by an inquiry having been conducted by the Coroner under Act IV of 1871. **Rat. Un. Cr. C. 540=Cr. Rg. 14 of 1891.**

(2)—*Ss. 24, 25, 26 and 29—Coroner's inquisition—Commitment to High Court Sessions—Jurisdiction of Presidency Magistrate to try or enquire a case committed by Coroner—Effect of discharge or acquittal by Magistrate—Crim. Pro. Code (1898), ss. 213, 214, 477, 478 and 498.*—An inquisition drawn up by a Coroner, though it may have the effect of a valid commitment, upon which the High Court, in the exercise of its Original Criminal Jurisdiction, may act, has not that effect, until it has been accepted by the High Court, and the Officers of the Crown have drawn up a charge in accordance with it. Therefore, the mere drawing up of an inquisition by the Coroner does not of itself oust the jurisdiction of a Presidency Magistrate to enquire into or try the case of an accused person. Any order of acquittal or discharge made by him will be operative, subject to the discretion of the High Court, when the time comes for it to consider whether it should take action upon the Coroner's inquisition as an effective commitment. If, in any case, the accused person objects to the Magistrate proceeding with the case on the ground of his being already committed to the High Court, in the exercise of its Original Criminal Jurisdiction by virtue of the inquisition drawn up by the Coroner, an inquisition which has the chance of being accepted as a valid commitment, and which, if so accepted, might subject him to a second trial, notwithstanding that the Magistrate might try and acquit him, the difficulty raised would be one that could be solved only by a proper application to the High Court, which, having regard to the circumstances of the individual case, will make such order as it thinks fit, as to whether the commitment by the Coroner is to be acted upon, or whether it is proper for the Magistrate to proceed with the case. **31 C. 1=7 C.W.N. 889.** (16 B. 159, *R.*)

(3)——*Prisoners' Act (III of 1900), ss. 2 and 11—Commitment to jail after inquisition—Bail, power to grant.*—After a Coroner has drawn

1.—Imperial Acts—continued.

Act IV of 1871 (Coroners)—*concluded.*

up an inquisition and committed a person to jail refusing bail, the only Court which has power to grant bail is the High Court. **31 C. 1=7 C.W.N. 889.**

(4)—*S. 25—Commitment by Coroner—Jurisdiction of Presidency Magistrate to hold preliminary enquiry.*—A Presidency Magistrate is not ousted of his jurisdiction to hold a preliminary enquiry into a charge of murder, because the Coroner has held an enquiry into the cause of death and has committed the accused to the High Court under Act IV of 1871, s. 25. **16 B. 159.** [*R.*, 31 C. 1=7 C.W.N. 889.]

(5)—S. 25—*See* No. 2, *supra*.

(6)—S. 26—*See* No. 2, *supra*.

(7)—S. 29—*See* No. 2, *supra*.

Act V of 1871 (Prisoners).

[REP., (EXCEPT S. 15), ACT III OF 1900.]

See ACT III OF 1900.

See LOCAL GOVERNMENT, Rat. Un. Cr. C. 827.

Act VIII of 1871 (Registration).

[REP., ACT III OF 1877.]

See ACT XX OF 1866, ACT III OF 1877.

(1)—*S. 80—Nature of imprisonment to be specified in conviction.—Held* that, under Act I of 1868, s. 2, cl. 18, the Sessions Judge should have specified in his warrant whether the imprisonment awarded to a person convicted under s. 80, Act VIII of 1871, should be simple or rigorous, but that, as he had omitted this at the proper time, simple imprisonment should now be set forth in the sentence and warrant. **18 W.R. Cr. 3.** [*R.*, 11 C.W.N. 740; *F.*, 5 C.L.J. 445.]

(2)—S. 80—*See* ACT III OF 1877, s. 82, 23 W.R. Cr. 55.

Act IX of 1871 (Limitation).

[REP., ACT XV OF 1877.]

See ACT XV OF 1877.

„ APPEAL

„ LIMITATION.

(1)—Sch. II, Art. 46—*See* ACT XV OF 1877, ART. 47, 7 N.W.P. 35, 1 M. 309, 6 C.L.R. 93.

(2)—Art. 152—*See* APPEAL—PRACTICE AND PROCEDURE, 1 M. 304.

Act X of 1871 (Excise).

[REP., ACT XXII OF 1881.]

See ACT XXII OF 1881.

„ ACT XII OF 1896.

(1)—*Ss. 12, 57 and 62—Illicit sale of liquor—License.*—Where a license for the sale of spirituous and fermented liquors by retail expired

1.—Imperial Acts—continued.

Act X of 1871 (Excise)—*continued.*

on a certain date, and the accused did not attempt to renew it, till after he had been convicted before the Magistrate for selling spirituous liquors, *held*, that the case was distinguishable from 1 A. 630, and that he was properly convicted as he violated s. 12 of the Act. **1 A. 635.** (1 A. 630, *D*).

(2)—Ss. 19 and 63—*See* ACT XI OF 1870, 3 A. 404.

(3)—*Ss. 32, 57, 62—Illicit sale of liquor.*—Where the lapsing of a first license for the sale of spirituous and fermented liquors, was not noticed by the authorities, and was only brought to their knowledge by the accused going to the Collector's Office ten days after, and they simply renewed the license, and accepted the whole fee, for the new period, *held*, that the accused was not guilty, as he had given no notice of his intention not to renew the license, nor had the Collector recalled it. **1 A. 630.** [*F.*, 1 A. 638; *D.*, 1 A. 635.]

(4)—*Ss. 32, 57, 62—Illicit sale of liquor—License.*—Where a license for the sale of spirituous and fermented liquors by retail expired and the license-holder gave no notice of his intention not to renew the license, nor had the license been recalled by the Collector, but, liquor being sold without the renewal of the license for a week, the license holder's servants were prosecuted, *held*, that they could not be convicted under the provisions of s. 22, but only under s. 57, for not paying the monthly license fee in advance. **1 A. 638.** (1 A. 630, *F.*)

(5)—*Ss. 45, 46, 63—Illegal search—Liability for prosecution.*—The Excise Act contains no provision, which would relieve any person from liability to prosecution under the Act, because the offence had been discovered by an illegal search. **37 P.R. 1880 Cr.**

(6)—S. 57—*See* Nos. 1 and 4, *supra*.

(7)—*Ss. 57, 62—Breach of the conditions of the license by servant of licensed vendor.*—The servant of a licensed vendor is not liable to be convicted under s. 57, for the offence of selling liquor contrary to the conditions of the license. But he may be liable to be convicted under s. 62. **4 P.R. 1882 Cr., F.B.** (19 P.R. 1878, *R.*)

(8)—S. 62—*See* Nos. 1, 3, 4 and 7, *supra*.

(9)—*S. 63—License to sell opium—Transferability.*—The license granted to a licensed retail vendor of drugs is not transferable, but such vendor may employ agents and servants in his own business, and, if a transfer be made in good faith, the offence of the transferee, in being in possession of unauthorized quantities of opium and drugs, is not one calling for severe punishment. **12 P.R. 1878 Cr.**

(10)—*S. 63—Licensed vendor—Importing opium from foreign territory.*—A licensed vendor cannot be convicted under ss. 63 and 65, Act X of 1871, for importing opium or *charas* without a pass from foreign territory. **12 P.R. 1878 Cr.**

I.—Imperial Acts—continued.

Act X of 1871 (Excise)—*concluded.*

(11)—S. 63—*See* Nos. 2 and 5, *supra.*

(12)—*S. 65—Imprisonment in default of payment of fine.*—When a fine is imposed under s. 65, the Court is competent to award imprisonment in default under s. 5 of Act I of 1868. **6 P.R. 1872 Cr.**

(13)—*S. 65—Scope of the section.*—The words "like offence" in s. 65 of Act X of 1871, include an offence committed prior to the passing of the Act and are not applicable only to a previous offence against the Act. **6 P.R. 1872 Cr.**

(14)—*S. 66—" Traveller "*—Where a sepoy, who had come to his home on leave, had in his possession opium for his own use, but not for the use of others, *held*, that the sepoy was not a traveller within the meaning of s. 66 (*b*). **23 P.R. 1873 Cr.**

(15)—*Ss. 78 and 79—Punjab-grown opium—Reward to informer.*—Certain sections of Act X of 1871 are modified by Act XXVI of 1872, regarding Punjab-grown opium, but ss. 78 and 79 of Act X of 1871 are not repealed by Act XXVI of 1872. Therefore, an award to an informer of a portion of the fines imposed, on a conviction for unlawful possession of Punjab-grown opium, was held not to be illegal. **6 P.R. 1877 Cr.**

(16)—*S. 79—Breach of opium rule—Informer's claim for half the fines, when not allowable.*—On a conviction of the accused, who cultivated poppy under cultivator's licenses, under Rule No. 14 of Rules framed under s. 49 of Act IV of 1872, for not entering in their licenses the actual turn-out of opium, the Magistrate directed the payment of the proceeds of the sale of confiscated opium to the informer, but refused to order the payment of half the fines imposed on the accused. *Held*, that, as the conviction was not a conviction for unlawful possession of opium within the meaning of s. 79, Act X of 1871, the Magistrate's order was legal. **23 P.R. 1879 Cr.**

(17)—S. 79—*See* No. 15, *supra.*

See BENGAL ACT XXI of 1856, 22 W.R. 31 Cr.

See ACT I OF 1878, s. 45, Book Cir. 3 of 1872, Oudh.

Act XXV of 1871 (Railway Act Amendment).

[REP., ACT IV OF 1879].

(1)—*S. 19 (s. 125, cl. 1 of Act IX of 1890)—Allowing cattle to stray on a Railway line.*—The defendant was convicted of being the owner of a cow which strayed on a railway provided with fences. On the date of the offence, no rules had been published under s. 1 of the Railway Act Amendment Act (XXV of 1871) determining what kind of fences should be deemed to be suitable for the exclusion of the cattle. No evidence was offered as to the state of the fences, and the conviction proceeded solely on the confession of the prisoner that he

I.—Imperial Acts—continued.

Act XXV of 1871 (Railway Act Amendment)—*concluded.*

was the owner of the cow. *Held*, that the conviction was wrong, as the state of the fences was in this case matter requiring specific proof. **1 Weir 874=8 M.H.C. App. 1.**

(2)—*S. 29—Gist of the offence.*—The prisoner was convicted under s. 29 of Act XXV of 1871 of endangering the safety of persons in a certain goods train by negligence. Although he was shown to have neglected his duty, there was no evidence whatever of the safety of any person in any train having been endangered by his neglect of duty; *held*, that he could not be convicted under s. 29 of Act XXV of 1871, as it was plainly apparent that, by reason of the precautions taken by other persons any possible danger which might have resulted from his neglect was avoided **5 N.W.P. 240**. [*D.*, 11 C.W.N. 173=5 Cr. L.J. 16. 59 P.L.R. 1907=13 P.R. 1906 Cr=5 Cr. L.J. 81.]

Act XXVII of 1871 (Criminal Tribes).

[REP. IN PART, ACT XVI OF 1874; ACT XII OF 1876. AMENDED, AND EXTENDED TO BENGAL. ACT VII OF 1876. AMENDED, AND EXTENSION TO OTHER PROVINCES AUTHORISED, ACT II OF 1897.]

(1)—*S. 18 (7), Rule 13—Roll-calls of registered persons—Power of calling roll-calls—Delegation—Superintendent of Police—Further delegation.*—Under Rule 13 framed under s. 18 (7) of the Criminal Tribes Act, 1871, the only persons who can order a roll-call are the District Magistrate, and, if specially authorised by the District Magistrate, the District Superintendent of Police; and the latter, when so authorised, cannot delegate his powers to his subordinates, as, for instance, by giving general authority to Sub-Inspectors to order roll-calls. Such an order would be *ultra vires*. **23 P.R. 1908 Cr.= 9 Cr. L.J. 94.**

(2)—*S. 19 (1), as amended by Act II of 1897—Absence from village without leave—Sentence—Revision.*—A member of a declared criminal tribe was convicted under s. 19 (1) of the Act and sentenced only to whipping for being absent from his village without leave and thereby committing a breach of the rules. The District Magistrate reported the case to the Chief Court on the ground that the sentence was illegal, because, under s. 19 (1) of the Act as amended by Act II of 1897, a sentence of imprisonment must form part of the substantive sentence and the accused having two previous convictions against him deserved no consideration. The Chief Court declined to interfere on the ground that, though under s. 5, as amended, of the Act, imprisonment should have been awarded, the convicting Magistrate might have considered a sentence of imprisonment only sufficient and, the sentence of whipping being carried out, no enhancement was desirable. **166 P.L.R. 1905=3 Cr. L.J. 77.**

1.—Imperial Acts—continued.

Act XXVII of 1871 (Criminal Tribes)—*cld.*

(3)—*Rule 7 framed under cl. 4, s. 18 of Act as amended by notification No. 249 of the Punjab Government, dated 12th August, 1907—Liability of registered persons, absent without permission from their village, to punishment.*—Rule 7 of the Rules framed by the Local Government, under s. 18, cl. (4) of the Criminal Tribes Act, 1871, as amended by the Punjab Government Notification No. 249, dated 12th August, 1907, is perfectly valid and *intra vires*. Therefore, a registered person who should, without permission, leave or be absent from the village in which he resides, is liable to conviction. **20 P. R. 1908 Cr. = 9 Cr. L.J. 1.**

Act I of 1872 (Evidence).

[REP. IN PART, 44 & 45 VICT., C. 58, S. 127. ACT X OF 1897. AMENDED, ACT XVIII OF 1872; ACT III OF 1887; ACT III OF 1891, SS. 1–8; ACT V OF 1898; ACT XIII OF 1898; ACT V OF 1899.]

See EVIDENCE ACT (I OF 1872).

Act VI of 1872 (Oaths.)

(REP., ACT X OF 1873.)

See ACT X OF 1873.

—*S. 5—Evidence—Oath—Municipal Commissioner—Illegality.*—Under the above section, the omission to take any oath, or any other irregularity in the form in which it is administered, does not invalidate the proceedings. The High Court declined to interfere, under s. 296, Act X of 1872, with the order of a Municipal Commissioner, who was the editor of a newspaper, who had, prior to the disposal of the case, made very strong remarks on the case in the newspaper of which he was editor, holding that there was nothing illegal in his order, though he would have exercised a wise discretion if he had refused to sit as one of the Commissioners in the case. **21 W.R. Cr. 31.** [*F.*, 25 W.R. Cr. 6.]

Act IX of 1872 (Indian Contract).

[REP. IN PART, ACT I OF 1877; REP. IN PART AND AMENDED, ACT VI OF 1899. AMENDED, ACT IV OF 1886; ACT XII OF 1891].

See CONTRACT.

(1)—*Crim. Pro. Code (1898), s. 145—Partnership property—Claim of exclusive possession by a partner as manager.*—Where there are several partners, the claim of one of them to exclusive possession of the partnership property, as manager, is a question outside the purview of s. 145, Crim. Pro. Code. **32 C. 249 = 8 C.W.N. 885.** [*R.*, 10 C.W.N. 1088].

(2)—*S. 23—Part of consideration being the withdrawal of prosecution effect of.*—Where a plaintiff, who claimed with two of the defendants to be entitled to the office of the *archaka* of a temple, sued for a declaration of his title and for a declaration that an agreement previously entered into by them with the other defendants was void as being the result of coercion and as part of its consideration was the stifling of a prosecution for criminal trespass and theft pending against them, the agreement was held to be void, notwithstanding that such stifling formed only a part of its consideration. **18 M. 189.** (*Lound* v. *Grimwade*, 39 Ch. D. 605, *R*).

1.—Imperial Acts—continued.

Act IX of 1872 (Indian Contract)—*continued.*

(3)—*S. 23—Consideration for agreement used for suppressing prosecution for criminal breach of trust—Validity of agreement—Penal Code, s. 214, excep.*—A person suing for possession of property would not be disentitled to a decree, simply because the sale to him was made to raise money for suppressing a criminal prosecution, if there is no evidence to show the plaintiff's knowledge of such unlawful purpose or of any money having been paid in pursuance thereof. Under the exception to s. 214, Penal Code, it is not every compromise of a criminal prosecution out of Court which is a breach of the positive law. **8 C. 24.**

(4)—*S. 23—Validity of Kobala executed for forbearance from criminal proceedings.*—A contract whereby the defendant agreed to execute a *Kobala* of certain lands in favour of the plaintiff in consideration of the latter's not taking criminal proceedings against the former in regard to a compoundable offence is neither to be deemed as forbidden by law nor as against public policy and might be enforced. **3 C. W.N. 5.**

(5)—*S. 23—Burden of proof where contract is based on condonation of criminal complaint.*—Where, in a suit to enforce the performance of a contract, the defendant pleads that it was based on the condonation of a criminal complaint against the plaintiff which might have been of a nature not condonable by law and that the contract was, therefore, void, the burden of proof is on him to show the nature of the offence complained of. **11 W.R. 313.**

(6)—*S. 23—Validity of transfer of property to complainant, by accused after conviction, as compensation.*—Certain parties convicted of a criminal offence, in order to avoid apprehension, entered into a compromise with the complainant, who agreed to accept a sum of money as costs and as compensation for the disgrace he had suffered. They accordingly sold him some property in lieu of cash. *Held* that the sale was not made under illegal pressure. Though the offence was one in which a compromise could not be legally admitted, yet, as the Magistrate did admit it, and the parties acted in good faith, the position of the latter was held not to have been affected. **8 W.R. 412.**

(7)—*S. 23—Legality of contract to pay money for suppressing prosecution for causing death accidentally.*—Where, to suppress a criminal prosecution for having accidentally caused the death of his wife, the plaintiff voluntarily paid money to the defendant, knowing the defendant to be the nearest relative of the deceased who could take a part in the prosecution, the

1.—Imperial Acts—continued.

Act IX of 1872 (Indian Contract)—*continued.*

contract was held to be void as against morality and public policy, and the plaintiff was held not entitled to sue for the money so paid. **17 W.R. 84.**

(8)—*S. 23—Suit to recover consideration for compounding charge of wrongful restraint.*—Where A was criminally prosecuted by B for wrongful restraint, and he came to terms with B to pay him for the withdrawal of the complaint, or to deposit money or property with C to be paid over to B on the disposal of the case according to B's petition of withdrawal; and the Magistrate, instead of allowing the withdrawal of the charge, punished A criminally, *held* that A could sue for the recovery of the money or property, as the charge was not one which it would have been illegal for A to withdraw with the consent of the Magistrate, the offence charged consisting of an act for which B might have sued for damages in the Civil Court. **7 W.R. 33.**

(9)—*S. 23—Validity of agreement to stifle prosecution.*—An agreement, the object of which is to stifle a prosecution, *e.g.*, to compound an offence which cannot by law be compounded, is against public policy and cannot be recognised in any way by a Court of law. **6 Bom. L.R. 73.**

(10)—*S. 23—Whether guarantee given for not taking criminal proceedings enforceable.*—A guarantee which a surety gave to the creditors of D, for the payment of the debts due to them by D, on consideration that they were to abstain from taking criminal proceedings against D for criminal breach of trust for 15 days and by implication to abstain from taking such proceedings altogether if the said debts were paid within that time, was held not to be enforceable by the creditors. A man, to whom a civil debt is due, may take securities for that debt from his debtor, even though the debt arises out of a criminal offence and he threatens to prosecute for that offence provided he does not, in consideration of such securities, agree not to prosecute. He must not, however, by stifling a prosecution obtain a guarantee from third parties. **11 B. 566.** [*R.*, 28 A. 718=3 A.L.J. 506=A.W.N. 1906, 212].

(11)—*S. 23—Agreement not to prosecute for giving false evidence.*—It is essential to the well-being of society that persons who commit offences which are of a public nature, and which are punishable as crimes, should be brought to justice. Therefore, a Court cannot take cognizance of a bargain to abstain from the prosecution of a person for such an offence as that of wilfully giving false evidence. **3 N.W.P. 166=Agra, F.B. Ed. 1874, 252.**

(12)—*S. 23—Contract to pay money for forbearing from criminal prosecution.*—A contract to pay money in consideration of foregoing a criminal prosecution is opposed to public policy and will not be enforced; the consideration to

1.—Imperial Acts—continued.

Act IX of 1872 (Indian Contract)—*continued.*

support the promise in such a contract being a vicious consideration. **2 M.H.C. 187.** (*Keir* v. *Leeman*, 6 Q.B. 308, on appeal 9 Q.B. 371.)

(13)—*S. 23—Contract compounding assault.*—A contract compounding an assault is not illegal, and may be sued upon. The fact of two of the defendants being Mahomedans does not affect the principle of the decision. **5 W.R.S.C.C. Ref. 16.**

(14)—*S. 23—Compounding prosecution for fraudulent abstraction of documents.*—The plaintiff, a resident of Pondicherry, held a bond from one of the defendants (the 2nd) for a certain sum of money. This bond the plaintiff charged the said defendant before the French legal authorities with having fraudulently abstracted from his house in Pondicherry and he obtained the arrest and the extradition from British territory of the 2nd defendant, as also of his brother the 1st defendant. The latter on his way to Pondicherry met the plaintiff, and a settlement of accounts took place. The 5th, 6th, 7th and the 8th defendants made themselves liable by executing the bond sued on for the sum found due to the plaintiff, and took indemnity bonds to themselves from the 1st defendant, the consideration being the agreement of the plaintiff to discontinue further proceedings on the criminal charge. The Court at Pondicherry sanctioned the agreement as a compromise by Civil redress, and suspended further proceedings in accordance with the law in force in the settlement. *Held*, that the contract was enforceable, the facts of the case not showing the compromise to be in its nature prejudicial as being in contravention of public policy under the Government of British India, or injurious to the good order and interest of society, in regard to the administration of public justice. The English Common Law rule, that contracts for the compounding or suppression of criminal charges of offences of a public nature are illegal and void, has no application to a contract for compounding the prosecution of criminal proceedings for an offence against the Municipal Law of a foreign country. The rule of International law that the law of the place of a contract governs its validity is subject to the qualification that every state may refuse to enforce a contract when it is for the fraudulent evasion of its laws, or injurious to its public institutions or interests. **4 M.H.C. 14.**

(15)—S. 23—*See* WITHDRAWAL OF CASE, Old S. C. 43, Oudh.

(16)—*Ss. 23 and 24—Illegal contract—Contract to indemnify surety for his bail bond—Criminal Procedure Code (Act V of 1898), s. 513—Whole consideration—Part of one single consideration cannot be separated to validate an agreement.*—Pending a criminal charge against L, his pleader stood bail for him; and as an indemnity for the bail took from him a sale deed and a rent note regarding his house, in the name of the plaintiff. The consideration for the sale deed

1.—Imperial Acts—continued.

Act IX of 1872 (Indian Contract)—*concluded.*

was a sum of Rs. 8,000, of which Rs. 5,000 were the indemnity for the bail-bond, and the remaining Rs. 3,000 represented the advances to be made thereafter by the plaintiff. The plaintiff sued on the rent note to recover from L the sum of Rs. 2,000 as rent. *Held* that the contract for indemnifying this pleader for his bail-bond was illegal: and this illegality rendered the sale-deed void in law; that the rent note was tainted with the same illegality which affected the sale-deed and could not stand on any separate footing; that the agreement was an indivisible agreement; part of a single consideration for one object was unlawful and, therefore, the whole agreement was void under s. 24 of the Indian Contract Act, 1872 *Held*, further, that the deposit allowed under s. 513, Crim. Pro. Code, is allowed in substitution only of the bond which the principal himself would otherwise execute, not in substitution of any bond which his surety executes. **10 Bom. L.R. 553.**

(17)—S. 24—*See* No. 16, *supra*.

(18)—*Ss. 76, 108—Government currency notes, whether "goods."*—The change of a Government currency note for money is not a contract for sale and the transaction being the exchange of money in one form for money in another is not governed by the Contract Act. **3 C. 379=1 C. L.R. 339.** [*Dist.*, 25 B. 702=3 Bom. L.R. 392; *R.*, 115 P.L.R. 1904=18 P.R. 1905.]

(19)—S. 108—*See* RESTORATION OF PROPERTY, 2 P.R. 1908 Cr.=6 P.W.R. 1908=140 P.L.R. 1908=7 Cr.L.J. 279.

(20)—S. 108—*See* STOLEN PROPERTY, L.B.R. (1872—1892), 84.

(21)—S. 108—*See* No. 18, *supra*.

(22)—S. 178, proviso 2—*See* RESTORATION OF PROPERTY, 4 L.B.R. 13=6 Cr.L.J. 125.

(23)—S. 178—*See* JURISDICTION OF CIVIL AND CRIMINAL COURTS, 4 L.B.R. 25=6 Cr. L.J. 135.

See ACT XXVII OF 1870, 22 M. 212.

Act X of 1872 (Crim. Pro. Code).

[REP., ACT X OF 1882.]

See CRIMINAL PROCEDURE CODE.

Act XI of 1872 (Foreign Jurisdiction and Extradition).

[REP., ACT XXI OF 1879.]

See ACT XXI OF 1879.

(1)—*Ss. 3, cl. (2) and 9—Native State.*—Amenability of Native Indian Subjects to British Courts for offences committed beyond India. **29 P.R. 1878 Cr.**

(2) Ss. 3, 9—*See* JURISDICTION OF CRIMINAL COURTS, 2 A. 218, F.B.

(3)—*and XXI of 1879, s. 9—Offence by British subject in Native State—Extradition—Native subject.*—S. 9, Act XI of 1872, runs thus:—"All

1.—Imperial Acts—continued.

Act XI of 1872 (Foreign Jurisdiction and Extradition).—*concluded.*

British subjects, European and Native, in British India, may be dealt with, in respect of offences committed in any Native State, as if such offences had been committed in any place within British India in which such subject may be or may be found." In re-enacting the provision in s. 9 of Act XXI of 1879, the Legislature omitted "may be" and retained only "may be found." *Held* that, looking to the purposes of these Acts and to the fact that the words "may be," "may be found," really mean one and the same thing, the alteration in the recent Act was merely to avoid redundancy, and the expression "found" used in it must be taken to mean, not where a person is discovered, but where he is actually present. Where a person charged with the offence of theft in a dwelling house in Rajputana, being found in Sirdhi territory, another Native State, was brought from that place to Ahmedabad, and was charged before the Courts there, *held* that those Courts had jurisdiction to try him. Where it was proved that a place in British territory was the home of the accused's parents, and that he himself was born and educated there, and that he only went 1½ years previously to a Native State for purposes of trade, living, during that time, sometimes in British territory and sometimes in the Native State, *held* that there was a legal presumption in favour of the accused being a Native Indian subject of Her Majesty, and, therefore, amenable to the jurisdiction of the British Courts. **6 B. 622.** [*F.*, 13 B. 147.]

(4)—S. 9—*See* JURISDICTION OF CRIMINAL COURTS, 1 M. 171.

(5)—S. 9—*See* MAGISTRATE, JURISDICTION OF, Rat. Un. Cr. C. 97.

(6)—S. 9—*See* Nos. 1 and 2, *supra*.

(7)—*S. 11—Receiving property stolen in Indore State.*—An accused person who received in British territory property stolen in the commission of a dacoity in the Indore State cannot be surrendered under the warrant of the Political Agent at Indore. **14 P.R. 1873 Cr.**

Act XV of 1872 (Christian Marriage).

[REP. IN PART, ACT XVI OF 1874. REP. IN PART AND AMENDED, ACT XII OF 1891. AMENDED, ACT VI OF 1886, S. 30; ACT II OF 1891; ACT I OF 1903.]

(1)—*Ss. 3 and 68—Unauthorised marriage of a Christian child.*—The words "person who professes the Christian religion," as used in Act XV of 1872, mean not only adults who profess that religion, but also their children, who are in law presumed to follow their father's religion. Where an unauthorised person solemnised the marriage of a child of the age of three years born to a Christian who was baptized, *held*, that the person was guilty of an offence under s. 68 of the Act. **18 M. 230=1 Weir 813.**

1.—Imperial Acts—continued.

Act XV of 1872 (Christian Marriage).—*ctd.*

(2)—*Ss. 5, 10, 12, 13, 38, 68, 70 and 73—Solemnisation of marriage by an Episcopally ordained person without publishing notice of such marriage.*—Where a Syrian Priest, who had received an Episcopal ordination, solemnised a marriage according to the Roman ritual, being so authorised by the Patriarch of Anticch, under whose jurisdiction he was, without the notice of the banns of marriage as required by Part 3 of the Act, and where there was nothing to show that a marriage solemnised with the Roman ritual under the sanction of the Bishop of a Syrian Church was not solemnised according to the rules, rites or ceremonies and customs of the Syrian Church, *held*, that the priest was not liable to be convicted for an offence under s. 73 of the Act. **19 M. 273=1 Weir 814.**

(3)—*Ss. 5, 68—Celebration of Christian marriage by unauthorised person—Presence of Marriage Registrar.*—Where the Lay Trustee of a Church, not coming within one of the four classes of persons mentioned in clauses 1, 2, 3 and 5 of s. 5 of the Act, solemnised a marriage between Christians, according to the rights of the Church of England in the presence of the Marriage Registrar, who was present, not in his official capacity as Marriage Registrar, but as a relative of the bride, during the absence of the incumbent of the Church and of the Native Pastor, who had previously published the banns of marriage, *held*, that the Lay Trustee was properly convicted under s. 68 of Act XV of 1872. **14 M. 342=1 M.L.J. 458=1 Weir 802, F.B.**

(4)—S. 10—*See* No. 2, *supra*.

(5)—S. 12—*See* No. 2, *supra*.

(6)—S. 13—*See* No. 2, *supra*.

(7)—*Ss. 18, 66—"Ignorantia juris non excusat," applicability of, to a false declaration under s. 18.*—Inasmuch as the declaration required by s. 18 is one as to the best of the deponent's belief and as s. 66 only makes penal the "intentionally making a false oath," the doctrine "*ignorantia juris non excusat*" is not applicable to a declaration, alleged to be false, but only made to the best of the deponent's belief. **16 A. 212.**

(8)—S. 38—*See* No. 2, *supra*.

(9)—*Ss. 66 to 76—Scope of the sections.*—Ss. 66 to 76 apply to all persons, who are not authorised to do so, solemnising a marriage between Christians, and do not apply simply to marriages that are to take place before a Marriage Registrar. **14 M. 342=1 M.L.J. 458=1 Weir 802, F.B.**

(9-*a*)—S. 66—*See* No. 7, *supra*.

(10)—S. 67—*See* No. 9, *supra*.

(11)—*S. 68—Requisites for convicting a person under the section.*—The only facts necessary to support a conviction under s. 68 are these:—first, it must be proved that the accused was

1.—Imperial Acts—continued.

Act XV of 1872 (Christian Marriage)—*ctd.*

not authorised under the Act to solemnise a marriage in the absence of a Marriage Registrar, and secondly, that he knowingly solemnised the marriage in the absence of such Registrar between persons, one or both of whom was or were a Christian or Christians. The word "knowingly" only applies tc the fact that the person so solemnising the marriage is aware that he is solemnising it and that the person or persons he is professing to marry is or are a Christian or Christians. **14 M. 342=1 M.L.J. 458 =1 Weir 802, F.B.**

(12)—*S. 68—Unauthorised persons solemnising marriage when one of the parties is a Christian.*—S. 68, as amended by s. 6, Act II of 1891, makes punishable the solemnisation of a marriage between persons of whom one is a Christian, unless the person solemnising such a marriage has been authorised for that purpose under s. 5. Where a Hindu celebrated the ceremony of marriage according to the Hindu form between a Native Christian and a Hindu girl, *held*, that the person performing the ceremony was liable to be convicted of an offence under s. 68 inasmuch as he was not authorised under s. 5. **17 M. 391=1 Weir 813.** (6 M.H.C.App. 20, *R.*)

(13)—*S. 68—Meaning of the term "solemnise."*—The term "solemnise" in s. 68 of Act XV of 1872 means "conduct, celebrate or perform" and should not be limited as applying to only such marriage ceremonies as are performed by some person possessing, or claiming authority to perform them by virtue of ecclesiastical authority. Therefore, an unauthorised person, not being the persons being married, who actually takes part in performing the marriage, that is, in doing any act that is supposed to be material to constitute the marriage, is guilty under s. 68 as a party either solemnising a marriage or professing to do so. **20 M. 12=1 Weir 820.**

(14)—S. 68—*See* Nos. 1, 2, 3 and 9, *supra*.

(15)—S. 69—*See* No. 9, *supra*.

(16)—S. 70—*See* Nos. 2 and 9, *supra*.

(17)—Ss. 71 and 72—*See* No. 9, *supra*.

(18)—*S. 73—Scope of the section—Notice of marriage whether to be given by an Episcopally ordained person.*—S. 73 is a highly penal section, and must be construed strictly and in favour of the liberty of the subject. The section does not require that a person, who has received Episcopal ordination, and who is not one of the classes specially excepted by that section, should publish a notice of any marriage which he intends to solemnise. **19 M. 273=1 Weir 814.**

(19)—S. 73—*See* Nos. 2 and 9, *supra*.

(20)—Ss. 74 to 76—*See* No. 9, *supra*.

(21)—*Part 3—Applicability to Episcopally ordained persons.*—Part 3 of the Act only applies to Ministers of religion licensed under the Act, and not to Episcopally ordained persons. **19 M. 273=1 Weir 814.**

S. N. DAR, B. A. LL. B.
Vakil High Court,
SRINAGAR (Kashmir)

1.—Imperial Acts—continued.

Act XIX of 1872 (Penal Code Amendment).

[DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN THE ARAKAN HILL DISTRICT, REG. IX OF 1874, S. 3.]

—*Penal Code, s. 230 —"Coin" defined.*—It is not necessary, to satisfy the ordinary definition of money, that coins should be a legal tender receivable at a value in rupees fixed by the law. Gold Mohurs having no absolutely fixed value, but having a current value, which is not ascertained merely by weighing them as lumps of gold, but attaching to them as coin, are "coins" for the time being used as money. **5 N.W.P. 187.** [*D.*, 29 A. 141=4 A.L.J. 43=A. W.N. 1906, 308=4 Cr.L.J. 453.]

Act VIII of 1873 (Northern India Canal and Drainage).

[REP. IN PART, ACT XII OF 1873; ACT XVI OF 1874; REP. IN PART (IN PUNJAB), ACT XVI OF 1887. AMENDED ACT XII OF 1891; ACT XVI OF 1899; (IN PUNJAB), REG. IV OF 1898.]

(1)—*S. 45—Resistance to a Naib Nazir—Distraint for canal dues under Act—Order for distraint not formally drawn up—Penal Code, s. 186.*—S. 47 of Act VIII of 1873 refers to the recovery of canal dues by the Collector from the *lambardars* who have been required under that Act to collect and pay such dues. But, under s. 45, the Collector may recover dues from such persons as have actually used canal water, although a *lambardar* has been appointed. Hence, where a Naib Nazir who was a public servant proceeded to distrain certain crops for an amount due on account of canal rates, under an order from an Assistant Collector, and the persons against whom distraint was issued offered resistance to the Naib Nazir in the discharge of his duties, *held*, that they were guilty of the offence under s. 186, I.P.C., although the order of the Assistant Collector might not have been formally drawn up. **27 A. 499=A.W.N. 1905, 74=2 A.L.J. 219=2 Cr.L.J. 183.**

(2)—*Ss. 70 and 74—Definition of "Canal"—Damage to trees growing on canal banks.*—*Held*, that damage to trees growing on a canal bank is damage to a canal within the meaning of s. 70, cl. (1), read with s. 74 of Act VIII of 1873. **A.W.N. 1907, 18=4 A.L.J. 204=5 Cr.L.J. 196.**

(3)—S. 74—*See* No. 2, *supra*.

See CRIM. PRO. CODE (1898), s. 33, 1 A. 461, F.B.

Act X of 1873 (Oaths).

[REP. IN PART, ACT XII OF 1873; ACT XII OF 1876; ACT VI OF 1900, S. 48.]

See ACT VI OF 1872.

(1)—S. 4—*See* FALSE EVIDENCE, 2 L.B.R. 272.

(2)—S. 4—*See* PERJURY, 29 M. 89=3 Cr. L.J. 370.

1.—Imperial Acts—continued.

Act X of 1873 (Oaths) - *continued.*

(3)—*Ss. 4, 5, 6, 7, 13, 14, 15—Omission to take oath or affirmation.*—The evidence of a boy aged 10, to whom no oath or affirmation was advisedly administered, was held to be admissible. The provisions of the Oaths Act and of s. 108, Evidence Act, were discussed in this case. **31 P.R. 1889 Cr.** (10 A. 207, *Diss.*)

(4)—*Ss. 4, 5 and 14—Crim. Pro. Code (1882), s. 164—Person making a statement under s. 164, whether can be bound by an oath—Evidence Act, s. 3.*—The direction in s. 164, Crim. Pro. Code, that the statement shall be recorded in one of the manners prescribed for recording evidence is merely a direction as to procedure. The statement itself is one which the law permits to be made before the Court by a witness, and is, therefore, evidence within the definition of s. 3 of the Indian Evidence Act. The person making it is a witness within the meaning of s. 5 of the Oaths Act, and therefore one to whom an oath or affirmation might be administered. A charge under s. 193, Penal Code, can, therefore, be framed as regards a statement under s. 164, made on oath before a Magistrate, in a stage of inquiry which he was authorised to conduct under the Code of Criminal Procedure. **16 M. 421=1 Weir 175.** [*F.*, 8 Bom.L.R. 589=4 Cr.L.J. 183, 29 M. 89=3 Cr. L.J. 370.]

(5)—*S. 164, Crim. Pro. Code (1882)—Evidence Act, s. 80.*—A confession recorded under s. 164, Crim. Pro. Code, purporting to have been taken on oath in violation of the express provisions of the Act is not a confession recorded in accordance with law and, therefore, the record is not admissible under s. 80, Evidence Act, to prove that confession. **10 C.P.L.R. Cr. 16.**

(6)—*Oath not to be administered to person, whose statements are recorded under s. 164.*—A Magistrate has no power to administer an oath or affirmation to any person whose statements he records under s. 164, Crim. Pro. Code. His function is to prepare a record in the manner and subject to the conditions prescribed in s. 164. **2 P.R. 1893 Cr.**

(7)—*S. 4—Crim. Pro. Code, s. 122—Inquiry as to the fitness of surety—Recording evidence on oath.*—A Magistrate holding an enquiry as to the fitness of a surety has power to record evidence on oath in the exercise of the power and duty conferred and imposed by s. 122. **26 A. 371.** [*F.*, 2 Sind L.R. 11 Cr.]

(8)—*S. 5—Penal Code, ss. 191 and 193—Examination of a person for obtaining information for the purpose of taking proceedings—Contradictory statements made by such person as a witness at the trial—Crim. Pro. Code (1898), s. 190 (c).*—Although a Magistrate might examine a person for the sake of obtaining information upon which a case might be started against some person not before the Court, he cannot examine him on oath as such person is not a witness. There is no authority, that, being so examined, such person is bound, by any express

1.—Imperial Acts—continued.

Act X of 1873 (Oaths)—*continued.*

provision of law, to state the truth. Consequently any charge for giving false evidence founded on such statement is bad and it, therefore, follows that a conviction based on the statement, as being contrary to another statement made at the regular trial without any proof or finding that the second statement was false cannot be maintained. **27 C. 455=4 C.W.N. 249.** [*Diss.*, 8 Bom. L.R. 589.]

(9)—*S. 5—Examination of child without affirmation—Evidence Act, s. 118.*—Whether a child understands the nature of an oath or not, he should, when examined as a witness, be examined on oath or affirmation. **S.C. 242, Oudh.** (16 M. 105, *R.*)

(10)—S. 5—*See* Nos. 3 and 4, *supra.*

(11)—*Ss. 5, 6, 7 and 13—Evidence Act, s. 118—Evidence of children taken without affirmation—Admissibility.*—Where a Sessions Judge, after being fully satisfied himself of the intellectual capacity of a child to give evidence, intentionally omitted to administer an affirmation, as it appeared to him that the child was of too tender years to render any attempt to bind his conscience expedient or practically operating but enjoined the child to tell the truth and admitted his evidence, *held*, (Per. Collins, C.J.) that the action of the Sessions Judge in not administering an oath or affirmation was irregular and that the irregularity was not cured by s. 13 of the Oaths Act and that the evidence of the child was, therefore, inadmissible.

Held, per Parker, J. (*contra*), that such intentional omission to administer an oath or to affirm the child, when the child was otherwise competent to give evidence, was cured by s. 13 of the Oaths Act and the evidence was admissible. **16 M. 105=1 Weir 823.** [*R.*, 11 C. P.L.R. 16 Cr., 10 O.C. 337.]

(12)—*Ss. 5, 6, 13—Evidence Act, s. 118—Competency to give evidence--Persons of tender years—Omission to take evidence on oath or affirmation.*—Whilst the limit of age as to the competency of witnesses has been removed, the general principle that they should be competent to give "rational answers" to questions has been affirmed, as shown by s. 118 of the Evidence Act. The necessity of oaths or solemn affirmations has been maintained and imperatively required, as shown by s. 6 of the Oaths Act. The omissions or irregularities in the administration of oaths or solemn affirmations are to be overlooked in certain cases contemplated by s. 13 of the Oaths Act. The evidence of a child of eight or nine years of age, who has not attained such maturity of mind as would enable him to realize the solemnity or obligation of an oath or affirmation, is inadmissible, if it has been deliberately and advisedly taken without any oath or affirmation, and s. 13 of the Oaths Act does not apply to it. An inability, from tender years, to comprehend either the spiritual or legal obligations of an oath or solemn affirmation is intellectual incompetency, and makes the child incompetent to be examined as a witness at all. **10 A. 207.** (14 B.L.R. 294, *Diss.*) [*R.*, 11 A. 183=9 A.W.N. 65, 20 P.R. 1902 Cr., 16 M. 105=1 Weir 826, 11 C.P.L.R. 16, 2 L.B.R. 322, 10 O.C. 337; *Diss.*, 31 P.R. 1889 Cr., 16 B. 359; *R.*, 11 A. 183=A.W.N. 1889, 65.]

(13)—*Ss. 5, 6 and 13—Evidence Act, s. 118—Competency to be a witness, of old men and young children.*—There is no direction or intimation in s. 118 to a Court, which has to deal with the question whether a person should or should not be examined, that it is to enter upon enquiries as to his religious belief or to open such a field of speculation as is involved in the *query* "What will be the consequence here or hereafter, if you will not tell the truth?" But a Court is to ascertain, in the best way it can, whether, from the amount of intellectual capacity and understanding of a young or old person, that the person is able to give a rational and intelligent account of what he has seen, heard, or done on a particular occasion; and if the Court is satisfied that a child of twelve years or an old man or woman of a very advanced age can satisfy those requirements, the competency of the witness is established. (10 A. 207, *R.*) [*Appr.*, 16 B. 359; *R.*, 16 M. 105=1 Weir 826.] Having regard to the language of the Oaths Act, neither a Judge nor a Magistrate has any option, when once he has elected to take the statements of a person as evidence, but to administer either an oath or an affirmation to such a person as the case may require. **11 A. 183.** [*R.*, 16 B. 359, 16 M. 100=1 Weir 823, 11 C.P.L.R. 16, 10 O.C. 337=7 Cr.L.J. 89.]

(14)—Ss. 5, 6 and 13—*See* EVIDENCE ACT, s. 118, 10 O.C. 337=7 Cr. L.J. 89.

(15)—Ss. 5 and 13—*See* DEFAMATION, 30 M. 222=6 Cr. L.J. 130.

(16)—*S. 6—Penal Code, ss. 191, 193—Offence of giving false evidence.*—The offence of giving false evidence may be committed, although the person giving evidence has been neither sworn nor affirmed. **19 C. 355.**

(17)—S. 6—*See* Nos. 3, 11, 12, 13 and 14, *supra.*

(18)—*Ss. 6 and 7—Exemption from taking oath—Muhammadan required to repeat kalma—Refusal—Penal Code, s. 173.*—Witnesses, interpreters and jurors, who are Hindus or Mahomedans, are exempt from taking oath. As repeating of the Kalma, by a Muhammadan witness, is not in accordance with the form prescribed by the Chief Court under s. 7 of the Act, his refusal to do so cannot be punished under s. 173, I.P.C. **20 P.R. 1902 Cr.=47 P.L.R. 1902.** (10 A. 207, *R.*)

(19)—S. 7—*See* Nos. 3, 11, *supra.*

(20)—*Ss. 8 to 11—Applicability to criminal proceedings.*—The term "party to any judicial

1.—Imperial Acts—continued.

Act X of 1873 (Oaths)—*continued.*

proceeding" in s. 8 of the Oaths Act does not include the complainant in a criminal proceeding nor the accused, ss. 8—11 of the Oaths Act do not apply to criminal proceedings. A prisoner on his trial can consent to nothing. Where the pleaders for the prosecution and the defence in a case of assault agreed that, if the principal witness would give his evidence on an oath specially binding on him—to wit, on the *Gita*—they would, under ss. 8 to 11, Oaths Act, accept the evidence as conclusive proof of the matter stated, *held*, that the Magistrate was not bound to decide the case on such evidence. **13 B. 389.** [*R.*, 33 C. 386=10 C.W.N. 501, 3 L.B.R. 208=4 Cr. L.J. 471, 12 C.W.N. 140=6 Cr. L.J. 434.]

(21)—*Ss. 9, 10 and 11*—The provisions of ss. 9 to 11 of the Oaths Act are inapplicable to criminal proceedings. They are appropriate to proceedings in which the matters litigated are civil rights which the parties are at liberty to forego and of which the Courts are competent to enforce a renunciation. **1 Weir 822.**

(21-*a*)—S. 9—*See* No. 20, *supra.*

(22)—S. 10—*See* Nos. 20 and 21, *supra.*

(23)—S. 11—*See* Nos. 20 and 21, *supra.*

(24)—*S. 13—Oaths Act, X of 1873—Child-witness—Procedure.*—In the case of a child-witness, the Judge is bound first to ascertain by questioning the child whether it is by tender years prevented from understanding the questions put or from giving rational answers to those questions. Then, if the Judge elects to take the statements of the child as evidence, he should proceed to administer the affirmation; but if he deliberately refrains from so doing, on the ground that the child cannot understand the nature of a solemn affirmation, under s. 13 of the Oaths Act, the deposition of the child will be admissible. The ignorance of a child on such a matter as the nature of a solemn affirmation is not necessarily equivalent to an inability to understand ordinary questions and give rational answers. **5 Bom. L.R. 551.** (16 B. 359, *F.*)

(25)—*Evidence given on simple affirmation.*—Held, by the majority (Jackson, J., *dissenting*), that the evidence of a witness who was examined on simple affirmation under the direction of the Judge is admissible as evidence. The word "omission" in s. 13 of the Oaths Act (X of 1873) includes any omission, and is not limited to accidental or negligent omissions. **23 W.R Cr. 12=14 B.L.R., F.B., 294.**

(26)—*Intentional omission to administer oath or affirmation to a witness.*—The omission referred to in s. 13 of Act X of 1873 is not limited to accidental or negligent omissions to administer an oath, but also to deliberate omissions. But having regard to the language of the Oaths Act, neither a Judge nor a Magistrate has any option when once he has elected to take the statement of a person as evidence,

1.—Imperial Acts—continued.

Act X of 1873 (Oaths)—*continued.*

but to administer either the oath or the solemn affirmation to such persons as the case may require.

Where in a charge of murder, the Judge allowed one of the witnesses, a girl of about ten years of age to be examined without any oath or affirmation being administered to her, as it was found that she did not understand the nature of either, *held* that the girl's evidence was admissible under s. 13, Oaths Act, if she was not by tender years prevented from understanding the questions put to her and from giving rational answers to those questions. **16 B. 359.** [*F.*, 16 M. 105=1 Weir 826, 5 Bom. L.R. 551, 10 O.C. 337; *R.*, 11 C.P.L.R. 16 Cr; 2 L.B.R. 322=1 Cr. L.J. 1131.] (23 W.R. Cr. 1, *F*; 4 M.H.C. 185, 3 B.H.C. 56 Cr., 10 A. 207, 11 A. 183, *R.*)

(27)—The Court in this case declined to act on the evidence of a child, 9 years old, who had been examined without oath, although she was a competent witness under s. 118 of the Evidence Act, I of 1872, inclining to the opinion that s. 13 of the Oaths Act, by which the evidence of a witness may be received in evidence, although no oath was administered, did not render the deposition of a child of nine years, whose deposition had been taken advisedly, and not by omission, without oath or solemn affirmation, admissible as evidence. **22 W.R. Cr. 1=14 B.L.R. 295 (note).** [*R.*, 16 M. 105, 10 A. 207.]

(28)—Where a Sessions Judge omitted deliberately to administer an oath to a prosecution witness on the ground that the witness was of too tender years to render any attempt to bind her conscience expedient, *held*, that she ought not to have been examined as a witness until she had made the necessary affirmation. But the irregularity was saved by s. 13 of Act X of 1873, as the section would include any omission. **1 Weir 827 (Footnote).** [*R.*, 1 Weir 823=16 M. 105.]

(29)—The evidence of a child of immature age—who the Sessions Judge considered understood the questions which were put to her, and who was, therefore, a competent witness under s. 118 of the Evidence Act,—taken by the Sessions Judge on a simple affirmation, because she was not aware of the responsibility of an oath, was held to be admissible as evidence under s. 13 of the Oaths Act, X of 1873. **22 W.R. Cr. 14=14 B.L.R. 54.** [*R.*, 16 M. 105, 16 B. 359.]

(30)—When a Judge or Magistrate has elected to take the statements of a person as evidence, he has no option but to administer either the oath or affirmation to such a person as the case may require. The proper course in such cases is to record the questions and answers put to the witness to ascertain whether he is competent to testify under s. 118, and, if the Court comes to the conclusion that he is competent, an oath or affirmation should be

1.—Imperial Acts—continued.

Act X of 1873 (Oaths)—*concluded.*

administered. A child is generally competent, if it is old enough to understand that it ought to speak the truth. **2 L.B.R. 322.** (10 A. 207, *cited*; 14 B.L.R. 294, 16 B. 359, *Diss.*)

(31)—All witnesses whether they are men or only boys aged 6 or 7, if they are competent witnesses under s. 118 of the Evidence Act, *i.e.*, if they are able to understand what goes on in Court, must be affirmed under s. 5 of the above Act. The word "omission" in the above section includes any omission and is not limited to accidental or negligent omission. **11 C.P.L.R. Cr. 16.** (16 B. 359, 14 B.L.R. 294, *Appr.*; 10 A. 207, *Contra*; 16 M. 105, *R.*)

(32)—*Omission to swear jury.*—As to whether if the jury in a Sessions trial are not sworn, the omission is one which could be covered by s. 13 of the Oaths Act, X of 1873, *see* **20 W.R. Cr. 19.**

(33)—*See* FALSE EVIDENCE, 19 C. 355.

(34)—*See* SANCTION TO PROSECUTE, 9 C. L.J. 690=13 C.W.N. 942=10 Cr. L.J. 150=36 C. 808=2 Ind. Cas. 697.

(35)—S. 13—*See* Nos. 3, 11, 12, 13, 14, 15, *supra.*

(36)—*S. 14—Crim. Pro. Code, s. 282—Order for trial of a witness for giving false evidence in a Sessions trial*—De novo *trial of the Sessions case owing to the incompetency of one of the jurors, effect of—Penal Code, s. 193*—During the trial of a dacoity case, a person was examined as a witness, and the Sessions Judge, considering his evidence to be false, committed him for trial before his own Court under s. 193, Penal Code. Subsequently the dacoity case was tried *de novo* owing to the incapacity of a juror who was found to be deaf and partly blind. *Held*, that there was nothing in the retrial of the dacoity case to absolve the witness from the obligation under which he lay to speak the truth when examined as a witness in the first trial, although such trial became null and void owing to the incapacity of a juror. **19 M. 375=2 Weir 680=6 M.L.J. 195.** [*F.*, 6 C.W.N. 717.]

(37)—*See* EVIDENCE ACT, s. 132, 12 B. 440.

(38)—*See* Nos. 3, 4, *supra.*

(39)—S. 15—*See* No. 3, *supra.*

Act IV of 1874 (Foreign Recruiting).

[REP. IN PART, ACT XII OF 1876.]

See BOMBAY ACT, XI OF 1846, s. 3, 25 B. 667.

Act XI of 1874 (Criminal Procedure Amending Act X of 1872).

[REP., ACT X OF 1882.]

(1)—*S. 6—Withdrawal of case by District Magistrate—Crim. Pro. Code (Act X of 1872), ss. 47, 491 and Act XI of 1874, s. 6.*—Under s. 47 of the Crim. Pro. Code (1872) as amended by Act XI of 1874, a District Magistrate may withdraw a case falling under s. 491 of the same Code (= s. 107 of the Code of 1898). **8 C. 851.** [*R.*, 31 C. 350].

1.—Imperial Acts—continued.

Act XI of 1874 (Criminal Procedure Amending Act X of 1872)—*concluded.*

(2)—S. 23—*See* APPEAL, 11 B.H.C.A.C.J. 117.

(3)—*S. 26—Power of Appellate Court rejecting appeal to enhance sentence.*—When the Appellate Court rejects an appeal, under s. 278, Crim. Pro. Code, 1872, it has, by s. 26, Act XI of 1874, no power of enhancing the sentence. **24 W.R. Cr. 29.** [*R.*, 10 C.L.R. 57, 23 B. 221.]

(4)—*S. 28—Power of High Court to order retrial under Crim. Pro. Code (1872), s. 280.*—The High Court has full power, as a Court of Revision, to order a retrial when necessary; it can, as a Court of Appeal, also exercise the like power under Act XI of 1874, s. 28, in cases tried with assessors. **24 W.R. Cr. 24.** (5 W.R. F.B. 80, *F.*)

(5)—*Power of Sessions Judge.*—An Appellate Court has the power to order a case to be retried, if it thinks fit to do so. A Sessions Judge is competent to order the re-trial of a case, which is before him on appeal. **2 C.L.R. 511.**

Act XIV of 1874 (Scheduled Districts).

[REP. IN PART, ACT XIX OF 1879; ACT XIV OF 1881, S. 14; ACT XXV OF 1881; ACT VIII OF 1883; ACT VII OF 1885; ACT XX OF 1890, S. 8 (1); ACT VI OF 1902; REG. I OF 1900. REP. IN PART AND AMENDED, ACT XII OF 1891. AMENDED, ACT II OF 1893.]

(1)—*Jurisdiction of High Court to transfer cases from Agent to Governor in Agency Tracts of Ganjam and Vizagapatam—Scheduled Districts Act (XIV of 1874)—Crim. Pro. Code (1882)—Letters Patent, s. 28—Madras Act XXIV of 1839, s. 3.*—On the coming into force of Crim. Pro. Code of 1861, the state of affairs in the Agency Tracts of Ganjam and Vizagapatam, which are scheduled districts, was that a special jurisdiction and a special procedure were created by Madras Act XXIV of 1839. But after the passing of the Crim. Pro. Code, the Government of Madras, by notifications dated 29th January and 17th February, 1862, issued under s. 445, Crim Pro. Code, 1861, extended the Code to the Agency Tracts. By an order dated 6th January, 1863, the Government of Madras withdrew the rules, theretofore regulating the administration of criminal justice in the Agencies, constituted the Agent a Sessions Judge under the Code and substituted, for the rules then in force, all the rules and conditions under which Sessions Judges exercise the powers conferred on them by the Code. Where the High Court set aside the conviction of an accused person by the Agent to the Governor in Vizagapatam on the charge of culpable homicide not amounting to murder, and directed the re-trial of the accused before the Sessions Court of Vizagapatam, *held*, that the

1.—Imperial Acts—continued.

Act XIV of 1874 (Scheduled Districts)—*ctd.*

High Court had jurisdiction to make such an order both under the Crim. Pro. Code and the Letters Patent, s. 28. **14 M 121=2 Weir 7.**

(2)—*See* BEN. ACT XXXVII OF 1855, S. 4 (1), 12 C. 536.

(3)—*See* APPEAL, 15 B. 505.

(4)—*Ss. 1 to 7 and 11—Laws Local Extent Act (XV of 1874), ss. 3 and 4—Applicability of Penal and Crim. Procedure Codes to the Laccadive Islands.*—The Penal Code and the Crim. Pro. Code, not having been, by any notification under s. 3 of the Scheduled Districts Act, expressly declared to be inapplicable to the Laccadive Islands are in force in such Islands. Any act done in these Islands contrary to the provisions of the Penal Code can, therefore, under the provisions of s. 2 of that Code and of s. 5 of the Crim. Pro. Code, be inquired into and tried only in accordance with the provisions of the latter Code. **13 M. 353= 2 Weir 1.** [*D.*, 2 Weir 7=14 M. 121.]

(5)—S. 2—*See* No. 4, *supra.*

(6)—*S. 3—Act comes into force in Scheduled Districts only on notification by the Government.*—The Scheduled Districts Act comes into force in each of the scheduled districts only on the issue of the notification under s. 3 of the Act; and under s. 4, it is only on the issue of such a notification that the enactments notified shall be deemed to be or not to be in force, and the notification thereof is binding on all Courts of law. The effect of the notification issued by the Madras Government under s. 3, dated 19th February, 1889, is to place all the Madras scheduled districts in a position to be operated on by further notifications under s. 3 of the Act, declaring that such and such Acts are in force or are not in force in such districts. To those places regarding which no such further notification or notifications are issued, laws applicable to British India generally, and not specially excluded from operation by the mere fact of a district being a scheduled district, are applicable. **13 M. 353=2 Weir 1.** [*D.*, 2 Weir 7=14 M. 121.]

(7)—*Ss. 3, 5, 6—Crim. Pro. Code, s. 526—Power of High Court to transfer cases—Aden Act II of 1864.*—*Per Jardine, J.*—After the High Court had annulled the proceedings in the Court of the Resident at Aden as being without jurisdiction, the case could not be treated as pending in his Court, as there was no Court of Session in existence to which the Magistrate could send the case. and the case remained in the Magistrate's Court. Whether the case be pending in the Court of the Resident or of a Sessions Judge or of a Magistrate, the High Court had the power to transfer the case, if the circumstances of the case would justify such transfer.

Per Birdwood, J.:—The Government of Bombay in exercise of the powers conferred by ss. 3 and 5 of Act XIV of 1874, and with the previous sanction of the Government of India, declared that Act to be in force in the island of Perim, and extended to the island the whole of Act II of 1864 with the exceptions of ss. 2, 17 and 23. At the same time, the Resident at Aden should "exercise the same jurisdiction and powers in respect of the trial of persons by the Court of Sessions for the island of Perim as are vested in him at Aden by the said Act." *Held* that this extension of Act II of 1864 to Perim must be practically inoperative. The act contains no provision for its extension and it makes only provision for litigation in certain Courts constituted for a certain local area. It follows that the Code of Criminal Procedure is still in force at Perim unaffected by Act II of 1864, just as it was before the notification. *Held* also that, by appointing the Resident at Aden to be "Sessions Judge for Perim, the Government made an appointment under clause (*a*) of s. 6 of Act XIV of 1874 (Scheduled Districts). That portion of the notification which regulates, presumably under clause (*c*) of the section, the exercise by the Resident of his power with reference to Act II of 1864, is ineffectual. The appointment made under clause (*a*) of the section must be held to be effectual with reference only to the provisions of the Code. So, after the annulling of the proceeding in the Court of the Resident (see previous case), and after the establishment of the Court of the Resident as the Court of Session for Perim, by the Government Notification of 1885, the commitment to that Court originally made by the Magistrate of Perim may be held to have been accepted. The High Court may legally transfer the case, as the case is now properly before a Criminal Court subordinate, under the Crim. Pro. Code, to the authority of the High Court, to any other Criminal Court of equal or superior jurisdiction, or to itself. [*R.*, Rat Un. Cr. C. 825, 96 P.L.R. 1901.] The transfer of a case can only be directed from a Court having jurisdiction to receive and try it. **10 B. 274.**

(8)—S. 4—*See* No. 4, *supra.*

(9)—S. 5—*See* Nos. 4 and 7, *supra.*

(10)—S. 6—*See* Nos. 4 and 7, *supra.*

(11)—S. 7—*See* No. 4, *supra.*

(12)—*S. 6—Assam Frontier Tracts Regulation, 1880, s. 2—Withdrawal of the operation of Criminal Procedure Code Power of High Court.*—The effect of the rules laid down under s. 6 of Act XIV of 1874, and under the notification of 6th May, 1884, issued by the Chief Commissioner of Assam under s. 2 of Assam Frontier Tracts Regulation directing that the Criminal Procedure Code should cease to be in force in the North Cachar Hills from the date of the notification, is to supersede in that place all previously existing criminal revisional authority by that of the Chief Commissioner. **26 C. 874=3 C.W.N. 564.**

(13)—S. 11—*See* No. 4, *supra.*

1.—Imperial Acts—continued.

Act XV of 1874 (Laws Local Extent).

[REP. IN PART, ACT VIII OF 1875; ACT XII OF 1876; ACT XVIII OF 1877; ACT VI OF 1878; ACT XI OF 1878; ACT XIX OF 1879; ACT XIV OF 1881, S. 14; ACT XXVI OF 1681; ACT X OF 1882; ACT VIII OF 1883; ACT VII OF 1885; ACT VIII OF 1887; ACT IX OF 1887; ACT VII OF 1889; ACT XIII OF 1889; ACT VIII OF 1890; ACT XX OF 1890, S. 8 (1); ACT IV OF 1894; ACT IX OF 1894; ACT XI OF 1901, S. 3; ACT I OF 1903. REP. IN PART AND AMENDED, ACT XIV OF 1881, S. 15; ACT XII OF 1891.]

(1)—Ss. 3 and 4—Applicability of Penal and Crim. Pro. Codes to the Laccadive Islands.—*See* ACT XIV OF 1874, ss. 1 to 7 and 11, 13 M. 353=2 Weir 1.

(2)—S. 4—*See* No. 1, *supra*.

Act XVI of 1874 (Repealing Act).

[REP., ACT XII OF 1876.]

(1)—*Jurisdiction of Magistrate—Effect of the repeal of Madras Act III of 1865 (Offences against special and local laws) by Act XVI of 1874.*—Although Act III of 1865 is repealed by Act XVI of 1874, a Magistrate has jurisdiction over offences created by special and local laws given to him by Madras Act III of 1865. **1 M. 223.**

(2)—*Jurisdiction of Magistrates—Madras Act, III of 1865—Act XVI of 1874—Crim. Pro. Code (1872), s. 8.*—The jurisdiction conferred on Magistrates by the Madras Act III of 1865 is controlled by the provisions of s. 8 of the General Act of the Government of India, *viz.*, the Criminal Procedure Code of 1882. That Act while it declared that offences punishable under any law other than the Penal Code containing no distinct provision as to the Court or officer before which or before whom they are to be tried may be inquired into and tried by the Criminal Court appointed by such Act, also provided that Magistrate of third class should be incompetent to try offences punishable with imprisonment extending to one year, and a second-class Magistrate incompetent to try offences punishable with imprisonment extending to three years. Act XVI of 1874 repealing Act III of 1865 has left unaffected the jurisdiction of Magistrates under that Act so far as it remained in existence at the time of the passing of the Act. second and third-class Magistrates whose jurisdiction was already restricted by Act X of 1872 cannot have their jurisdiction extended by reason of Act XVI of 1874 as it was before the passing of Act X of 1872. **2 M. 161=1 Weir 887.**

(3)—S. 1—*See* MAD. ACT III OF 1865, 1 Weir 886, F.B.

Act IX of 1875 (Indian Majority).

[AMENDED, ACT VIII OF 1890, S. 52.]

(1)—Ss. 2 and 3—*See* COMPOUNDABLE OFFENCE, 17 P.R. 1891 Cr.

1.—Imperial Acts—continued.

Act IX of 1875 (Indian Majority)—*cld.*

(2)—Ss. 3 and 4—*See* ACT VI OF 1864, s. 5, L.B.R. (1872—1892), 355.

(3)—S. 3—*See* No. 1, *supra*.

(4)—S. 4—*See* No. 2, *supra*.

Act X of 1875 (Advocate General's Powers).

[REP., ACT V OF 1898].

See CRIM. PRO. CODE (1898), Ch. XXIII. ss. 266–336.

(1)—S. 14.—Applications under s. 14 of the Act should be disposed of by the High Court in its ordinary original criminal jurisdiction. **9 C. 397.**

(2)—Ss. 32 to 37—*See* JURY, 1 B. 232.

(3)—Ss. 33 to 37—*See* No. 2, *supra*.

(4)—S. 76—*See* COMMISSION, 6 B. 285.

(5)—S. 101—*See* LETTERS PATENT, s. 25, 2 B. 61.

(6)—*Ss. 115, 147—Power of High Court to issue* certiorari.—*Order for delivery of property.*—The term "case" mentioned in s. 147 of Act X of 1875 refers to some question in the nature of a criminal proceeding, and could not refer to a matter of *quasi*-civil character, of which a reference under s. 115 to the Police Magistrate partakes. But the jurisdiction of the High Court to issue writs of *certiorari* can only be taken away by express enactment, and the High Court has still jurisdiction to issue the writ in cases to which s. 147 does not apply. [*R.*, 19 C. 52]. The word "property" in s. 115 of Act X of 1875 includes not only property that has been seized by the police or has been found on the person of the prisoner, but also property produced before the Police Magistrate by a witness. Proceedings before a Magistrate under s. 115 of Act X of 1875 were not intended to take the form of a regular trial, wherein the rights of the parties were to be finally determined, but rather of a preliminary proceeding wherein the Magistrate, upon the statements of the respective cases of the rival claimants, should make an order for delivery of property to the one, who he considered had made out a *prima facie* case. If the correctness of the Magistrate's decision be impugned, that may be done in a civil suit. It was not, therefore, incumbent upon the Magistrate to hear the applicant's witnesses, nor was it competent to the High Court, to review the decision of the Magistrate, even when the Court was of opinion that the Magistrate had come to a wrong conclusion as to the disposal of the property upon the statements before him of the cases of the respective claimants. **12 B.H.C.R. 217.**

(7)—S. 147—*See* No. 6, *supra*.

(8)—*High Court's power to order refund of fine on quashing a conviction.—Held* that the Court had no power, under s. 147 of the Act, to order the repayment of a fine on quashing a conviction. **1 C. 354.**

1.—Imperial Acts—continued.

Act X of 1875 (Advocate General's Powers) —*concluded.*

(9)—*Transfer of case without notice to Crown —Practice—Penal Code, ss. 292 and 294.*—Where an application is made for the transfer of a case under s. 147, Act XV of 1875, in which the prisoner has been convicted and is undergoing imprisonment, the Court has the discretion to order, if a sufficient *prima facie* cause be shown, that the case be removed, without notice to the Crown.

Semble:—A charge in respect of offences under ss. 292 and 294, Penal Code, must be specific in regard to the representations and words alleged to have been exhibited and uttered and to have been obscene. It is desirable, also, that the Magistrate should state, in his judgment, the representations and words he adjudges to be obscene. In the absence of any such specific decision, the High Court, when the case has been transferred under s. 147, Act X of 1875, may either try the case *de novo*, or dismiss it on the ground that the Magistrate has come to no finding on which the conviction can be sustained. **1 C. 356.**

(10)—*High Court—Power to issue Mandamus —To transfer case.*—The High Court had no power, under Act X of 1875, to issue a *mandamus* to a Presidency Magistrate to commit to the High Court for trial, an accused person acquitted by such Magistrate, when the Magistrate did not decline jurisdiction but, having exercised jurisdiction, committed an error of law: nor could the High Court, under s. 147 of the above Act, order a transfer of a case of the above description to itself. **2 C. 278** [*R.*, 9 C. 397.]

(11)—*Commitment, application to quash.*—The words "or other proceeding," in s. 147 of Act X of 1875, do not include a commitment; and no application to have a commitment quashed can be entertained under the section. **9 C. 397.** (2 C. 278, *R.*)

(12)—*Transfer of case to High Court—Costs.* —In a case transferred to the High Court under s. 147, the Court has no power to give costs. The case may be transferred after final determination by the Magistrate. Notes of the proceedings before them should be taken in all cases by the Judicial Officers of all Criminal Courts subject to the Act. **15 B.L.R Ap. 14.**

(13)—*See* TRANSFER OF CRIMINAL CASES, C. 290.

Act XII of 1875 (Indian Ports).

[REP., ACT X OF 1889.]

—*S. 22—Master, non-liability of, for servant's criminal acts.*—Where the servants of a contractor committed an offence under s. 22 of the Indian Ports Act, by throwing ballast from a ship into a river within the limits of the port, *held* that the contractor was not liable, in the absence of proof of abetment, for his servants' acts. **9 C. 849=12 C.L.R. 508.**

1.—Imperial Acts—continued.

Act V of 1876 (Reformatory Schools).

[REP., ACT VIII OF 1897.]

See ACT VIII OF 1897.

,, JUVENILE OFFENDER.

(1)—*Accused directed to be placed in Reformatory Schools—Validity of order—Penal Code, s. 379.*—After convicting the accused of theft under s. 379, Penal Code, a Magistrate ordered him to be placed in a Reformatory School for five years, but the Chief Court, in revision, set aside the order as not authorised by law, for Act V of 1876 was not in force in the Punjab, under s. 1 of the Act. **6 P.R. 1882 Cr.**

(2)—*Crim. Pro. Code, Act X of 1882, s. 399—Repeal by Reformatory Schools Act X of 1876.*—S. 399 of the Crim. Pro. Code was repealed in Bombay in 1889 by the introduction of Act X of 1876 into that Presidency. **Rat. Un. Cr. C. 864=Cr. Rg. 28 of 1896.**

(3)—*See* ACT VIII OF 1897, Rat. Un. Cr. C. 936.

(4)—*See* CRIM. PRO. CODE (1898), s. 399 (1, 2), Rat. Un. Cr. C. 180, 929.

(5)—S. 2.—Sentence of imprisonment in a Reformatory at a place where the provisions of the Act were not in force—Period of confinement.—*See* CRIM. PRO. CODE (1882), s. 399. **A.W.N. 1889, 131.**

(6)—*Ss. 2 and 7—Crim. Pro. Code, s. 399—Power of Second Class Magistrate to send a youthful offender to reformatory.*—The introduction of the Reformatory Schools Act, 1876, repeals the operation of s. 399, Crim. Pro. Code, "so far as may be practicable." Under ss. 7 and 8 of the former Act, only a first-class Magistrate can send a male youthful offender to a reformatory school. Therefore, an order by a second-class Magistrate sentencing a male juvenile offender to rigorous imprisonment to be sent to reformatory instead of being imprisoned in the criminal jail was held to be not valid inasmuch as only the first-class Magistrate should pass an order for sending such person to the reformatory schools and as only reformatory schools have been established and not reformatories. **12 M. 94=1 Weir 875.** [*R.*, 25 C. 333].

(7)—*Ss. 2 and 7*—Order of detention in Reformatory Schools—*See* ACT VIII OF 1897, ss. 1, 2, 3 and 8, 25 C. 333=2 C.W.N. 11.

(8)—Ss. 2 and 7—Repeal by Act V of 1876 of s. 318, Crim. Pro. Code, 1872—*See* CRIM. PRO. CODE (1872), s. 318, 25 C. 333=2 C W.N. 11.

(9)—*Ss. 3 and 7.*—A minor called upon to furnish security is not a youthful offender within the meaning of ss. 3 and 7, because failure to furnish the security ordered is not an offence under Chapter VIII of the Crim. Pro. Code. **L.B.R. (1893—1900), 129.** (4 M.H.C Ap. 46 and 2 C. 384, L.B.R. 1872—1892, 364, *F.*)

(10)—*S. 7—Procedure as to order.*—In the case of a juvenile offender whom it is desirable

1.—Imperial Acts—continued.

Act V of 1876 (Reformatory Schools)—*contd.*

to confine in a Reformatory, a Magistrate must first sentence him according to law and on sentencing him to imprisonment whether rigorous or simple, he may then make a further order such as is contemplated in s. 7 of the Reformatory Schools Act. **Rat. Un. Cr. C. 518 = Cr. Rg. 41 of 1890.**

(10-*a*)—*Sentence—Procedure.*—Where it is deemed necessary to have a convicted person sent to the Reformatory, the proper procedure is, not to order him, on conviction, to be detained there for some period, but to impose a substantive sentence and order that, in lieu thereof, he be detained in a Reformatory. **A.W.N. 1896, 27.**

(10-*b*)—*Power of High Court to interfere—Boy—Murder—Sentence.*—The High Court has no power to interfere with an order under s. 7 of Act V of 1876, directing detention in a Reformatory in lieu of some substantive sentence. The proper punishment to be imposed on a boy convicted of having murdered another boy for the purpose of taking his jewels, is transportation for life and not detention in a Reformatory. **A.W.N. 1896, 43.**

(11)—S. 7—*See* JUVENILE OFFENDER, L.B.R. (1893—1900), 79

(12)—*See* Nos. 6, 7, 8 and 9, *supra.*

(13)—*Ss. 7, 8—Jurisdiction.*—Where a youthful offender was sentenced to two years' rigorous imprisonment and in appeal the Sessions Judge, acting under s. 7 of the Reformatory Schools Act, ordered the offender's detention in a Reformatory School for two years and 8 months, *held* that s. 7 applies only to the Court by which the offender is sentenced and that the procedure which should have been adopted was that laid down in s. 8. **Rat. Un. Cr. C. 536 = Cr. Rg. 6 of 91.**

(14)—*Ss. 7, 8 and 10—Confinement in Reformatory School.*—A direction to confine a prisoner in a Reformatory School could only be made under s. 7 of Act V of 1876, and that only after a sentence of transportation or imprisonment. In cases under ss. 7 and 8, the age of the prisoner should be ascertained in order that the limit of age provided by s. 10 be not exceeded. It is not every juvenile offender in respect of whom the order under ss. 7 and 8 should be made, and the inmates of the Reformatory ought not to be obliged to associate with a person convicted of a serious offence under the Penal Code. **Rat. Un. Cr. C. 726 = Cr. Rg. 54 of 94.**

(15)—Ss. 7, 10 and 11—*See* JUVENILE OFFENDER, L.B.R. (1893—1900), 255.

(16)—*S. 8—Determination of age.*—It is necessary that a Magistrate passing an order under s. 8 of the Reformatory Schools Act should determine the age of the convict, and it is not enough to state that he is under 16 years of age. **Rat. Un. Cr. C. 494.**

1.—Imperial Acts—continued.

Act V of 1876 (Reformatory Schools)—*contd.*

(16-*a*)—If a District Magistrate is of opinion that the sentence upon any juvenile offender should be changed into one of detention in a Reformatory, he should communicate with the officer in charge of the jail and request him to send the juvenile offender to be dealt with under s. 8. If he refuse to comply with such request, the District Magistrate should bring the matter to the notice of the Inspector-General of Prisons or before Government. **Cr. Rg. 55 of 1889.**

(17)—*S. 8—Proceedings under the section—Judicial proceedings—Crim. Pro. Code, ss. 4, 435.*—Under s. 8 of the Reformatory Schools Act, evidence should be taken by the Magistrate as to the age of the offender. This would seem, therefore, a judicial proceeding. The proceeding, moreover, involves the alteration of the sentence of a competent Court. The alteration can only be made after he is satisfied on two points which are submitted for his decision, and in arriving at a decision, he must exercise a judicial discretion. Therefore, such proceeding is a judicial proceeding within the meaning of ss. 4, 435, Crim. Pro. Code. The High Court is, therefore, competent to revise the proceedings. **14 B. 381.** [*F.*, Rat. Un. Cr. C. 726, 25 C. 383; *R.*, 13 P. R. 1891 Cr.]

(18)—*Judicial proceeding—Crim. Pro. Code, 1882, ss. 4, 435—High Court—Revision—Letters Patent, s. 28—"Case."*—Though it is doubtful whether the order of a Magistrate under s. 8 of the Reformatory Schools Act is a "case" within the meaning of s. 28 of the Amended Letters Patent, it is clear that it is a "judicial proceeding" within the meaning of s. 435 of the Crim. Pro. Code and the High Court has jurisdiction to revise such an order. **Rat. Un. Cr. C. 494.**

(19)—S. 8—*See* Nos. 13 and 14, *supra.*

(20)—S. 10—*See* Nos. 14 and 15, *supra.*

(21)—S. 11—*See* No. 15, *supra.*

(22)—*S. 22—Act VIII of 1897, s. 8—Rules framed under the old Act, whether in force, after the passing of the new Act.*—Rules framed by the Governor-General in Council under s. 22 of Act V of 1876 must be deemed to have been passed under the existing Act (Act VIII of 1897). A Magistrate acting under the new Act must order the detention of a juvenile offender in a Reformatory School until he attains the age of 18. **21 M. 430 = 1 Weir 880.** [*R.*, 21 A. 391 = 19 A.W.N. 138.]

(23)—*S. 22—Rule by Government as to sending youthful offenders to Reformatory Schools.*—Under a Rule published under s. 22 of the Act by the Governor-General in Council "no boy shall be sent to a Reformatory School, if under 10 years of age, for a less period than 7 years, if over 10 years of age, for a less period than 5 years, unless he shall sooner attain the age of 18 years." Where a boy over 14, but whose exact age was not ascertained, was sent to the Reformatory School to be detained therein for a

1.—Imperial Acts—continued.

Act V of 1876 (Reformatory Schools)—*cld.*

a period of two years, *held*, that such an order was illegal, and that the proper procedure would be for the Magistrate to ascertain the precise age of the boy at the date of his order, and to make an order that he be detained for such period as would be equivalent to the period intervening between his then age and eighteen. **15 A. 208.** [*R.*, Rat. Un. Cr. C. 708.]

(24)—*Ss. 22 and 78—Rule made by Governor-General in Council under the Act—Minimum period of detention in a Reformatory School—Youthful offender.*—A rule made by the Governor-General in Council on the 14th March, 1889, directs that the minimum period for which boys shall be sent to a Reformatory School shall be, in the case of boys under 10 years of age, 7 years: and in the case of boys over 10 years of age, 5 years, unless the boys shall sooner attain the age of 18 years. It is not every boy that is convicted of an offence that can be sent to the Reformatory Schools, but only such boys as are found to be proper persons to be inmates of such a school. As a rule, no boy should be sent to a Reformatory on a first conviction, unless there is reasonable cause for supposing that he is likely again to lapse into crime. **1 Weir 378.**

(25)—S. 78—*See* No. 24, *supra*.

Act XIX of 1876 (Dramatic Performances).

[DECLARED IN FORCE IN UPPER BURMA, EXCEPT THE SHAN STATES (WITH THE EXCEPTION OF S. 12), ACT XIII OF 1898, S. 4.]

—S. 10—*See* PWES, U.B.R. (1897—1901), Vol. I, 368.

Act I of 1877 (Specific Relief).

[REP. IN PART, ACT XII OF 1891. REP. IN PART (LOCALLY)—ACT II OF 1882; ACT IV OF 1882, S. 21: APPLICATION RESTRICTED AND AMENDED IN PART, ACT IX OF 1899, SS. 3, 21.]

(1)—Ss. 7, 45—*See* **ACT IV OF 1877**, s. 170, 8 C 166=10 C.L.R. 190.

(2)—*S. 9—"Dispossessed otherwise than in due course of law," meaning of—Crim. Pro. Code (Act V of 1898), s. 145, effect of an order under—If dispossession within the meaning of s. 9, Act I of 1877.*—The plaintiff sued for recovery of possession of a mica mine under s. 9 of the Specific Relief Act, on the allegation that he was dispossessed by the defendant therefrom on the 13th February, 1907, in consequence of the final order of the Magistrate of Giridih, passed under s. 145 of the Crim. Pro. Code, on the 11th February, 1907, after the property had been in attachment under the proviso to cl. (4) of the section.

Held, that, under these circumstances, the plaintiff could not be said to have been dispossessed otherwise than in due course of law and the plaintiff is, therefore, not entitled to maintain an action under s. 9 of the Specific Relief Act.

1.—Imperial Acts—continued.

Act I of 1877 (Specific Relief)—*continued.*

Although s. 145 of the Crim. Pro. Code does not expressly authorize the Court to put the successful party into possession, the effect of which is to entitle him to take it.

Per MOOKERJEE:—A matter may be considered to have happened in due course of law, if it is the result of operation of the law, invoked by the ordinary method of any judicial proceeding.

The view that the effect of an order under s. 145 of the Crim. Pro. Code, is to entitle the successful party to take possession is consistent with the observations of the Judicial Committee. **7 C.L.J. 547.**

(3)—*Suit for possession under s. 15, Act XIV of 1859 (Limitation)—S. 318, Crim. Pro. Code (1861).*—The object of s. 15, Act XIV of 1859, is not to maintain, but to restore a party to possession; the object of s. 318, Crim. Pro. Code (1861) being to maintain a party in possession temporarily at least, whether that possession is a wrongful one or not, while s. 15, Act XIV of 1859, is to restore to possession parties dispossessed otherwise than by due course of law; and an award under s. 318, Crim. Pro. Code, is, therefore, no bar to a possessory action under s. 15, Act XIV of 1859, **20 W.R. 12.** [*R.*, 26 B. 353, 3 Bom. L.R. 919.]

(4)—*Crim. Pro. Code (1861), ss. 318 and 319—Jurisdiction of Civil Courts as to dispossession.*—Case where the bearing of ss. 318 and 319. Crim. Pro. Code, 1861, with regard to cases of dispossession and the jurisdiction of the Civil Courts illustrated. **8 W.R. 386.**

(5)—S. 9—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 5 A.L.J. 297=A.W.N. (1908), 142=30 A. 331.

(6)—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 13 C.W.N. 530=36 C. 370=9 Cr. L.J. 399=1 Ind. Cas. 817.

(7)—*See* PENAL CODE, ss. 441, 447, 3 L.B.R. 278=5 Cr. L.J. 415.

(8)—*See* PENAL CODE, S. 488, 138 P.L.R. 1904.

(9)—*S. 42—Suit by the plaintiff for a declaration that the defendant is not his lawful wife—Crim. Pro. Code (Act V of 1898), s. 488.*—A suit by a person against whom an order for maintenance in favour of defendant has been made by a Magistrate under section 488 of the Criminal Procedure Code, is maintainable in a Civil Court for a declaration that the defendant is not his wife. **100 P.L.R. 1903.** (21 P.R. 1894 Cr., 18 A. 29, 20 W.R. 58 Cr., 6 B.L.R. 243, 41 P.R. 1876, *R.*)

(10)—*Suit to declare property found by Criminal Court to be plaintiff's, to belong to plaintiff exclusively.*—After criminal proceedings had been successfully taken against plaintiff's tenants for mischief done in respect to a nullah, coming under either s. 430, or

1. - Imperial Acts—continued.

Act I of 1877 (Specific Relief)—*continued.*

432, Crim. Pro. Code, 1872, plaintiff sued for a declaration that the nullah was his own exclusive property, and therefore not such a stream as could come under either of those sections.

Held that the Court had discretion under s. 15, Civ. Pro. Code, 1859, to allow such a suit to be brought. **22 W.R. 329.**

(11)—*Dispute among rival haut-holders—Right of party aggrieved by order of Magistrate to declaratory decree on certain allegations.*—Where a plaintiff alleges that he had been holding a *haut* on his own land for many years, that the defendant's setting up a rival *haut* on the same days led to disturbances, which ended in an order by the Magistrate, prohibiting him from holding the *haut* on those days, and that he has suffered loss in consequence, he would, if the facts are true, be entitled to a decree declaring his right, as against the defendant, to hold the *haut* on the days. **5 C. 7 = 4 C.L.R. 309.** (6 B.L.R. 74, 10 B. L.R. 434 = 18 W.R. Cr. 47, 2 C. 293, 6 N.W.P. 104, *referred to.*)

(12)—*Suit for declaratory decree against order removing alleged obstruction—Crim. Pro. Code (1882), s. 133—Effect of order under section.*—In a suit for a declaration that certain land on which the plaintiff had erected an *otta* was his property and not that of the Government, where it appeared that the Magistrate had made an order, under s. 133, Crim. Pro. Code, (1882), for the removal of the otta as an obstruction to the public way, held that the plaintiff (subject to the discretion of the Court) was entitled to a declaration as against the Government of his right to the land, without having to wait until the Government had taken possession of the land. *Held, further*, with regard to the contention that the jurisdiction of the Court was taken away by s. 133, Crim. Pro. Code, which provides that "no order duly made by a Magistrate under this section shall be called in question in any civil Court," that the Magistrate's order under this section was not a conclusive determination of the question of title. **17 B. 293.** (15 C. 460, *R.*) [*R.*, 22 B. 230.]

(13)—*Magistrate removing bridge in proceedings under Ch. XX, Crim. Pro. Code (1861)—Declaratory suit to set aside the order of removal.*—Where a Magistrate in proceedings under Ch. XX, Crim. Pro. Code, 1861, removed a bridge, held that no suit would lie for a bare declaration of right without any consequential relief against persons no further interested in the matter than that they had put the Magistrate in motion. **15 W.R. 294.** (13 W.R. 19, *R.*)

(14)—*Whether order under s. 137, Crim. Pro. Code (1882), a bar to suit under s. 42, Specific Relief.*—A suit by an owner under s. 42, Specific Relief Act, is not barred by an order of a Criminal Court under s. 137, Crim. Pro. Code (1882). **15 C. 460, F.B.** [*F.*, 17 B. 293; *R.*, 15 C. 564].

1.—Imperial Acts—continued.

Act I of 1877 (Specific Relief)—*concluded.*

(15)—*Right to declaratory decree if affected by order under s. 321, Crim. Pro. Code (1861), not being carried out.*—A plaintiff is entitled to a declaratory decree as to the erroneousness of a Magistrate's order under s. 321, Crim. Pro. Code, 1861, though the order has not been put into force. **17 W.R. 281.**

(16)—*Right to declaratory decree—Crim. Pro. Code (1872), Ch. 40.*—Where a person, whose right to land is contested, obtained an order under Ch. 40, Crim. Pro. Code, 1872, from a Magistrate, declaring him entitled to retain possession, held he could sue for a declaration of his right to the land. **6 M. 176.**

(17)—S. 45—*See* BOM ACT XLVIII OF 1860, 4 Bom. L.R. 1 = 26 B. 396.

(18)—*See* BOM. ACT VI OF 1863, 4 Bom. L. R. 768.

(19)—*See* BOM. ACT IV OF 1902, s. 28, 7 Bom. L.R. 161.

(20)—*See* No. 1, *supra.*

See BEN. ACT II OF 1888, s. 31, 22 C. 717.

See BOM. ACT XLVIII OF 1860, 3 Bom. L. R. 653.

Act III of 1877 (Registration).

[REP. BY ACT XVI OF 1908].

See ACT XX OF 1866.

„ ACT VIII OF 1871.

(1)—*False statement made to a Sub-Registrar in identifying a person.*—Where a person was charged with having made a false statement before a Sub-Registrar, in having identified an unknown person who had borrowed money and executed a mortgage bond, as his neighbour to whom the mortgagee had agreed to advance the money on the mortgage, it was sought to prove a statement made by the mortgagee, who was not alive, at the time of the institution of proceedings, to a third person about a conversation which the mortgagee had with the accused. This was admitted in evidence, although objected to by the pleader for the accused. Further, a memorandum of an alleged approval of the mortgage bond by the accused, a pleader, was tendered and received in evidence, without proof of its being in the hand-writing of the accused, but upon a mere comparison of the handwriting. *Held*, that both the statements and the memorandum were inadmissible and irrelevant. *Held* also, upon the oral evidence in the case, that the accused was guilty of an offence of having made the false statement alleged against him. **10 C. 1047.**

(2)—*See* CRIM. PRO. CODE (1898), s. 29, 2 Weir 25.

(3)—Ss. 6 to 14, 69 and 84—*See* PENAL CODE, ss. 21 and 161, 32 C. 664 = 2 Cr. L.J. 512.

1.—Imperial Acts—continued.

Act III of 1877 (Registration)—*continued.*

(4)—Ss. 7 to 14—*See* No. 3, *supra.*

(5)—*S. 34—Crim. Pro. Code (1882), s. 195—Sanction to prosecute—Registration Act (III of 1877), s. 34—Sub-Registrar, whether a "Court."* —A Sub-Registrar, acting under s. 34 of Act III of 1877, is not a "Court" within the meaning of s. 195, Crim. Pro. Code. **11 M. 3.** [*F.*, 4 M.L.J. 189; *R.*, 12 M. 201.]

(6)—*Ss. 34, 35, 41—Crim. Pro. Code (1882), s. 195—Sanction to prosecute—Presentation of forged document for registration—Sanction of Sub-Registrar whether necessary.*—A Sub-Registrar acting under ss. 34 and 35 of the Registration Act cannot determine whether a document was executed or not, and if execution is denied, he is obliged to refuse registration. The document cannot be said to be given in evidence before him by a party to the proceeding; whereas in the case of a will, s. 41 makes it incumbent upon the Sub-Registrar to satisfy himself that the document has been really executed by the testator, and the document has to be given in evidence before him in a proceeding in which the Sub-Registrar has to determine whether it shall or shall not be registered. In the former case the sanction of the Sub-Registrar is not necessary for a prosecution of a party to the transaction on a charge of forgery. **12 M. 201.** [*F.*, 4 M.L.J. 189.] (10 M. 154, and 11 M. 3, *Expl.*).

(7)—*Ss. 34 (b) and 82 (a)—Inquiry as to the identity of the executant of a document—Power of Sub-Registrar to take deposition on affirmation—False statement.*—A Sub-Registrar, after commencing the proceeding of registration, should enter into evidence as to the identity of the persons appearing before him and alleging that they have executed the document. He is authorised, in such proceedings, to take depositions on affirmation or otherwise from the witnesses, and if any of the statements made therein is false, the deponents are guilty of an offence under s. 82 of the Act. **1 Weir 884.**

(7-*a*)—S. 35—*See* No. 6, *supra.*

(8)—*S. 41—Crim. Pro. Code, s. 195—Sanction to prosecute—Sub-Registrar acting under s. 41 of the Registration Act, whether a "Court."*—The term "Court" in s. 195, Crim. Pro. Code, is not restricted to a "Court of Justice," as defined in the Indian Penal Code, s. 6 of the Code of Criminal Procedure clearly contemplates the existence of Courts under other laws, and the Legislature has seen fit to use the general expression "Court" to the more restricted description "Court of Justice." A Sub-Registrar is, therefore, when acting under s. 41 of Act III of 1877, a "Court" within the meaning of s. 195, Crim. Pro. Code. **10 M. 154.** [*Applied*, 15 M. 138, F.B.; *D.*, 12 M. 201, 4 M.L.J. 189.]

(8-*a*)—*See* No. 6, *supra.*

(8-*b*)—S. 69—*See* No. 3, *supra.*

1.—Imperial Acts—continued.

Act III of 1877 (Registration)—*continued.*

(9)—*Ss. 72 and 73—False statement before Registrar—Irregularities in proceedings—Effect with respect to jurisdiction of criminal Courts.* —In a criminal trial for making a false statement before a Registrar, the fact that the proceedings before the Registrar were under s. 72 instead of under s. 73, of the Registration Act, would not matter, where no objection had been taken by the accused to the form of the proceedings before the Registrar. Nor would the want of verification of a petition of appeal, as provided in s. 73 of the Registration Act, interfere with the jurisdiction of the Criminal Court. **10 C. 604.** [*R.*, 16 C. P.L.R. 9.]

(10)—*Ss. 72, 73, 74 and 75—Registrar whether a "Court" within the meaning of s. 195, Crim. Pro. Code (1882).*—A Registrar acting under ss. 72 to 75 is a Court for the purposes of s. 195, Crim. Pro. Code. **15 M. 138 = 2 M.L.J. 64, F.B.** [*D.*, 2 M.L.J. 286; 4 M.L.J. 189; *Diss.*, A.W.N. 1893, 59 = 15 A. 141.]

(11)—Ss. 72 to 75—*See* CRIM. PRO. CODE (1898), s. 195, 15 A. 141.

(12)—S. 73—*See* Nos. 9, 10, 11, *supra.*

(13)—*Ss. 74 and 82—District Registrar's power to delegate to Sub-Registrar, functions prescribed by s. 74.*—The functions prescribed by s. 74 are entirely in the Registrar himself. He cannot delegate them to the Sub-Registrar. Therefore, a Sub-Registrar, holding an enquiry under s. 74, acting under the orders of the Registrar cannot be said to be acting within the meaning of s. 82 of the Act. Where a witness makes a false statement before the Sub-Registrar in such a case, he cannot be prosecuted under s. 82 of the Act. **24 C. 755.**

(14)—S. 74—*See* Nos. 10, 11, *supra.*

(15)—S. 75—*See* Nos. 10, 11, *supra.*

(16)—*Ss. 80 and 82—Enquiry by a clerk of Registry office.*—Where the clerk of a Registrar's office made inquiry, with a view to ascertain whether the person who brought a receipt to take back a document, which could not be returned in the first instance, and for which a receipt was accordingly given, was the person in whose possession the receipt ought to be, such enquiry is an enquiry within the meaning of Registration Act, of 1871, s. 80. **23 W.R. Cr. 55.**

(17)—*S. 81—Previous acquittal, plea of, in a criminal trial upon the same facts—Crim. Pro. Code, s. 403—False certificate by Registrar—False declaration—Indian Penal Code, s. 197—General Clauses Act, s. 26—Criminal Revision—Crim. Pro. Code, s. 439.*—The accused was a Sub-Registrar. He registered a document on the back of which he certified that it was presented for registration by the executant who was personally known to him and who admitted its execution. This was a false certificate, as the accused admittedly had not actually seen and had no conversation with him. He was tried

1.—Imperial Acts—continued.

Act III of 1877 (Registration)—*continued.*

and convicted on a charge under s. 81, Act III of 1877, which alleged that he registered and endorsed the document in a manner which he knew to be incorrect, knowing at the time that he would thereby be likely to cause injury to certain persons. He was acquitted on this charge on the ground that it was not proved that he knew that it was likely that he would cause injury to any one by his act. He was subsequently tried and convicted on a charge under s. 197, I.P.C. He pleaded his previous acquittal as a bar to his conviction under s. 197, I.P.C., but his plea was disallowed. *Held*, that the accused's plea of previous acquittal was a valid plea and that effect should have been given to it. S. 26 of the General Clauses Act was only intended to enact that, provided that he is not twice punished for the act or omission, the offender may be prosecuted and punished at one and the same trial under either or any of the enactments and the accused's case was not taken out of sub-s. (1) of s. 403, Crim. Pro. Code, by that section. It was failure to prove that the accused endorsed a false certificate with the knowledge that he was likely to cause injury to certain persons which brought about his acquittal, and not doubt as to whether the facts alleged against him constituted an offence under s. 81, Act III of 1877. *Held*, therefore, that the last part of sub-s. (1) of s. 403 of Criminal Procedure Code was not applicable. **6 O.C. 153.**

(18)—*S. 82—Sanction to prosecute.*—No sanction is necessary before instituting a charge under s. 82 of the Act. **11 C. 566, F.B.** [*R.*, 11 M. 500.]

(19)—*Crim. Pro. Code (1882), s. 195—Sanction to prosecute for forgery under s. 82, Registration Act, whether necessary.*—The sanction of a Sub-Registrar is not necessary for instituting a charge of forgery against a person presenting a forged document for registration, inasmuch as the forged document is not given in evidence in any proceeding before a Court. The provisions of s. 195, Crim. Pro. Code, do not apply to such a case. **11 M. 500.**

(20)—*Prosecution under the Registration Act—Frame of charge by Magistrate on his own motion.*—Except as directed by s. 82 of the Registration Act, a Magistrate cannot, on his own motion, frame a charge against the accused from the evidence of the registering officer before him, in respect of statements made to such officer in the course of the registration proceedings. **10 C. 604.**

(21)—*False statement—Delegation of powers of District Registrar—Penal Code, s. 193.*—S. 82 of the Registration Act only applies to a false statement intentionally made before any officer acting in execution of the Registration Act. A Deputy Magistrate directed by a District Registrar to enquire into certain matters regarding the registration of a document is not such an officer. **20 C. 719.**

1.—Imperial Acts—continued.

Act III of 1877 (Registration)—*continued.*

(22)—*Prosecution for denial of execution—Stay of proceedings pending civil suit to declare the deed to be forged.*—Where the accused denied the execution of a mortgage-bond, but the special Sub-Registrar held that he had executed it and directed a prosecution under s. 82 of the Act, upon which the petitioner sued for a declaration that the bond was a forgery, *held*, that the Criminal proceeding should be stayed, inasmuch as the proceedings in the Civil suit were much more likely to result in a proper conclusion than the summary proceeding taken before the Registration Officers. **5 C.W.N. 44.** [*R.*, 31 C. 858.]

(23)—*Prosecution under—Time for ordering prosecution—Denial of execution of a document—Refusal to register—Appeal from the refusal—Limitation.*—On the petitioner denying the execution of a document in favour of A, before the Sub-Registrar, that Officer refused to register the document. Thereupon A lodged a complaint against the petitioner for cheating under s. 417, I.P.C., which was dismissed under s. 203, Crim. Pro. Code, on the 26th March, 1906. On the 27th April, 1906, A appealed to the special Sub-Registrar who rejected the appeal for not having been preferred within the prescribed period of 30 days from the Sub-Registrar's refusal to register, but at the same time submitted a report to the District Registrar which ultimately led to an enquiry with the result that a proceeding was drawn up against the petitioner under s. 82 of the Registration Act. *Held*,—that under the circumstances the petitioner should not be prosecuted under s. 82 of the Registration Act. That the presentation of an appeal to the special Registrar after the time limited therefor, against the refusal of the Sub-Registrar to register a document on denial of execution, does not give any *locus standi* for the institution of a proceeding for inquiry as to the execution of the document. **12 C.W.N. 47.**

(24)—*Falsely personating a party before the registering officer, dishonest intention not essential for the offence of—Silence not an omission constituting abetment.*—S. 82 of the Act having been enacted with a view to punish acts, which are not offences under the Penal Code, a fraudulent or dishonest intent is not essential for the offence of falsely personating a party under the section before the registering officer. In the present case, there was nothing to create the presumption of common dishonest intent between the parties to the deed, sought to be registered, nor was there anything on the record, from which instigation or conspiracy was inferable; held, that, under such circumstances, the parties, other than the personators, who silently, stood by and saw the personation committed, could not be held guilty of abetment of any offence committed by the personators. **3 L.B.R. 222=4 Cr.L.J. 483.**

(25)—*S. 82 (c)—False personation.*—To complete the offence of false personation, under s. 82 (c) of the Registration Act, fraudulent

1.—Imperial Acts—continued.

Act III of 1877 (Registration)—*continued.*

intent is not necessary. Hence, where a person at the instance of another goes to the Registrar and demands the return of a document which had been presented for registration, representing that he is that other person, he commits the offence of false personation within the meaning of s. 82. **5 Bom.L.R. 138.** [*R.*, 3 L.B.R. 222=4 Cr.L.J. 483.]

(26)—*Sub-Registrar trying case against his clerk in capacity of Magistrate.*—A Sub-Registrar, also a Magistrate is not competent to investigate a case against one of his subordinates in this Registry Office, and afterwards himself try and convict him. **14 W.R. Cr. 74 =8 B.L.R. 423 (note).**

(27)—*Trial by Magistrate of charge instituted by him as Sub-Registrar.*—Where a Magistrate tried prisoners charged with having committed offences under ss. 93 and 94, Registration Act, 1866, the proceedings are not illegal, and without jurisdiction or otherwise bad, merely because the prosecution was (with the sanction of the Registrar to whom he is subordinate) instituted against the accused by the same Magistrate in his capacity of Sub-Registrar, but where it can be done, it would be better if the case were tried by some other person. **8 B.L.R. 422=17 W.R. Cr. 39.** (13 W.R. Cr. 66, *R.*). [*R.*, 25 W.R. 57 Cr.]

(28)—*Magistrate, jurisdiction of to try offence committed before himself in judicial proceeding.*—A Magistrate in whose presence the offence of intentionally giving false evidence in a judicial proceeding is committed may himself try and commit the persons so offending. **18 W.R. Cr. 15=5 B.L.R. App. 89.** [*Doubted*, 12 B.L.R. O. Cr. 35.]

(29)—*Abetment of false personation.*—Where three persons put up a fourth to personate one, whose authority was required to complete a certain conveyance of some immoveable property, they were held to be guilty under s. 94, Act XX of 1866. **7 W.R. Cr. 99.**

(30)—*Abetment, punishment for.*—Under Act XX of 1866, s. 94, the Legislature intended that the Courts should have power in certain cases (as for instance when he is the chief offender, the person really pulling the strings, and for whose benefit the offence is, in fact, committed) to punish the abettor more severely than the person who actually commits the substantive offence. **8 W.R. Cr. 16.**

(31)—*S. 82 (a)—"Acting in execution of the Act," what amounts to.*—A District Registrar is not "acting in execution of the Act" in questioning the parties who have signed a document and presented it for registration, as to the circumstances under which they signed it. A false statement made in such inquiry is not an offence punishable under s. 82. **1 Bom.L.R. 686.**

(32)—*Ss. 82 and 83—Crim. Pro. Code (1882), s. 29—Jurisdiction of Second-Class Magistrate over offences under Registration Act.*—Under s. 83 of the Registration Act, an offence falling under s. 82 of the Act is cognisable by a second-class Magistrate, and such jurisdiction is not affected by the provisions of s. 29, Crim. Pro. Code. **7 M. 347=2 Weir 24.** [*F.*, 2 Weir 25.]

(33)—S. 82—*See* ACT XX OF 1866, s. 91, 5 B.H.C. Cr. 7.

(34)—*See* ACT XX OF 1866, s. 93, 2 B.L.R. A. Cr. 25, 11 W.R. Cr. 24.

(35)—*See* CRIM. PRO. CODE (1898), s. 487, A.W.N. (1896), 181.

(36)—*See* PENAL CODE, ss. 109, 457, 468, 471 and 511, 30 C. 822=7 C.W.N. 639.

(37-38)—*See* SANCTION TO PROSECUTE, 12 C.W.N. 822=8 C.L.J. 73=8 Cr.L.J. 51, 11 O.C. 358=9 Cr.L.J. 54.

(39)—S. 82 (*a*)—*See* PENAL CODE, Ss. 471 and 474, 5 C.L.J. 233=5 Cr.L.J. 199.

(40)—S. 82—*See* Nos. 7, 13, 16, *supra*.

(41)—*S. 83—Competency of Registrar to institute prosecution under offence and under Act.*—A Registrar under Act XX of 1866 is competent under s. 95, to institute a prosecution for any offence under that Act. **10 W.R. Cr. 5.**

(42)—*Registrar transferring complaint to Magistrate and then as Magistrate transferring to police.*—Under Crim.Pro.Code, a Magistrate has only jurisdiction, to entertain a criminal charge, either when a complaint is made before him by a person properly qualified to complain and prosecute, or when he himself of his own knowledge and discretion starts the proceedings in cases in which he has such power given him. Where, therefore, a Registrar under Act XX of 1866, transferred a complaint made before him to the Magistrate's Court, and afterwards himself sitting as Magistrate, ordered the matter to be made over to the Police, it was held that this did not amount to the institution of a criminal charge under Crim. Pro. Code. **10 W.R. Cr. 21=6 B.L.R. 693 (note).**

—Charge under Registration Act whether Magistrate bound to commit to Sessions.—In the case of a prosecution under Act XX of 1866, a Magistrate has full power to entertain and finally adjudicate on the charge, and is not bound to commit to the Sessions; the words in s. 95 of that Act, "all prosecutions under this Act shall be instituted before a person exercising the powers of a Magistrate," being interpreted to mean that the whole of a criminal trial from complaint to adjudication shall be carried out before and by the same person. **10 W.R. Cr. 21=6 B.L.R. 693 (note).**

(43)—*Jurisdiction of Sessions Judge to try offences under Registration Act.*—The Sessions Judge can try a case of abetting false personation of a witness before a Registrar of Assurances, under s. 95, Registration Act, 1866. The word

1.—Imperial Acts—continued.

Act III of 1877 (Registration)—*concluded.*

"instituted" in that section should be construed to mean "commenced." **15 W.R.Cr. 58=6 B. L.R., F.B., 692.**

(44)—*Power of Sub-Registrar to investigate—Crim. Pro. Code (1861), s. 66—Sanction to prosecute.*—A Sub-Registrar under Act XX of 1866, has no power to investigate regarding the committal of an offence committed before him for registration of any document, but should cause the complainant to proceed, under s. 66, Crim. Pro. Code, before the Magistrate, or before an officer authorized to receive such complaint. **4 B.L.R. App. 69=13 W.R. Cr. 21.**

(45)—*See* No. 32, *supra.*

(46)—*S. 84—Sub-Registrar's office if a Court—Jurisdiction of Magistrate—Crim. Pro. Code (1872), ss. 435 and 436—Penal Code, s. 228—Evidence Act, s. 3*—A Sub-Registrar is a public officer; his proceedings are judicial proceedings within the meaning of s. 228, Penal Code; and his Court is a Court within the meaning of that word in the Evidence Act. Where, in a case under s. 228, the Sub-Registrar, before whom the offence was committed, did not proceed under s. 435 or 436, Crim. Pro. Code (1872), it was held that a Magistrate had no jurisdiction. **22 W.R. Cr. 10=13 B.L.R. App. 40.**

(47)—*See* No. 3, *supra.*

Act IV of 1877 (Presidency Magistrates' Court-fees).

[REP. (EXCEPT s. 57), ACT X OF 1882.]

(1)—*S. 39—Municipal corporation not a public servant—Preliminary sanction of Government not necessary.*—A municipal corporation not being a public servant within the meaning of s. 39 of Act IV of 1877 may be prosecuted under the Penal Code without the preliminary sanction of the Government required by that section. **1 J.G. 70.**

(2)—A Corporation, like the Calcutta Municipality, is not a public servant, so as to require the previous sanction of the Government for the purpose of its being prosecuted under the Penal Code. **3 C. 758=2 C.L.R. 520.**

(3)—*S. 41—Appeal.*—Held that there was no appeal from the order of a Judge of the High Court directing a prosecution under s. 41 of the Presidency Magistrates Act. **2 C. 466.**

(4)—*S. 87—Discharge of accused by Presidency Magistrate, effect of—Malicious prosecution.*—The discharge of an accused person by a Presidency Magistrate under s. 87 of the Act is such a termination of the prosecution as entitles the accused to maintain an action for malicious prosecution. **6 B. 376.** [*R.*, 19 B. 717.]

(5)—*S. 87, expl. 2—Examination of witnesses upon revival of prosecution.*—Upon the revival of a prosecution in which the accused has been discharged, all the witnesses, on whose evidence the prosecutor intends to rely, as justifying the committal of the accused, must be examined before the Magistrate; and, if any of them were examined at the time of the original prosecution, they must be examined *de novo.* **5 C. 121=4 C.L.R. 305.**

(6)—A revival of a prosecution is not a continuation of the original prosecution, from which the accused has been discharged. **5 C. 121=4 C.L.R. 305.**

(7)—*S. 124—Dismissal of complaint for default after partial hearing by Presidency Magistrate—Institution of fresh proceedings.*—An order of dismissal under s 124 of the Presidency Magistrates' Act (IV of 1877) does not operate as an acquittal and is no bar to the revival of fresh proceedings. **6 C. 523=8 C.L.R. 106.** [*R.*, 9 C. 397; Rat. Un. Cr. Rul. 422=13 B. 384].

(8)—*S. 129—Prosecution by Advocate or Attorney before Presidency Magistrate.*—With the exception of certain officers, such as the Advocate-General, Standing Counsel, Government Solicitor, &c., no counsel for attorney can claim the right of conduct of a prosecution before the Presidency Magistrate without his permission. **6 C. 59=6 C.L.R. 374.**

(9)—*S. 167—Plea of guilty—Appeal.*—The proviso to s. 161 of Act IV of 1877 provides that, when an accused person has been convicted on his own plea, no appeal shall lie, except as to the extent or legality of the sentence, although he is sentenced for a term exceeding six months or to fine exceeding Rs. 200. The object of this proviso, construed in its plain and obvious sense, is to limit the right of appeal, when the accused has pleaded guilty, to such matter as may be a special ground of complaint with respect to the sentence as distinguished from the conviction itself, whether on the ground that the extent of the sentence is beyond what the circumstances of the case required, or that the sentence is illegal as not authorized by law. **5 B. 85.**

(10)—*Sentences by Presidency Magistrate, when appealable.*—S. 167 which gives jurisdiction to the High Court to entertain an appeal from the sentence of a Presidency Magistrate refers in terms to a sentence of imprisonment exceeding six months or fine exceeding Rs. 200. It does not refer either to a sentence which awards imprisonment and fine or to any alternative imprisonments in default of payment of fine. The words of the section are confined in their meaning to substantive sentences and cannot be extended to include an award of imprisonment in default of payment of fine, the operation of which is contingent only on the fine not being paid. **2 M. 30=1 Weir 325.** [*F.*, 16 C. 799; *R.*, 33 C. 1036=4 C.L.J. 408.]

(11)—*S. 168—Discharge by Presidency Magistrate.—Setting aside.*—The only course to be taken in seeking to set aside an order of

1.—Imperial Acts—continued.

Act IV of 1877 (Presidency Magistrates' Court-fees)—*concluded.*

discharge by a Presidency Magistrate having been laid down in s. 168 of the Presidency Magistrates' Act, which confines the right of appeal to Government, a complainant, who is a private individual, cannot indirectly obtain what is denied to him by the law, by invoking the aid of the High Court's extraordinary powers under s. 15 of the Charter. **7 C. 447.** [*F.*, Rat. Un. Cr. Rul. 335; *R.*, 9 C. 397.]

(12)—*S. 170—Copies of order by, and depositions before, Presidency Magistrates, right to.*—All prosecutors, whose charges are dismissed by the Presidency Magistrate, are affected, within the meaning of s. 170 of the Presidency Magistrates' Act, by the order of discharge, so as to entitle them to obtain copies of the order made by the Magistrate and the depositions. **8 C. 166 =10 C.L.R. 190.**

(13)—*S. 170—Refusal by Presidency Magistrate to grant copies—Interference of High Court—S. 15 of the Charter Act—Specific Relief Act (I of 1877), ss. 7, 45.*—On a refusal by a Presidency Magistrate to grant copies of his order of dismissal and depositions to a prosecutor, the High Court can, certainly under s. 15 of the High Courts Charter Act, and also under s. 45 of the Specific Relief Act, compel the Magistrate to grant such copies. **8 C. 166=10 C.L.R. 190.**

(14)—S. 234—*See* HUSBAND AND WIFE, 7 B. 180.

Act X of 1877 (Code of Civil Procedure).

[REP., ACT XIV OF 1882.]

(1)—Ss. 182, 183—*See* EVIDENCE ACT, s. 91, 6 C. 762 = 8 C.L.R. 292.

(2)—S. 183—*See* No. 1, *supra.*

(3)—Ss. 341 and 342—*See* CONTEMPT OF COURT, 4 C. 655.

(4)—S. 342—*See* No. 3, *supra.*

(5)—*S. 651—"Revenue Court," whether a Court of Civil Jurisdiction.*—The term "any Court of Civil jurisdiction" in s. 651, is used for the purpose of including all Courts of Civil, in contradistinction to Criminal Courts. A Revenue Court being, therefore, a Court of Civil jurisdiction, the provisions of s. 651 are applicable to a person, who escapes from custody under the warrant of a Revenue Court. **4 A. 27.**

Act XV of 1877 (Limitation).

[REP., ACT IX OF 1908.]

(1)—*S. 5, sch. II, art. 155 (=s. 4, art. 155 of 1908)—Criminal appeal.*—The provisions of the Limitation Act are to be applied with as much strictness in criminal cases as they are in civil cases. That the appellant did not know that he had a right of appeal or that he thought his relatives would prefer an appeal is not a sufficient cause under s. 5 of Act XV of 1877 for not presenting his appeal in time. **A.W.N. (1891), 10.**

1.—Imperial Acts—continued.

Act XV of 1877 (Limitation)—*continued.*

(2)—*S. 5, art. 157—Delay in filing appeal—Excuse of delay.*—S. 5 of the Limitation Act gives the Courts a discretion, which, in respect of jurisdiction, is to be exercised in the way in which judicial power and discretion ought to be exercised, upon principles which are well understood; the words "sufficient cause" receiving a liberal construction, so as to advance substantial justice, when no negligence, nor inaction, nor want of *bona fides* is imputable to the appellant. Delay in the filing of an appeal ought not to be excused, unless there are special circumstances, namely, a misleading by the other side or a mistake in the office itself or some sudden accident which could not be foreseen. **9 Bom. L.R. 893=6 Cr. L.J. 221.**

(3)—*S. 5, art. 157—Appeal by Government from acquittal—Limitation.*—Art. 157 of the Limitation Act, which provides a period of six months for appeals by Government from acquittal is subject to the provisions of s. 5 of the same Act, which allows the Court to receive an appeal after the time limited when the appellant satisfies the Court that he had sufficient cause for not presenting the appeal in due time. **1 Weir 791.**

(4)—*S. 12 (=s. 12 of 1908)—Exclusion of time in obtaining copy of judgment.*—The time taken in obtaining a copy of the judgment must be excluded in an appeal by the accused, in computing the period of limitation. **10 C. 642.**

(5)—*S. 12, sch. II, art. 154—Appeal by persons in jail—Time taken in obtaining copies of judgment.*—For the purpose of computing the period of limitation for an appeal from a sentence of criminal Court by a person in jail, the time taken in forwarding applications for copies and in transmission of such copies to the jail, as well as the time occupied in the actual preparation of copies in the office of the Court, by which the judgment or order was passed, is to be included in "the time requisite for obtaining a copy," within the meaning of s. 12 of the Limitation Act. **9 M. 253=1 Weir 789.**

(6)—S. 12.—*See* APPEAL, 5 P.R. 1888 Cr.

(7)—*See* SANCTION TO PROSECUTE, 1 Weir 789.

(8)—S. 18 (=s. 18 of 1908)—*See* ACT XII OF 1882, s. 11, 20 B. 543.

(9)—S. 26 (=s. 26 of 1908)—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 13 C.W.N. 859=3 Ind. Cas. 468.

(10)—S. 28 (=s. 28 of 1908)—*See* CRIM. PRO. CODE (1898), s. 146, 26 M. 410.

(11)—*Art. 47 (=art. 47 of 1908)—Order of attachment under Crim. Pro. Code (1861), s. 318, nature of.*—The plaintiff sued for the establishment of his proprietary right to, and possession of, a certain ghat or bathing place. The lower Courts held that the suit was barred by limitation under cl. 46, sch. II, Act IX of 1871, the suit not having been brought within three years

1.—Imperial Acts—continued.

Act XV of 1877 (Limitation)—*continued.*

from the date on which the Magistrate, acting under Ch. XVIII of Act XXV of 1861, passed an order directing that the plaintiff and one of the defendants to the suits should put in personal recognizances of Rs. 500 each and that the Tahsildar should warn the parties not to go near the bathing place until a competent Court had settled the quarrel between them, the lower Courts being of opinion that the latter portion of the order amounted to an attachment of the property in dispute under s. 319, Act XXV of 1861. It was held that the order to the Tahsildar was not an attachment contemplated by that section. **7 N.W.P. 35.**

(12)—*Magistrate's order of attachment.*—Where a Magistrate passed an order for attachment on the finding that neither of the parties then at issue was in possession, *held* that it was an order respecting possession within the meaning of cl. (7), s. 1, Act XIV of 1859, and, therefore, the limitation provided by the clause was not applicable. **3 Agra 65.** [*R.*, 2 Bom. L.R. 93.]

(13)—*Order as to possession under Crim. Pro. Code (1861), s. 318.—Held*, that s. 1, cl. (7), Act XIV of 1859, was not applicable to an order passed under s. 318, Crim. Pro. Code, 1861. **3 N.W.P. 171.**

(14)—*Verbal order of Magistrate under Act IV of 1840.*—A verbal order of the Magistrate under Act IV of 1840 cannot be regarded as an order, or award within the meaning of the term of cl. 7, s. 1, Act XIV of 1859. **2 Agra 27.**

(15)—(*Act XIV of 1859, s. 1 (7).*)—*Limitation for suits for possession—Crim. Pro. Code (1861), s. 318.*—The provisions of s. 318, Crim. Pro. Code (1861), differ from those of Act IV of 1840 in many important respects. No period of limitation is prescribed in s. 318, Crim. Pro. Code, within which a suit must be brought to set aside the Magistrate's award made under that section. **8 W.R. 490.**

(16)—*Dispossession under s. 318, Crim. Pro. Code (1861).*—A plaintiff was found to have been dispossessed from land by a Magistrate's order under s. 318, Crim. Pro. Code. *Held* that his right of suit for possession was not barred, under cl. 7, s. 1, Act XIV of 1859, by the lapse of more than three years from the date of the Magistrate's order. **9 W.R. 480.** [*F.*, 17 W. R. 281.]

(17)—*Order to record letter ending proceedings.*—Where, in consequence of certain proceedings, under Act IV of 1840, a letter was written by a Judge directing the Magistrate to leave certain *maliks* not in possession of a certain *dearah* in dispute to their civil remedy, and the Magistrate ordered the Judge's letter to be put with the record, *held* that such order was not an order in the sense of Act XIV of 1859, s. 1, cl. 7. **20 W.R. 316.**

(18)—*Order dismissing complaint under Act IV of 1840.*—Where a Magistrate passed an order dismissing a complaint under Act IV of 1840, on the ground that the complainant had not been forcibly dispossessed, it is not a binding award to which cl. 7, s. 1, Act XIV of 1859, would apply. **11 W.R. 477.**

(19)—*Act IX of 1871, art. 46.—Held* that art. 46 can only apply between the parties whose possession has been confirmed by the Magistrate and each one of the parties to that proceeding who claimed against them. It does not apply in favour of one of the parties who has subsequently succeeded by regular suit in ousting the parties put in possession by the Magistrate. **6 C.L.R. 93.** [*D.*, 23 C. 731.]

(20)—*Possession of property—Order by Magistrate—Suit to recover.*—The period of limitation (three years) prescribed by art. 47, Limitation Act, 1877, for a suit to recover property that was the subject of an order under s. 530, Crim. Pro. Code, counts from the date of the Magistrate's order, and not from that of a confirmation order by the Sessions Judge. The above article has reference to immoveable as well as to moveable property. **6 C. 709=8 C.L.R. 154.** (1 M. 309, *Appr.*)

(21)—*Act IX of 1871, sch. II, cl. 46.*—The three years rule prescribed by art. 46 does not apply to a case where attachment proceedings are recorded and properties put in the charge of the Sub-Magistrate because the previous possessor is unascertained. **1 M. 309.** [*F.*, 20 A. 120=A. W.N. 1897, 214; *Appr.*, 6 C. 709; *R.*, 26 M. 410].

(22)—*Order under s. 145, Crim. Pro. Code.*—Art. 47 applies to all the persons bound by, or parties to, an order under s. 145, Crim. Pro. Code, and to any other persons claiming under or through any such persons under the title derived subsequent to the order. **23 C. 731, F.B.** (6 C.L.R. 93, *D.*). [*R.*, 28 B. 215=5 Bom. L.R. 932].

(23)—*Scope of article—Scope of order by Magistrate, the order being under s. 145, Crim. Pro. Code, 1882 (corresponding with s. 530, Crim. Pro. Code, 1872).*—Art. 47 contemplates a right to sue in ejectment being in existence at the time of the passing of an order under s. 145, Crim. Pro. Code, 1882; that is, it only bars those parties to the order, who, at the date of it, had a right to eject the successful party in the proceedings in the Criminal Court. **19 C. 646.**

(24)—*Arts. 47, 142, 144 (=arts. 47, 142, 144 of 1908)—Crim. Pro. Code, 1882, s. 146—Property attached under the section—Suit for possession.*—A suit for possession of immoveable property attached under s. 146, Crim. Pro. Code, is not governed either by art. 47 or art. 120, but is governed either by art. 142 or art. 144. **20 A. 120** (3 Agra 65, 1 M. 309, *R.*) [*Commented on*, 26 M. 410].

(25)—Art. 142—*See* No. 24, *supra.*

I.—Imperial Acts—continued.

Act XV of 1877 (Limitation)—*concluded.*

(26)—*Art. 144 (=art. 144 of 1908)—Possession—Lands under attachment by Magistrate--S. 146, Crim. Pro. Code.*—Lands under attachment by a Magistrate under s. 146, Crim. Pro. Code, are presumed to continue in possession of the person, who is afterwards found to have title thereto. Where a person, who is, afterwards, found to have a title to a property, receives from the Magistrate the rents and profits thereof for the period during which it was held under attachment by the latter, under s. 146, Crim. Pro. Code, he is held to be in constructive possession thereof, until withdrawal of such attachment. Limitation does not run against him during such period. **1 C.W.N. 569.** [*R.*, 3 A.L.J. 680=A.W.N. (1906), 286, 29 A. 90.]

(27)—Art. 144—*See* No. 24, *supra.*

(28)—Art. 154 (=art. 154 of 1908)—*See* No. 5, *supra.*

(29)—*Art. 155 (=art. 155 of 1908)—Appeal from the Resident's Court, Bangalore—Limitation.*—Where a person defended by counsel on a criminal charge interfered in the examination of a witness and made a defamatory statement with regard to his character was charged with defamation and convicted in the Resident's Court, Bangalore, *held*, an appeal to the High Court, preferred more than sixty days after the conviction, should be admitted. **15 M. 414=1 Weir 588=2 M.L.J. 142.** [*R.*, 17 B. 573, 1 Weir 589].

(30)—*See* APPEAL—APPEALS FROM ACQUITTALS, 2 C. 436, F.B.

(31)—*See* No. 1, *supra.*

(32)—Art. 157 (=art. 157 of 1908)—*See* Nos. 2 and 3, *supra.*

(33)—*Art. 178 (=art. 181 of 1908)—Crim. Pro. Code (1882), s. 195—Application for sanction to prosecute—Limitation.*—Rules of limitation are foreign to the administration of criminal justice, and it is only by express statutory provision that any rule of limitation can be made applicable to criminal cases. There is no fixed period of limitation for making an application for sanction under s. 195, Crim. Pro. Code. Art. 178, Limitation Act, has no reference to applications arising out of proceedings under the Code of Crim. Procedure. **10 A. 350.** [*Appl.*, 20 B. 543; *R.*, 11 C.P.L.R. 141, U.B.R. 1902, 2nd Quarter, Criminal Procedure, 3.]

Act I of 1878 (Opium).

[REP. IN PART, ACT IV OF 1894. REP. IN PART AND AMENDED, ACT XII OF 1891.]

(1)—*Opium cases—Undue severity of sentence—Measure of reward.*—Rewards in opium cases should not, in the absence of exceptional circumstances, usually exceed Rs. 5 for each ½ tola of opium found Magistrates should be careful so to limit a reward as to leave no doubt that it can be paid out of the fine and value of the opium combined. **L.B.R. (1872—1892), 568.**

I.—Imperial Acts—continued.

Act I of 1878 (Opium)—*continued.*

(2)—*Opium cases—Undue severity of sentence—Court to be guided by sound principles—Measure of reward.*—In dealing with opium cases the Courts must be guided by sound principles, and must not, by the imposition of ruinous fines for petty offences, render the administration of the law unbearable. Rewards in such cases must be regulated by the quantity discovered and the amount of the fine which it is reasonable to inflict. **L.B.R. (1872—1892), 567.** (L.B.R., 1872—1892, 368, 425, 546, *R.*)

(3)—*Possession of opium with intention of selling.*—The accused kept $2\frac{9}{16}$ tolas of opium in his possession with the intention of selling it. *Held* that he did not thereby contravene any rule under the Opium Act. **Rat. Un. Cr. C. 287=Cr. Rg. 23 of 86.**

(4)—*S. 3—Crim. Pro. Code (1882), s. 191—Importing opium into British India without license—Jurisdiction.*—A Second-Class Magistrate cannot refuse to take up a case of importing opium into British India without a license, although empowered, under s. 191, Cr. P. C., and s. 3 of the Opium Act, to take cognizance of the offence and try the case, merely on the ground that the gravity of the offence required severer punishment than he was competent to inflict. **Rat. Un. Cr. C. 375=Cr. Rg. 23 of 88.**

(5)—*License to possess opium—Right to have opium transported from one place to another.*—The accused, having a license for possession of opium as a medical practitioner limited to one seer, or eight pallams, sent his servant to another place to buy four pallams of opium from a licensed vendor of opium. The servant purchased the opium and took it to the accused at Madras. *Held*, that the accused was guilty of the offence of transporting opium by sending his servant to bring opium to Madras, which was illegal, except under Rules VIII to XIII of the Opium Act, and the license, which the accused held, did not authorise such transport either expressly or impliedly. *Quære.*—Whether, if the accused had carried the opium himself, the license to possess the opium would necessarily imply a right to transport it with him and so override the prohibition of transport? **13 M. 191=1 Weir 834.**

(6)—*Ss. 3 and 4—Beinchi removed from pipe and reserved for further use is a preparation.*—**Beinchi** or **Pyaungchi** which is the refuse of the opium pipe is, when removed, from the pipe and reserved for further use, a preparation of opium within the meaning of s. 3 of the Opium Act, and its possession is illegal under s. 4, inasmuch as it is not permitted by the rules framed under the Act. **L.B.R. (1872—1892), 617.**

(7)—*Ss. 3, 4, 9—Illicit possession of opium—Jurisdiction—Extradition Act (XXI of 1879), ss. 4, 5—Government of India Notification No. 1007-1, dated 18th March, 1884.*—In this case the accused was convicted by the District Magistrate of Gurgaon, under s. 9 on a charge of illicit possession of opium. The case for the

1.—Imperial Acts—continued.

Act I of 1878 (Opium)—*continued.*

prosecution was that the accused took delivery of four maunds of poppy heads, at the Railway Station of Bawal on the Rajputana-Malwa Railway. The Sessions Judge, on appeal, acquitted the accused, on the ground that he had been convicted of an offence against No. 32 of the rules framed under s. 5 and s. 13 of the Act, which forbids the importation of opium "into the Punjab," and that, conceding that I of 1878 was in force in Bawal, yet Bawal was not "in the Punjab" within the meaning of the Rules under the Act. *Held*, on an appeal by the Local Government, that, under s. 9 of the Act, the possession of opium in contravention of the Act being penal, as well as possession in contravention of rules made under s. 5 of the Act, it was (assuming the possession to be proved) for the accused, and not for the prosecutor, to establish that possession of four maunds of opium was permitted by the rules made under the Act. *Held*, also, that the fact that the said rules were not in force at Bawal was of no avail to the accused, if it were sound. The order of acquittal was reserved, and the appeal of the accused returned to the Sessions Judge for disposal upon the merits. **8 P.R. 1887 Cr.**

(8)—*Ss. 3 and 9—Illegal manufacture of chandu an offence under s. 9.*—With reference to ss. 3 and 9 of the Act the illegal manufacture or preparation of *chandu* was an offence under s. 9 of the Act. **A.W.N. 1884, 213.**

(9)—*Licensed cultivator transporting opium without pass.*—Where a licensed cultivator transported opium from one district to another without a pass, *held*, that the accused, not being either a farmer, or a licensed vendor, or a whole-sale licensed vendor, was not competent to transport opium from one District into another. *Held, further*, that, even supposing a licensed cultivator could be held to be a licensed vendor, that the accused was liable to be punished under s. 9, Act I of 1878, as he had not complied with the provisions of the rules by obtaining a pass. **13 P.R. 1884 Cr.**

(10)—*S. 4—Admixtures of opium—Rules under the Act.*—"Opium," as defined in the Opium Act, includes admixtures of it. *Kunbon* being an admixture of opium, the possession of it is not allowed by the rules under the Act. Hence, the possession of *kunbon* is, under the above section, illegal, irrespective of the method in which it was obtained. **L.B.R. (1872—1892), 619.**

(11)—*See* PENAL CODE, s. 353 105 P.L.R. 1904.

(12)—*See* Nos. 6, 7, *supra*.

(13)—*Ss. 4 (c) and 9 (c)—Possession of opium—Burden of proof.*—Under the Opium Act, the possession of opium is *prima facie* illegal, and the person in possession must show that, in fact, his possession is legal. Rule III of rules framed under the Act provides that a person may possess 3 tolas of raw opium "provided

1.—Imperial Acts—continued.

Act I of 1878 (Opium)—*continued.*

such opium has been purchased from Government or from a farmer or licensed vendor or medical practitioner." In order, therefore, that a person in possession of opium may have the benefit of Rule III, he must show that it was purchased as provided by the Rule. If he fails to do so, his possession is illegal by virtue of s. 4, and he is liable to punishment under s. 9 (*c*). **1 Weir 832.**

(14)—*S. 5—Omission to keep regular account of opium.*—The accused was convicted of the offence of contravening a rule made and notified under s. 5 of the Opium Act, 1878, by not keeping a regular account of the opium in his possession in accordance with the stipulation in his license. *Held* that the person who contravenes a condition of a license imposed under a rule may be considered guilty of a breach of the rule. **Rat. Un. Cr. C. 297=Cr. Rg. 44 of 1886.**

(15)—*Registered consumer—Presumption.*—The ordinary presumption would be that a person producing a certificate and asserting or implying that he was the person named in the certificate was the registered consumer to whom the certificate had been granted, and, unless it was proved that the vendor had reason to believe that the person producing the certificate was not the person named in it, the vendor should reasonably be held to be permitted by the rules to sell opium to the person producing the certificate. **L.B.R. (1893—1900), 419.**

(16)—*Rule 9—Holder of cultivator's license—Consumption of opium.*—The holder of a cultivator's license is not prohibited, by rule 9 of the rules framed under s. 5, read in connection with the other rules, from consuming the opium of which he is lawfully possessed under his license. **12 P.R. 1884 Cr.**

(17)—*Rules 11, 21—Patwari's omission to furnish cultivator's license—Liability of cultivator.*—Poppy cultivators, who were without licenses only because the *Patwari* has failed to furnish them, are not liable under rule 21. **46 P.R. 1885 Cr.**

(18)—*Rule 16—Scope of the rule.*—The intention of rule 16 of rules framed under s. 5 of Act I of 1878, is to permit possession of either opium not exceeding 3 tolas or of intoxicating drugs not exceeding that quantity, or of both not exceeding 3 tolas in the aggregate. **22 P.R. 1890 Cr.**

(19)—*Ss. 5, 9—Opium—Chundul.*—Chundul is opium dissolved in water and boiled so as to be smoked. A man cannot be said to make a preparation or admixture of opium within the meaning of ss. 5 and 9 of the Opium Act of 1878 and s. 35 of the rules framed under that Act, for which a license would be required, by merely dissolving in water the opium which he has legally purchased for his own use in smoking. **Rat. Un. Cr. C. 284=Cr. Rg. 20 of 86.**

1.—*Imperial Acts*—continued.

Act I of 1878 (Opium)—*continued.*

(20)—*Rules framed under the Act—Rules 34 to 50—Form E, referred to in rule 39—Words "or in such other form as the Commissioner from time to time prescribes"*—Ultra vires—Delegata potestas non potest delegari—*Breach of conditions of a Commissioner's license, whether a breach of a rule under the Opium Act and an offence.*—S. 5 (*f*) gives the Local Government power to make rules to permit absolutely or subject to conditions the sale of opium and to regulate its sale. Rule 39 of the rules so framed, *inter alia*, enacts that "such licenses shall be in the form E hereto annexed or in such other form as the Commissioner from time to time prescribes." S. 9 (*f*) makes it an offence to sell opium in contravention of the Act or Rules. A holder of a license in form E would, if he committed a breach of the license, be selling in contravention of rule 39 and could be dealt with under s. 9 of the Act. The words "or in such other form as the Commissioner from time to time prescribes," in rule 39 are *ultra vires*. The rule-making power is a power delegated by the Government of India to the Local Government and the Local Government cannot delegate it to the Commissioner, for *delegata potestas non potest delegari*. The conditions of a form of license prescribed by the Commissioner are, therefore, not rules under the Opium Act. Breach of the conditions of a Commissioner's license which is not in form E but in the form approved of by the Commissioner in Sind, is, therefore, not a breach of a rule under the Opium Act, even where the breach is committed by a person, and *a fortiori* he is not guilty of an offence under s. 9 when the breach is committed by his servant. **1 Sind L.R. Cr. 70 =8 Cr. L.J. 188.**

(21)—*Allowing sale of opium by an unauthorised person.*—A person who has taken a license for the sale of opium is guilty of an offence under s. 9 of Act I of 1878, if he allows another person to sell it on his behalf, when that salesman's name is not endorsed on the license under the rules framed by the Local Government and published in the N.W.P. and Oudh Government Gazette, dated 11th June, 1898. **1 A.L.J. 245.**

(22)—*Preparation of incorrect account.*—There is nothing in any of the rules made by the Bengal Government under s. 5 of the Act, which would make the preparation of incorrect accounts punishable under s. 9. **26 C. 571 = 3 C.W.N. 365.**

(23)—*Licensed vendor of opium—Keeping incorrect accounts—Liability under s. 9.*—S. 5 of the Act declares that the Local Government, with the previous sanction of the Governor-General in Council, may make rules consistent with the Act regulating the sale of opium. The Bengal Government in rule 15 (1) framed under s. 5, and art. 13, form No. 1, framed under rule 15 (1), has provided for the retail sale of opium in accordance with the conditions specified in the license and requires that the licensee is to keep an account showing the quantity of opium received and sold and other particulars. *Held*, that rule 15 (1) is not regularly made, and a licensee, who keeps an incorrect account in contravention of the above rule, is not liable to be punished under s. 9 of the Act. **26 C. 571 = 3 C.W.N. 365.** [*D.*, 1 A L.J. 245].

(24)—*Rule 9 (f)—Licensed cultivation—Entry of outturn of cultivation.*—The omission by a licensed cultivator to have the outturn of his cultivation entered upon his license, is not a contravention of rule 9 (*f*). **10 P.R. 1893 Cr.**

(25)—*Ss. 5, 9 and 13—Omission by poppy cultivator to inform patwari of outturn of poppy cultivation.*—There is nothing in the rules framed under the Opium Act requiring a poppy cultivator to inform the patwari of the outturn of poppy heads from the area under cultivation, as in the rules opium is distinguished from poppy heads. **16 P.R. 1883 Cr.**

(26)—*Ss. 5 (Rule 38), 9—Selling opium in a quantity in excess of that allowed by law.*—The act of selling opium by a licensed vendor in a quantity in excess of that permitted by law, is not a mere breach of the license, but is an offence under the Rules framed under the Abkari Act, and can be punished under s. 9. **1 Bom. L.R. 677.**

(27)—*Ss. 5, 9—Rule 24—Illegal transport of opium.*—The accused, licensed retail vendors of opium in one district, instructed a wholesale contractor of drugs in another district, to send them 2 maunds of poppy-heads. The latter did accordingly after obtaining a *rowana* from the Collector of his district, but without the permission of the Collector of the other district. The accused were convicted of violations of rule 24. *Held*, that the conviction was wrong, as it could not be supposed that the accused authorized or intended to authorize their vendor to transport the poppy-heads otherwise than in accordance with law and rules in force, and as the obligation of getting a pass for transport of opium is imposed upon the transporting farmer. **40 P. R. 1887 Cr.**

(28)—*Ss. 5 and 9.*—The licensed vendor of madak was fined Rs. 25 under s. 9 of the above Act for contravening a rule made and notified under s. 5 of the Act and embodied in his license which provided that he "shall not allow any of the drug to be consumed on his premises." The Magistrate found that the vendor was not present at the time when the drug was consumed on his premises, but punished him on the ground of his direct responsibility to the Government for the fulfilment of the condition of his license and the obligation which lay upon him, if he chose to delegate the charge of his shop to a servant, to take precautions in order to secure that the rules under which he held the license should be observed. *Held*, that, although a master is not generally speaking

1.—Imperial Acts—continued.

Act I of 1878 (Opium)—*continued.*

criminally responsible for the acts of his servants, unless he expressly command, or personally co-operate in, them, still the vendor was under the circumstances liable for the breach committed by his servant. **7 C.P.L.R. Cr. 41.**

(29)—*S. 9 (c)--Possession of opium beyond the prescribed quantity.*—Any possession of opium beyond the prescribed quantity amounts to an offence under the Opium Act and Rules. It cannot be said that, when possession is on behalf of another, it is not possession within the meaning of the Opium Act and Rules. The offence consists in the possession of an amount beyond the prescribed amount, without reference to any question or to any alleged proprietary right to any portion of the opium. **1 Weir 832.**

(30)—*S. 9, cl. (c)—Nature of possession of opium in contravention of Excise Law.*—S. 9 (*c*) contemplates a criminal or guilty possession. In the case of a person charged with being in illicit possession of opium under this section, the fact that the opium was found in that portion of his dwelling-house, which was in his sole occupation, gives rise to a *prima facie* presumption of his guilty possession. **S.C. 236, Oudh.** (S. C. 161, Oudh, *F.*)

(31)—*S. 9—Possession of illicit opium, what amounts to.*—The accused was a shop-keeper, and his neighbour was a licensed opium seller. The latter not being in the habit of sleeping in his shop used, when he went home, to put the opium with the books and license in a box, which he locked himself, and of which he kept the key, and to make it over to the accused for safe custody during the night. *Held*, that such custody did not amount to possession by accused of the opium which was locked in the box and that he could not, therefore, be held to be guilty of having opium in his possession in contravention of the Opium Act and the rules made thereunder. **25 A. 262.** [*R.*, 2 L.B.R. 136].

(32)—The "possession" referred to in s. 9 of the Act is possession with knowledge, and no presumption arises unless and until such possession is proved. **16 C.P.L.R. 13.** [*R.*, 17 C.P. L.R. 75].

(33)—*S. 9 (c)—Presence in chandu den—Abetment of possessing more than the prescribed quantity of opium.*—The fact of the presence of a person in a "*chandu* den" where several persons were smoking *chandu*, or even of his being found smoking there, could not warrant his conviction for abetment of the offence on the part of the master of the establishment of possessing *chandu* to a larger amount than that allowed by law. **A.W.N. 1901, 117.**

(34)—*S. 9—Rule 16—Possession of three tolas of opium—Plea of joint possession.*—In order to succeed on a defence of joint possession in a charge of possession of more than one tola of opium, it must be conclusively shown that the

1.—Imperial Acts—continued.

Act I of 1878 (Opium)—*continued.*

possession of the accused was the joint possession of the accused and others and that he held on behalf and for the use of all. **34 P.R, 1905 Cr.** (13 P.R. 1879 Cr. and 31 P.R. 1902 Cr., *F.*)

(35)—Where the defence of joint possession of more than one tola of opium is pleaded, it is not only essential to know that a certain number of people are living in the house, but that they all joined in the purchase, and that it was held by one for the use of all. **31 P.R. 1902 Cr.** (13 P.R. 1879 Cr., *R.*)

(36)—As it is the possession of more than one tola of intoxicating drugs that constitutes the offence under rule 16, and not the amount that the person in possession may himself own, the accused who was in possession of 2½ tolas was held to be rightly convicted under s. 9, although there had been three other persons each using a fourth of it, and the accused's own share may have been one fourth. **13 P.R. 1879 Cr.** [*F.*, 31 P.R. 1902 Cr.]

(37)—*Opium, unlawful possession of, by member of joint-family—Crim. Pro. Code, s. 103 (1)—Search by Police--Appeal, new plea taken in.*—An accused person, who was convicted of being in unlawful possession of crude opium, contended that the witnesses, called on to attend the search, were not respectable inhabitants of the locality, in which the place searched was situated, and also, for the first time in appeal, that his father, who was alive, being the master of the house, he (the accused) was entitled to an acquittal, in the absence of good evidence as to exclusive possession by a junior member of the joint-family. *Held*, that, in prosecutions under s. 9, Act I of 1878, against a member of a joint-family, the prosecution is bound to prove that the opium, found in the common room of the joint-family house, was in the exclusive possession and control of the particular member of the joint family charged with its possession, that such a defence could not be discarded simply because it was for the first time put forward in appeal, and that, under s. 103 (1), Crim. Pro. Code, it was the duty of the police officer to call two or more respectable inhabitants of the locality, in which the place searched was situated, to attend and witness the search. **2 O.C. 99.** (15 A. 129, *R.*)

(38)—*S. 9 (2)—Liability of cartman carrying opium seed.*—Where accused No. 1 engaged accused No. 2 to carry illicit opium in his cart, *held* that, in the absence of proof that the accused knew that opium was transported in his cart, he was not guilty. **Rat. Un. Cr. C. 378=Cr. Rg. 28 of 88.**

(39)—*S. 9, cl. (c)—Possession of opium, ingredients necessary to constitute—Whether crew of boat in which opium was found, could be said to be in possession of the opium.*—For the purposes of an offence under s. 9, cl. (*c*) of the Opium Act (I of 1878), nothing is necessary beyond possession of the opium; no particular

1.—Imperial Acts—continued.

Act I of 1878 (Opium)—*continued.*

frame of mind of the person found in possession is necessary to constitute the offence. The mere fact that the accused were two of the crew of the boat in which contraband opium was found, is not sufficient to attribute to them possession within the meaning of s. 9 of the Opium Act. **14 C.W.N. 308.**

(40)—*S. 9—Possession of a railway receipt for parcel containing opium.*—Where it was found that the accused had in his possession a railway receipt for a parcel containing opium. *Held (dubitante).*—That the possession of the railway receipt constituted possession of the opium to which the receipt related within s. 9 of the Opium Act. **14 C.W.N. 233=36 C. 1016.**

(41)—Where a railway receipt for a parcel which contained opium addressed to the accused was found, on search made in his house, carefully locked up and secreted in his box, *held*, that the possession of the railway receipt should be taken as possession of the opium within s. 9 of the Opium Act, inasmuch as the conduct of the accused showed that he was aware of the contents of the parcel and that it was sent to him with his full knowledge. **32 C. 557=9 C.W.N. 719=2 Cr.L.J. 470.**

(42)—*S. 9—Possession of opium without license—Legality of arrest - Conviction.*—For a conviction under this Act it matters not, so far as the legality of a conviction goes, by whom the accused was arrested or found in possession of the opium. **U.B.R. (1897—1901), Vol. I, 239.**

(43)—*Illicit possession—Desire of Magistrate to induce accused to give up opium.*—The desire of the Magistrate to induce an accused person to give up opium smoking is not in itself a sufficient ground for passing on him a sentence of imprisonment. **L.B.R. (1872—1892), 370.**

(44)—*Possession by one of excess quantity purchased for several persons—Legality of.*—There is no rule allowing a person to possess opium purchased by another person, nor to possess opium in excess of the three tolas' weight which has been purchased for other persons or which has been handed over to him to carry. The law must be strictly construed and followed or its ends will be easily defeated. **U.B.R. (1892—96), Vol. I, 137.**

(45)—*Sentence for illegal possession of opium—Excessive.*—It was not the intention of the Legislature to punish with severity trifling breaches of Opium Law. In this case a fine of Rs. 50, and in default one month's imprisonment for the illegal possession of one tola of opium was considered to be a very excessive sentence. **L.B.R. (1872—1892), 425.**

(46)—*Illegal possession—Severe punishments inadvisable.*—Severe punishments for an offence under cl. (*c*) of this section are unsuitable in cases of possession by a Burman woman of a small quantity for her own use and in cases

1.—Imperial Acts—continued.

Act I of 1878 (Opium)—*continued.*

when Excise officers abet the commission of such offences. **U.B.R. (1892—1896), Vol. I, 135.**

(47)—*Necessity for moderate punishment in certain cases.*—On a conviction under this section, the punishment should, on considerations of fairness and common sense, be moderate in cases of confined opium-smokes from Burmese times for the continuance of a habit which has only recently been prohibited by a different Government. **U.B.R. (1892—1896), Vol. I, 136.**

(48)—The accused was found in illegal possession of four tolas of opium and was sentenced to one month's rigorous imprisonment and to a fine of Rs. 100 and in default to a further period of three months' rigorous imprisonment. *Held*, the punishment was needlessly severe. **L.B.R. (1872—1892), 368.**

(49)—When an accused person is convicted of an offence under the Opium Act under the conditions which lead the Magistrate to conclude that he is engaged in traffic in opium on a large scale or in transporting opium in considerable quantities, a substantive term of imprisonment may appropriately be awarded in addition to a substantial fine. When opium is smuggled or sold in large quantities, the profits are probably such that the prospect of a sentence of fine only does not act as a deterrent. **U.B.R. (1897—1901), Vol. I, 241.** (1 U.B.R., 1892—1896, 139, *D.*)

(50)—*Burden of proof.* Where opium of any kind, and whether or not in excess of the prescribed maximum, is found in the possession of any person, and the legality of such possession is challenged by the Crown, the burden of proving that the possession was lawfully obtained lies on the person with whom the opium is found. **17 C.P.L.R. 75.** (16 C. P.L.R. 13, *R.*)

(51)—*S. 9, cl. (c)—Possession of 'Beinchi' illegal.*—'*Beinchi*' (or half-consumed opium), *i.e.*, the remnant left in an opium pipe after once smoking, is itself a preparation of opium when retained for further use and its possession is therefore illegal under s. 9. **U.B.R. (1892—1896), Vol. I, 133.**

(52)—*Servant's possession of opium, on master's behalf—Whether illegal—Conviction under s. 9 (c), Opium Act—Sustainability.*—Mere possession by a Burman servant, on behalf of his master, a Chinaman, of three tolas of opium, is not illegal, and the servant cannot be convicted under the terms of s. 9 (*c*), Opium Act. **U.B.R. 1909, 2nd Quarter, Opium, 1.** (U.B.R., 1897—1901, Vol. I, 232.)

(53)—If the accused, a Burman servant, had had the custody of no more than three tolas of opium, which his master was entitled to possess, it might have been found that he, although a Burman, had committed no breach of the Opium Rules on the ground that he was not in possession within the meaning of the

1.—Imperial Acts—continued.

Act I of 1878 (Opium)—*continued.*

law. But it is otherwise if the quantity of opium be more than three tolas. There is no provision in the Opium Rules for the possession of more than three tolas of opium by one man, nor for the joint possession of more than that quantity by several persons. **U.B.R. (1897—1901), Vol. I. 232.**

(54)—*Excessive opium found in a boat—Liability of the master and the crew.*—Where 50 tolas of opium were found in a boat and there was nothing to show how the opium came there, the master of the boat was liable to be convicted under s. 9, but not the crew. **8 C.W.N. 349.**

(55)—*Manufacture of opium.*—The conversion of opium into "*Chandu*," another form of intoxicating drug, is not the manufacture of opium. **9 P.R. 1881 Cr.**

(56)—*S 9—Rules 3 and 4 (1)—Manufacture of chandul by purchaser or opium for domestic use.*—Reading rules 3 and 4 (1) together, the intention must be held to permit the manufacture of *chandul* by a purchaser of opium from a licensed vendor for his own (the purchaser's) domestic use from opium obtained from a licensed vendor. **Rat. Un. Cr. C. 676 = Cr. Rg. 42 of 1893.**

(57)—*Illegal making over of opium—Selling of opium—Abetment of illegal possession of opium—Penal Code, s. 40.*—The licensed cultivators of poppy employed another to prepare opium for them, giving him as remuneration ¼ of the juice extracted from the poppy-heads. The latter was thus in possession of 32½ tolas of opium and was rightly convicted under s. 9. The licensed cultivators were convicted under s. 9 for selling opium. *Held*, that they could not be considered to have sold opium and were therefore not liable to be convicted under s. 9. Held, further, that they were not liable to be convicted of abetment of possession of opium, as they were cultivators independent of each other, and as there was nothing to show the quantity made over by each of them. **4 P.R. 1884 Cr.**

(58)—*Illicit sale of opium-Evidence of sale.*—Several persons were found in a house, and one of them was smoking *chandu* On the premises were also found three pipes, two iron needles, one pair of tongs and a smoking pillow. The quantity of opium, however, found in the house was within the limit allowed by law. *Held*, that the circumstances were not strong enough to warrant the presumption that *chandu* was being sold on the premises. **7 A.L.J. 25.**

(59)—*Sale of opium by servant of licensee.*—In the absence of any prohibition in a license to sell opium granted under this Act against the employment of a servant to sell the same, a sale by a servant of the licensee on behalf of his master is not properly a sale of opium without a license, punishable under s. 9 of the Act. **S. C. 285, Oudh.**

1.—Imperial Acts—continued.

Act I of 1878 (Opium)—*continued.*

(60)—*S. 9(d)—Rule VIII of the Opium Rules, 1893—Taluqs farmed separately—Transporting of opium—Pass from proper authorities.* Under Rule VIII of the Opium Rules of 1893, a farmer desiring to transport opium from one taluq to another of the same district must "when the taluqs of the district are farmed to different farmers" obtain a pass for each consignment from the officer in charge of the excise revenue of the district or from the Tahsildar of the Taluq. Where the taluqs of a district are separately farmed, but only one person is the farmer of two of the taluqs, a person transporting opium from one of the taluqs to the other with permits signed by the farmer, and being found, in the course of transporting, in a place outside both the taluqs, has transgressed the rule. **1 Weir 833.**

(61)—*S. 9 (e)—Importing opium.*—The accused went on business into foreign territory and, while there, purchased one anna's worth of opium. He ate a portion of it there, and brought the rest in his turban into British territory. The Magistrate convicted him under s 9 (*e*), Opium Act. The High Court reversed the conviction. **Rat. Un. Cr. C. 969 = Cr. Rg. 25 of 1898.**

(62)—*Neglect to keep accounts.*—The rules made under the Opium Act do not make the neglect to keep accounts an offence punishable under the Act. **1 Weir 831.**

(63)—*Proof necessary for conviction.*—The accused was charged with purchasing opium from unlicensed persons on the statement made by the accused to an Excise Darogha, who was directed by the Collector to question opium eaters in order to elicit information for the purpose of prosecuting unlicensed vendors, the accused did not admit the statement, *held*, that the accused could not be convicted, as it had not been ascertained that the offence was actually committed. **19 P.R. 1890 Cr.**

(64)—*Breach of condition of license—Offence.*—An infraction of a condition of a license cannot be considered an infraction of the rules and punishable under s. 9 of the Opium Act. **Rat. Un. Cr. C. 860 = Cr. Rg. 24 of 1896.**

(65)—The terms of a license issued under rules promulgated under ss. 5 and 8 of the Opium Act, 1878, are not to be regarded as part of the rules themselves; and consequently, an infraction of any of the conditions of a license issued under the said rules cannot be considered an infraction of the rules and punishable under s. 9 (*f*) of the Act. **Rat. Un. Cr. C. 332 = Cr. Rg. 23 of 1887.**

(66)—*Form of charge.*—In a charge under s. 9 of Act I of 1878, the rule under which the accused is charged should be specified clearly so that the accused may know precisely with what he is charged and may not be misled in his defence. **10 P.R. 1888 Cr.;** 19 P.R. 1891 Cr.

1.—Imperial Acts—continued.

Act I of 1878 (Opium)—*continued.*

(67)—*Liability of master for acts of servant.*—Where the servant of a licensed opium vendor sold opium after sunset, contrary to the conditions of his master's license in his master's absence, and there was no evidence to show that the master had directly or otherwise authorised the illegal sale, the master was not liable to pay the penalty under s. 9 of Act I of 1878. **11 C.L.R. 464.** [*D.*, 1 N.L.R. 81; *R.*, 13 C.L.R. 336].

(68)—*Power of Magistrate issuing a search warrant to conduct search.*—A Magistrate who has the power to issue a search warrant has the power himself to search. **A.W.N. 1884, 213.**

(69)—*Commitment for an offence under s. 9 of the Act to the Sessions—Crim. Pro. Code (1882), s. 29*—A Sessions Judge has no jurisdiction over an offence under s. 9 of the Opium Act. The conviction under that section must be by a Magistrate. The latter is not, therefore, competent to commit the case to the Sessions. **19 A. 465.** (1 W.R. Cr. 5, 5 M.H.C. 277, *R.*).

(70)—*See* ACT XIII OF 1857, s. 24, 24 C. 691.

(71)—*See* CRIM. PRO. CODE (1898), ss. 252, 243, 29 M. 372=4 Cr. L.J. 231.

(72)—*See* CRIM. PRO. CODE (1898), s. 555, 15 A. 192, F.B.

(73)—*See* CRIM. PRO. CODE (1898), s. 556, L.B.R. (1872—1892), 400.

(74)—*See* JOINDER OF CHARGES, 113 P L. R 1906=4 Cr. L.J. 178.

(75)—*See* SENTENCE, L.B.R. (1872—1892), 330.

(76)—*See* MASTER AND SERVANT, U.B.R. (1897--1901), Vol. I, 232, 237.

(77)—*See* Nos. 7, 8, 9, 13, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28, *supra*.

(78)—*Ss. 9 and 10—Scope of the section.*—The section provides that opium in respect of which an offence under the section is committed must be opium in the possession of the accused, although the possession need not be to the knowledge of the accused. The section is a penal one and must therefore be read plainly; the plain meaning is that if excessive opium is found in a man's possession, he is liable to be punished, unless he is able to account for it satisfactorily. **3 C.W.N. 349.**

(79)—*Ss. 9 and 10—Opium in the luggage of a child in charge of an adult—Presumption—Extent of punishment.*—Where opium is found in the luggage of a child in charge of an adult, the presumption is that it is in the possession of the person in *loco parentis* to the child until the contrary is proved. The presumption under s. 10 should be imposed on the accused, only after giving him an opportunity to account for the possession of opium, and if he is then

1.—Imperial Acts—continued.

Act I of 1878 (Opium)—*continued.*

unable to account for it satisfactorily; and the punishment awarded under the Act should not be one beyond what the public interest demands. **U.B.R. (1892—1896), Vol. I, 139.**

(80)—*Ss. 9 (c) and 10—Possession of certain quantity of opium several days after last purchase, as recorded in consumption slip—Presumption of illegal possession of opium—Insufficient evidence.*—An accused person was found in possession of only 3 tolas of opium on the 9th June, and it was proved, from his consumption slip, that he had purchased 3 tolas on the 4th June. It was presumed by the Magistrate that he must have consumed ½ a tola a day and that the 3 tolas found in his possession could not be opium bought from the Government. His defence was that he had borrowed opium from his friends, so that he had not consumed the opium he had bought from the shop on the 4th June.

Held, that the presumption, under s. 10 of the Act, did not apply to a case of this kind, and that the Magistrate was not justified in drawing the inference, which he drew from the proved facts. **4 L.B.R. 314.**

(81)—*Holder of a mate's receipt.*—The holder of a mate's receipt is presumed, till the contrary is proved, to be in possession of the consignment covered by it. **U.B.R. (1897—1901), Vol. I, 242.**

(82)—*Constructive possession.*—Under s. 10, where the accused is found in constructive possession of a package containing opium, he is bound to account satisfactorily for it and to prove that no offence is committed by him in respect of it. **U.B.R. (1897—1901), Vol. I, 242.**

(82-*a*)—*Ss. 9 and 10—Presumption of guilt, rule of, in s. 10—Meaning of—Circumstantial evidence of guilt.*—In construing s. 10, Opium Act, some limitation must be placed upon the general words of the section, namely, "it shall be presumed, until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act." The effect of ss 9 and 10 of the Opium Act seems to be that, when once it is proved that an accused person has dealt with opium in any of the ways described in s. 9, the *onus* of proving that he had a right so to deal with it is thrown upon the accused by s. 10. But the commission of an act which may be an offence must be proved before the presumption under s. 10 comes into play, and the presumption cannot be used to establish the fact. Where the accused, after having purchased opium on behalf of his master, did not send it to the master's shop, but falsely said, when asked as to it, that the opium had been stolen. *Held*, these circumstances, though they raise a suspicion that the accused sold the opium, are not sufficient to prove that he had done so; and the rule of statutory presumption embodied in s. 10 of the Act does not apply and cannot be used to

1.—Imperial Acts—continued.

Act I of 1878 (Opium)—*continued.*

establish that fact. But as, on the facts proved, the accused might have been convicted of unlawful transport of opium, the conviction and sentence were not interfered with. **14 C.W.N. 710.**

(83)—*Ss. 9, 13—Fine—Power of Magistrate to distribute it among persons concerned in the detection.*—A Magistrate is not competent to distribute fines among persons who may have been concerned in the detection of an offence under the Act. Rule No. 67, so far as it authorizes such payment is *ultra vires*. **13 P.R. 1894 Cr.**

(84)—*S. 9, Rule 16 and s. 14—Illegality of search, as a defence.*—In this case the accused was prosecuted for being in possession of opium in excess of the quantity allowed by law. The accused pleaded that the discovery of the excess quantity was the result of an illegal search. *Held*, the fact that the discovery was the result of an illegal search cannot exonerate the accused from his criminal liability. **11 P.R. 1906 Cr. = 4 Cr. L.J. 290 = 118 P.L.R. 1907.**

(85)—*S. 10—Interpretation of—"Possession," definition of the term—Proof of possession essential.*—The term "possession" implies knowledge on the part of the alleged possessor. A man has not the possession of that, of the existence of which he is unaware. Before an accused person is required to account for opium, there must be proof that such opium has been in his possession or under his control. **L.B.R. (1872—1892), 573.**

(86)—*Satisfactory explanation of possession Accused discharged of onus probandi.*—Where an accused person gives an account of his possession of the opium, which, if true, is satisfactory, and there is no evidence to show that it is untrue, the burden of proving how he became possessed of the opium in question does not fall on him. **L.B.R. (1872—1892), 597.**

(87)—*Presumption in case of unlawful possession of opium.*—Where a person, convicted of attempting to smuggle 5½ seers of opium into the city of Lucknow for sale, was sentenced to two months' simple imprisonment and a fine of Rs.50, the sentence was enhanced to two months' additional rigorous imprisonment, the Court pointing out that, although s. 10 of the Act threw on the accused the burden of satisfactorily accounting for opium in his possession contrary to the provisions of the Act, the presumption against the accused is only a presumption which may be rebutted and that possession must be proved, as opium is not unfrequently maliciously placed in or upon a person's premises by an enemy, who, then, brings down the police to the spot where the opium is found, and as such finding does not prove the possession contemplated by law. **S. C. 161, Oudh.** [*F.*, S. C. 236, Oudh].

(88)—*Liability of common carriers under the section.*—S. 10 contains no reservation in favour of common carriers. One of the objects of enactments such as s. 10 is to induce persons like

1.—Imperial Acts—continued.

Act I of 1878 (Opium)—*continued.*

carriers, to exercise special vigilance in carrying on their business, and this would apply as much to a common carrier as to a carrier under a special contract. **8 C.W.N. 349.**

(89)—*See* Nos. 78, 79, 80, 81, 82, *supra.*

(90)—*S. 11—Confiscation of property—Proof.*—Where a cartman was hired by the accused and in the cart was found a bag containing opium belonging to the accused, *held*, that, the order for the confiscation of the cart was not legal, in the absence of evidence to show that the carter knew that the accused's bag contained opium and, even if he knew that there was opium in the bag, that the accused had no right to transport it. **1 Weir 835.**

(91)—*S. 11—Appeal from order of confiscation.*—No appeal lies against an order of confiscation passed under s. 11 of the Opium Act. **1 Weir 835.**

(92)—S. 13—*See* No. 83, *supra.*

(93)—*Ss. 14, 15 and 16 - Excise Act, s. 38—Crim. Pro. Code, ss. 102 and 103—Search—Witnesses to search—Written information—Evidence.*—S. 16 of the Opium Act lays down that searches under ss. 14 and 15 of that Act shall be made in accordance with the provisions of the Code of Criminal Procedure. Under the Excise Act, it would appear from the wording of s. 38 of that Act, that it is not necessary for an Excise officer to conduct the search under the provisions of the Code of Criminal Procedure. It is objectionable to be constantly calling the same person to witness the search, and to do so is likely to prejudice the mind of a trying Magistrate against the prosecution. When searches are undertaken under the provisions of the Opium Act, neighbours or respectable house owners near to the house searched, should be called in to witness the search. A written information is not evidence. If it is desired to make the matter contained in it evidence, a person who could directly testify to such matter should be produced as witness. **4 L.B.R. 121 = 14 Bur.L.R. 202 = 7 Cr.L.J. 87.**

(94)—S. 14—*See* No. 84, *supra.*

(95)—S. 15—*See* No. 93, *supra.*

(96)—*Ss. 15 and 19—Entry and search of boat between sunset and sunrise without warrant—Seizure of opium—Whether authorised—"in transit," meaning of—S. 15.* Opium which is being carried about from place to place in a boat is "in transit", although the boat is temporarily anchored or otherwise fastened. But, s. 15 of the Act does not authorise an officer to enter and search a boat, between sunset and sunrise, against the will of the person in charge of it, without a warrant from another officer authorised under s. 19 of the Act. **5 L.B.R. 56, F.B. = 2 Ind. Cas. 546.**

(97)—*S. 16—Search—How to be made—Irregularity in search—Effect of evidence.*—In conducting a search under this Act of premises

1.—Imperial Acts—continued.

Act I of 1878 (Opium)—*concluded.*

occupied by the accused, the provisions of s. 103 of Code of Criminal Procedure are to be observed. The residents of the locality must be asked to be present and a list of property found should be made. The irregularity of the search will impair the value of the evidence regarding the discovery of opium. **U.B.R. (1892-1896), Vol. I, 135.**

(98)—S. 16—*See* No. 93, *supra.*

(99)—S. 19—*See* No. 96, *supra.*

(100)—*S. 39—License to sell muddut—Bengal Act IV of 1866.*—The sale of *muddut* is regulated by Act I of 1878. Therefore, any license granted for the sale of *muddut*, will not be a license under ss. 36 and 37, Act IV of 1866. S. 39 of the Act applies, and, therefore, a license from the Commissioner of Police is necessary for the sale of *muddut*. **13 C.L.R. 336.** (11 C.L.R. 464, *R.*).

(101)—*S. 45—Strict compliance with legal preliminaries necessary before the search of house.*—Before the house of a man is searched for the discovery of illicit opium, all the necessary preliminaries imposed by law must be strictly complied with, as opium cultivators are as much entitled to the possession of less than five tolas of opium as any other person. **Book Cir. 3 of 1872.**

(102)—*Rule I, cl. XX—Presumption as to Burman when to be raised—Onus.*—If the law declares that under certain conditions the burden of proof shall be shifted from the prosecution to the accused, the presence of all those conditions should be strictly proved. Before a presumption that a person is a Burman can be raised, it should be shown that he *ordinarily* wears Burman clothes and speaks Burmese as his *vernacular*. **U.B.R. (1892—1896), Vol. I, 144.**

Act VI of 1878 (Indian Treasure Trove).

[REP. IN PART, ACT XII OF 1891.]

—*S. 20—Crim. Pro. Code (1882), s. 28—Offences under the Act—Jurisdiction of the third-class Magistrates.*—Third-class Magistrates have no jurisdiction to try offences punishable under s. 20 of this Act. **2 Weir 23.**

See ABETTOR, 1 Weir 919.

Act VII of 1878 (Forest).

[REP. IN PART (LOCALLY), ACT VI OF 1879. REP. IN PART AND AMENDED, ACT V OF 1901. AMENDED, ACT V OF 1890, SS. 2—14; ACT XII OF 1891. REP. (IN ASSAM), REG. VII OF 1891.]

(1)—*Conviction—Reward—Crim. Pro. Code, Act X of 1882, s. 545.*—Where a conviction and sentence proceeds under the provisions of the Indian Forest Act, it is not competent to a Magistrate to pass an order of reward to the complainant for detecting the offence. **Rat. Un. Cr. C. 873=Cr. Rg. 48 of 1896.**

1.—Imperial Acts—continued.

Act VII of 1878 (Forest)—*continued.*

(2)—*Rules framed under the Act—Misquoting of the section—Appeal.*—A misquoting of the section of the Act under which a rule otherwise valid has been framed, does not render the rule void. **19 P.R. 1880 Cr.**

(3)—*Rules framed under the Act by Local Government—Conservator notifying periods and localities left unascertained by Government.*—When the Local Government has framed rules under the Forest Act, prohibiting hunting and shooting in reserved forests during such periods and in such portions as the conservator may appoint, the Conservator, in notifying periods and localities left unascertained by the Local Government cannot be said to be exercising the authority delegated to the Local Government by the Act. **19 P.R. 1880 Cr.**

(4)—*Closing of forest for indefinite period.*—A notification closing a forest for an indefinite period is not bad for indefiniteness, when it is not known at that time, how long it may be necessary to close the forest. **19 P.R. 1880 Cr.**

(5)—*S. 5—Trees cut from waste—Conviction—Land Revenue Code.*—Where a person *cuts* trees in a plot marked as waste number, the prosecution should lie, not under the Forest Act, but under the Land Revenue Code or the Rules framed thereunder. **Rat. Un. Cr. C. 873=Cr. Rg. 49 of 1896.**

(6)—S. 16—*See* MISCHIEF, 1 Weir 492.

(7)—*S. 25—Summons case—Acquittal—Further enquiry—Revision—Crim. Pro. Code (1898), s. 437.*—In this case the accused was tried and acquitted by a Tahsildar of the offence under s. 25. The District Magistrate disagreeing with the decision of the Tahsildar sent the case for further enquiry to the Assistant Commissioner, Attock, who convicted the accused. The Sessions Judge declined to submit the case to the Chief Court for revision holding that the accused was tried in a summons case and could only be discharged, but could not be acquitted, and that the order directing further enquiry was not illegal. *Held*, that the order of the District Magistrate was illegal and that the view of the law taken by the Sessions Judge was erroneous. A case under s. 25 of the Forest Act is a "Summons case" and the Tahsildar, if he did not find the accused guilty, was bound to acquit him, and no order under s. 437, Crim. Pro. Code, directing further enquiry, could be passed. The order of the District Magistrate and conviction and sentence were set aside. **P.L.R. 1900 Cr., p. 50=19 P.R. 1900 Cr.**

(8)—*S. 25 (1)—Shooting in reserved forest.*—A conviction recorded under s. 25 (1) of the Forest Act, for shooting in a reserved forest in contravention of any rules which the Local Government from time to time prescribes, is illegal where no such rules have been passed by the Government. **Rat. Un. Cr. C. 684=Cr. Rg. 50 of 1893.**

1.—Imperial Acts—continued.

Act VII of 1878 (Forest)—*continued.*

(9)—*S. 25, cl. (b)—Permitting cattle to trespass—What amounts to trespass punishable under the Act—Test.*—The question whether the owner of cattle, whose animals trespass in a reserved forest, is criminally liable for committing an offence under s. 25, cl. (*b*), Forest Act, 1878, depends upon the whole circumstances of each particular case. In a great many cases, the question will resolve itself into, 'did he or did he not take proper precautions to prevent such trespass,' and it does not depend upon the presence or absence of the owner at the moment. **16 P.R. 1909 Cr.**

(10)—*S. 25 (c)—Possession of flint or steel.*—The mere possession of a flint or steel within forest limits does not constitute an offence under s. 25 (*c*) of Act VII of 1878. **4 Bom. L.R. 935.**

(11)—*S. 25 (d)—Trespass in reserved forest—Human being.*—The trespass of a human being in a reserved forest is punishable under s. 25 (*d*) of the Indian Forest Act. **Rat. Un. Cr. C. 602=Cr. Rg. 21 of 1892.**

(12)—*Ss. 25, 32 (a)—Protected forest--Felling a tree without permission—Damage to the protected forest - Compensation for the damage.*—There is no provision, either in the Act or the rules framed thereunder, to award compensation for damages in respect of the protected forest. **8 Bom. L.R. 987=5 Cr. L.J. 9.**

(13)—*Ss. 25 and 54—Conviction under the Act—Order for confiscation.*—An order for confiscation cannot be regarded as an order incidental on a conviction under the Act. The confiscation is by the terms of s. 54 declared to be a punishment, for it is in addition to any other punishment prescribed for the offence. Being a punishment, the order for confiscation should be passed simultaneously with the punishment for the offence. **27 C. 450.** (4 A. 417, *R.*).

(14)—*Ss. 25 and 63—Forest offence—Court-fees—Court Fees Act, s. 31.*—Where persons convicted of an offence under the Forest Act, were each sentenced to pay a fine of thirteen annas, or in default to suffer one day's simple imprisonment, and all of them were ordered to pay annas five as compensation for the loss of Forest fuel or wood and Rs. 1-4 as Court fee expenses under s. 31 of the Court Fees Act, *held* that the order as to payment of Court-fees was not a valid order, as offences under s. 25 of Act VII of 1878 are, under s. 63, of the kind for which Police officers may arrest without warrant. **Rat. Un Cr. C. 695=Cr. Rg. 25 of 94.**

(15)—*Ss. 25 and 66—Theft of wood from Government Forest, to which Forest Act does not apply—Penal Code, s. 379.*—In the absence of anything in a Special Act (like the Forest Act) to exclude the operation of the general criminal law, an intention on the part of the legislature to exclude it should not be inferred. Further s. 66 negatives any such intention. Theft of wood from a Government forest, to which the Forest Act had not been applied, is punishable under the Penal Code. **10 P.R. 1885 Cr.**

1.—Imperial Acts—continued.

Act VII of 1878 (Forest)—*continued.*

(16)—*Levy of pound fines under Act I of 1871—Prosecution for an offence under s. 25, Forest Act.*—The levy of pound fines under Act I of 1871, s. 12, in respect of an offence of allowing cattle to trespass in a reserved forest is not a punishment, and does not, therefore, bar a prosecution, under s. 25 of the Forest Act. **19 P. R. 1885 Cr.**

(17)—*Ss. 25, 75—Sentence—Payments of rewards out of fines and confiscations.*—The payment of rewards out of fines and confiscations is not a part of the sentence, but is a matter for the Executive Government to deal with, in the exercise of the power vested in them by the rules framed under the Act. These rules give the Government the power to pay one half of the proceeds of fines and confiscations by way of reward without any order of the convicting Court, but more than one half cannot, however, be paid unless the Magistrate so directs. **Rat. Un. Cr. C. 960=Cr. Rg. 13 of 1898.**

(18)—*Ss. 28, 29-a, 31, 32, 34—Cutting trees reserved in protected forests.*—In acquitting an accused convicted of cutting trees reserved in a protected forest under s. 29-*a*. *held* that a protected forest may be notified either under s. 28 or s. 34, but the powers under both these sections are restricted to lands which are forest or waste lands. Whatever liability the accused might be under in regard to the provisions of any other law, he could not be convicted under s. 32 of the Act, for, the land which formed part of a survey number in an occupant's holding and which was assessed, was not shown to be within the class of lands to which the powers of Government under ss. 28, 29 and 34 of the Forest Act applied. **7 Bom. L.R. 462=2 Cr. L.J. 437.**

(18-*a*)—S. 29—*See* No. 18, *supra*.

(18-*b*)—S. 31—*See* No. 18, *supra*.

(19)—*S. 32—Notification No. 58, dated the 26th January, 1897.*—Held, that the Forest Act, 1878, is one curtailing the proprietary rights of individuals, and the Act and the notifications under it must be construed strictly where the rights of individuals are trenched upon. **55 P.L.R. 1901.**

(20)—S. 32—*See* Nos. 12 and 18, *supra*.

(20-*a*)—S. 34—*See* No. 18, *supra*.

(21)—*S. 41—Omission to return pass—Offence.*—There is no rule made under s. 41 of the Forest Act, for the Khandesh District, which requires holders of passes to return them, and the omission to return a pass is not therefore an offence. **Rat. Un. Cr. C. 500.**

(22)—*S. 41 (Rules 21, 26)—Compensation in addition to imprisonment—Crim. Pro. Code, s. 545 (1).*—Where a person is convicted of an

1.—Imperial Acts—continued.

Act VII of 1878 (Forest)—*continued.*

offence under rules 21, 26, framed under s. 41, Forest Act, 1878, compensation cannot be awarded in addition to the imposition of fine. **5 Bom. L.R. 126.**

(22-*a*)—S. 41—*See* No. 35, *infra*.

(23)—*Ss. 45 and 51—Conviction under s. 51, when can be had.*—Before a person can be legally convicted of a breach of the rules framed under s. 51, it must be shown that the timber of which he was found in possession, was timber that has gone below the catching places, that is to say, drift or stranded timber. Though the possession of unmarked timber within the area specified by the Local Government under s. 45 may be sufficient to establish that the timber was the property of the Government, yet it would not be sufficient to convict a person under s. 51. **13 P.R. 1883 Cr.**

(24)—S. 51—*See* CRIM. PRO. CODE (1898), s. 260, 128 P.L.R. 1902.

(24-*a*)—S. 51—*See* No. 23, *supra*.

(25)—*Ss. 52, 73—Sub-Assistant Conservator of Forests—Seizure and detention of timber—Want of a valid pass.*—Where a Sub-Assistant Conservator of Forests seized timber under the suspicion that it was property stolen from the Government forests, *held* that he could justify the seizure on the ground of the commission of a forest offence arising from the want of a valid pass. According to s. 52, Forest Act (VII of 1878), a forest officer cannot justify the detention of goods on the ground of an offence against the forest laws, where he had not taken the course which that section prescribes of taking the matter before a Magistrate. **15 B. 229.**

(26)—*Ss. 54 and 55—Confiscation of forest produce, the property of Government.*—No confiscation order is necessary, or can be made, in respect of forest produce, which is the property of Government, and regarding which a forest offence has been committed. All that need be done is, to direct that it should be taken by some forest officer. **4 A. 417.**

(27)—*Power to confiscate.*—It is only in respect of forest produce with regard to which an offence has been committed, that power to direct confiscation is given by law. Such an order, regarding forest produce not belonging to Government, can only be made at the time when the offender is convicted. **4 A. 417.** [*F.*, 27 C. 450.]

(28)—*Ss. 54, 76—Reward—Forest produce.*—Since there can be no legal confiscation of Government property, a reward cannot be paid out of such property. **Rat. Un. Cr. C. 620 = Cr. Rg. 44 of 1892.**

(29)—S. 51—*See* No. 13, *supra*.

(30)—*S. 55—Disposal of property.*—Under s. 55, Forest Act, the property, regarding which an offence is committed, should be awarded to Government. **5 Bom. L.R. 124.**

1.—Imperial Acts—continued.

Act VII of 1878 (Forest)—*continued.*

(31)—*Government Forest produce, offence relating to—Proper order.*—When the forest produce, in respect of which an offence is committed, is found to be the property of Government, the only order which the Magistrate can legally make regarding it, under s. 55 of the Indian Forest Act, is that it should be taken charge of by a Forest Officer. An order for its sale and the payment of a reward to the informer from its proceeds is therefore illegal. **Rat. Un. Cr. C. 361 = Cr. Rg. 3 of 1888.**

(31-*a*)—S. 55—*See* Nos. 26 and 27, *supra*.

(32)—*S. 56—Forfeiture for forest offence when a good title has vested in a third person.*—Under the orders issued by the Collector of Kandesh, certain Bhils entered the forest, brought from it teak logs under the customary passes, and sold them in open market to applicants who purchased in good faith. The Government sought to forfeit them on the ground that a forest offence had been committed in respect of them, inasmuch as the permission under which the Bhils acted, only allowed them to cut deadwood and the logs did not fall under the description. *Held*, ordering the logs to be restored to the custody of purchasers, that it was clear from the terms of s. 56 that a forfeiture was not a consequence of a forest offence, under the conditions stated in that section, where a good title has vested in a third person. **2 Bom.L.R. 675.**

(33)—*S. 58—Crim. Pro. Code (1872), s. 297—Revision by High Court of an order of a subordinate tribunal under s. 58 of Forests Act, VII of 1878.*—The terms of s. 58 of the Forests Act do not exclude the ordinary revisional powers of the High Court over a subordinate tribunal in the exercise of its Criminal jurisdiction, where there had been a judicial proceeding. **4 A. 417.**

(34)—S. 63—*See* No. 14, *supra*.

(35)—*Ss. 64, 41, Rule 26—Crim. Pro. Code, 1882, ss. 222, 223—Pass for forest produce belonging to Government—General charge.*—An inamdar, the owner of a forest, obtained in October 1891, a book of passes authorising him to issue the same for the transit of forest produce belonging to himself. Between October 1891 and March 1892, he issued 50 of these passes covering forest produce exceeding altogether 10 khandis; of these, about one khandi may have belonged to the inamdar and the rest, it was presumed, belonged to Government, but it could not be made out what particular pass or passes covered the produce belonging to the inamdar. He was convicted, in respect of forest produce over and above his own, under ss. 411 and 109, I.P.C., and Rule 26 of the Rules passed under s. 41 of the Forest Act, the charge being framed in general terms with reference to all the transactions between October 1891 and March 1892. *Held* that the conviction under Rule 26 could not be sustained, there being no express prohibition in Rule 3 against issuing such

1.—Imperial Acts—continued.

Act VII of 1878 (Forest)—*continued.*

passes for forest produce belonging to Government, and Rule 13 not applying to the case. *Held*, further, that the general charge as framed by the Magistrate was correct. **Rat. Un. Cr. C. 659=Cr. Rg. 24 of 1893.**

(36)—S. 66—*See* Nos. 15, 16, *supra.*

(37)—*S. 67 (2)—Receipt of compensation by officer not empowered—Legality of prosecution.*—Where compensation for grazing cattle in a reserved forest is received by an officer not empowered to do so, such receipt does not in strict law bar a prosecution for the offence. "Such officer" in s 67 (2) of the Forest Act means an officer empowered. **Rat. Un. Cr. C. 591=Cr. Rg. 6 of 92.**

(38)—*S. 69—Cattle Trespass Act, I of 1871, s. 11—Cattle straying in reserved forest.*—If cattle were found straying in a reserved forest, the seizure of the same would be legal even if no damage had actually been done, inasmuch as s. 69 of the Forest Act makes s. 11 of the Cattle Trespass Act applicable to forests. **22 B. 933.**

(38-*a*)—S. 73—*See* No. 25, *supra.*

(39)—*S. 75, interpretation of—Excise law—Confiscation in the owner's absence.*—The boat, in which excisable articles are carried in contravention of the excise law, should not be confiscated under the provisions of s. 75, unless it is found that the owner of the boat was in some way implicated in the offence under the excise law. **12 C.W.N. 139.**

(40)—*S. 75, Rule 1—Order of Court.*—Under Rule 1 of the rules framed under s. 75 of the Forest Act, one half of the fine imposed is payable as reward without any order of the convicting Court. **Rat. Un. Cr. C. 622=Cr. Rg. 46 of 92.**

(41)—*Apportionment of reward.*—It is not competent to a Magistrate to order a reward to be less than half the amount of the fine. When the reward is to be distributed among more than one person, the apportionment vests in the Conservator of Forests. **Rat. Un. Cr. C. 610=Cr. Rg. 31 of 92.**

(42)—*S. 75, Rules 3, 13, 26—Pass-book—Contractor—Authority.*—Of the rules framed under the Forest Act, Rule 3 prohibits the removal of forest produce beyond certain limits without a pass from the Conservator or some person duly authorised in that behalf under Rule 13. *Held* that a contractor under the Forest Department, to whom the Forest officer has given a pass-book containing passes bearing the office seal with an endorsement that he might thereby remove timber, was sufficiently authorised under Rule 13 to issue passes. **Rat. Un. Cr. C. 424=Cr. Rg. 88 of 88.**

(43)—S. 75—*See* No. 17, *supra.*

(44)—*Ss. 75, 76—Offence under the section, what constitutes.*—The offence under s. 75 of the Forest Act is only committed, under the express

1.—Imperial Acts—continued.

Act VII of 1878 (Forest)—*concluded.*

terms of the Act and rules, when the trees cut are the property of Government. The Court, before convicting, is bound to satisfy itself of Government proprietary rights in the usual modes and by means of the usual materials recognised in Courts of Justice. The declared opinion of the Executive Government merely as such can have no more weight with the Court than that of the humblest of Her Majesty's subjects. **18 B. 670.** [*F.*, Rat. Un. Cr. C. 828].

(45)—S. 76—*See* Nos. 28 and 44, *supra.*

(46)—*S. 78—Penal Code, s. 187—Refusal to serve as member of* panch.—A person refusing to serve as member of a *panch* appointed for the purpose of drawing a *panchnama* with reference to certain wood alleged to have been illegally cut in the reserved forests, was held not to be liable to be convicted under s. 187, I.P.C., as he was not shown to be a person contemplated in the provisions of the first three paragraphs of s. 78 of Act VII of 1878, and as the purpose for which he was called upon to give his assistance was also not one of the purposes mentioned in clauses (*a*) and (*d*) of that section. **22 B. 769.**

(47)—*S. 172—Forest officer, whether a public servant—Penal Code, s. 182.*—Under s. 172, Forest Act, the Forest officer is a public servant within the meaning of the Indian Penal Code. Any false information given to him with the intent mentioned in s. 182, I.P.C., is punishable under that section, whether that information is volunteered by the informant, or given in answer to questions put to him by that officer. **10 B. 124.**

Act VIII of 1878 (Sea Customs).

[REP. IN PART, ACT XVI OF 1904. AMENDED, ACT IX OF 1885, SS. 5 AND 6; ACT II OF 1887, SS. 1—4; ACT IV OF 1889, SS 10 and 11; ACT VIII OF 1889, SS. 1 AND 2; ACT IX OF 1891, S. 3; ACT XII OF 1891; ACT VIII OF 1894, S. 11. SUPPLEMENTED, ACT VIII OF 1896. APPLICATION OF S. 150 EXTENDED, ACT XIII OF 1890, S. 9. APPLIED WITH MODIFICATIONS, ACT II OF 1896].

(1)—S. 19—*See* BOM. ACT V OF 1878, SS. 3 (10), 9 and 43, 11 Bom. L.R. 221=33 B. 380=1 Ind. Cas. 343.

(2)—*Ss. 76, 167 (30)—Master of ship allowing boat-load to leave vessel without boat-note.* On reading ss. 76 and 167 (30) together, there is no doubt as to its being the duty of the master to see that each boat-load is accompanied by a boat-note specifying the number of packages sent and the marks and numbers or other descriptions thereof. It is further provided that each such note shall be signed "by an officer of the vessel." A duty is thus on the master of the vessel to see that no boat-load leaves his vessel without a boat-note. Failure to discharge this duty is punishable under s. 167 (30). **1 Weir 897.**

1.—Imperial Acts—continued.

Act VIII of 1878 (Sea Customs)—*concluded.*

(3)—S. 167 (30)—*See* No. 2, *supra.*

—*See* TRADE MARK, 4 C.L.J. 268 = 10 C.W.N. 107; 1 Weir 557.

Act XI of 1878 (Indian Arms).

[REP. IN PART, ACT XII OF 1891.]

See ACT XXXI OF 1860.

(1)—*Air-gun—not adapted for use with explosives—whether it comes under definition of arms—Tariff Act (No. XI of 1882).*—Where an air-gun was found to be similar to the 'gem' air guns, which are not adapted for use with explosive substances and which have been classed as toys by the Government for the purposes of the Tariff Act, *held*, that the air-gun in this case was a toy and did not come under the definition of arms within the meaning of the Arms Act. **4 Cr. L.J. 239.**

(2)—*Sub-Inspector, not of the 1st grade, presented by Government with a revolver, going armed with dagger—Whether offence.*—A Sub-Inspector of Police, not of the 1st grade, who has been presented by Government with a six chambered revolver, was charged under the Arms Act of going armed with a dagger without a license. *Held*, that the exemption under cl. (18) of paragraph 1 of Notification No. 518 of 1879 covered a dagger also and that the Sub-Inspector committed no offence by the possession of the dagger. **U.B.R. 1907, Fourth Quarter, Arms, 1.**

(3)—*S. 1, cl. (b) and s. 5—Sale of arms by public servant in execution of decree whether covered by s. 1, cl. (b), Arms Act—Act XIV of 1882, Crim. Pro. Code, s. 226.—Held* that the sale of arms by the Nazir of the Court, in execution of a decree, is a sale by a public servant in discharge of his duty, and, therefore, excluded by s. 1, cl. (*b*). from the operation of the Arms Act. XI of 1878; it would be a proper thing for the Court ordering the sale, to give notice of the sale and of the purchaser's name and address contemplated by s. 5 of the Act. **9 B. 518.**

(4)—*S. 4—Term "Arms" defined.*—There is no exhaustive definition in the Arms Act, of the expression "arms" which, though necessarily including the articles specified in the section, may also be held to apply to other instruments or weapons. Where the circumstances of a case show that a weapon or instrument is carried or possessed for the purpose of offence or defence and not as an article of domestic or agricultural utility, there is no reason why such weapon or instrument should not be held to fall within the category of "Arms." **20 P.R. 1900 Cr.**

(5)—*Parts of Arms—Chavei*—The word "arms" in s. 4 includes parts of arms and, therefore, *chavies* may be "arms" within the meaning of the Arms Act. **20 P.R. 1900 Cr.**

1.—Imperial Acts—continued.

Act XI of 1878 (Indian Arms)—*continued.*

(6)—*S. 4—Chavi.—Held*, that s. 4, Arms Act, 1878, does not define 'Arms' but clearly includes parts of arms within the word, and that *chavis* are arms within the meaning of the Arms Act. **33 P.L.R. 1901.**

(7)—*Arms, definition of—Sword-stick, if sword.*—A sword-stick is a sword sheathed in a cane-stick and comes within the definition of arms in s. 4 of the Indian Arms Act. Whatever can be used as an instrument of attack or defence, for cutting as well as for thrusting, and is not an ordinary implement for domestic purposes, comes within the meaning of the statute. **11 C.W.N. 971=34 C. 749=6 Cr. L.J. 227.**

(8)—"*Arms*" *definition of—Cook's knife, whether is an arm.*—The purpose for which an implement is primarily intended regulates whether it should be considered an arm or not. A cook's knife is not an arm. The accused's conduct in manufacturing a sheath for the knife, to enable him to conveniently carry it about with him, does not convert it into an arm, unless the character of the knife is altered, (*e.g.*), by grinding it so as to make it double-edged. **5 L.B.R. 130.**

(9)—*Test whether a weapon is an arm—Clasp-knife not an arm.*—The purpose for which a weapon is carried cannot be a sufficient test of whether it is an "arm" or not. A clasp-knife is not a dagger and is not designed or suitable, for warfare. Therefore, it does not come within the definition of "arms." **L.B.R. (1893—1900), 487.** (L.B.R. 1893—1900, 417, *F.*)

(10)—*Empty cartridge case—Ammunition.*—Empty cartridge case is ammunition as defined by s. 4 of the Arms Act, the possession of which is an offence. **7 A.L.J. 102=4 Ind. Cas. 405=10 Cr. L.J. 573.**

(11)—*Ss. 4, 19, cl. (f) (a)—Empty cartridge cases.*—The expression "all parts of ammunition" as used in s. 4 of the Arms Act includes empty cartridge cases. **7 Bom. L.R. 474=2 Cr. L.J. 449.**

(12)—*S. 4 (3)—Battle-axe, whether an arm.*—The word "includes" in s. 4 (3) is clearly not intended to be exhaustive. A battle-axe is an arm for the purposes of Act XI of 1878. **1 Weir 654.**

(13)—*Ss. 4, 5 and 9—Manufacture or possession of fire-work—Rockets.*—The manufacture or possession of fire-works, including rockets which are mere fire-works, does not come within the prohibition of s. 5 of the Arms Act. The rockets referred to in s. 4 under the definition "ammunition" are war-rockets. **5 M. 159=1 Weir 655.** [*D.*, 8 M. 202].

(14)—*Ss. 4, 14—Gun-barrel in good order is a fire-arm.*—An old-fashioned muzzle-loading gun-barrel in good condition and with the touch-hole in good order is a fire-arm within the meaning of s. 4. There is nothing in s. 14

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I.—Imperial Acts—continued.

Act XI of 1878 (Indian Arms)—*continued.*

inconsistent with s. 4. "Fire-arms" in s. 14 includes parts of fire-arms. **3 N.L.R. 53=5 Cr. L.J. 435.**

(15)—*Ss. 4, 14 and 19 (f)—Gun-barrel.*—A gun-barrel, so long as it can be used as a gun-barrel, is an arm within the definition of the Arms Act, s. 4, because it is a part of a fire-arm. But it is not a "fire-arm" within the meaning of s. 14 of this Act, nor is it one of the other articles mentioned in the section. **12 C. P.L.R. Cr. 10.**

(16)—*Ss. 4 and 19—Sword hilt, whether "arm."*—The expression "arms" includes "parts of arms," Sword hilts are, therefore, "arms" within the meaning of the Act. **38 P.R. 1889 Cr.**

(17)—*Revolver out of repair, whether an arm within Act—Possession of such weapon without license, whether an offence under Act.*—A revolver, even if it is out of repair, is none the less an arm, within the definition of s. 4 of the Arms Act, and a person in possession of such a weapon, without a license, is guilty of an offence under s. 19 of the Act. **6 P.R. 1908 Cr.=14 P.W.R. 1908 Cr.=7 Cr. L.J. 350=148 P.L.R. 1908.**

(18)—*Unserviceable fire-arms, possession of, without license.*—In including parts of arms in the meaning of arms, the Legislature intended to provide against the importation and retention of arms in parts which might be put together any moment and used as fire-arms. A fire-arm, which is defective and otherwise unserviceable, is not within the meaning of the Act. Therefore, possession of a gun rendered unserviceable by the loss of the trigger is not an offence under s. 19 (1) of Arms Act. **6 M. 60, F.B.=1 Weir 657.** [*F.*, 1 Weir 358; *R.*, 12 C.P.L.R. 8 Cr.; *Diss.*, 1 Sind L.R. 18, F.B., 6 P.R. 1908 Cr., 3 N.L.R. 53, 1 Weir 659=21 M. 360. F.B.]

(19)—A broken and unserviceable gun will not fall under the designation of "parts of arms" within the meaning of s. 4, Act XI of 1878. **1 Weir 658.**

(20)—A revolver, the trigger of which is out of order, is a fire-arm within the meaning of the Arms Act. In such cases, the question is not so much whether the particular weapon is serviceable as a fire-arm, but whether it has lost its specific character and has so ceased to be a fire-arm. Whether, in any particular case, the instrument is a fire-arm or not is a question of fact to be determined according to the circumstances. **21 M. 360=1 Weir 659, F.B.** [*F.*, 6 P.R. 1908 Cr.=14 P.W.R. 1908 Cr.; *R.*, 1 Sind L.R. 18.]

(21)—*Possession of gun-barrel and nipple.*—The term "arms" includes part of arms. Therefore, the possession of a gun-barrel and nipple without a license, in serviceable condition, is an offence under s. 19 (*f*). **7 M. 70=1 Weir 658.** [*R.*, **12 C.P.L.R. 8 Cr., 3 N.L.R. 53.**]

I.—Imperial Acts—continued.

Act XI of 1878 (Indian Arms)—*continued.*

(22)—*Ss. 4, 19 (a)—Ammunition, definition of—Empty cartridge cases, possession of.*—Empty cartridge cases fall within the definition of ammunition given in s. 4 of the Arms Act. Therefore, a conviction under s. 19 (*a*) of the Act for the possession of such cases is legal. **4 Ind. Cas. 405 Cr.**

(23)—*Ss. 4 and 19 (e)—"Going armed," meaning of—Clasp-knife not an arm.*—The offence punishable under s. 19 (*e*) of the Act consists in going armed with a weapon falling within the meaning and definition of the term "arm" as used in the Act. No weapon can be held to be an arm within the Act, unless it is a weapon which would ordinarily be spoken of as an "arm." The purpose for which an implement is primarily intended regulates whether it would, in ordinary parlance, be spoken of as an arm, and if it is not designed for use as a weapon of offence and defence, although it may be used as such, then it is not an "arm." A clasp-knife does not fall within the ordinary natural meaning of the word arm. **1 L.B.R. 271.** (L.B.R., 1893—1900, 416 and 487, *commented on.*)

(24)—Ss. 4 and 19 (*f*)—*See* ACT IV OF 1884, ss. 5 and 7, U.B.R. (1897—1901), Vol. I, 193.

(25)—*Ss. 4 and 27—Arms, definition of—Power of Government to exclude—Opinion of the Court—"Das."*—The word "*arms*," except so far as the definition expressly includes other weapons, must be understood to mean weapons of offence, suitable for use in warfare. The Government of India have, under s. 27, the power of excluding any description of arms from the operation of the Act. But the Act does not empower the Government to define what is an arm within the meaning of the Act. If any thing is not, in the opinion of the Court, an arm within the meaning of the Arms Act, it is immaterial whether Government have or have not excluded it from the operation of the Act. *Das* of the kind described in the Government of India, Home Department Notification No. 827, dated 15th June, 1893, as excluded from the operation of the Act, are not arms within the meaning of the Act, and it is, therefore, unnecessary to exclude them from the operation of Act. **L.B.R. (1893—1900), 416.** (L.B.R., 1893-1900, 320, *overruled.*)

(26)—*S. 5—Keeping arms for sale—Dagger-shaped clasp-knives, whether 'arms' within the definition of.*—The appellant in this case was convicted of having kept arms for sale in contravention of the provisions of s. 5 of the Act. The question for decision was whether the dagger-shaped-knives, known as clasp-knives, fell within the definition of 'arms' in the Act. *Held*, the purpose for which an implement is primarily intended regulates whether it would, in ordinary parlance, be spoken of as an arm. Applying this test, there could be no doubt that the manufacturer of the knives before the Court intended to supply weapons to persons who wanted efficient stabbing instruments. They

1.—Imperial Acts--continued.

Act XI of 1878 (Indian Arms)—*continued.*

could not be likely to serve any domestic purpose. Under the circumstances, the knives fell within the definition of 'arms.' 3 L.B.R. 1 = 2 Cr. L.J. 372.

(27)—S. 5—*See* Nos. 3, 13, *supra.*

(28)—*Ss. 5 and 19—License for match-lock—Licensee converting it into percussion-gun.*—**There is no distinction drawn in the Act between the various kinds of explosive fire-arms; and, if reference is had to sch. II, it will be seen that a distinction is there drawn, not between the different kinds of gun, as for example, a rifle and a smooth-bore, but between fire-arms and fire-arm barrels and pistols and pistol-barrels. Where a person was charged with possessing a percussion-gun, while his license covered only a match-lock, and the defence was that, for convenience sake, he had the original gun altered from match-lock to a percussion-gun after he obtained license,** *held*, **that the accused could not be convicted under s. 19 of the Act. 10 M. 131 = 1 Weir 665.**

(29)—*Ss. 5, 19 (a)—Repairing arms without license.*—**In the Arms Act, the word "repair" appears neither in the provision prescribing a license, nor in the provision prescribing a penalty, the word "convert" being used in substitution therefor. The term "manufacture" cannot be construed to include "repair." 1 Weir 653.**

(30)—*Repairer of arms.*—**A repairer of arms is not within the purview of ss. 5 and 19 (*a*) of the Arms Act. 1 Weir 656.**

(31)—*Ss. 5 and 19 (b)—Sale of gun used for private purpose, after notice, but before permission.*—**The sale of a gun, used for one's private purpose, after giving notice to the Magistrate, but before the receipt of his permission, is not an offence under s. 19 (*b*) of the Act. 1 Weir 657.**

(31-*a*)—S. 9—*See* No. 13, *supra.*

(32)—*Ss. 13 and 14—Servant carrying arms under orders of master.*—**A person licensed to carry a gun, lent one of his servants his gun to shoot game with it.** *Held* **that the servant should not be convicted for carrying a gun without a license and that the gun should not be confiscated. A.W.N. 1881, 7.** [*R.*, 22 A. 118.]

(33)—*Ss. 13, 19, cl. (e)--Meaning of the term "going armed."* - **Term "going armed" in s. 13 of the Act means "carrying arms." 1 Weir 663.**

(34)—A person, who appears in a public place or issues from his own property or abode, having about his person a weapon of the sort described in s. 4, and not covered by a license, goes armed within the meaning of s. 13 of the said Act. The phrase "*going armed*" is not to be restricted to the meaning, carrying or bearing arms in the manner usual for the particular weapon in view. L.B.R. (1893—1900), 284.

1.—Imperial Acts—continued.

Act XI of 1878 (Indian Arms)—*continued.*

(35)—*Ss. 13, 14, 19 and 22—Master and servant—Delivery of gun to servant for shooting—Meaning of "possession" in s. 22.*—**From s. 22 (1) of the Act, it is clear that the transfer of possession contemplated is something more than the entrusting of an arm to a servant. Moreover, in ss. 14 and 19, the Act deals with possession and control as distinct matters. A servant using a gun belonging to his master would no doubt have the weapon under his control, so long as the use continued, but the weapon would remain in the master's possession. Throughout the Arms Act the word "possession" must be taken to mean something different from mere "control." 4 N.L. R. 78 = 8 Cr. L.J. 18.**

(36)—*Ss. 13, 16 and 19—Unlicensed possession of a double barrelled gun by a reservist.*—**The notification of Government of India exempts all soldiers, in the service of Her Majesty the Queen Empress of India, from the operation of certain provisions of ss. 13 to 16 of the Arms Act. The term "soldiers" includes reservists.** *Held*, **therefore, that a reservist of the 45th sikhs found in possession of double-barrelled gun without a license was not guilty under s. 19 of the Arms Act. 1 P.R. 1902 Cr.**

(37)—*Ss. 13 and 19—License to carry arms—Failure to produce it on being required to do so.*—**The law does not require, nor the license provide, that a license to carry arms shall always be on the person of the bearer of arms. If, on being required to show his license, the bearer of arms is prepared to produce it, on being given a reasonable opportunity to get it, and such license exists, he should not be prosecuted. The production of the license at the trial is a sufficient answer to the charge of infringing the Arms Act. 20 C. 444.** [*F.*, 3 C.W.N. 394.]

(38)—*License to carry arms covering one retainer.*—**A license to carry arms including a retainer authorises any retainer to carry the arms specified in the license with the permission of his master. The license should not be so construed as to restrict the retainer to carry the arms only in the presence of the master. 20 C. 444.**

(39)—*Ss. 13 and 19(e)—Going armed in contravention of s. 13—Gun carried by a servant for a master who is legally entitled to possess and go armed.—Carrying arms does not necessarily equal going armed.* **It must constantly happen that sportsmen on their way to and from the field hand over their guns to their servants to avoid unnecessary fatigue to themselves, and by doing so it does not appear that the servants should be considered as going armed when they have no control over the use of the gun so far as intended, and are simply bearers of the gun as a load. If the gun were taken to pieces before being handed to the servant, it would be difficult to hold that he could be armed with it; and the moral restriction of the servant's duty to make no use of the gun**

I.—Imperial Acts—continued.

Act XI of 1878 (Indian Arms)—*continued.*

seems in effect to make the same difficulty when the gun is left complete. **U.B.R. (1897-1901), Vol. I, 1.** (15 A. 27, *R.*)

(40)—*Going armed in contravention of s. 13*—In this case the accused was found in another man's house wearing dagger. He did not allege that the dagger was not his or that he had not brought it to the house. On the contrary, he specified the purpose for which the dagger was used. *Held*, that under the above circumstances the accused had committed the offence of "going armed with a dagger in contravention of s. 13." **U.B.R. (1897—1901), Vol. I, 4.**

(41)—*License to go armed for special purpose.*—Where a license to go armed is granted for protection only, the licensee cannot use it for sport or display. **1 Weir 663.**

(42)—*Failure to take license.*—S. 19 makes it punishable to go armed, in contravention of the provisions of s. 13 which prohibits any person from going armed except under license. These words cannot be held to mean that the licensee is bound to take his license with him whenever he goes armed. **1 Weir 661.**

(43)—S. 14—*See* Nos. 14, 15, 32 and 35, *supra*, and No. 81, *infra.*

(44)—*Ss. 14 and 15—Order appointing an officer as commissioned officer with retrospective effect—Effect.*—The petitioner, who was promoted from the rank of Haveldar to the rank of Jamadar on 30th August, with retrospective effect from the 1st June, was held to be a commissioned officer from the 1st June, and therefore was held to fall within one of the classes exempted by the Government of India from the operation of the prohibitions contained in ss. 14 and 15 of the Arms Act. The possession of his gun by his servant without a license on the 22nd June was held not to be an offence. **27 P.R. 1885 Cr.**

(45)—*Ss. 14, 15 and 19 (f)—Possession of sword or dagger.*—The possession of a sword or dagger without a license in a place to which s. 15 has not been rendered applicable, is not punishable under s. 19 (*f*). **1 Weir 666.**

(46)—*Ss. 14 and 19—Dalwes—Spears—Forks.*—Dalwes, spears, and forks do not come within the term "military stores" in s. 14, and the mere possession of such weapons is not a punishable offence in Burma under s. 19 of the Arms Act. But going armed with swords or spears without a license is punishable under s. 13. **U.B.R. (1892—1896), Vol. I, 1.**

(47)—*Ss. 14 and 19 (f)—Fire-arm.*—The unserviceable remains of a gun could not be fairly described as a 'fire-arm' within the meaning of s. 14 of the above Act and do not require to be protected by a license under that section. **12 C.P.L.R. Cr. 8.** (6 M. 60 and 7 M. 70, *R.*)

I.—Imperial Acts—continued.

Act XI of 1878 (Indian Arms)—*continued.*

(48)—*Ss. 14, 19 and 28—Being in possession of arms without license—Sanction of Collector to prosecute.*—In order to prosecute a person for being in possession of guns without license, the Collector's sanction for the prosecution should be obtained under s. 28. **5 M. 26 =1 Weir 662.**

(49)—*S. 15—Possession of bayonets.*—The possession of bayonets without a license is not an offence punishable under the Arms Act except in districts proclaimed under s. 15 of that Act. **L.B.R. (1872—1892), 426.**

(50)—Ss. 15 and 19—*See* ACT XXXI OF 1860, s. 32 (1 and 2), 9 B. 478.

(51)—S. 15—*See* No. 44, *supra.*

(52)—S. 16—*See* No. 36, *supra.*

(53)—*Ss. 17 and 19—License to kill wild beasts—Killing wild beast for sport without sporting license.*—Persons who are granted license to carry arms, under Form XI, Rule 16 of the Arms Act, to kill bisons which are notoriously in the habit of injuring crops, will be justified in going armed for the purposes of sport and no separate license under Form VIII, Rule 13, s. 17 is necessary. **5 M. 26=1 Weir 662.**

(54)—*S. 19—Temporary possession of arms.*—The temporary possession of a gun by a servant who carries it from his master's house to the blacksmith's for repairs, and by the blacksmith for the purpose of repair, without a license, is not punishable under s. 19 of the Act. **16 A. 276.** (A.W.N. 1891, 208, 15 A. 27, *R.*) [*R.*, 4 N.L.R. 78=8 Cr. L.J. 18, 4 N.L.R. 146.]

(55)—*S. 19—"Going armed"—Meaning.*—The term "going armed" in s. 19 of the Arms Act of 1878 means only carrying arms with intention to use such arms should occasion arise, and does not include taking arms for the purpose of repair. **A.W.N. 1891, 208.** [*Expl.*, 15 A. 27; *R.*, 16 A. 276=A.W.N. 1894, 82, 24 A. 454].

(56)—*"Going armed," what amounts to.*—The mere temporary possession, without a license, of arms for purposes other than their use as such, is not an offence within the meaning of s. 19 of the Arms Act. The above principle is not confined to the case of a servant carrying his master's gun, but applies also to a friend performing the same office to a friend. The essence of the offence is the going armed, *i.e.*, carrying a weapon with the intention of using it as a weapon, when the necessity or opportunity arises. **24 A. 454.** [*R.*, 6 P.R. 1908 Cr.=14 P.W.R. 1908 Cr.=148 P.L.R. 1908=7 Cr. L. J. 350, 4 N.L.R. 146, 5 L.B.R. 83.]

(57)—*Spear exempted.*—The carrying of a spear is not an offence under s. 19 (*e*) of the Arms Act, because, under cl. (*j*) of s. 2 of the Rules under s. 27 of the Act, spears are exempted from the operation of ss. 13 to 16 of the Act. **Rat. Un. Cr. C. 507=Cr. Rg. 25 of 90.**

1.—Imperial Acts—continued.

Act XI of 1878 (Indian Arms)—*continued.*

(58)—*Saltpetre in the Khandesh District.*—As Khandesh is neither a district on the external land frontier of British India nor a sea-board District of British Burma, cl. IV of the Notification of the Government of India, No. 578 of 6th March, 1879, has no application to it and as the Government of India has not, by any other notification, extended s. 19 of the Act to saltpetre in the Khandesh District, a person cannot be convicted under s. 19 of the Arms Act, for keeping saltpetre without a license. **Rat. Un. Cr. C. 227 = Cr. Rg. 1 of 1886.**

(59)—*Extension of time before renewal of license, effect of.*—An order extending the time for renewal of a license has the effect of keeping a license previously granted practically in force. **3 C.W.N. 394.**

(60)—*Sentence.*—Under the provisions of s. 19 of the Arms Act, a Magistrate, on finding the accused guilty, is bound to pass some sentence, though, of course, it is open to him to pass a nominal sentence. **1 Weir 654.**

(61)—*Offence not triable summarily.*—An offence under s. 19 of the Arms Act is not triable summarily. **1 Weir 654.**

(62)—*Possession of gun-powder without license.*—The term "ammunition" is defined by the act as meaning, among other things, any explosive material. Read in combination with the terms "arms and military stores," it is not unreasonable to infer that the intention of the Act was to deal with an explosive material capable of being used for purposes of warfare. Therefore, a person, in possession of a quantity of gunpowder without license is liable to be convicted under s. 19, although he may intend to employ the powder in the manufacture of fireworks or other harmless purposes, inasmuch as gunpowder is a material capable of being used for purposes of warfare. **8 M. 202 = 1 Weir 664.** (5 M. 159, *D.*)

(63)—When it is not shown that the accused had exclusive possession of the room in which arms are found, or that arms were placed there by him, or belonged to him, or that he knew they were there, the accused cannot be convicted of the offence under s. 19 of the Arms Act. **75 P.L.R. 1901.** (25 P.R. 1883, *F.*)

(64)—*Arms—Possession without license—Possession must be exclusive.*—A dagger was found in a room in a house. The room and the house were jointly occupied by a father and his adult son. There was no evidence to show that either of them was aware of its existence. *Held*, that neither of them could be convicted of an offence under s. 19 of the Act. **158 P.L.R. 1905 = 52 P.R. 1905 Cr. = 3 Cr. L.J. 71.**

(64-*a*)—S. 19—*See* Nos. 15, 16, 17, 18, 21, 22, 23, 24, 28, 29, 30, 31, 32, 35, 36, 37, 38, 39, 40, 41, 42, 45, 46, 47, 48, 50 and 53, *supra*.

1.—Imperial Acts—continued.

Act XI of 1878 (Indian Arms)—*continued.*

(65)—*S. 19 (a)—Persons licensed under the Explosive Act—Manufacture of fire-works with gunpowder at an unlicensed place.*—Where the accused, who had a license under the Explosive Act to manufacture and sell gunpowder and fire-works on certain premises, manufactured fire-works at a different place, *held*, that the accused could not be convicted under the Arms Act. **1 Weir 656.**

(66)—*Sale of fire-works without license.*—The mere possession or sale of fire-works, without a license, is no offence under the Arms Act. But the possession of gunpowder without a license, even though for the innocent purpose of making fire-works, is an offence. **1 Weir 655.**

(67)—*Sale by agent of license-holder.*—There is nothing in Act XI of 1878 or the rules, which renders a sale of sulphur and ammunition by the agent of a license-holder illegal. **12 M. 473 = 1 Weir 655.**

(68)—*S. 19 (c)—Person carrying arms—Presumption.*—A man who is found going about with a pistol, gun, sword or other weapon within the definition of "arms" in s. 4 of the Act must, in the absence of proof to the contrary, be presumed to be carrying it with the intention of using it, should an opportunity for using it arise, and, unless he is licensed to carry the weapon and is not exceeding the terms of his license, he may be properly convicted under s. 19 (*c*) of the Act. **15 A. 27.** (A.W.N. 1891, 208, *Expl.*) [*R.*, U.B.R. (1897—1901), 1; *D.*, 4 N.L.R. 146].

(69)—*S. 19 (e)—Offence under the clause, whether triable by the second-class Magistrate.*—No Magistrate of the second class has the power to try an offence under s. 19 (*e*) of the Arms Act. **1 Weir 660.**

(70)—The privilege conferred by the exemption referred to in Notification No. 518, dated 6th March, 1879, as amended by Notification No. 458, dated 18th March, 1898, is of a personal nature and protects only persons carrying fire-arms for their own personal use, and does not extend to the servants and retainers of the persons exempted. **14 C.P.L.R.Cr. 112.** (22 A. 118, *Diss.*)

(71)—*"Going armed"—Dagger—"Dahmyaung," meaning of.*—The meaning of *Dahmyaung* in the Burmese translation of the Arms Act must be limited to the meaning of dagger. **L.B.R. (1893—1900), 320.**

(72)—*and Rangoon Police Act, s. 30, two convictions under, for same act of offender, illegality of.*—The case against the accused was founded on facts, which constituted an offence under the Arms Act, as well as under s. 30 of the Rangoon Police Act. *Held*, that the accused should not have been charged and convicted twice as for two offences under each of the said Acts. The above s. 30 is a special provision for punishing a person, who may be

1.—Imperial Acts—continued.

Act XI of 1878 (Indian Arms)—*continued.*

found, under certain circumstances, raising the suspicion of his intending to commit certain offences and, so. when an offence has been actually committed by such a person, his prosecution for such offence and, at the same time, for an offence under the Police Act, would be illegal. Also, according to s. 26 of the General Clauses Act (X of 1897), when an act constitutes an offence under two or more enactments, the offender will not be liable to be punished twice for the same act. Further, a person, who has rendered himself liable under more than one clause of s. 30 of the Police Act, is to be held guilty of only one offence under the entire section and not of an offence under each of the clauses (*Per* HARTNOLL, J.). **3 L. B.R. 218, F.B.**

(73)—*See* CRIM. PRO. CODE (1898), ss. 35, 123, 5 Bom. L.R. 26.

(74)—*S. 19, cls. (e) and (f)—Possession of spears without license.*—Under Rule II-A of the notification of the Government of India, dated 6th March, 1879, spears of all kinds are, so far as regards the Presidency of Madras, excluded from the operation of any prohibition and direction contained in the Arms Act. **1 Weir 660.**

(75)—*Possession of gun without ammunition.*—The possession of a gun without ammunition, in the absence of a license, is not punishable under s. 19 (*e*) ; nor can the accused be convicted under s. 19 (*f*), in the absence of the previous sanction of the District Magistrate. **1 Weir 662.**

(76)—*Guns without ammunition.*—The carrying of a gun without ammunition, by an unlicensed person, is an offence under s. 19 (*f*), but not under s. 19 (*e*). **1 Weir 661.** [*F.*, 1 Weir 662].

(77)—*S. 19 (f), prosecution under—Sanction.*—A prosecution under s. 19, cl. (*f*) requires the sanction of the District Magistrate. **L.B.R. (1872—1892), 426.**

(78) - The sanction of the District Magistrate is necessary before a prosecution under s. 19 (*f*), can be instituted. **U.B.R. (1892—1896), Vol. I, 1.**

(79)—A prosecution under cl. (*f*) of s. 19 of the Act requires the previous sanction of the District Magistrate. **9 C.P.L.R. Cr. 26.** (3 C. 622, 2 A. 405, 10 C. 1030, *R.*)

(80)—The sanction of the District Magistrate is only required for proceeding under cl. (*f*) of s. 19. **1 Weir 660.**

(81)—*Ss. 19 (f) and 14—Possession of a gun, meaning of—Interpretation of s. 19 (f).*—The provisions of s. 19 (*f*) of the Arms Act do not make the mere possession of a gun punishable ; they make possession contrary to the provisions of s. 14 of that Act punishable.

The snatching up of a gun, which was in the hand of another, and firing it at a mad dog, do not constitute the possession contemplated by s. 14 of the Arms Act. **12 C.W.N. 272=3 M.L.T. 190=7 Cr. L.J. 112=7 C.L.J. 242=35 C. 219.**

(82)—*S. 19 (f)—Volunteers—Exemption from the operations of Arms Act, effect of.*—The exemption of volunteers from the operation of the Arms Act, by Government of India Notification No. 458, dated 18th March, 1898, is not confined merely to purposes of volunteering. A volunteer is, by virtue of such exemption, entitled to keep fowling pieces and to use them for the purpose of protecting his cultivation. **22 A. 323.**

(83)—*Reservist in possession of gun.—Held*, that the possession of a double barrelled gun by the accused, who was a reservist, did not constitute any offence against the provisions of the Indian Arms Act. **5 P.L.R. 1902.**

(84)—*Servant carrying arms belonging to his master.*—Exemption from the operation of the Act applies to the possession of a gun, so long as it is the property of the licensee, and the mere fact that it happened at the time to be carried by a servant, does not make the servant liable for not having himself a license under the Act. **3 C.W.N. 394.** [*R.*, 13 C.W.N. 124= 4 Ind. Cas. 333].

(85)—Where a person who apparently had a license to go armed had come to shoot to a village wherein his cousin's servant was, feeling thirsty, went to get a drink, leaving the gun with the servant, (a person not holding a license under the Arms Act), *held*, that such a temporary custody of the gun by the servant did not amount to the "possession" or "control" contemplated by cl. (*f*) of s. 19. **4 N.L.R. 146 Cr.**

(86)—Where the accused, a servant, was found using a gun which was lent to him by his master who held a license for the gun for his own purpose. *Held*, that the act of the accused was an infringement of the provisions of s. 19, cl. (*f*) of the Arms Act. **13 C.W.N. 124=4 Ind. Cas. 333.**

(87)—Where the license-holder left a gun with his servant, temporarily, *held*, that the servant could not be convicted under s. 19 (*f*). **1 Weir 664.**

(88)—*Arms without licenses collected for worship in a temple—Arms Act (XI of 1878), s. 19, cl. (f), conviction under—Legality.*—There is nothing in the Arms Act to exempt the custodians of a temple, which had a collection of fire-arms used as objects of worship, from complying with the requirements of the Act either by taking out a license or obtaining exemption under s. 27, so that a conviction under s. 19, cl. (*f*), for neglect to take out license in respect of such arms, is not illegal. **8 C. 473.**

(89)—*Possession of unserviceable fire arms.*—A fire-arm, which is defective and otherwise unserviceable, is not within the meaning of the

I.—Imperial Acts—continued.

Act XI of 1878 (Indian Arms)—*continued.*

Arms Act, and, consequently, not one for which a license need be taken out, although it might be capable of being rendered serviceable by being repaired. **1 Weir 658.**

(90)—*Possession of sword without license.*—In a District which has not been disarmed, the possession of a sword without a license is not an offence under the Act, unless the person in possession goes armed with it. **1 Weir 666.**

(91)—*S. 19, cl. (i)—Offence under the clause, whether triable by the second-class Magistrate—Crim. Pro. Code, X of 1872, s. 8.—Held*, that the offence of failing to deposit arms under cl. (i) of s. 19 was not triable by a second-class Magistrate under s. 8, Crim. Pro. Code, 1872. **1 Weir 660.**

(92)—*Ss. 19 and 20—Definition—Concealment of arms on search being made by the police—Mere denial of possession not concealment—Possession of unlicensed arms.—Held*, that the mere denial, on the part of a person, whose house is being searched by the Police for unlicensed arms, that he has any such arms in his possession does not constitute a concealment or attempt to conceal arms on search being made by the Police within the meaning of the second paragraph of s. 20 of Act XI of 1878. *Held*, also, that where unlicensed arms are found concealed upon premises which, though legally the joint property of a joint Hindu family, are in fact, at the time of the finding, in the exclusive possession and control of one member of the family, that member of the family, can properly be held to be in possession of such arms. **A.W.N. 1906, 11=3 Cr. L.J. 88 =28 A. 302=3 A.L.J. 833.**

(93)—*Ammunition—Empty cartridge cases—Machinery for manufacture.*—Empty cartridge cases with exploded caps are not "ammunitions" as defined in the Arms Act. An instrument for re-capping cartridge cases of the Martini-Hurry rifles is not machinery for manufacturing ammunition within the meaning of the Act. **20 P.R. 1890 Cr.**

(94)—*Ss. 19, cl. (f) and 20—Unserviceable fire-arm, possession of.*—Whether in any particular instance an instrument is a fire-arm or not, is a question to be determined according to the facts of each case, and the circumstance that it is in an unserviceable condition is not sufficient to take it out of the category of fire-arms. Where certain fire-arms had been found from the possession of the accused, who had concealed them under a heap of straw, in order that visitors in his house should not see them: *held*, that the concealment was not with the intention specified in s. 20, and the accused could, therefore, be convicted only under s. 19, cl. (*f*) of the Arms Act. **9 Cr. L.J. 259 F.B.= 1 S.L.R. 18 Cr.**

(95)—*Ss. 19 (f), 20, 25 and 29—Having in possession or control arms and ammunitions without license—Search for arms—Legality of the search—Crim. Pro. Code (1898), ss. 55 and*

I.—Imperial Acts—continued.

Act XI of 1878 (Indian Arms)—*continued.*

165.—Where, on a search made by a Magistrate with a number of Police Officers into the house of the accused person, who, after his license for possession of arms and ammunitions had been cancelled, was suspected of being in possession of them, and who was, preliminarily to the search, arrested some arms and ammunitions were found on the premises, and the accused, was committed to the Sessions and convicted of offences under ss. 19 and 20 of the Arms Act, *held*, that the conviction under s. 20 of the Act was not legal, but that the accused should be taken to have had, in his possession or under his control, arms and ammunitions, as defined by the Arms Act, within the meaning of sub-s. (*f*) of s. 19, and, therefore, the conviction under that section should be confirmed. *Held*, also, that the search, under the circumstances of the case, was not properly made, as it was not covered by the provisions of s. 25 of the Arms Act or s. 165 of the Code of Criminal Procedure. **27 C. 692=4 C.W.N. 750.**

(96)—*Ss. 19, 20 and 29—Sanction to prosecute, whether necessary for an offence under s. 20.*—Ss. 19 and 20 of the Act are so interwoven that it is difficult to see how an offence can be committed under the first paragraph of s. 20, unless an offence under one of the enumerated sub-sections in s. 19 has also been committed: Therefore, before prosecuting a person under s. 20 of the Act, previous sanction should be obtained. **27 C. 692=4 C.W.N. 750.**

(97)—*Ss. 19 (f), 25, 29—District Magistrate's sanction necessary for trial under Act—Conviction without sanction not mere error of procedure—No failure of justice necessary to set aside conviction—Fresh sanction may be ordered—Illegal procedure in search, effect of.*—The trial of an offender under s. 19 (*f*), Arms Act, without the District Magistrate's sanction under s. 29, is not merely an error of procedure. The Court has no power to allow proceedings to be instituted without such sanction. No failure of justice is necessary to set aside a conviction under the section made in proceedings without such sanction. The District Magistrate, in such a case, may, however, order a fresh sanction of the offence if he wishes to do so. Where the offence has been undoubtedly committed by the accused, who was in possession of arms, the fact that the legal procedure (s. 25) was not followed in making the search would not, by itself, be sufficient ground to acquit the accused. **U.B.R (1892—1896), Vol. I, 2.**

(98)—*Ss. 19, 27—Exemption from the provisions of the Act in the case of certain classes of persons—Government of India Notifications, 518 of 1879, and 458 of 1898—Arms carried by servants of exempted persons—Their liability.*—By Government of India Notifications, Nos. 518 of 1879 and 458 of 1898, framed under the provisions of s. 27 of the Arms Act, certain classes of persons are exempted from the operation of the prohibitions and directions contained

1.—Imperial Acts—continued.

Act XI of 1878 (Indian Arms)—*continued.*

in ss. 13, 14, 15 and 16 of the Arms Act, "subject to the proviso that the arms and ammunitions carried or possessed by such persons shall be for their own personal use, etc., etc." *Held*, that the servant of a master so exempted was not liable to be convicted under s. 19 of the Act for being found carrying a gun and ammunition and using them for the purpose of shooting game for his master, as the use of the arms by the servant for that purpose should be considered to be within the meaning of the words "personal use." **22 A. 118.** [*D.*, 13 C.W.N. 124].

(99)—*Ss. 19 and 29—Illegal possession of arms—Illegally—Going armed—Prosecution—Previous sanction of District Magistrate—Institution of proceedings—Framing of charge—Crim.Pro.Code, ss. 190, 195, 535 and 537 (b).*—An accused person was prosecuted by the police under s. 19 (*e*) of the Arms Act for going armed with a revolver. On taking the evidence, the Magistrate doubted whether a person could be said to go armed with an unloaded revolver wrapped up in a cloth. He therefore, charged the accused in the alternative with going armed under clause (*e*) or with possessing the revolver under cl. (*f*) of s. 19. After the framing of the charge the Magistrate submitted the record to the District Magistrate, owing to an objection being taken, for his previous sanction under s. 29 of the Arms Act. The District Magistrate wrote upon the diary, "I sanction the institution of proceedings under s. 19 (*f*) of the Arms Act against Kaka." The trial proceeded, and the accused was convicted under cl.(*f*). *Held*, that, the police having submitted a report in which it was stated that the accused was found carrying the revolver, and that being described as an offence under cl. (*e*) of s. 19, proceedings under cl. (*f*) were instituted only when the Magistrate framed the charge under that clause. Although the framing of the charge when the Magistrate did frame it, was without jurisdiction, yet, if the Magistrate had followed the proper course of amending the charge, and then obtained sanction as he did, there would be nothing to prevent him from again framing a charge under clause (*f*), and proceeding with the trial. The Magistrate cannot be said to be without jurisdiction to try the case merely because he framed the charge before receiving sanction, and did not frame a fresh charge after receiving it. At the time when he took the evidence for the prosecution, no sanction was required, because proceedings in respect of an offence under cl. (*f*) had not then been instituted, and, under s. 256, Crim. Pro. Code, the accused had the right to recall all the witnesses for the prosecution after the charge was framed. He was, therefore, in no way prejudiced by the Magistrate's procedure. The Magistrate, therefore, had jurisdiction, notwithstanding the word 'previous' in s. 29, because, in the circumstances set forth, the proceedings in respect of the offence under cl. (*f*) cannot be said to have been instituted when the Magistrate received the police report. Considering the terms of the District Magistrate's order, it was held that proceedings in respect of the offence under cl. (*f*) were instituted again after the sanction was received, and the absence of a charge framed after sanction, in that case, is cured by s. 535 of the Code of Crim. Procedure. S. 29, Arms Act, must be read with s. 190, Crim.Pro.Code, under the provisions of s. 1 and s. 5 (2) of the same Code. Misuse of the word "prejudice" pointed out. S. 537 (*b*) does not cure the want of sanction in any case, except when the sanction is required under s. 195, Crim. Pro. Code. **4 L.B.R. 247=8 Cr.L.J. 65.**

(100)—*Ss. 19 (f) and 29—Sanction, necessity for—Legality of conviction where no sanction obtained till after commitment—Crim Pro.Code, ss. 532 and 537.*—A conviction under s. 19 (*f*), Act XI of 1878, is illegal, where no previous sanction of the District Magistrate under s. 29 was obtained. Where sanction is obtained after commitment, neither s. 532 nor s. 537, Crim. Pro. Code, can cure the omission. **5 M.L.T. 162.**

(101)—*Sanction of District Magistrate for prosecution under s. 19 (f), Arms Act, XXXI of 1860, s. 32 (2).*—Where there has been no proclamation or order under s. 32, cl. (2) of the Arms Act of 1860, for a general disarmament or search for arms, the sanction of the District Magistrate is necessary, under s. 29, Act XI of 1878, for the institution of proceedings against any person for an offence punishable under s. 19 (*f*). **1 Weir 663.**

(102)—S. 20.—An offence under s. 20 is not triable by a first-class Magistrate. **2 L.B.R. 244.**

(103)—S. 20.—*See* Nos. 92, 93, 94, 95 and 96, *supra*.

(104)—*S. 22—Selling military stores to unauthorised person by manager of licensed vendor of arms.*—If the manager of a licensed vendor of arms and ammunition sells military stores to a person, without previously ascertaining that he is legally authorised to possess the same, the licensee becomes liable to punishment under s. 22; and it is no defence to plead that the delivery by the man in charge is not a delivery by the owner of the shop. The rule "whatever a servant does in the course of his employment with which he is entrusted and as a part of it, is his master's act" is applicable to certain criminal proceedings also. **24 B. 423=2 Bom. L.R. 52.** [*R*, 4 N.L.R. 78=8 Cr. L.J. 18].

(105)—*Rifle—Delivery into the custody of servant not authorised to possess—Whether amounts to delivery into possession—Conviction under s. 22—Maintainability.*—A and his servant N, while out on a shooting excursion, came across a deer recently killed by a tiger. A fixed his rifle over the killed deer so as to form a trap for the tiger and went home leaving the trap in charge of N. A was charged under s. 22 of the Arms Act, with having delivered the rifle into the possession of an unauthorised person. *Held*, that the delivery into possession

***1.—Imperial Acts*—continued.**

Act XI of 1878 (Indian Arms)—*continued.*

contemplated by s. 22 of the Arms Act is such a delivery as gives the person into whose possession the arm is delivered control over the arm and authority to use it as an arm and that therefore A cannot be convicted for an offence under s. 22. **5 L.B.R. 83.**

(106)—S. 22—*See* No. 35, *supra.*

(107)—*S. 24—Order for confiscation.*—S. 24 shows that the order for confiscation is in addition to any sentence which may be passed. Therefore without the sentence, an order for confiscation cannot be passed. **1 Weir 654.**

(108)—*S. 25—Arms found in house occupied by a Hindu joint family—Evidence of possession.*—Although it is not laid down as an invariable rule that where weapons are found in a house occupied by a Hindu family living jointly, possession is necessarily that of the managing member only, yet in all such cases. where it is sought to establish that possession and control are with some member of the family other than the managing member, there must be good and clear evidence of the fact before the Court can arrive at such a conclusion. The Act is one highly penal and must be strictly construed. **15 A. 129.** [*Applied*, 2 O. C. 99, 9 C.L.J. 663; *R.*, A.W.N. 1907, 187 = 29 A. 598 = 6 Cr.L.J. 23; *D.*, 28 A. 302 = A.W.N. 1906, 11 = 3 A.L.J. 833 = 3 Cr. L. J. 88; 158 P.L R. 1905 = 52 P.R. 1905, Cr. = 3 Cr.L.J. 71.]

(109)—*Search warrant, form of.*—Magistrates before they issue search warrants, under the Arms Act, should record the grounds of their belief, that there are in the house, which it is proposed to search, weapons kept for an unlawful purpose. **15 A. 129.**

(110)—*House-search—Code of Criminal Procedure (Act V of 1898), ss. 94, 105 and 165—Judicial Officers Protection Act (XVIII of 1850), s. 1.*—The defendant, who did not, before causing the search of the plaintiff's house to be made, first record the grounds of his belief as provided for by s. 25 of the Arms Act, could not justify the search under the provisions of the said Act. As there was no proceeding pending before him, the defendant was not a 'Court' within the meaning of s. 94 of the Code of Criminal Procedure, and, therefore, the defendant could not direct a search to be made in his presence under the provisions of s. 105 of the Code. The search having been for the purposes of discovering arms generally, s. 165 of the Code did not apply. Conducting a search for arms is not an act done in the discharge of a judicial duty. Act XVIII of 1850 (Judicial Officers Protection Act) does not apply to such a case. Even where a defendant's *bona fides*, in conducting a search, is established, it does not release him from the obligation the law casts upon him, as being in supreme control of the search party, of seeing that the search was conducted in a proper and reasonable manner. In such a case, the damages should be substantial, and not merely nominal. **8 C.L.J. 75.**

***1.—Imperial Acts*—continued.**

Act XI of 1878 (Indian Arms)—*concluded.*

(111)—The Act appears to refer to cases in which the Magistrate considers that arms, whether under a license or not, are possessed "for an illegal purpose," or under circumstances such as to endanger the public peace. **8 C. 473.**

(112)—Search for arms would be illegal if it was not ordered by a Magistrate in pursuance of s. 25, Arms Act. **U.B.R. (1892—1896), Vol. I, 1.**

(113)—*See* CRIM. PRO. CODE (1898), ss. 96, 105, 165, 13 C.W.N. 458 = 9 C.L.J. 298 = 36 C. 433 = 5 M.L.T. 367.

(114)—*See* PENAL CODE, ss. 224, 225, 332, 353, 114 P.L.R. 1903.

(115)—S. 25—*See* Nos. 95 and 97, *supra.*

(116)—*S. 27—Army Regulations, effect of, on powers of Governor-General in Council.*—The Army Regulation, India, cannot restrict the powers exercised by the Governor-General in Council under s. 27 of the Arms Act. **1 P.R. 1902 Cr.**

(117) - S. 27—*See* Nos. 25 and 98, *supra.*

(118)—S. 28—*See* No. 48, *supra.*

(119)—S. 29—*See* Nos. 95, 96, 97, 99, 100 and 101, *supra.*

(120)—*S. 30*—The Act appears to contemplate the presence of some specially empowered officer besides the officer conducting the search. **8 C. 473.**

Act XVII of 1878 (Northern India Ferries).

[REP. IN PART, ACT XII OF 1891; ACT II OF 1901. AMENDED, ACT III OF 1886; (IN CENTRAL PROVICES), ACT I OF 1883, SS. 43 AND 44; (IN N.W. PROVINCES AND OUDH), ACT XIV OF 1883, SS. 64 AND 65; (IN PUNJAB), ACT XX OF 1883, SS. 78 AND 79; (IN CENTRAL PROVINCES AND PUNJAB), ACT XII OF 1891.]

(1)—*S. 2—Public Ferry—Bengal Regulation VI of 1819, cl. 2—Right of District Magistrate to grant exemptions from payment of tolls.*—An order by a District Magistrate declaring certain persons exempt from the payment of tolls for the use of a certain public ferry, is a valid order under s. 52 of Act XVII of 1878 and cl. 2 of Bengal Regulation VI of 1819. **A.W.N. 1891, 135.**

(2)—*Ss. 13 and 26—Government Notification No. 536, dated the 14th February, 1883—Ferry—Limits of public ferry.*—A notification of Government published under the Northern India Ferries Act, 1878, laid down the limits of various public ferries in one column and in another column the distances within which a private ferry was not allowed to ply for hire. In the case of some ferries, very wide limits were assigned, and the prohibited distance was defined as the limits given in the column laying down the limits of the ferry. In other

1.—Imperial Acts—continued.

Act XVII of 1878 (Northern India Ferries) *—concluded.*

cases, where the limits of the ferry were not so wide, the prohibited distance was described with reference to s. 13 of the Act as two miles. *Held*, that in the former case the very wide limits given were deemed sufficient by the Local Government to guard the interests of the lessee of the ferry, and consequently the prohibited area was reduced to the space contained within these limits. **A.W.N. 1905, 262=3 Cr. L.J. 50.**

(3)—*S. 22—Lessee taking less than lawful toll.*—It is not an offence under Act XVII of 1878, on the part of lessee, to ask or take less than the authorized toll either once or habitually. But it is an offence to ask or take more than the lawful toll. **65 P.R. 1887 Cr.**

(4)—S. 26—*See* No. 2, *supra.*

Act I of 1879 (Stamp).

[REP., ACT II OF 1899].

See ACT XXXVI OF 1860.

,, ACT X OF 1862.

,, ACT II OF 1899.

(1)—*S. 3 (4) (b)—Bonds—Acknowledgment of debt attested by witnesses.*—No document can be a bond, unless it is one which itself creates an obligation to pay money. But acknowledgments of advances, or of the purchase and receipt of goods, the obligation to pay for which is not created by the instrument, but arises from the promises to re-pay advances and to pay for goods, which the law always implies when the money is borrowed or goods are purchased, are not bonds. Documents which are, in form, acknowledgments only are not converted into bonds by the mere fact that they contain memoranda as to the rate of interest at which the loan is made, and are attested by witnesses. **22 C. 757.** [*R.*, 35 P.R. 1903=101 P.L.R. 1903; *D.*, 10 C.P.L.R. Cr. 1].

(2)—*S. 3, cl. 10—Promissory note on Hundi impressed stamp.*—When a person was fined for accepting promissory notes payable on demand and written on *Hundi* impressed stamps instead of on paper to which adhesive stamps had been affixed, it was held that the promissory notes were "duly stamped" under the above section. **S. C. 201, Oudh.**

(3)—*S. 3 (10), 61—Absence of certificate as required by Rule 5 (b) of the Rules made by the Governor-General in Council—"Duly stamped" instrument.*—The absence of the certificate, required by Rule 5 (*b*) of the Rules, dated 3rd March, 1882, issued by the Governor-General in Council, under the Stamp Act, does not make a document "not duly stamped" within the intention of the Act, and the person executing the document has not committed any offence punishable under s. 61 of the Act. The non-compliance by the treasury officer or the stamp vendor with the direction to give such a certificate is not an act for which the person

1.—Imperial Acts—continued.

Act I of 1879 (Stamp)—*continued.*

purchasing the stamp from him can be punished by the invalidation of the stamps innocently bought by him. **13 C. 39.**

(4)—*S. 3, sub-s. 13—Mortgage—Definition for purposes of stamp duty—Transfer of Property Act, s. 54.*—For the purpose of ascertaining what stamp duty is payable on an instrument, alleged to be a mortgage, the definition of mortgage as given in the Stamp Act and not that in the Transfer of Property Act is to be referred to. **27 C. 587=4 C.W.N. 524.** [*R.*, 4 L.B.R. 2].

(5)—*S. 3, sub-s. 13, arts. 29 and 44.*—An instrument evidencing an agreement to secure the repayment of a loan of a certain sum of money with interest, for which a certain promissory note payable on demand was given as collateral security is a mortgage-deed as defined by s. 3, sub-s. 13 of the Stamp Act, and the Stamp duty on it is payable under art. 44 of the Act and not under art. 29. **27 C. 587=4 C.W.N. 524.**

(6)—*S. 3 (17)—Essentials of a receipt.*—The chief essential of a receipt is an acknowledgment. A mere statement of the fact of the receipt of money is not enough. Where, at the request of a person who made a payment of money to another, a third person drew up a mere memorandum stating that money was received by that other, *held* that the memorandum was not a receipt. **23 B. 54.** *See*, also, 1 Weir 901.

(7)—*S. 3 (17), arts. 52, 54—Release—Receipt.*—Where A sold some of his lands to B for Rs. 5,499, instead of paying in cash Rs. 4,994, which was found due to the latter on accounts being settled, and A obtained from B the surplus amount in cash and a receipt for the sum of Rs. 4,994, for the purchase money, the receipt containing the following words "the said amount, I have received in full, there now remains this day nothing due by you to me in any manner whatsoever,"—*held* that the document was not a release as it was not a renunciation of a claim. The language used in the document brought it within the definition of "receipt" which includes an acknowledgment of satisfaction of a debt. The fact that a separate document was used rather than an endorsement on the sale deed of the same date did not distinguish this from 10 M. 64. **Rat. Un. Cr. C. 732=Cr. Rg. 61 of 94.**

(8)—*Ss. 3 (17), 61—Receipt, what amounts to.*—Certain ornaments were pledged by the accused to his creditor. They were given back by the creditor and were sold by the accused, and the proceeds were paid by him to the creditor, and the debt due by the accused was thus satisfied. A memorandum of the circumstances was made in the creditor's book and signed by the accused. The accused was subsequently charged with and convicted of, an offence under s. 61 of the Indian Stamp Act, 1879:—*Held*, reversing the conviction, that, although, in the memorandum, the receipt of the ornaments was acknowledged, it was not a

I.—*Imperial Acts*—continued.

Act I of 1879 (Stamp)—*continued.*

receipt within the definition contained in cl. 17, of s. 3 of Act I of 1879, as the ornaments were not by it acknowledged to have been received in "satisfaction of a debt." **Rat. Un. Cr. C. 356 = Cr. Rg. 46 of 1887.**

(9)—*Ss. 3, 61—Mortgage-deed.*—A mere memorandum of a mortgage by a mortgagee in his accounts and signed by witnesses, but not so under the authority of the mortgagor, is not a "mortgage-deed" as defined in s. 3 of the Act; nor is such an instrument chargeable with stamp duty under any other section of the Act. **31 P.R. 1883 Cr.**

(10)—*Ss. 11, 16, 17, 18, 61, 62, 69—Stamp.*—A salary bill of a Government official sent to the treasury for payment was discovered to have an one-anna receipt stamp, affixed thereto, uncancelled. The Collector convicted the official of abetment of an offence under s. 62, read with s. 11. *Held*, that no offence was committed under s. 62, since the instrument in question was one required to be stamped at or before the time of execution, to which s. 11 did not apply—it being applicable to cases in which the instrument chargeable with duty may be stamped after execution—but that the offence committed was one under the second para of s. 61. But as in this case no sanction had been given by the Collector, under s. 69, for a prosecution under s. 61, the High Court merely set aside the conviction under s. 62, without making any further order. **9 A. 210.** [*R.*, 1 L.B.R. 281].

(11)—S. 16—*See* No. 10, *supra.*

(12)—S. 17—*See* No. 10, *supra.*

(13)—S. 18—*See* No. 10, *supra.*

(14)—*Ss. 33, 62.*—The accused, a money lender, was convicted under s. 67 (2), Stamp Act, and fined Rs. 200 in respect of a document which the Magistrate considered to be a contrivance or device on the part of the accused to defraud Government of the stamp duty. *Held*, that, as the document was not executed by the accused who provided the blank printed form and got another to sign it without a stamp, the conviction was altered to one of abetment of an offence under s. 62 of the Stamp Act. Again it is not necessary in proceedings under the Act, that the document should be impounded under s. 33 of the Stamp Act. The only requisite to a prosecution is the sanction of the Collector or other officer authorized in that behalf. **U.B.R. (1892—1896), Vol. I, 313.**

(15)—S. 34—*See* ACT XXXVI OF 1860, 14 M. 255.

(16)—*S. 37 (b)—Scope of the clause.*—S. 37 (*b*) of the Stamp Act applies to the case of a document not duly stamped. In cases in which the omission to stamp at all or to stamp duly arises from negligence, inadvertence or ignorance of the provisions of the Stamp Law, it is the duty of the Collector to compel the payment

of the duty. But where the stamp affixed to a document is, according to the valuation of the property set forth therein, correct, the Collector has no duty to perform under s. 37. **12 M. 231 = 1 Weir 903.**

(17)—*Ss. 37 and 40—Sanction for prosecution under the Act—Recording of a proceeding, whether necessary.*—The Act does not require intention to be proved as a part of an offence under it, but, in order to prevent indiscriminate prosecutions, it confines the power of instituting the prosecutions to the Collector, and instructs him to exercise it only when it appears to him that the offence had been committed with an intention to evade payment of the proper duty. He is not required to make a formal enquiry or to record a proceeding when he gives a sanction in writing for a prosecution. It is to be presumed he has governed his decision by the rule prescribed. **7 M. 537 = 1 Weir 899.**

(18)—*Evading payment of stamp duty.*—The Stamp Act is a fiscal enactment, and must be strictly construed; and before any person can be punished for an offence relating to the stamp revenue, the procedure prescribed by the Act must be strictly followed. On the discovery of a not duly stamped instrument, the procedure laid down in s. 37 of the Act should be followed; the severer proceeding of a criminal prosecution under s. 40 is only intended for those cases where there is an intention to evade the stamp law. **8 C. 259 = 10 C.L.R. 365.** [*Appr.*, L.B.R. (1872—1892), Vol. I, 623; *Cons.*, 12 M. 231; *R.*, U B.R. (1892—1896), Vol. I, 307].

(19)—*Ss. 37 (b), 40, 61 and 63—Defrauding Government by understating the value of property in a deed—Prosecution.*—A District Court having, under s. 33 of the Stamp Act, impounded a partition deed produced before it, forwarded it under s. 35 to the Collector, being of opinion that the executant of the deed had committed an offence under s. 63 of the Act, the accused not having properly valued the property with the intent to defraud Government. The Collector, under the provisions of s. 69, sanctioned the prosecution of the executant, who was punished under s. 63. The Sessions Judge reversed the sentence on the ground that the Collector had omitted to collect the deficient stamp duty before sanctioning the prosecution. *Held*, that the acquittal was wrong, because s. 37 (*b*) did not apply to the case, and because the conviction would not be bad, simply because the Collector failed to record proceedings under s. 40 to the effect that he had satisfied himself that there was an intention to evade payment of the proper duty. **12 M. 231 = 1 Weir 903.** [*R.*, U.B.R. (1892—1896), 307.]

(20)—*Ss. 37, 40, 69—Execution of unstamped instrument—Scope of sections.*—The effect of ss. 37, 40, Stamp Act, is that every one must be allowed an opportunity of paying the penalty before the Collector exercises his discretion under s. 69. In many cases, there may be a

1.—Imperial Acts—continued.

Act I of 1879 (Stamp)—*continued.*

reasonable question as to whether any penalty is payable or not, and the duty may be recovered by an order which would be lost by a prosecution. He ought, at any rate, to do what the law commands as his duty before exercising a mere discretion. **7 B. 82.** [*Appr.*, L.B.R. (1872—1892), 623; *R.*, 12 M. 231, U.B.R. (1892—1896) 307].

(21)—*Ss. 37, 61—Holder of insufficiently stamped instrument.*—No prosecution lies under s. 61, Stamp Act, against the holder of an insufficiently stamped pro-note. But the Collector, on the bond being impounded and sent to him, can levy the penalty under s. 37. **40 P.R. 1886, Cr.**

(21-*a*)—S. 39—*See* No. 44, *infra*.

(22)—*S. 40—Scope of the section.*—S. 40 only refers to cases in which a prosecution is instituted after penalty has been paid. It confines the power of instituting prosecutions to the Collector, and instructs him to exercise it only when it appears that the offence was committed with the intention to evade payment of the proper duty. **12 M. 231=1 Weir 903.**

(23)—S. 40—*See* Nos. 17, 18, 19, 20, *supra*.

(24)—*S. 46—Rule of Governor-General, 3rd March, 1882, 5 (e)—Construction—Stamped paper—Writing on reverse.*—The rule is an enabling rule, authorising parties to use plain papers in addition to a stamp paper, where the whole of an instrument cannot be written on the side of the stamp paper which bears the stamp. The rule, while favoring the writing of an instrument only on that side, does not prohibit the writing on the reverse side, so as to make it an offence under s. 61, if they did so write. **7 M. 176, F.B.**

(25)—*S. 51—Allowance for spoiled stamps—Power of Collector to delegate authority—False statement in enquiry before Deputy Collector—Penal Code, s. 193.*—Under s. 51, and the rules made thereunder, the Collector himself, and none other, is the officer, to whom power is given by law to make enquiries into applications for allowance for spoiled stamps; to take the necessary evidence on oath, and to grant or refuse such application; and it is illegal and incompetent for him to delegate his authority in the matter where a Collector made over such an application to the Deputy Collector for enquiry, *held*, that, he being incompetent to put the witnesses produced by the applicant on their oaths, no charge under s. 181 or 193 could be framed against the witnesses in reference to their statements made before him. **5 A. 17.**

(26)—*Ss. 58 and 64—Proof of demand of stamped receipt.*—In order to bring home a charge under s. 64, it must be shown that the person accused had been required under s. 58 to give a properly stamped receipt and had refused to give it. **27 C. 324=4 C.W.N. 440.**

(27)—*Ss. 60 and 63—Intention to avoid payment of stamp.*—Intention to avoid payment of stamp is not an essential ingredient of the offence described in s. 60 of Act I of 1879. But such intention is the essential ingredient of the offence made punishable by s. 63 of that Act. **12 M. 231=1 Weir 903.**

(28)—*S. 61—Penal Code, s. 107—Abetment of making an unstamped receipt.*—Where the accused paid a sum of money to his creditor, and when the money was paid and he was to receive a receipt, the creditor said that he could not give a stamped receipt, as he had no stamp and the accused, thereupon, accepted the receipt without a stamp, and promised himself to affix one, *held*, that the accused was not guilty of abetment of the offence of making an unstamped receipt, as he did not aid the offence by an act, nor did he omit to do anything which he was bound by law to do. **8 A. 18=A W.N. 1885, 317.** [*F.*, 7 C.P.L.R. 21 Cr.]

(29-30)—*S. 61—Receipt of insufficiently stamped instrument—Abetment—Penal Code, ss. 40, 109.*—The mere fact of the acceptance of an insufficiently stamped instrument cannot amount to an abetment of the offence under s. 61 of the Stamp Act. **A.W.N. 1883, 145.** [*R.*, 20 A. 440]. *See, also*, A.W.N. 1884, 37.

(31)—*Receiver of an unstamped instrument—"Accepting."*—The term "accepting" in s. 61 of the Stamp Act does not mean "receiving" but "executing as an acceptor." The mere receiver of a pro-note not duly stamped does not render himself liable to the penalties under the section. **20 A. 440=18 A.W.N. 108.** (24 W.R. Cr. 1, A.W.N. 1885, 145, 7 B. 82, 7 M. 71, *R.*) [*R.*, U.B.R. 1904, 2nd Quarter, Stamp, p. 1].

(32)—The mere receiving of a pro-note not duly stamped and suing upon it is not "accepting" within the meaning of s. 61, and is, therefore, not an offence under the section. **12 P.R. 1887 Cr.**

(33)—The term "accepting" in s. 61 does not mean receiving but executing as an acceptor. A person receiving a promissory note insufficiently stamped and subsequently putting it in a suit would not be guilty of an offence under s. 61. **7 M. 71=1 Weir 902.** [*F.*, 11 P.R. 1891 Cr., Rat.Un.Cr.C. 682, 1 N.L.R. 163; *R.*, U.B.R. (1892—1896), 312 (Cr.), 18 A.W.N. 108=20 A. 440].

(34)—An accused person, who had merely accepted an unstamped receipt without having either executed or signed it, commits neither an offence under s. 61, Stamp Act, nor does he, by such bare acceptance, become guilty of abetting its execution. **18 P.R. 1895 Cr.**

(35)—It is not abetment of the execution of an unstamped instrument to receive it, any more than acceptance of stolen property is abetment of theft. **7 B. 82.** [*F.*, 8 A. 18=5 A.W.N. 317, 7 C.P.L.R. 21, 20 A. 440=8 A.W.N. 108, 1 N.L.R. 163; *R.*, U.B.R. 1904, 2nd Qr., Stamp, p. 1; *D.*, 10 C.P.L.R. 1].

I.—Imperial Acts—continued.

Act I of 1879 (Stamp)—*continued.*

(36)—The mere receipt of an unstamped *khata* does not constitute an offence under s. 61, Stamp Act. **Rat. Un Cr. C. 682 = Cr. Rg. 47 of 93.** (7 M. 171, *F.*)

(37)—*Meaning of the term "Signing otherwise than as a witness"—Agent authorised to sign on behalf of a firm—Liability of agent for granting unstamped receipt.*—The words "signing otherwise than as a witness" in s. 61 of the Act includes the writing of a person's name by himself, or by his authority, with the intention of authenticating a document as being that of the person whose name is so written. An ordinary agent authorised to sign on behalf of his principal comes within the purview of the section. Where a clerk signs a firm's name under the authority of the firm, it makes little difference that he wrote the letters to the dictation of the Manager and he may be properly convicted under s. 61 of the Act. **27 C. 324 = 4 C.W.N. 440.**

(38)—*Acknowledgment of receipt of debt due by letter—Failure to properly stamp it.*—Where a person acknowledges by letter the receipt of money in satisfaction of a debt for more than Rs. 20, the letter is a receipt and is as such chargeable with duty and the person signing it otherwise than as a witness without its being properly stamped is liable to be convicted under s. 61 of the Act. **8 M. 11, F.B. = 1 Weir 902.**

(39)—*Amount of fine.*—Where a person is convicted of the abetment of an offence under s. 61 of the Stamp Act for not fixing a stamp to an acknowledgment signed by a debtor in his account books, the amount of fine inflicted should not be excessive but proportionate to the fraudulent intent of the offender. **A.W.N. 1885, 30.** [*D.*, 8 A. 18].

(40 and 41)—*Signing unstamped receipt.*—Where the evidence shows that an unstamped receipt was granted for the acquittance of a debt due from the payer to the grantor's principal, the grantor would be guilty of an offence under s. 61 of the Stamp Act by signing such receipt otherwise than as a witness. **A.W.N. 1885, 266.**

(42)—*Term "receipt" explained.*—A receipt is something more than a document merely purporting to acknowledge the payment of money. It means a note or the like, whereby money, a debt or the like, is intended to be acknowledged to have been actually paid or discharged. If there is no intention to acknowledge payment of satisfaction, a man cannot be held to have given a receipt. **1 Weir 901.**

(43)—*See* Nos. 3, 8, 9, 10, 19, 21, *supra.*

(44)—*Ss. 39 and 69—Charter-party, counterpart or duplicate of—Stamp duty, immaterial for purpose of securing a conviction—Sanction for prosecution by Collector when valid.*—There is nothing in the law which renders it obligatory to execute a charter party in duplicate;

I.—Imperial Acts—continued.

Act I of 1879 (Stamp)—*continued.*

but when the parties think proper to execute it in duplicate, they commit an offence punishable under s. 61 of the Stamp Act if they fail to stamp the counterpart as prescribed in the schedule. The mere fact that they may have intended it to be used merely as a private copy cannot alter its nature or make it any less a duplicate or counterpart if it is duly signed. Provided that the prosecution be duly instituted, the intention of the party prosecuted to evade the stamp-duty or otherwise is immaterial for the purpose of securing his conviction.—When a Collector without first calling on the party to pay the duty and penalty grants sanction to prosecute before the time had arrived for the exercise of his discretion under s. 40, his sanction is not a valid sanction. **L.B.R. (1872—1892), 623.**

(45)—*See* ABETMENT, 20 A. 440 = A.W.N. 1898, 108; 10 C.P.L.R. Cr. 1.

(46)—*See* EVIDENCE, L.B.R. (1893—1900), 119.

(47)—*Ss. 61 and 62—An unstamped letter acknowledging receipt of a cheque for Rs. 100—Chargeability of duty on, under s. 61—Conviction for not stamping, under s. 62—Legality.*—A cheque for Rs. 100, was sent to the accused. He acknowledged its receipt by means of a letter which ran thus "Your cheque for Rs. 100 to hand," *held*, such a letter is an instrument chargeable with the stamp duty of one anna within the meaning of s. 61 of the Stamp Act I of 1879 and that the accused was rightly convicted under s. 62 of the same Act. **1 Weir 903 = 11 M. 329.**

(48)—*Ss. 61 and 64—What constitutes an offence under s. 64.*—Where a person neither refuses nor neglects to give a receipt, nor does he with intent to defraud the revenue give a receipt for less than Rs. 20 when he has received more, nor does he with like intent separate or divide the money or property paid or delivered, he cannot be convicted under s. 64 of the Act. **8 M. 11, F.B. = 1 Weir 902.**

(49)—*Refusal to grant stamped receipt by a firm—Liability of the members of the firm.*—The term "person" used in ss. 61 and 64 of the Stamp Act includes the members of a trading partnership. Where a firm carrying on business in Calcutta as general dealers, acknowledged the receipt of certain sums from a customer, but refused to give a properly stamped receipt, *held*, that the members of the firm were liable to be prosecuted under ss. 61 and 64 of the Act, and that an enquiry as to the presence or the absence of the partners from Calcutta at the time the letters were written or their knowledge of the grant of an improper receipt or of the refusal to grant a proper receipt was immaterial, since they were, in the contemplation of law, the persons who signed the letters of acknowledgment and refused to give a proper receipt. **27 C. 324 = 4 C.W.N. 440.**

1.—Imperial Acts—continued.

Act I of 1879 (Stamp)—*continued.*

(50)—*Ss. 61 and 67—Execution of document requiring to be stamped but not stamped.*—The execution of a document, which on its face requires to be, and is not stamped, cannot be said to be an "act, contrivance, or device not specially provided for" within the meaning of s. 67 of Act, because where the document is what on its face it purports to be, the act of the executant, if punishable at all, is provided for under s. 61 of the Act and cannot, therefore, fall under s. 67. The act of the person receiving the unstamped document may amount to abetment of an offence, under s. 61, and would then be 'an act provided for by any other law for the time being in force,' namely, the Penal Code, and is, therefore, beyond the scope of s. 67 of the Act. The recipient and the writer of a letter requesting the granting of a loan to a certain person, the writer holding himself responsible for the amount of the loan, if the borrower does not repay it, cannot be prosecuted for an offence under s. 67 of the Stamp Act. **23 M. 155 = 1 Weir 907.**

(51)—*Ss. 61 and 69.—Irregularity in mode of reference.*—Criminal proceedings taken under the above Act are not invalidated by the mere fact that there was irregularity in the mode of reference by a Civil Court, provided the prosecution is instituted by the Collector or such other officer as the Local Government generally or the Collector specially authorizes in that behalf. **10 C.P.L.R. Cr. 1.**

(51-*a*)—*Ss. 61, 69—Crim. Pro. Code, Act X of 1882, s. 555—Unstamped receipt—Jurisdiction of Magistrate—Interest of Magistrate in case.*—Where a Deputy Magistrate who was also the officer in charge of the Treasury, convicted a person for having given an unstamped receipt, *held* that the conviction was illegal both for want of the sanction required by s. 69 of Act I of 1879, and under s. 555 of the Crim. Pro. Code. **A.W.N. 1884, 37.**

(52)—*See* CRIM. PRO. CODE (1898), s. 190, U.B.R. (1897—1901), Vol. I, 55.

(53)—S. 62—*See* Nos. 10, 14, 47, *supra.*

(54)—*S. 62 (1) (a)*—An entry of the receipt of money made by a debtor in his creditor's book with the addition that the amount borrowed would be paid on a certain date (but to whom it did not appear) is not executing a promissory note without the necessary stamp, for the entry does not amount to promissory note; nor can the creditor be convicted of receiving payment of a promissory note. **A.W.N. 1903, 174.**

(55)—*Ss. 62 (1) (b), s. 64 (c)—Entry made by debtor in creditor's book not a receipt.*—An entry made by a debtor in the creditor's book of the fact of a payment made by him is not executing a receipt not duly stamped or the commission of any other Act calculated to deprive the government of any duty under the Act. **A.W.N. 1903, 173.**

1.—Imperial Acts—continued.

Act I of 1879 (Stamp)—*continued.*

(56)—*S. 63 (b)—Scope of the section.*—S. 63 (*b*), being a penal one, must be construed strictly. If so construed, a purchaser or grantee under a conveyance cannot, without straining the meaning of the language, be held to be a person employed or concerned in or about the preparation of the document of conveyance. The language of the clause appears to point to the case of a person in whom trust and confidence has been reposed in connection with the preparation, writing, etc., of an instrument and who abuses such trust and confidence, *e.g.*, an attorney's clerk or professional writer, and not to the case of a person materially interested or concerned in the instrument, when executed, such as a purchaser or grantee. **1 Weir 905.**

(57)—S. 63—*See* Nos. 19, 27, *supra.*

(58)—*S. 64 (= s. 65 of Act II of 1899)—Failure to grant receipt when demanded.*—The failure to grant a receipt for money paid, though demanded, is an offence punishable, under s. 64 of Act I of 1879, with fine which may extend to Rs. 100. It is therefore not excluded by cl. (*a*) of s. 216 of the Crim. Pro. Code from the category of offences triable summarily. **1 Weir 906.**

(59)—*Four conditions to co-exist to bring an instrument under s. 64.*—In order to bring an instrument within the terms of s. 64, Stamp Act, four points are necessary and must co-exist, or else the instrument is not liable:—(1) The debt must exceed Rs. 20, (2) The instrument must be signed by or on behalf of the debtor, and (3) In order to supply evidence of a debt, (4) The instrument must have been left with the creditor. Wherever a balance of account is struck, no stamp need be affixed unless the debtor signs an acknowledgment. The failure of the creditor to affix such stamp is not an offence under s. 64 of the Stamp Act. **A.W.N. 1884, 164.**

(60)—*See* Nos. 26, 48, 49, 55, *supra.*

(61)—*Ss. 64, 69—Prosecution under the former section—Collector's sanction.*—To prosecute a person for having committed an offence under s. 64 of the Stamp Act, the previous sanction of the Collector as laid down in s. 69, is necessary. It is, therefore, essential that the record of conviction should evidence such sanction. **9 B. 27.**

(62)—*S. 67 (= s. 68 of Act II of 1899)—Execution of separate instruments in respect of single transaction.*—The act, device, or contrivance which is referred to in s. 67 must be either improper or prohibited. There is no provision in the Stamp Act which prohibits the execution of separate instruments and requires the execution of a single instrument in respect of a single transaction. Where a person executed as a security for a loan of Rs. 1,300, two mortgage deeds, one on a stamp of Rs. 10 for Rs. 1,000, and another on a stamp of Rs. 3 for Rs. 300, instead of executing a single deed on a stamp of Rs. 15 for the whole amount, *held* that he was not guilty of an offence under s. 67 of the Act. **1 Weir 907.**

1.—Imperial Acts—continued.

Act I of 1879 (Stamp)—*continued.*

(63)—The second clause in s. 67, Stamp Act, is not controlled by the first so as to restrict its application to negotiable instruments. The clause is of general application, and covers all cases in which a document is executed with the intention of defrauding the Government of its stamp duty. **9 M. 138, F.B.**

(64)—*See* No. 50, *supra*.

(65)—*S. 68—Act VII of 1870 (Court-fees Act), s. 34—Act XVIII of 1869 (General Stamp Act), s. 48—Sale of Court-fee stamps without a license.*—The sale of Court-fee stamps without license was no offence under Act XVIII of 1869, but was specially made so under s. 68, Act I of 1879. **4 A. 216, F.B.**

(66)—*Selling stamps without license.*—The selling of a stamped paper previously bought from a licensed vendor, because the seller did not require it, is an offence under s. 68, as the accused was not "a person appointed to sell stamps." **Rat. Un. Cr. C. 317 = Cr. Rg. 3 of 1887.**

(67)—*Ss. 61, 69—Prosecution in respect of offence against stamp law—Sanction.*—The prisoner in this case was convicted by the District Magistrate of an offence under s. 61 of the Stamp Act, but the prosecution was not instituted with the sanction of the Collector. *Held* that this was an irregularity and not a mere technical objection, because the prosecution could not be conducted by the officer granting the sanction (if sanction had been granted by the Collector who was also the Magistrate). **A.W.N. 1883, 98.**

(68)—S. 69—*See* CRIM. PRO. CODE (1898), ss. 487 and 556, A.W.N. 1884, 37.

(69)—*See* Nos. 10, 20, 51, 52, 61, *supra*.

(70)—*Sch. I, art. I.*—The prosecution related to the fact that certain entries in a Mahajan's cash book were signed by the persons affected by these entries, and it was contended that the mere fact that they were signed by the customers converted them into acknowledgments, though the entries in question were not in form acknowledgments of debt as contemplated by art. I. sch. I of the Stamp Act. *Held* that such a fact did not convert the document into an acknowledgment under art. I sch. I of the Stamp Act. unless it was established that according to mercantile usage or by the use actually made of the entry, it had the effect of such an acknowledgment. **10 C.P. L.R. Cr. 7.**

(71)—*Sch. I, art. 5, cl. (c)—Promise to pay interest.*—A promise by a debtor to pay interest in an acknowledgment of a debt in a Mahajan's accounts, is an agreement chargeable under art. 5, cl. (c), sch. I of the Act. **10 C.P.L.R. Cr. 1.** (4 B. 326, 22 C. 757, *Diss.*; 23 W.R. 403, 15 C. 150, *R.*)

(72)—*Sch. (i), art. 13—Guarantee bonds.*—The material part of a document was as follows:—"If T and Z fail to redeem the paddy lands they mortgaged to P, I. L.G.N. will redeem them by paying the original mortgagee money and interest. *Held*, that this was not a security bond, but a guarantee bond, coming under art. 13, sch. (i), Stamp Act, 1879. **L.B.R. (1893—1900), 119.**

(73)—*Art. 29—Scope of the article.*—Art. 29 applies to an instrument evidencing an agreement to secure the re-payment of a loan, which means an instrument executed at the time the loan is made, and not to the case of an assignment by way of mortgage of a valuable security to secure a pre-existing debt. The article contemplates an instrument contemporaneous with the advance and with the deposit. **27 C. 587 = 4 C.W.N. 524.**

(74)—*See* No. 5, *supra*.

(75)—Art. 44—*See* No. 5, *supra*.

(76)—*Art. 52—Crim. Pro. Code (1898), s. 432—Reference under Stamp Act (1879)—Entry by creditor in debtor's book.*—An entry recording the payment of the amount due made by the creditor in the debit side of the debtor's *khatta* book, and signed by him, is a "receipt" within the meaning of s. 3 (17) of the Stamp Act, and, as such, requires to be stamped under art 52, sch. I of the Act. To decide questions of this kind, the Court must look to the intention of the parties. **11 C. 267.** [*R.*, 2 L. B.R. 307].

(77)—*See* No. 7, *supra*.

(78)—Art. 54—*See* No. 7, *supra*.

(79)—*Chapter VIII.*—A criminal Court trying an offence punishable under Chapter VIII of the Act cannot realise a penalty previously directed to be paid by the Collector under Chapter IV of that Act. **10 C.P.L.R. Cr. 1.**

Act IV of 1879 (Indian Railways).

[REP., ACT IX OF 1890.]

See ACT XVIII OF 1854.

„ ACT IX OF 1890.

„ CARRIERS.

„ RAILWAY COMPANY.

(1)—*Ss. 15, 29—False accounts of goods despatched.*—The duty imposed by s. 15, that of giving an account of the quantity or description of property sought to be despatched by rail being limited to the case of a demand being made, *held*, that a person giving false account of goods despatched without being so demanded by railway authorities could not be convicted under s. 29. **36 P.R. 1885 Cr.**

(2)—*Ss. 17 and 31—Duty of passengers and their liability.*—Under ss. 17 and 31, Railway Act, no passenger is to travel without a proper ticket (an ordinary one for the particular journey or a season ticket) furnished by the

1.—Imperial Acts—continued.

Act IV of 1879 (Indian Railways)—*continued.*

company. Every passenger is to show or deliver up his ticket when called upon; and any passenger, who fails in either of these points, is liable, whether a season-ticket holder or not, to pay the ordinary fare for his journey, or if he cannot show where he got into the train, the ordinary fare from the starting point of the train. **12 C. 192.**

(3)—*S. 26—Liability under section when arises.*—Persons are liable to conviction under s. 26 of the Act, not by reason of consequences directly referable to default in observing the rules, but by reason of the danger or risk which it entails. Where it was required by a rule sanctioned and notified as required by law that the guard and driver of a ballast-train should, on a line worked on the block-system, stop the train at a station and should not leave the station till the guard has received from the Station Master and delivered to the driver a "line clear certificate," disobedience, of such rule by the guard and driver which endangered the safety of persons, was held to make them liable to be punished under s. 62. **6 M. 201 = 1 Weir 867.**

(4)—S. 29—*See* No. 1, *supra.*

(5)—*S. 31—Order under, nature of—Season ticket holder travelling without ticket.*—The order under s. 31 of the Railway Act, in case of a refusal by a passenger, travelling without a proper ticket, to pay the fare, should be one merely for the recovery of the amount due *as the fare*, and not an order to pay the sum as if it were a fine. [*R.*, Rat. Un. Cr. C. 435]. A passenger, who has a season ticket, which is still in force and in his possession, cannot be said to be travelling without a ticket within the meaning of s. 31 of the Railway Act, merely by reason of his inability to produce it when called upon, on account of his not happening to have the ticket with him: but he will be considered not to have shown the ticket, and will have to pay the ordinary fare. **12 C. 192.**

(6)—S. 31—*See* No. 2, *supra.*

(7)—*Ss. 31, 32—Fine—Fare—Fraudulent act*—S. 32, unlike s. 31 of the Railways Act, applies only to fraudulent acts, and requires the imposition of fine in addition to the fare. Where there is no intent to defraud, the conviction should be under s. 31. **Rat. Un. Cr. C. 435 = Cr. Rg. 7 of 89.** (12 C. 192, *R.*)

(8)—S. 32—*See* ACT IX OF 1890, s. 112, 1 Weir 869, F.B.

(9)—*See* No. 7, *supra.*

(10)—*S. 45—Knowledge—Act likely to endanger safety of passengers.*—Where there is no evidence that a Station Master, in sending a train without previously obtaining a line clear message, knew that his act was likely to endanger the safety of the passengers travelling therein, a conviction under s. 45 of the Act is illegal. **A.W.N. 1882, 172.**

1.—Imperial Acts—continued.

Act IV of 1879 (Indian Railways)—*concluded.*

(11)—*Ss. 45, 46—Placing obstruction on the rails.*—Where the accused was charged with pulling up an iron mail post and placing it across the rails on a dark-night, *held* that the act being wrongful in itself, rashness cannot be usually predicated, and that the offence, falling within s. 45 of the Railways Act, should be committed to the Sessions Court and not tried by a Magistrate as falling within s. 46. **Rat. Un. Cr. C. 458 = Cr. Rg. 14 of 89.**

(12)—*S. 46—Failure to remove stone from rail.*—A person who fails to remove a stone from a rail is not guilty of negligently doing an act which is likely to endanger the safety of persons travelling upon the railway, under s. 46, unless it be proved that he was legally bound to remove it. **Rat. Un. Cr. C. 394 = Cr. Rg. 50 of 88.**

(13)—*See* No. 11, *supra.*

(14)—*Ss. 101 and 29—Negligence of Railway servant—Lives lost—Punishment.*—Where a Railway servant was convicted under s. 29 of Act IV of 1879 for his gross negligence by which an accident happened in which several lives were lost, *held* that three months' simple imprisonment was too light a sentence. **A.W.N. 1890, 171.**

Act XIV of 1879 (Hackney Carriage).

[REP. IN PART, ACT XIII OF 1889. DECLARED IN FORCE IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4].

(1)—*Ss. 6 and 7—Rule 1—Driving unlicensed carriage*—Rule 1 of the rules framed under Act XIV of 1879 for the Umballa Cantonment does not render driving an unlicensed carriage punishable under s. 7 of the Act. **7 P.R. 1892 Cr.**

(2)—S. 7—*See* No. 1, *supra.*

(3)—*S. 9—Summary and not exclusive remedy.*—The above section is merely intended to provide a simple and summary means of settling disputes between the hirers and letters of hackney carriages, and parties are not thereby excluded from having recourse to the Civil Courts. **A.W.N. 1893, 203.**

(4)—*Ss. 3 and 7—Advertisement as to the hire of carriage—Hackney carriage—Liability under the Act.*—A published an advertisement in a newspaper that he would supply carriages for hire and for sale. He was charged under s. 7 of the Hackney Carriage Act, for hiring hackney carriages, without obtaining a license from the Municipality, in contravention of Rule 1 of the Rules framed by the Rangoon Municipal Committee under s. 3 of the said Act. *Held*:—(1) that a conviction cannot be upheld under the section, if it is not proved that the accused had carriages in his possession to which it might be held that the advertisement referred, and that a mere insertion of a notice cannot be sufficient for a conviction; (2) and that it must also be shown that the accused also meant to offer his carriages for the conveyance generally

1.—Imperial Acts—continued.

Act XIV of 1879 (Hackney Carriage)—*cld.*

of that portion of the public who are "passengers," and that the terms and conditions of the hiring must also be clear. **4 L.B.R. 80=7 Cr. L.J. 71.**

(5)—*S. 7*—Breach of the condition of a license as set out in Rule 7 of the above Act, not being a breach of a rule, is not punishable under s. 7. **U.B.R. (1892—1896), Vol. I, 125.**

(6)—S. 7—*See* No. 4, *supra.*

Act XVIII of 1879 (Legal Practitioners).

[AMENDED, ACT IX OF 1884; ACT XI OF 1896; ACT VI OF 1900; S. 47; ACT I OF 1903; ACT I OF 1908. REP. (LOCALLY), EXCEPT S. 36, REG. VII OF 1901.]

(1)—*Unprofessional conduct—Suspicion—Muktear—Renewal of license.*—The renewal of the license of a legal practitioner cannot be refused on the mere suspicion that he was implicated in, and privy to, the sending of anonymous petitions making serious allegations against a Sub-divisional Officer and other Government officers. **12 C.W.N. 919=4 M.L.T. 155=8 Cr. L.J. 155.**

(2)—*Inquiry under Legal Practitioners' Act—False statement of the accused person made after being solemnly affirmed—Penal Code, ss. 181 and 193.*—Where a pleader is called upon, in an enquiry under the Legal Practitioners' Act, to explain his conduct, it is not competent to the Court conducting the enquiry to take a statement from him on solemn affirmation. He is not, therefore, in such proceeding legally bound by an oath to speak the truth, and, if he states what is false, does not render himself amenable to the charge of making a false statement under s. 181 or giving false evidence under s. 193, Penal Code. **6 M. 252=1 Weir 116.**

(3)—*Nature of the enquiry under the Act—Judicial proceeding—False statements by witnesses on solemn affirmation—Penal Code, ss. 181, 193.*—An enquiry under the Legal Practitioners' Act is a judicial proceeding, and false statements on solemn affirmation made by the witnesses therein should be charged as offences under s. 193, Penal Code, and the persons so charged should be tried separately. **6 M. 252 =1 Weir 116.**

(4)—*See* FALSE EVIDENCE, 6 M. 252=1 Weir 116.

(5)—*Ss. 3 and 36—District Magistrate declaring a person to be a tout—Procedure—Personal inquiry necessary—Opportunity to show cause.*—Before proceeding to declare a person to be a tout, the District Magistrate should himself make an inquiry as to the person's antecedents and give him an opportunity to show cause. Where a Sub-divisional officer called on a person to show cause why he should not be declared a tout and he showed cause and the Sub-divisional officer after recording evidence on both sides submitted the proceedings with his report to the District Magistrate, and the latter after perusing them passed an order declaring the person to be a tout, the order was set aside. **12 C.W.N. 842.**

1.—Imperial Acts—continued.

Act XVIII of 1879 (Legal Practitioners)—*ctd.*

(6)—Ss. 3 and 36—*See* TOUT, 27 P.W.R. 1909 Cr.

(7)—*Ss. 6, 8—Scheduled Districts Act, ss. 3, 5, 6—Enrolment of vakils in the province of Kumaun and Garhwal—Jurisdiction.*—The Commissioner of Kumaun is the High Court of that province and Garhwal for the purposes of the Legal Practitioners' Act. Therefore, a person enrolled as a vakil of the High Court of Judicature at Allahabad is not entitled, by virtue of such enrolment, to practise in the Courts of Kumaun and Garhwal. Where the Commissioner of Kumaun refuses to enroll a person as entitled to practise in the Courts of Kumaun and Garhwal, the High Court of Judicature at Allahabad has no right to interfere. **24 A. 348, F.B.**

(8)—S. 8—*See* No. 7, *supra.*

(9)—S. 9—*See* CRIM. PRO. CODE, (1898), s. 4 (*v*), 5 A.L.J. 40=A.W.N. 1908, 11=30 A. 66= 7 Cr. L.J. 21.

(10)—*S. 10—Pleader or Mukhtear—Power to practise.*—Unless a pleader or mukhtear comes within the exceptions to s. 10, Act XVIII of 1879, or within the proviso, he acts in contravention of the provisions of the section, if he performs, even on a single occasion, the functions of a pleader or *mukhtear* in a Court not established by Royal Charter. **44 P.R. 1887 Cr.**

(11)—*Ss. 10, 32—Illegal practising by a pleader—Jurisdiction.*—A pleader or mukhtear practising in the Court of a Subordinate Magistrate, in contravention of the provisions of s. 10 of the Act, is only punishable under s. 32, by such Magistrate, and not by the District Magistrate. **4 A. 375.**

(12)—*S. 12—Conviction of pleader for cheating—Report to High Court—Arguments allowed to show that facts did not amount to offence.*—Where, on a pleader being convicted of cheating under s. 417, I.P.C., the District Judge reported the case to the High Court under the Legal Practitioners' Act, Counsel for the pleader was allowed to go behind the conviction and show that his acts did not in law amount to the offence of cheating. **7 A. 290, F.B.** [*D.*, 22 A. 49, P.C.; *Diss.*, 18 A. 174].

(13)—*S. 13—Grossly unprofessional conduct.*—Where certain parties to a suit executed an agreement in which it was stated that, as they were unable to pay the pleader's fees owing to poverty, a certain sum shall be paid to the vakil, in consideration of his conducting the case, when the case was won, *held* that it was, in effect, an agreement by which the pleader became entitled to a share of the property in suit in payment of his services as pleader in the

I.—Imperial Acts—continued.

Act XVIII of 1879 (Legal Practitioners)—*ctd.*

suit, and that, in accepting such an agreement, the pleader was guilty of grossly unprofessional conduct. **4 O.C. 229.** (4 C.W.N. 104, 5 C.W.N. 184, *R.*)

(14)—*Pleader taking sides against former client—Grossly improper conduct.*—A pleader, after his dismissal without misconduct on his part, or after the close of the business, is at liberty to take sides against his former employer, provided always that he has no secrets to carry with him that can be used to his former client's prejudice. But he is not competent to do so when he is neither discharged by his client nor has the business, for which he was retained, closed. Where a *mukhtear* retained by the complainant defended the accused when the latter was retried after the order of his discharge was set aside on revision, *held*, that the conduct of the *mukhtear* was grossly improper. **45 P.L.R. 1904.** (6 C. 79, 12 B. 95, *R.*) See, also, 2 P.R. 1904.

(15)—A pleader, after his dismissal without misconduct on his part, or after the close of the business, is at liberty to take sides against his former employer, provided always, that he has no secrets to carry with him that can be used to his former client's prejudice "The Court will require a strong case to be made out as a ground for an order restraining a pleader from acting in any particular case; but from the nature of the thing it will, in general, be satisfied with the affidavit of a person who says he made confidential communication pertinent to the now pending suit, without requiring him to go into details, the statement of which would be a disclosure of the very matters which it is his purpose to keep concealed. **L.B.R. (1893—1900), 19.** (12 B. 91, *F*).

(16)—*Pleader—Professional misconduct—Enquiry—Strict proof necessary.*—In order to secure his own fee a pleader was an active party to placing his client in the hands of a money-lender who made a wholly unscrupulous and extortionate bargain with the pleader's client. The pleader knew the terms of that bargain: yet he did not advise or warn his client but permitted him to enter into the bargain. *Held*, that it was a professional misconduct of a grave kind: of a kind which, if permitted would tend to corrupt and demoralise the legal profession. A high standard of rectitude, diligence, duty and zeal is required of pleaders in the interests of the Bar. An enquiry into the professional misconduct of a pleader being of a *quasi*-judicial nature, the Court must have a strict proof of the pleader's misbehaviour. **10 Cr.L.J. 526 =4 Ind. Cas. 266=11 Bom.L.R. 1150.**

(17)—*Unprofessional conduct what amounts to—Interference by Privy Council with the punishment passed on a pleader by the High Court.*—Where a certificated pleader, after his employment as a pleader by a Bank had ceased, commenced a correspondence with a suitor against whom the Bank had taken proceedings to recover a debt, which showed that he was guilty of grave improprieties in his professional conduct, *held*, such conduct amounted to a "reasonable cause" for suspending him under s. 13 of the Act. Where the *quantum* of punishment, imposed on a pleader for conduct which amounted to a "reasonable cause" for suspending him under s. 13 of the Act, was neither unreasonable, nor excessive, the Privy Council declined to interfere with the decision of the High Court as to the punishment. **13 A. 93=17 I.A. 199, P.C.** [*R.*, 29 C. 890= 6 C.W.N. 556, F.B.]

(18)—*"Other reasonable cause"—Writing of an anonymous letter by pleader.*—Where a pleader wrote a letter, which he did not sign, to an officer, who was conducting an enquiry into a charge of bribery against a Revenue Inspector, the letter making allegations, which were intended to prejudice the mind of the officer in connection with the matter, which he was investigating, *held*, that the pleader was guilty of misconduct and that he should be suspended "for other reasonable cause" under s. 13, cl. (*f*), Legal Practitioners Act. **13 M.L.J. 65=26 M. 448.**

(19)—*See* PLEADER AND CLIENT, 4 Ind. Cas. 176.

(20)—*S. 13 (b)--Misconduct—Mukhtar's writing an objectionable letter to the presiding officer of a Court—Apology—Suspension.*—*Held*, that the conduct of a *mukhtar*, who writes for another person a letter to the address of the presiding officer of a Court, on the supervision of Courts subordinate to his Court, and uses highly objectionable language in it, came within the terms of s. 13 (*b*) of the Legal Practitioners Act. For such misconduct the Chief Court suspended a *mukhtar* from practice for a period of three months and declined to accept an apology tendered by him before the presiding officer of the Court concerned and the Chief Court. **166 P.L.R. 1901.**

(21)—*Ss. 13, 14—Power of High Court to transfer proceedings.*—The Chief Court has no power, either under s. 25, Civil Pro. Code, or under s. 526, Crim. Pro. Code, or under the provisions of the Punjab Chief Court's Act, or under its general powers of superintendence, to order the transfer of a proceeding under s. 14 of the Legal Practitioners Act. But the general powers of superintendence and control enables the Chief Court to look at the charge, and, if it appears that the allegations made do not establish a case justifying suspension or dismissal, to direct proceedings to be stayed. **41 P.R. 1888 Cr.**

(22)—*Ss. 13, 14—As amended by Act XI of 1896—Competency of District Judge to enquire into a charge of misconduct—Toutism—Chief Court's power of revision.*—*Held*, that:—S. 14 of Act XVIII of 1879 applies to all clauses of s. 13 as amended by Act XI of 1896, when any of the charges mentioned in s. 13 of the said Act is brought to the notice of any Court within whose

1.—Imperial Acts—continued.

Act XVIII of 1879 (Legal Practitioners)—*ctd.*

local limits the pleader is ordinarily practising, the presiding officer has jurisdiction to proceed against him (pleader) under its s. 14 and can report, in the manner prescribed thereunder, to the High Court for suspending or dismissing such pleader in case the charge is made out: in acting under s. 14 of the said Act, the Court is bound to hold a preliminary inquiry in order to find out distinctly what is the charge, and after satisfying itself that it is *prima facie* a true one, but not before, the Court can proceed to issue notice required in paras. 1 and 2 of the same section. Such a notice if issued on a vague report is liable to be set aside on revision by the High Court: in order to sustain a charge under clause (*c*) of s. 13 of the Act, the gratification paid to the tout must be "out of any fee paid or payable to a pleader," but does not include a payment made out of the *Munshiana* of a pleader's *Munshi*. **31 P.W.R. 1909 Cr.**

(23)—*Conduct of pleader as suitor.*—A petition couched in disrespectful and improper language, drafted and presented by a Pleader to a Court, not in his professional capacity, but as a party, will not render him liable to the penalties provided in the Act for a professional man, as it is possible to take notice of his behaviour in any other way, *viz.*, as one committed by a suitor. **24 M. 17.** [*F.*, 3 M.L.T. 237=7 Cr. L.J. 333=18 M.L.J. 184].

(24)—*Pleader—Unprofessional conduct—Refusal of brief for political reasons—Right to refuse—Reasons for refusal if must be stated—Right to move High Court to quash proceedings when called upon to show cause.*—A pleader is not bound to accept a brief offered to him, nor to state his reasons for refusing to accept it. A pleader, having refused a brief offered to him, was subjected to a stringent examination to disclose his reasons, and, on its appearing that his reasons were political, proceedings were started against him under the Legal Practitioners' Act and he was called upon to show cause why he should not be reported to the High Court for unprofessional conduct. Without waiting to show cause, the pleader at once moved the High Court to quash the proceedings. *Held* that he was entitled to do so, that there was no rule of procedure to justify the examination to which he was subjected. **12 C.W.N. 381.**

(25)—*As amended by Act XI of 1896—Meaning of expression "any other reasonable cause"—Misconduct prior to enrolment—Permanent defect of character—Power of subordinate Court to proceed under s. 14.*—Held, *per Hill, J.*, (agreeing with Rampini, J., and dissenting from Ghose, J). Each of the clauses of s. 13 which precedes cl. (*f*) is generally distinct from the rest and is exhaustive of its own genus, and, where this is so, the principle of *ejusdem generis* can hardly apply. Cl. (*f*) was intended to cover misconduct, other than professional misconduct, and to embrace all clauses other than those previously enumerated in the section, which might reasonably be regarded as disqualifying

1.—Imperial Acts—continued.

Act XVIII of 1879 (Legal Practitioners)—*ctd.*

a person from retaining the office of a pleader or *mukhtear*. S. 13 (*f*) was also intended to provide for causes disqualifying a person for retaining the office of pleader or mukhtear, and that a moral defect of character may be one of such causes. An offence committed prior to admission as legal practitioner may be made the foundation of a proceeding under s. 13, provided it is of such a nature as to imply a permanent defect of character of a disqualifying kind. Per Ghose, J., *contra.*—The words "or for any other reasonable cause" in cl. (*f*) of s. 13 should be construed according to the well-known canon of construction, that when general words follow particular words of the same nature, they are presumed to be restricted to the same genus as those words, unless it can be shown from an inspection of the scope of the Legislation that the general words were meant in a wider sense. It is extremely doubtful whether the words "any other reasonable cause" are intended to apply to any act other than professional misconduct, and occurring before or after the enrolment of a person as a pleader or mukhtear. As bearing upon the question. s. 12 which authorizes the suspension or dismissal of a pleader or mukhtear on conviction of a criminal offence may be referred to. The section could only refer to a conviction subsequent to his enrolment as a pleader or mukhtear. (7 B.L.R. 179, *relied on*). [*F.*, 29 C. 890, F.B., 13 M.L.J. 65=26 M. 448; *R.*, 166 P. L.R. 1901.] A reference was made by a Sessions Judge, under s. 14 of the Legal Practitioners' Act, recommending that a certain mukhtear, who has been practising as such in the Criminal Courts, should be dismissed. The grounds for this recommendation were that the mukhtear was dismissed from the office of Sub-Inspector of Police, which he held previously, for gross misconduct and that, subsequently, he procured a certificate of good moral character from a pleader by concealing his previous history, and, by means of that certificate, thus improperly obtained, he gained admission to the examination of mukhtears. *Held*, *per* Hill, J (agreeing with Ghose, J, and dissenting from Rampini, J), that the mukhtear ought not to be dismissed or suspended in consequence simply of his dismissal from the Police, specially in the absence of any "legal proof" of disqualification given in the presence of the mukhtear and that no case, either for dismissal or suspension, had been made out against him. (6 W.R.Mis. 5, *R.*) *Per* Hill, J.—s. 13 authorises the High Court, after such enquiry, as it thinks fit, to suspend or dismiss a pleader or mukhtear for any of the causes specified in the section, but the power of Subordinate Courts is much more restricted under s. 14. The "taking of instructions" and "misconduct" referred to in s. 14 relates to clauses (*a*) and (*b*) respectively of s. 13, and it is only in such cases that a Subordinate Court is authorized to proceed under s. 14. **27 C. 1023=4 C.W.N. 389.** [*R.*, 10 C.W.N, 1059=4 C.L.J. 229; *Diss.*, A.W.N. 1906, 268=3 A.L.J. 811=29 A. 61]. (15 C. 153=14 I.A. 154, *R*).

1.—Imperial Acts—continued.

Act XVIII of 1879 (Legal Practitioners)—*ctd.*

(26)—*Ss. 13, 40—"Other reasonable cause," meaning of, in s. 13—Not restricted to matters ejusdem generis with matters in cls. (a) to (e)—Charge, necessity to formulate with particularity—Evidence Act (I of 1872), s. 132—Answers not objected to—No privilege.*—An order under s. 13 of the Legal Practitioners' Act can only be made, after notice has been given to the pleader to show cause why he should not be suspended or dismissed. The notice must formulate the charges with sufficient precision, to enable the pleader to know the charge which he is called upon to meet. The words "other reasonable cause" in s. 13, cl. (*f*) are not restricted to matters *ejusdem generis* with the matters mentioned in cls. (*a*) to (*e*). Two pleaders organized a political meeting and one of the speakers at the meeting was convicted of sedition. The two pleaders were also charged with having published a leaflet to honour B. C. Pal. *Held*, these circumstances did not constitute "reasonable cause" for their suspension or dismissal. The evidence given by witnesses can be used against them in a subsequent proceeding, if they did not claim privilege or object to answer any of the questions which were put to them. **6 M.L.T. 253, F.B. = 19 M.L.J. 504 = 3 Ind. Cas. 344.**

(27 and 28)—*Proceedings by subordinate Court against pleader—High Court's power of transfer.*—S. 13, Act XVIII of 1879, does not contain in itself any power enabling the High Court to transfer proceedings taken in or by a Court subordinate to it against a pleader for unprofessional conduct before such subordinate Court. Whether the High Court has the power or not, it is obviously expedient, in all disciplinary matters, that the Court before which contempt or misconduct takes place should itself deal with the contempt or misconduct. The section contains in itself special provisions whereby the High Court can deal with the report when it has been made; in other words, the section is full and complete and independent of s. 13. **A.W.N. 1893, 33.**

(29)—*S. 14—Professional misconduct by pleader—Charge before a Joint Magistrate—Transfer of the Magistrate—Right of District Magistrate—Pleader accusing Magistrate as acting maliciously, vexatiously, and with a vindictive spirit, whether amounts to professional misconduct.*—A pleader was charged with professional misconduct in connection with the alteration of the date in a certain petition, which was presented to a Sub-Magistrate. The case came before the Joint Magistrate of that division for inquiry. The Joint Magistrate, before the date of the inquiry, was transferred to another division. The District Magistrate made an order transferring the charge to the same Joint Magistrate, on the ground that he had dealt with the matter in the first instance. *Held*, that the order of the District Magistrate transferring the charge to the Joint Magistrate of a different division was unauthorized, and that it should accordingly be set aside. There is no provision of law which authorizes the issue

1.—Imperial Acts—continued.

Act XVIII of 1879 (Legal Practitioners)—*ctd.*

of either a summons or a warrant against a pleader who fails to appear in answer to a charge preferred against him under s. 14 of the Legal Practitioners' Act.

Where a Magistrate issued a warrant against a pleader in such a case, and the pleader attached a written statement to the warrant in which he stated that the Magistrate, in issuing the warrant, had acted maliciously, vexatiously and with a vindictive spirit, it was held, that such language, though to the last degree improper, did not amount to fraudulent or grossly improper conduct in the discharge of his professional duty, within the meaning of s. 14 of the Legal Practitioners' Act. **3 M.L.T. 237 = 7 Cr. L.J. 333 = 18 M.L.J. 184.**

(30)—*Mukhtears practising in Civil and Criminal Courts—Charge of misconduct with reference to matters pending in the Civil Court—Power of Sub-Divisional Magistrate to frame charge—Jurisdiction.*—When a Sub-Divisional Magistrate framed charges under s. 14 of the Act against certain mukhtears, who were authorised by their certificates to practise in both Civil and Criminal Courts, with reference to conduct relating to suits pending before the Court of the Munsiff: *Held*, that the Sub-Divisional Magistrate had acted illegally and without jurisdiction. **10 C.W.N. 1059 = 4 C.L.J. 229 = 4 Cr.L.J. 160.**

(31)——*Jurisdiction.*—The Judge or Magistrate, who prefers a charge of misconduct against a *mukhtear* need not necessarily try it. **24 P.R. 1881 Cr.**

(32)—*Proceedings under the section—Offence punishable under the Penal Code.*—Recourse should not generally be had to the special and summary jurisdiction provided by s. 14, where the misconduct imputed to a pleader or mukhtear amounts to an offence under the general Criminal law. **26 P.R. 1884 Cr.**

(33)—*Interim order of suspension.*—No interim order of suspension can be made in a proceeding under s. 14, Act XVIII of 1879 by a subordinate Court. Only after the proceedings have been completed and a charge is made and a report is submitted either for the suspension or dismissal of the pleader or *mukhtear*, the subordinate Court can order suspension. **26 P.R. 1884 Cr.**

(34)—*Unprofessional conduct of a practitioner—Institution of proceedings by a Magistrate.*—If an officer presiding in a Subordinate Court comes to learn that one of the practitioners before the Court has been guilty of unprofessional conduct, it will be within the scope of his duties, under s. 14 of the Act, to take steps for having the matter adjudicated upon. The presiding officer is to send him a copy of the charge, and also a notice that, on a day to be thereby appointed, such charge will be taken into consideration. Ultimately, it becomes the duty of such officer, if he finds the charge established, and considers that the pleader

1.—*Imperial Acts*—continued.

Act XVIII of 1879 (Legal Practitioners)—*ctd.*

should be suspended or dismissed in consequence, to record his findings and the grounds thereof, and to report the same to the High Court, and the High Court may acquit, or suspend, or dismiss the pleader or mukhtear. **15 C. 152, P.C. = 14 I.A. 154.** [*R.*, 27 C. 1023; 3 A.L.J. 811 = A.W.N. 1906, 268 = 29 A. 61.]

(35)—*See* SANCTION TO PROSECUTE. A.W.N. 1908, 273 = 5 A.L.J. 749 = 31 A. 38 = 9 Cr. L.J. 39 = 1 Ind. Cas. 569.

(36)—S. 14—*See* Nos. 21, 23, 24, 25, *supra.*

(37)—*S. 32—Practising as pleader by unauthorized person.*—The term practising in s.32, Legal Practitioners' Act, does not connote the doing of acts habitually or often, but signifies the performance of an act by a person as a professional man which, as a private individual, he could not do. **26 A. 380 = A.W.N. 1904, 57.**

(38)—*Mukhtear practising without a certificate.*—A mukhtear found to have practised for a number of years without renewing his certificate but to have paid to his clerk, year after year, the sum requisite for a renewal of the certificate, was fined a sum covering the value of the stamps requisite for the renewal of the certificate for the years during which he was so practising. **A.W.N. 1897, 8.**

(39)—*Ss. 32 and 14—R. 452 of rules of Court of 4th April, 1898—Refusal to renew certificate of mukhtear on account of pendency of proceedings under s.193, I.P.C.*—The fact that criminal proceedings in connection with an offence under s. 193, I.P.C., are pending against a mukhtear is not a sufficient reason within the meaning of Rule 452 of the Rules of the Court of 4th April, 1898, for refusing to renew his certificate, unless the District Judge also takes action under s. 14 of the Legal Practitioners' Act. **A.W.N. 1901, 60.**

(40)—S. 32—*See* No. 11. *supra.*

(41)—*S. 36—Tout—Court competent to declare—Punjab Courts Act (XVIII of 1884), s. 23.*—A District Judge in the Punjab is not competent to declare a person a law-tout under s. 36 of the Legal Practitioners' Act, for under the Punjab Courts Act, s. 23, the Local Government has notified the Divisional Judge to be the District Court for purposes of the Legal Practitioners' Act. **108 P.L.R. 1904.**

(42)—*S. 36—Act XI of 1896—Touts—Practice.*—Where it appeared to the High Court, on evidence, that certain persons habitually acted as touts, they were asked to show cause why an order should not be made under s. 36 of Act XVIII of 1879, and, on their failing to give evidence that they were living by honest and legitimate means, they were included in the list of touts and a copy thereof ordered to be hung up in every Court. **A.W.N. 1896, 107.**

(43)—*High Court's power of interference—Crim. Pro. Code, s. 439—High Courts Act, s. 15.*—The only provision under which the

1.—*Imperial Acts*—continued.

Act XVIII of 1879 (Legal Practitioners)—*ctd.*

High Court would interfere with the order of a subordinate Court under s. 36 of the Legal Practitioners' Act is s. 15 of the High Courts Act. The High Court ought not to interfere, on the ground that the finding of the Sessions Judge was against the weight of the evidence, with the order of the latter under s. 36 of the Legal Practitioners' Act. **21 A. 181.** [*R.*, P.L.R. 1900, 17 Cr.].

(44)—*Illegal gratification for furnishing cases—Letters Patent (N.W.P. High Court), s. 8.*—A letter written by a High Court Vakil to another practising in the mofussil, asking the latter to send up cases to him and agreeing to share the fees, renders him culpable under s. 36 of Act XVIII of 1879, and the High Court has jurisdiction to take up the case, and suspend the pleader, as his conduct amounts to a "reasonable cause" within s. 8 of the Letters Patent of March 17th, 1866. **17 A. 498 = 22 I.A. 193, P.C.** [*R.*, 29 A. 95 = 17 M.L.J. 74 = 4 A.L.J. 34 = 9 Bom.L.R. 9 = 11 C.W.N. 273 = 5 C.L.J. 130 = 2 M.L.T. 1, P.C.]

(45)—*Order declaring certain persons to be touts—Revision—Jurisdiction—Practice—Statutes 24 and 25 Vict., Cap. CIV, s. 15—Rules of High Court of the 18th January, 1898, rules 1 (xiii) and 4.*—The District and Sessions Judge of Meerut held an inquiry under s. 36 of the Legal Practitioners' Act, 1879, as the result of which he ordered certain persons to be proclaimed to be touts and excluded from the precincts of the Courts in the provincial division. The parties affected applied to the High Court against the Judge's order under s. 15 of Statutes 24 and 25 Vict., Cap. CIV. On this application being laid before a Division Bench for disposal, it was *held*:—(*Per Karamat Husain, J.*,) that the disciplinary powers of the High Court, under s. 15 of the Statute, being exerciseable only by the full Court, a bench of two Judges had no jurisdiction to adjudicate upon the application, neither had a single Judge jurisdiction to admit it. (*Per Aikman, J.*,) that the Court had an inherent power to delegate to one or more of its members the power to deal with applications such as the present, and rule 1 (xiii) of the rules of Court of the 18th January, 1898, effected such a delegation. But the powers of the Court under s. 15 of the Statute were limited, and in this instance no case for their exercise had been shown. **A.W.N. 1908, 279 = 6 A.L.J. 22 = 31 A. 59 = 9 Cr.L.J. 59.**

(46)—*Punjab Courts Act (XVIII of 1884), ss. 13, 70—Revision—Order declaring a person to be a tout.*—Though, by virtue of the powers vested in the Chief Court, under s. 13 of the Punjab Courts Act, it is competent to the Court to revise an order passed by a subordinate Court under s. 36 of the Legal Practitioners' Act declaring a person to be a tout, yet, as very considerable discretion in the matter of preparing and publishing its list of touts is afforded to the subordinate Courts, the Chief Court will not interfere with any order passed under

1.—Imperial Acts—continued.

Act XVIII of 1879 (Legal Practitioners)—*ctd.*

s. 36. unless it can be shown that the provisions of that section have not been duly complied with, or for other good and substantial reason ; for example, it would be a good ground for a petition to the Chief Court that the petitioner's name was included in a list of touts without any opportunity being given to him of showing cause against such inclusion. Similarly, the Chief Court will in a proper case interfere, if it finds that there is no evidence whatever to support the finding of the subordinate Court, or that the evidence, such as it is, cannot legally be accepted as proving that the petitioner is a tout. In this case, the Chief Court set aside the order passed by the Divisional Judge, on the ground that there was absolutely no evidence to the effect that the petitioner was a tout. **115 P.L.R. 1909=11 P.R. 1909 Cr.**

(47)—*Tout--Declaration of person as—Revision, powers of Chief Court—Evidence—Personal knowledge of Judge.*—An order declaring a person to be a tout is one which very seriously affects the character and prospects of the person against whom it is passed. It is therefore competent to the Chief Court, in the exercise of its revisional jurisdiction, to scrutinize such orders, with the object of satisfying itself that there has been a compliance with the provisions of law, and that the person affected has been given full opportunity of meeting the charge brought against him. The District Judge is bound to examine witnesses named by him and summon them for the purpose, after the evidence against the person has been produced. Where the District Judge declined to do so, the Chief Court on revision set aside the order, and directed him to summon witnesses named by the person declared as a tout and record the evidence and pass orders on the whole evidence on the record. The District Judge ought not to impart his own personal knowledge in a case, unless he informs the person of the nature and source of his information and allows himself to be cross-examined thereupon—a process which is fraught with grave inconvenience. Where statements by certain pleaders made on a previous occasion were read to them by the District Judge and the persons against whom proceedings were held were allowed opportunity to cross-examine them. *Held*, that the irregularity in the procedure adopted by the District Judge was not a sufficient ground for interference by the Chief Court on revision. If a number of respectable pleaders in a particular District are found to be of opinion that a person is a tout, the fact is sufficient to justify the District Judge in holding that the person charged is by general repute a tout. The law was framed as it is, with the distinct object of evading the difficulty of compelling witnesses to give the specific grounds upon which their opinions were based, and in cross-examination the witnesses cannot be compelled to give particulars regarding specific instances, though no doubt it is open to the person charged to show

1.—Imperial Acts—continued.

Act XVIII of 1879 (Legal Practitioners)—*cld.*

that a particular witness has an *animus* against him or that for other reasons his testimony should not be accepted without demur. **120 P.L.R. 1909.**

(48)—*Order proclaiming a person "tout"—Power of Chief Court to interfere.*—The Chief Court has jurisdiction, in pursuance of its general powers of general superintendence and control under s. 13, of Punjab Courts Act, 1884, to interfere with an order of a District Magistrate holding a person to be a "tout" where he has so held without considering the definition of the term "tout" as defined in s. 1 of Act XI of 1896. **3 P.R. 1900 Cr.** [*Cited*, 22 P.R. 1904 Cr.]

(49)—*See* SESSIONS JUDGE, JURISDICTION OF, 26 M. 596=13 M.L.J. 272.

(50)—*See* Nos. 5, 6, *supra*.

(51)—*S. 40—Unprofessional conduct of practitioner—Opportunity to defend himself.*—The High Court, to whom a Subordinate Court makes a report on the unprofessional conduct of a pleader, could not suspend or dismiss a practitioner, without allowing him an opportunity of defending himself, under s. 14 of the Act, before that Court, merely on the evidence recorded by the Subordinate Court. **15 C. 152, P.C.** [*R.*, 24 M. 83].

(52)—*S. 41—Duty of Advocates.*—An advocate is bound to use his judgment, experience and discretion in the presentation of his client's case and, whatever be his instructions, to exclude all topics and observations of which the case does not properly admit. An advocate cannot shelter himself behind his clients, when he allows himself to be made the medium of reckless imputations on a Court of Justice. The publication of a libel on a Court of Justice is an aggravated misdemeanour. **2 L.B.R. 130.**

(53)—*Improper conduct—Advocate—Privilege as a suitor.*—Although any action clearly taken as a private individual in the prosecution of a case, or the setting up of a defence would not, under ordinary circumstances, justify the High Court in taking notice of such action as a breach of professional good conduct, merely because the individual concerned happened to be an advocate, yet conduct, which is in itself indefensible and amounts to gross misconduct in an advocate, is not taken out of the purview of s. 41 of the Legal Practitioners' Act by a mere colourable pretence that it was the conduct of a suitor, defendant, or accused in that capacity. **148 P.L.R. 1901.**

(54)—*See* CONTEMPT OF COURT, 5 P.R. 1902.

Act XXI of 1879 (Foreign Jurisdiction and Extradition).

[REP. IN PART, ACT X OF 1882. AMENDED, ACT XII OF 1891 ; ACT V OF 1896. DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED

Act XXI of 1879 (Foreign Jurisdiction and Extradition)—*continued.*

BY REG. III OF 1899, S. 3; IN THE ANGUL AND THE KHONDMALS, REG. I OF 1894, S. 3; IN BRITISH BALUCHISTAN, REG. I OF 1890, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4].

See ACT XI OF 1872.

(1)—*Dacoity committed by foreign subjects in foreign territory—Jurisdiction of British Court.*—Where the accused, foreign subjects, but who had only resided for about three years in British territory, committed dacoity in a foreign state, *held*, that they were not liable to be tried by British Courts. **37 P.R. 1881 Cr.**

(2)—*Offences committed outside British India—Jurisdiction of British Courts.*—Act XXI of 1879 admits of proceedings being taken, in British India, regarding offences committed in Foreign States only on condition that the person charged is a Native Indian subject of Her Majesty and that the Political Agent of the Foreign State has given his sanction to proceedings being taken in British territory. **5 M. 23=1 Weir 1.** [*R.* 13 M. 423, 24 B. 287, 1 Bom.L.R. 678, 2 Weir 148].

(3)—*Competency of Justice of Peace at Mysore to commit a person to the High Court for an offence under Mysore Law.—Obiter.*—Where a person is charged with an offence against the Mysore Mines Regulation, 1897, a Justice of the Peace appointed under the Act of 1879, has jurisdiction to commit him for trial to the High Court under the powers conferred by s. 6 of the Act and the notification of the Government of India, dated July 21, 1881. **26 M. 607=1 Weir 13.**

(4 to 6)—*Civil and Military Station, Bangalore—Civil and Sessions Judge and District Magistrate of Bangalore—Justices of Peace for Mysore—Jurisdiction of High Court—Applicability of Crim. Pro. Code.*—The Civil and Sessions Judge, as well as the District Magistrate, of the Civil and Military Station, Bangalore, though they are appointed justices of the peace in the state of Mysore, are, by virtue of their office, justices of the peace in the Civil and Military Station of Bangalore, by virtue of Act XXI of 1879; they are also Magistrates of the first class, and both their Courts are subordinate to the High Court under the same enactment. The Civil and Military Station of Bangalore is not British territory, but a foreign territory belonging to Mysore. The Code of Crim. Procedure is in force there in common with other Acts by virtue of declarations made by the Governor-General in Council in exercise of the powers conferred upon him by Act XXI of 1879. **12 M. 39=1 Weir 10.**

(7)—*Ss. 1, 11, 12 and 18—Validity of warrant issued by Political Agent of Native State against British Indian subject.*—Excepting in the case of a European British subject, the Political Agent for the Bhopal State may, at the request

Act XXI of 1879 (Foreign Jurisdiction and Extradition)—*continued.*

of the State, issue a warrant for the arrest of any person who has committed, or is supposed to have committed in the Bhopal State an offence under s. 409, Penal Code, (which is one of the offences mentioned in the schedule), and, on such person being forwarded, it will be the duty of the Political Agent to decide whether the accused shall be tried by him or be made over to the State Court for trial. It matters not whether a complaint against the accused has been made in the Political Agent's Court or not, and the Magistrate, to whom the warrant is directed, is bound, under the provisions of s. 12 of the Act, to execute it and has no authority to question the authority or discretion of the Political Agent to issue it; a Deputy Commissioner, therefore, was held to have acted legally in ordering a warrant for the arrest of a Native Indian subject of His Majesty, issued by the Political Agent for the Bhopal State, to be executed. **5 O.C. 55.**

(8)—Ss. 3 and 11—*See* PENAL CODE, s. 224, 21 P.R. 1885 Cr.

(9)—Ss. 4, 5—*See* ACT I OF 1878, 8 P.R. 1887 Cr.

(10)—*Ss. 4 and 6—Power of Justice of the Peace to try an European British subject for an offence purely under Mysore Mines Regulations.*—A Justice of the Peace, appointed under s. 6 of the Foreign Jurisdiction and Extradition Act, 1879, has power to try an European British subject for an offence against the provisions of the Mysore Mines Regulations, the offence being solely against the law of Mysore, but not coming within any of the provisions of the Penal Code. **26 M. 607=1 Weir 13.**

(11)—S. 5—*See* No. 9, *supra.*

(12)—*S. 6—"Offences" under the Act.*—The word "offences" as used in s. 6 of the Act of 1879 is not restricted to offences as defined by s. 40, Penal Code, nor to offences as defined in the Code of Criminal Procedure.—(*Per White, C.J.*) **26 M. 607=1 Weir 13.**

(13)—*See* No. 10, *supra.*

(14)—*S. 8—Scope of the section.*—S. 8 of the Act of 1879 extends to European British subjects in States in India in alliance with His Majesty the law relating to offences and the Criminal Procedure for the time being in force in British India. This section, as distinguished from s. 4, is an enactment and not a declaration. It is an entirely independent provision and ought not to be read so as to restrict the powers of the Governor-General which are declared by s. 4 and which may be delegated to his officers under s. 6. It is by virtue of s. 8 that an European British subject can be tried in Mysore for an offence against the I.P.C. The law which is extended to European British subjects in Mysore by virtue of s. 8 is not so extended to the exclusion of all other law. **26 M. 607=1 Weir 13.**

1.—Imperial Acts—continued.

Act XXI of 1879 (Foreign Jurisdiction and Extradition)—*concluded.*

(15)—*High Court, jurisdiction of—European British subjects in Native States—Crim. Pro. Code, s. 526—Transfer.*—S. 8 of Act XXI of 1879 extends, to all British subjects, Native or European, in Native States, the law relating to offences and criminal procedure for the time being in British India. The High Court of Bombay has the power, in the case of a European British subject, of transferring a case from the Cantonment Magistrate acting either as a Justice of the Peace and as a first-class Magistrate, or as a District Magistrate, with the increased powers given to him by Act III of 1884, to itself or to any criminal Court of equal or superior jurisdiction. **9 B. 333.** [*R.*, 14 B. 160, 20 B. 480].

(16)—*S. 9—Conviction in British India for offence committed outside.*—A conviction in British India for an offence committed outside its limits is good under s. 9 of Act XXI of 1879.—(*Per Garth, C.J., Pontifex and Morris, JJ.*) **8 C. 985, F.B.=11 C.L.R. 241.** [*R.*, 9 C. 288, 16 C. 667].

(17)—*See* ACT XI OF 1872, 6 B. 622.

(18)—S. 11—*See* Nos. 7, 8, *supra.*

(19)—S. 12—*See* No. 7, *supra.*

(20)—S. 18—*See* No. 7, *supra.*

(21)—*Rule No. 3, Book Circular XXXIV (c)—Jurisdiction of District Magistrate.*—Rule No. 3 of the "Rules for the apprehension, demand and surrender of persons charged with heinous crimes" contained in the treaty with Jumna State, published in the Chief Court's Book Circular XXXIV (*c*) does not confer a lawful authority upon the District Magistrate as such, to take proceedings and pass an order upon an application by a foreign State for extradition of a subject of that State. Under that rule, it is competent for the Government to give direction to its executive officers, notwithstanding that they may be Magistrates. **21 P.R. 1886, Cr.** (4 P.R. 1870 Cr., *R.*)

Act III of 1880 (Cantonment).

[REP., ACT XIII OF 1889.]

See ACT XIII OF 1889.

,, BOM. ACT III OF 1867.

,, MAD. ACT I OF 1866.

,, CANTONMENT CODE, 1899.

(1)—*Extension of Cantonment rules outside Cantonment limits—Jurisdiction of Criminal Courts.*—Rules made under clause 7 of s. 19 have been extended in Delhi outside the Cantonment limits. *Held*, that an ordinary Magistrate is competent to exercise his jurisdiction, under the above rules, in a case which has come before him on complaint, and not on a report by the Police. **2 P.R. 1885 Cr., F.B.** (12 P.R. 1870 Cr., *Approved*).

1.—Imperial Acts—continued.

Act III of 1880 (Cantonment)—*continued.*

(2) *S. 14—Sub-Conductor in the Commissariat Department, whether a "soldier."*—A Sub-Conductor in the Commissariat Department is not a "soldier" within the meaning of s. 14 of Act III of 1880. **3 A. 214.**

(3)—*Bengal Excise Act VII of 1878, s. 14—Power to cancel license.*—In his judicial capacity, a Cantonment Magistrate has no authority to cancel the license of a person convicted upon an offence under this section, as the power to cancel licenses belongs to the Revenue authorities. **15 C. 452.**

(4)—"*European soldier,*" *meaning of.*—Where a European soldier gets pay from the Civil Department for the discharge of Civil duties, as Telegraph Master, in which he is continuously employed, and lives in the Telegraph Office outside the Cantonment boundary and attends no drill, he is not a "European soldier," within the meaning of s. 14; and he cannot be convicted for selling liquor for the use of a European soldier. **S.C. 104, Oudh.**

(4-*a*)—*S. 20, cl. VII—Rules under section—Registration of woman as prostitute without her consent.*—Where it was found that the name of the accused had been registered as a public prostitute without her consent, and that she was not carrying on the occupation of a prostitute, *held* that she was not liable to be convicted for not presenting herself for medical examination as directed. **A.W.N. 1887, 219.**

(5)—*S. 22—Bombay Municipal Act III of 1872, s. 226—License fee—Tax.*—A license fee imposed under the rules framed under s. 22 of the Cantonment Act is not a tax. Even if it were so, s. 22 of that Act does not empower the Government to extend s. 226 of Bombay Act III of 1872—which merely imposes a penalty for the use of stables without a license and does not provide for the assessment and recovery of a tax—to a Cantonment. A Regulation thus extending the provision is *ultra vires* and inoperative. **Rat. Un. Cr. C. 413=Cr. Rg. 80 of 88.**

(6)—*Ss. 25 and 27—Rules framed under s. 25—Valid rules.*—The Rule that "every person shall keep in proper repair the boundary wall, fence or other enclosures of his estate or premises" was held to be *ultra vires* of the s. 25, read with s. 27. A breach of such a rule is not, therefore, punishable under s. 28. **40 P.R. 1884 Cr.** [*Cf.* 48 P.R. 1887 Cr.]

(6-*a*)—*Ss. 25, 28—Rules framed under s. 28, breaches of—Jurisdiction of Magistrate acting as Cantonment Magistrate without Government's sanction to try case.*—*Held*, that a Magistrate who was temporarily doing the Magisterial work of the Cantonment Magistrate, who was absent a few days from the cantonment, was not competent to try a breach of the rules under s. 28 of Act III of 1880, unless the sanction of the Government had been previously obtained to his officiating as Cantonment Magistrate. **A.W.N. 1886, 289.**

1.—*Imperial Acts*—continued.

Act III of 1880 (Cantonment)—*continued.*

(7)—S. 27—*See* No. 6, *supra*.

(8)—Rule 68 of the Rules framed under s. 27 of Act III of 1880 requires owners of house or other property within Cantonment limits but residing outside such limits to appoint an agent to carry out the orders of the Cantonment Committee, the agent being answerable for the observance of all the present rules and regulations which refer to the owners of houses or other property. *Held*, that the rule was *ultra vires* requiring as it does the performance of an impossible act by the house-owner, *viz.*, the appointing of an agent answerable in the sense contemplated by the section. *Held*, further, that the rule was not a valid rule, inasmuch as a rule which requires a person to do an act which merely facilitates the observance by, or enforcement against, another person of rules for maintaining the cantonment in a sanitary condition is not a rule for maintaining the cantonment in a sanitary condition within the meaning of clause 6 of s. 27. 48 P.R. 1887 Cr.

(9)—*S. 28—Disqualification of Cantonment Magistrate.*—In every case where it is urged that there is a disqualification in the Judge, the circumstances creating the disqualification must be clearly determined before effect could be given to the objection, and they ought, therefore, to be specified in the objection. 48 P.R. 1887. (40 P.R. 1884, *Appr.*).

(10)—*Conviction under the section, not appealable—Revision allowed.—Crim. Pro. Code (1882), ss. 408, 413, 416.*—There is no appeal by any person, whether a European British Subject or not, in any case tried under s. 28 of the Act, by whomsoever it has been tried. The proceedings of a Cantonment Magistrate under s. 28 are liable to be reversed by the Chief Court on the revision side on the ground of a disqualification in the Cantonment Magistrate in a particular case owing to personal or pecuniary interest or bias. 40 P.R. 1884 Cr.

(11)—S. 28—*See* No. 6-*a*, *supra*.

(12)—*Ss. 28 and 29—Imprisonment in default of payment of fine.*—Imprisonment in default of payment of fine levied under s. 28 of Act III of 1880 is not valid, as the act provides for the consequence of non-payment in s. 29. 40 P R. 1884 Cr.

(13)—S. 29—*See* No. 12, *supra*.

(14)—*Cantonment Rule, Chapter III, Rule II—Omission to report a case of cholera.*—Omission to report an attack of cholera, notwithstanding a proclamation by the Cantonment Magistrate in the *bazaars* for two days that, whenever any grievous illness, especially diarrhœa occurred, the relations of the patient were at once to give warning to the police, was not a criminal offence, nor did it amount to a breach of Rule II. 9 P.R. 1895 Cr.

Act IV of 1880 (Portuguese Treaty).

[EXPIRED—SEE GAZETTE OF INDIA, 1891, PART I, PAGE 321.]

1.—*Imperial Acts*—continued.

Act IV of 1880 (Portuguese Treaty)—*cld.*

—Offence committed on High seas—Jurisdiction—Statutes 37 and 38 Vict., c. 27, and 30 and 31 Vict., c. 124, s. 11.—The rule in *Regina* v. *Elmstone* (7 B.H.C. Cr. 89) to the effect that English, not Indian Law, is applicable to offences committed on the high seas and tried in India, is altered by Statute 37 and 38 Vict., c.27. The accused, the captain of a native craft, was charged with having dishonestly sold his cargo at Sukeri, close to Goa, and scuttled his ship some three miles on the coast of Goa in the course of a voyage from Aleppy to Bombay. The accused was arrested in the Ratnagiri District and convicted by the Sessions Judge of Ratnagiri. The accused contended that the Sessions Judge had no jurisdiction, as the offence was committed within the territorial waters of Goa, and as, even if the offence was committed on the high seas, the English law and not the Indian law would apply. *Held* that, if the offence were committed within three miles of Goa, the Treaty Act IV of 1880 between England and Portugal as regards the Goa territory, conferred the right to try such cases in British India. *Held*, also, that, if the offence were committed on the high seas beyond the territorial limits of three miles from the shore, the Sessions Court at Ratnagiri had jurisdiction, and the Indian Penal Code applied under the provisions of Statutes 30 and 31 Vict., c. 124, s. 11, and 37 and 38 Vict., c. 27. **14 B. 227.**

Act XII of 1880 (Kazis).

—Right of Kazis appointed by Government to perform religious service in mosque.—Act XII of 1880 does not declare that only the Kazi appointed by Government is authorised to perform the religious service in the mosques within a given area. Such right, if it exists, must be established by a regular suit brought for that purpose in due course of law. **11 M. 323=2 Weir 117.**

Act XIII of 1880 (Vaccination).

[SUPPLEMENTED (IN BURMA), BURMA ACT II OF 1900. DECLARED IN FORCE IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4].

(1)—S. 6.—*See* INOCULATION, L.B.R. (1893-1900), 545.

(2)—*As amended by Burma Vaccination Law—Amendment Act of 1900.*—Failure to comply with a notice for the vaccination of a child issued under s. 17 of the Vaccination Act, 1880, is not punishable under s. 7 of the Burma Law Amendment Act, 1900. The Burma Act of 1900 is supplementary to the Act of 1880, and deals with quite different matters. It provides for matters not contained in the Act of 1880. It is not intended to provide a summary procedure for cases already provided for in the earlier Act. **2 L.B.R. 279.**

(3)—*S. 18—Order for costs and for refund of Court-fees—S.31, Court-fees Act.*—Disobedience

1.—Imperial Acts—continued.

Act XIII of 1880 (Vaccination)—*concluded.*

to the notice issued by the vaccinating authorities is not an offence, and such officers' report to the Magistrate is not a complaint of any offence. A Magistrate, therefore, who makes an order under s. 18 of that Act for compliance with such notice, cannot order the payment of costs, as there is no authority for it in the Vaccination Act, and cannot direct the refund of Court fees, as s. 31, Court Fees Act, does not apply. **4 L.B.R. 12 = 6 Cr. L.J. 124.**

Act V of 1881 (Probate and Administration).

[REP. IN PART, ACT VII OF 1889; ACT IX OF 1908. REP. IN PART AND AMENDED, ACT XII OF 1891. AMENDED, ACT VI OF 1889. SS. 11-17; ACT II OF 1890, S. 16; ACT VI OF 1900, s. 47; ACT VIII OF 1903, S. 3.]

(1)—S. 89—*See* DEFAMATION, 8 P.W.R. 1908 Cr. = 7 Cr. L.J. 290 = 112 P.L.R. 1908 = 10 P.R. Cr. 1908.

(2)—*S. 98, cls. 3 and 4—Sanction to prosecute, without finding if omission to file accounts is intentional or accounts intentionally false.*—N., was the executor to an estate. The probate was revoked. He had not filed an account during his executorship. After the revocation of the probate he was ordered to submit accounts. He failed to do so within the time appointed. Sanction was given to prosecute him under s. 98, cl. (*c*), Act V of 1881. The accounts were subsequently filed, whereupon the Court kept the order in abeyance; but after the examination of the accounts and suspecting its genuineness the Court restored the sanction for prosecution. *Held*, that the Judge was not right in making the order depend on the examination of the accounts themselves and that the Judge ought not to have made an order sanctioning the prosecution under s. 176 without an enquiry whether the omission to produce the accounts was intentional, or the accounts filed were intentionally false. **2 C.W.N. 597.**

Act XV of 1881 (Indian Factories).

[REP. IN PART AND AMENDED, ACT XI OF 1891.]

See ACT XI OF 1891.

(1)—*S. 2—Factory, definition of.*—To constitute a 'factory,' certain processes must be carried on "for not less than four months in the whole in any year." **1 N.L.R. 115.**

(2)—*Ss. 14, 15 and 17—Factory—Occupier—Notice under s. 14, effect of—Liability of the occupier for breach of the Act—Successor of the occupier.*—The substance and import of s. 14 of the Indian Factories Act, 1881, are that the occupier of a factory shall send the notice prescribed, within one month after his occupation has commenced. If any individual sends such a notice, that is evidence of a representation by him that he is the occupier; but there is nothing in the Act which makes it necessarily conclusive evidence. The Court may treat the evidence of the notice as sufficient to discharge the *onus* of proof lying on the prosecution at the outset, and to shift the burden on to the person who gave the notice. The Court is not bound to treat it as such. Whether it should so treat it or not must depend on the circumstances of each case. There is nothing in the Act to make the mere successor in office of a person who has given notice under s. 14 an occupier himself, unless he is legally in occupation: What is an occupation is a question of fact in each case, to be determined with reference to some well-known principles of law. The question who is the occupier of a factory must depend, among others, upon these considerations, namely:—who alone has the right of using the factory for the purposes for which it is constructed and worked; who has the right of regulating and controlling it; whose is the predominant possession of and general superintendence over it. **10 Bom. L.R. 38 = 7 Cr. L.J. 44.**

(3)—*Meaning of occupier*—The word "occupier" is not defined in the Factory Act. The proprietor of a factory who lives for the greater part of the year in a house on the factory premises is an occupier for the purposes of the Act. In the case of a factory started before the Act of 1881 came into force, no notice as required by s. 14 is necessary, and an occupier is none the less so for not having given the notice. **Rat. Un. Cr. C. 902 = Cr. Rg. 11 of 1897.** [*D.*, 29 B. 423 = 7 Bom.L.R. 454].

(4)—*Ss. 15, cl. (g) and proviso (i) and 17—Liability for keeping factory in a filthy state—Bengal Municipal Act (III of 1884 B.C.)—Liability of Municipality.*—In order to fix liability on any person other than the occupier of a factory, it is incumbent upon the latter to give the strictest proof of circumstances exonerating himself, and it is plain on the face of the section that the burden of proving absence of knowledge or consent on his part lies entirely upon him. The mere fact that a Municipality and the Factory were jointly responsible to keep a factory in a cleanly state will not discharge the occupier from his liability under s. 15 of the Factories Act and fix the liability on the Municipality under s. 17. The provision of s. 17 is of a highly penal character, and must be construed strictly in favour of the accused. **25 C. 454.** [*R.*, 29 B. 423 = 7 Bom. L.R. 454].

(5)—S. 15—*See* Nos. 2, 3, *supra.*

(6)—*S. 15 (1)—Intentional omission to give information, liability for.*—The intentional omission to give any information required by the form of notice prescribed by Government would render the person bound to send the notice liable to punishment under s. 15 (1). **L.B.R. (1893—1900), 407.**

(7)—*S. 15 (1) (e)—Manager residing on premises—Occupier.*—The manager of a factory who resides in a part of the premises in which the factory is, is not an occupier of the factory within the meaning of the Act. **29 B. 423 = 7 Bom. L.R. 454.**

1.—*Imperial Acts*—continued.

Act XV of 1881 (Indian Factories)—*concluded.*

(8)—*S. 15 (1) (c), Rule 19—Factory—Occupier of factory—Register of children—Duty to keep register—Personal responsibility—Delegation of duty, no defence.*—The provisions of s. 15 (1) (c) of the Factories Act, 1881, throw upon the occupier the responsibility of keeping the register. The responsibility is personal; and he cannot get rid of it by saying that he had delegated the duty to another person. **11 Bom. L.R. 12 = 9 Cr. L. J. 160 = 1 Ind. Cas. 102.**

(9)—*S. 15 (1) (e), Rule 22 (iii)—Unfenced machinery—Ring frames with tail-ends unfenced.*—It is not necessary that an order or notice from the Inspector of Factories should be issued to a person, who has not conformed to the rules made under the Act, before he can be charged for any offence under it. It is the duty of such person to obey the rules, and, in case of his disobedience, he becomes liable to conviction, whether there was any order or not from the Inspector, calling upon him to obey the rules. **12 Bom. L.R. 225.**

(10)—S. 17—*See* Nos. 2, 3, *supra*.

Act XVI of 1881 (Obstructions in Fairways).

See COMPENSATION, Rat. Un. Cr. C. 241.

Act XXII of 1881 (Excise).

[REP., ACT XII OF 1896.]

See ACT X OF 1871.

„ ACT XII OF 1896.

„ BEN. ACT III OF 1873.

„ BEN. ACT II OF 1876.

„ BEN. ACT VII OF 1878.

„ MAD. ACT VI OF 1871.

(1)—*Meaning of the term 'dispose of' in Excise License Form No. VII.*—The expression "dispose of" in Excise License Form No. VII refers and was intended to refer to a disposition of the nature of a sale. There is nothing to indicate that a wider meaning was intended. **U.B.R. (1897—1901), Vol. I, 178.**

(2)—*Punishment of fine under the Act.*—It was not intended that greater severity should be used towards persons infringing in an ordinary way the provisions of the Excise Act and a fine will suffice in such cases. **5 C.P.L.R. 44 Cr.**

(3)—*Illegal sale of liquor to a Burman alleged to be a servant of person entitled to buy.*—If the Burman was the agent of a disclosed principal, the sale should be considered to be made to the principal and not to the agent. **U.B.R. (1897—1901), Vol. I. 187.** (U.B.R., 1892—1896, 100, U.B.R., 1897 - 1901, 184, *R.*).

(4)—*See* ACCOMPLICE, L.B.R. (1872—1892), 146.

(5)—*See* PENAL CODE, s. 186, L.B.R. (1872—1892), 152.

1.—*Imperial Acts*—continued.

Act XXII of 1881 (Excise)—*continued.*

(6)—*Ss. 3, 21, 41—Country and foreign liquor—Rum manufactured in India.*—The words "country" and "foreign" liquor refers rather to the manner than the place of manufacture. Rum manufactured in the foreign method at a distillery in India, comes, for the purposes of Act XXII of 1881, under the definition of foreign spirit. **24 P.R. 1885 Cr.**

(7)—*Ss. 3, 22, 41, 42—Rule 13—Illegal purchase of* charas *by a licensed vendor.*—The accused, a licensed vendor of *charas*, purchased *charas* in contravention of Rule 13 of the Rules in force under Act XXII of 1881, without a permit from the Collector and was convicted under s. 41. *Held*, that the conviction was illegal as he did not come under s. 22, and, therefore, did not come under s. 41. *Held, further*, that it was doubtful whether Rule 13, which refers to farmers of the excise or intoxicating drugs, applied to the accused. *Held*, also, that the accused was liable to be punished under s. 42. **40 P.R. 1887 Cr.**

(8)—*Ss. 3, 12, 39—Unlicensed sale of* Tari.—*Tari* or juice extracted from palm trees cannot be said to be "fermented" in the sense of s. 39, or s. 3 of the Excise Act, and a person selling it to passers-by cannot be convicted under ss. 12 and 39 of the Act. **A.W.N. 1883, 238.**

(9)—*Ss. 3 and 38—Opium Act I of 1878, ss. 3, 5, 9, 14 and 19—Rules under Act—Search—Jurisdiction of Magistrate.*—Though *Chandu* is not a drug referred to in s. 38 read with s. 2, cl. (*h*) of Act I of 1878, yet, it is a prohibited drug under the Rules framed by the Local Government under s. 5 of the Act, and an authorised preparation of the same is an offence, under s. 9 of the Act, though not under s. 38 of Act XXII of 1881. Though an Honorary Magistrate is not a person authorised to conduct a search under s. 14 of the Opium Act, he possesses the powers given by s. 19, and he can himself conduct a search on the analogy of s. 65 of the Crim. Pro. Code. An irregularity in the conduct of a search, unless it causes a failure of justice, is not material under s. 537 of the Crim. Pro. Code. **A.W.N. 1884, 213.**

(10)—*Ss. 3 (b) and 41 - Yeast balls not intoxicating drugs, etc.—Possession prior to utilization not an offence.*—Yeast balls not being intoxicating drugs, or spirit, or fermented liquor, their possession prior to their utilization for the manufacture of liquor is not punishable under s. 41 or any other section of the Act. **L.B.R. (1872—1892), 571.**

(11)—S. 21—*See* No. 6, *supra*.

(12)—S. 22—*See* No. 7, *supra*.

(13)—*Ss. 27, 28, 29, 30, 34, 47—Act XII of 1896, ss. 36, 37, 38, 41, 57—Excise officer.*—An officer, who, before the coming into force of Act XII of 1896, is one of the class of officers on whom had been conferred powers to act as Excise Officer under ss. 27, 28, 29, Act XXII of 1881, and who had therefore power in certain

1.—Imperial Acts—continued.

Act XXII of 1881 (Excise)—*continued.*

events to take a case before a Magistrate under s. 32, is an Excise Officer within the meaning of s. 47, Act XXII of 1881. **20 A. 70.** (A.W.N. 1896, 105, *overruled.*) [*F.*, A.W.N. 1908, 157 = 5 A.L.J. 444 = 30 A. 377 = 8 Cr. L.J. 5 ; *R.*, 103 P.L.R. 1903.]

(14)—S. 28—*See* No. 13, *supra.*

(15)—S. 29—*See* No. 13, *supra.*

(16)—S. 30—*See* No. 13, *supra.*

(17)—S. 34—*See* No. 13, *supra.*

(18)—*Ss. 34, 47—Powers of police officer—Trial by investigating Excise officer* —A police officer invested by the Local Government with some of the powers under s. 34 of the Excise Act of 1881 is not authorised to make a complaint or report of the nature referred to in s. 47. [*Overruled*, 20 A. 70 = A.W.N. 1897, 162]. An Excise-officer who himself took proceedings against the accused should not try him in respect of the offence for which he instituted the proceedings. **A.W.N. 1896, 105.** (2 A. 806, *R.*) [*Overruled*, 20 A. 70 = A.W.N. 1897, **162**].

(19)— *Ss. 34-a, 36 and 47—Complaint by police officer invested with powers of an Excise officer.*—A Magistrate may take cognizance of an offence under s. 36 of Act XXII of 1881, upon the report of a police officer invested under the authority of s. 34-*a* of Act XXII of 1881, as amended by Act VI of 1885, with the powers of Excise officer specified in that section, as such officer must be deemed an Excise officer for the purpose of s. 47. **15 P.R. 1887 Cr.** (28 P. R. 1883 Cr., *R.*) [*F.*, 4 P.R. 1893, 8 P.R. 1901].

(20)—*S. 35—Conviction—Solitary confinement—Act I of 1868, s. 2 (18), Penal Code, s. 70.* —A person, convicted under s. 35 of Act XXII of 1881, is liable only to imprisonment, simple or rigorous, but not to solitary confinement. **17 P.R. 1889 Cr.**

(20-*a*)—*Ss. 35, 47 and 49—Petition by Excise Darogah.*—The petition of an Excise *Darogah* containing allegation of an offence under ss. 35 and 49, Act XXII of 1881, and presented by the *Darogah* in person to the Magistrate, who tried the case, was held to be the complaint of an Excise officer within the meaning of s. 47, Excise Act. **8 P.R. 1894 Cr.**

(21)—*Ss. 35 and 49—Preparation of* "Lahan." —"Lahan" is not a fermented liquor within the meaning of the Excise Act. The inference that can possibly be made from the possession of the vessels smelling of *lahan* is that that the accused had made preparations towards manufacturing liquor, but falling short of an attempt to commit an offence under s. 35. **29 P.R. 1884 Cr.**

(21-*a*)—S. 36—*See* No. 19, *supra.*

(21-*b*)—S. 38—*See* No. 9, *supra.*

(21-*c*)—S. 39—*See* No. 8, *supra.*

1.—Imperial Acts—continued.

Act XXII of 1881 (Excise)—*continued.*

(22)—*Ss. 39 and 41—Penal Code, s. 71.—Illegal possession and sale.*—A person cannot be convicted of illegal possession as well as of illegal sale of the same spirit. **L.B.R. (1872—1892), 350.**

(23)—*S. 41—Selling of surplus drugs to new contractor just before expiry of contract.*—When a contractor of drugs sold, just before the expiry of his contract, his remaining stock or *bhang* to the newly appointed contractor for the ensuing year, *held*, that he had not infringed any of the Rules under the Exise Act. **26 P.R. 1883 Cr.**

(24)—*Conviction for one offence by Magistrate altered into one for another offence by Sessions Court—High Court—Acquittal.*—A conviction by a Magistrate of the offence of selling illicit opium and *charas* was altered by the Lower Appellate Court into one for possession of opium and *charas*. The Chief Court set aside the conviction and acquitted the accused, on the ground that there was no sufficient evidence to convict the accused. **1 P.R. 1894 Cr.**

(25)—*Convictions on evidence of informer.*—The Chief Court, on revision, set aside a conviction for an illicit sale of opium, which depended for proof upon the bare statement of a hired informer of the cooly class without any corroboration. **2 P.R. 1894 Cr.**

(26)—Under this section the power to arrest includes the power to send the accused before a Magistrate. Prosecutions can, therefore, be instituted on the report of an officer empowered under ss. 37 and 38 in cases in which he has arrested or caused the arrest of the accused. *Held*, also, that an illegal arrest does not invalidate the trial. **U.B.R. (1897—1901), Vol I, 182.**

(27)—S. 41—*See* Nos. 6, 7, 10, 22, *supra.*

(28)—*Ss. 41 and 47—Offence under the Act —Complaint by whom to be made.*—No offence under the Excise Act, Chapter VII, is cognizable by the police, within the meaning of s. 4, Crim. Pro. Code, and no information by the police or by a person other than the Collector or Excise officer can give a criminal Court jurisdiction to enquire into an alleged offence under the Act. The absence of a complaint either by the Collector or Excise officer is a defect to which the provisions of s. 537, does not apply. **28 P.R. 1883 Cr.**

(29)—S. 42—*See* No. 7, *supra.*

(30)—*Ss. 42 and 49—Abetment—Sale in breach of license by servant.*—A servant of a licensed liquor vendor sold liquor in contravention of the conditions of the license without his master's knowledge. *Held*, the master cannot be convicted under s. 42 of the Act for the breach of the conditions of the license. **L.B.R. (1872—1892), 373.**

1.—Imperial Acts—continued.

Act XXII of 1881 (Excise)—*concluded.*

(31)—*S. 47—Possession and sale of* Chandu—*Evidence of sale.*—Several persons were found together in a room, some of them smoking *chandu*, and jars containing about 5 tolas of *chandu*, seven head rests, and the usual paraphernalia of the *chandu* den were also found in the room. *Held* that the circumstances disclosed led up to one inference only, namely, that the *chandu* found was exposed for sale, and that the persons found in the den were persons to whom it was being sold for smoking purposes. **A.W.N. 1902, 17.** [*R.*, 7 A.L.J. 25.]

(32)—*S. 47—Court taking cognizance of offence on report of Excise officer—Police officer invested with certain powers of Excise officer—Court acting on report of such officer—See* **4 P.R. 1893 Cr.**; 8 P.R. 1884 Cr.

(33)—*S. 47—See* Nos. 13, 18, 19, 20-*a*, 28, *supra.*

(34)—*S. 49—Sale of liquor in breach of license to European soldier.*—It is only when the licensee knows that the vendee is a European soldier or a Burman that he is forbidden to sell to him. **U.B.R. (1897—1901), Vol. I, 184.**

(35)—S. 49—*See* Nos. 20-*a*, 21, 30, *supra.*

(36)—*Ss. 49 and 52—Holder of out-still license leaving shop in charge of servant.*—Where the holder of an out-still license left his servant in charge of his shop during his temporary absence to sell his liquor to customers, which the servant accordingly did, *held* that neither the licensee nor his servant were guilty of any offence under Act XXII of 1881. **A. W.N. 1894, 201.**

(37)—*Ss. 49, 52.*—There is no license in Upper Burma to sell any liquor, except *tari*, to a Burman, and consequently any person, whether a licensee or not, who sells foreign spirit, etc., to a Burman, sells in contravention of s. 21, and thereby commits the offence defined in s. 49. Therefore, as a penalty is provided in s. 49, that section and not s. 52 is applicable to such illicit sale. **U.B.R. (1897—1901), Vol. I, 189.**

(38)—S. 52—*See* Nos 36, 37, *supra.*

Act IV of 1882 (Transfer of Property).

[REP. IN PART, ACT V OF 1908. REP. IN PART AND AMENDED, ACT II OF 1900. AMENDED, ACT III OF 1885; ACT VI OF 1904. APPLICATION OF CERTAIN SECTIONS EXTENDED, ACT XIII OF 1889, S. 32 (1). REP. AS TO CROWN GRANTS, ACT XV OF 1895.]

(1)—S. 54—*See* ACT I OF 1879, s. 3, sub-s. 13, 27 C. 587=4 C.W.N. 524.

(2)—S. 55—*See* CHEATING, 27 A. 561=A. W.N. 1905, 98=2 A.L.J. 268=2 Cr. L.J. 218.

Act V of 1882 (Easements).

[S. 14 AMENDED, ACT XII OF 1891. EXTENDED TO BOMBAY, N.W. PROVINCES AND OUDH, ACT VIII OF 1891].

1.—Imperial Acts—continued.

Act V of 1882 (Easements)—*concluded.*

—S. 24—Entry on Railway premises by dominant owner to effect necessary repairs, if an offence.—*See* ACT IX OF 1890, s. 122, 22 B. 525.

Act VI of 1882 (Companies).

[REP. IN PART, ACT II OF 1899. AMENDED, ACT VI OF 1887, ACT XII OF 1891, ACT IV OF 1910. AMENDED AND SUPLEMENTED, ACT XII OF 1895. SUPPLEMENTED, ACT IV OF 1900. NOT TO APPLY TO CERTAIN SOCIETIES, ACT X OF 1904].

(1)—*Construction of words.*—The Indian Companies Act cannot be properly resorted to for determining the meaning of words in the Municipal Act, as the two Acts are not in *pari materia.* **3 M.L.T. 400=18 M.L.J. 349=31 M. 408.**

(2)—*Table A—Banking Companies limited by shares—Payment of dividends from deposits—Penal Code, ss. 109 and 409.*—Banking Companies limited by shares, when they do not register articles of association of their own, shall be bound by Table A of Act VI of 1882. The business of the Company is under the sole and exclusive management of the Directors. The Directors are bound not to pay dividends out of anything except the profits of the Company. They are not entitled to pay dividends to share-holders out of deposits, because when a Bank takes a deposit, it takes it on the understanding that the deposit is not to be used to pay dividends to share-holders at the time when the Bank is insolvent and cannot lawfully pay dividends. If the Directors pay dividends out of such deposits they are guilty under s. 409, as the money so deposited is "property" of the Bank within the meaning of s. 309, though not of the depositors, they being not entitled to receive the specific rupees they have paid and as the share-holders including the Directors have wrongfully gained, though it is doubtful whether such payment can be regarded as causing wrongful loss to the Bank. But the Manager, Assistant Manager and Accountant, although, not being entrusted with such property, they may not be directly guilty of an offence under s. 409, may yet be guilty of abetment, by conspiring with the Directors in the illegal payment of the dividend. **16 A. 88.**

(3)—*See* MADRAS ACT III OF 1904, Sch. V, 3 M.L.T. 400=18 M.L.J. 349=31 M. 408=9 Cr. L.J. 68.

(4)—*S. 35—Fine to be levied under the section—Crim. Pro. Code (1882), s. 32.*—If an offence under s. 35 of the Act is proved, the Magistrate is bound to impose a fine of Rs. 500 in respect of each offence of issuing a share warrant not duly stamped. The fact that s. 32 of the Crim. Pro. Code, gives the Magistrate power only to inflict a fine of Rs. 1,000 will not affect the Magistrate's jurisdiction to impose a fine of more than Rs. 1,000 in a case where more than two share warrants not duly stamped have been issued. **20 C. 676.**

1.—Imperial Acts—continued.

Act VI of 1882 (Companies)—*continued.*

(5)—*Omission to duly stamp share warrants—Distinction between "forfeit" and "penalty."*—An omission to stamp a share warrant is an offence under the Act, punishable by a penalty. A Magistrate has jurisdiction to enforce its payment. No distinction can be drawn between the word "forfeit" in s. 35 and the word "penalty" in the other sections of the Act. **20 C. 676.**

(6)—*Ss. 55, 56—Right of share-holders to inspect the register of share-holders.*—Under s. 55, every share-holder, without payment, and every member of the public, on payment, is entitled to inspect the register of members of the company during business-hours, except when the register is closed under s. 56, and "subject to such reasonable restriction as the company in general meeting may impose." Where the share-holders, in general meeting, have not placed any restriction on the right of inspection, even a temporary refusal to allow the inspection, on the ground that the meeting of the directors was going on, will render the director responsible for such refusal liable to pay the penalty prescribed by s. 55. **20 A. 126.**

(7)—S. 56—*See* No. 6, *supra.*

(8)—*S. 82—Petition under s. 82 of the Act—Power of Magistrate to issue warrant—Crim. Pro. Code (1898), s. 190.*—A petition supported by an affidavit was presented to a District Magistrate under s. 82 of the Indian Companies Act. The Magistrate did not deal with the petition as an application under the Indian Companies Act, but having the petition and the affidavit before him and having examined the petitioner and purporting to exercise the powers conferred upon him by s. 190, Crim. Pro. Code, issued warrants for arrest and search. *Held* that, as there was no allegation either in the petition or affidavit that any offence, as defined by s. 4 (*o*), Crim. Pro. Code, had been committed, nor anything to show that the Magistrate had information, knowledge, or suspicion that any such offence had been committed, it was not competent for the Magistrate to proceed under s. 190 of the Crim. Pro. Code. **1 Weir 720.**

(9)—*S. 215—False statements in balance-sheet before winding up of Company.*—S. 215 of Act VI of 1882 does not apply to false statements contained in a balance-sheet published before the commencement of the winding up of a Company. **16 A. 88.**

(10)—*Balance-sheet under the Indian Companies Act, nature of.*—The balance-sheet of a Company coming under the Indian Companies Act, in order to represent the assets and liabilities of the Company, must be a true balance-sheet. It must show the actual condition of the Company. It is not sufficient if it should accurately show the state of the account books; it must, to be a true balance-sheet, show the actual state of the Company.

1.—Imperial Acts—continued.

Act VI of 1882 (Companies)—*concluded.*

If the books are false and the balance-sheet represents the books, the balance-sheet is also false. **16 A. 88.**

Act VIII of 1882 (Indian Penal Code Amendment).

[VIRTUALLY AMENDED, ACT X OF 1886, S. 21.]

S. 1—*See* PENAL CODE, s. 64, L.B.R. (1872—1892), 473.

See SENTENCE, 6 A. 61.

Act XI of 1882 (Indian Tariff).

[REP. ACT VIII OF 1894, ACT VIII OF 1910.]

See ACT XI OF 1878, 4 Cr. L.J. 239.

Act XII of 1882 (Indian Salt).

[REP. IN PART, ACT XX of 1884; ACT XII OF 1891. REP. IN PART AND AMENDED, ACT XIX OF 1890.]

(1)—*S. 9—Evasion of salt duty—Law under which punishable—Lower Burma Land and Revenue Act (II of 1876), s. 39, cl. (c).*—When salt-duty imposed under the Salt Act has not been compounded under any rules made under clause (*c*) of s. 39 of the Lower Burma Land and Revenue Act (II of 1876), and payment of such duty is evaded, the prosecution and conviction may be under s. 9 of the Salt Act (XII of 1882), under which the duty is primarily imposed, or under s. 39 of the Land Revenue Act (II of 1876), with reference to any rules made under s. 39, clause (*c*) of the Land Revenue Act, for composition with licensees. **L.B.R. (1893—1900), 252.**

(2)—*Liability of licensee of salt factory.*—The licensee of a salt factory is criminally liable for any evasion of payment of salt duty, unless he can show not only that he is personally unaware of the evasion but that he has exercised all proper precautions against such an event happening in his factory. **A.W.N. 1891, 181.**

(3)—*S. 11—Limitation.*—The general law of limitation and its schedules are chiefly intended for civil matters. The complaint of a criminal offence is not a suit or application within the meaning of s. 18, Limitation Act, and the peremptory terms of s. 11 of Act XII of 1882 are not affected by that section. **20 B. 543.**

Act XIV of 1882 (Code of Civil Procedure).

[REP. IN PART, ACT XIV OF 1885; ACT IV OF 1886; ACT X OF 1886, S. 24 (2); ACT VIII OF 1887; ACT XIII OF 1889; ACT VIII OF 1890; ACT VI OF 1900, S. 48; REP. WHOLLY, ACT V OF 1908. REP. IN PART, LOCALLY, ACT IX OF 1899, S. 3; REP. IN PART AND AMENDED—ACT VII OF 1888, SS. 3 TO 40 AND 42 TO 64; ACT XII OF 1891; (IN CENTRAL PROVINCES), ACT XX OF 1875, SS. 11 AND 12 (ADDED BY ACT II OF 1879, S. 2, WHICH IS SAVED BY S. 3 OF THE CODE); (IN AJMERE-MER-

1.—Imperial Acts—continued.

Act XIV of 1882 (Code of Civil Procedure) —*continued.*

WARA), REG. I OF 1877, SS. 2 AND 28 (SAVED BY S. 3 OF THE CODE); (IN PUNJAB), ACT XVIII OF 1884, SS. 68, 70 (3) (INSERTED BY ACT XXV OF 1899, SS. 5 AND 6); AMENDED, ACT XV OF 1882, S. 3; ACT VII OF 1887, S. 11; ACT VI OF 1888, SS. 2 TO 8; ACT X OF 1888, SS. 1 AND 3; ACT VIII OF 1890, S. 53; ACT VI OF 1892, SS. 2 TO 4; ACT V OF 1894; ACT VII OF 1895, SS. 1 AND 2; ACT XIII OF 1895; (IN OUDH), ACT XVIII OF 1876, SS. 19, 20, 22 (SAVED BY S. 3 OF THE CODE); (IN PLACES TO WHICH ACT IV OF 1882 EXTENDS), ACT IV OF 1882, S. 87 (SAVED BY S. 3 OF THE CODE; (IN LOWER BURMA), ACT VI OF 1900, S. 47; (IN COORG, REG. I OF 1901, SS. 11 AND 12; APPLICATION OF SS. 523 TO 526, RESTRICTED LOCALLY, ACT IX OF 1899, S. 3. DECLARED IN FORCE—IN THE SANTHAL PARGANAS (SS. 223 TO 228), REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN ANGUL AND THE KHONDMALS, REG. I OF 1894, S. 3; IN THE ANDAMAN AND NICOBAR ISLANDS (WITH MODIFICATIONS), REG. III OF 1876, S. 14, AS AMENDED BY REG. I OF 1884, S. 4; IN BRITISH BALUCHISTAN (PORTIONS OF THE CODE ONLY), REG. I OF 1890, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES) —REG. I OF 1896, S. 1 (AS AMENDED BY ACT XIII OF 1898, S. 18) AND S. 6; ACT XIII OF 1898, S. 4.]

(1)—*Decree ordering wife to return to husband —Enforcing decree under a suit for restitution of conjugal rights against wife.*—Quære:—Whether, under the present procedure, the Court can enforce its order upon a wife to return to her husband's by giving her over bodily into her husband's hands. Such disobedience would seem to fall within s. 200 of the Code, and to be enforceable only by imprisonment, or attachment of property, or both. **8 W.R. P.C. 3=11 M.I.A. 551.**

(1-*a*)—Depositions before Land Registration Deputy Collector to be taken as directed in the Civ. Pro. Code—*See* BENGAL ACT VII OF 1876, s. 88, 11 C.W.N. 470=5 Cr. L.J. 281.

(2)—*See* CRIM. PRO. CODE, 1898, ss. 439, 476, 26 A. 249=A.W.N. 1904. 15.

(3)—*See* WARRANT, 3 C.W.N. 605.

(4)—S. 2—*See* APPEAL, 5 W.R. (Mis.), 18.

(5)—S. 11—*See* JURISDICTION OF CIVIL COURTS.

(6)—S. 13—*See* RES JUDICATA, 14 Bur. L.R. 259=4 L.B.R. 337.

(7)—Ss. 51, 115—*See* FALSE EVIDENCE, 6 A. 626.

(8)—S. 55—*See* CHEATING, 27 A. 561=A.W.N. 1905, 98=2 A.L.J. 268=2 Cr. L.J. 218.

(8-*a*)—S. 70—*See* CRIM. PRO. CODE (1898), s. 332, A.W.N. 1899, 13.

(9)—*S. 87—Prisoner's Testimony Act, XV of 1869, ss. 15 and 16—Act XV of 1869, s. 16—Signature of jailer—Judicial notice.*—The Court will take judicial notice of the signature of the jailer under s. 16, Act XV of 1869, Prisoner's Testimony Act. **4 B.L.R. O.C. 51.**

(9-*a*)—S. 115—*See* No. 7, *supra*.

(10)—S. 174—*See* CONTEMPT OF COURT, 12 B. 63.

(11)—Ss. 194, 195 and 647—*See* SESSIONS JUDGE, JURISDICTION OF, 26 M. 596=13 M. L.J. 272.

(12)—S. 195—*See* No. 11, *supra*.

(13)—S. 251—*See* PENAL CODE, ss. 353, 149, 31 C. 424.

(14)—S. 258—*See* FALSE EVIDENCE, 10 B. 288.

(15)—*See* PENAL CODE, S. 210, 16 C. 126.

(16)—Ss. 258, 643—*See* PENAL CODE, S. 210, 4 M. 325.

(17)—S. 268—*See* PENAL CODE, s. 188, U. B.R. 1909, 2nd Quarter, Penal Code, 23.

(18)—S. 269—*See* PENAL CODE, s. 186, L.B. R. (1872—1892), 336.

(19)—S. 274—*See* CRIMINAL MISAPPROPRIATION, 22 M. 151=1 Weir 424.

(20)—S. 318—*See* CRIMINAL TRESPASS, 1 C.L.J. 104.

(21)—S. 336—*See* PRIVATE DEFENCE, RIGHT OF, 2 C.P.L.R. 73.

(22)—*Civ. Pro. Code, s. 337 (a)—Scope of the section.*—The accused, a judgment-debtor, was arrested and produced before the District Munsiff, who granted him five days' time for the payment of the judgment-debt, and also ordered the process server to keep him in custody till then. The accused escaped from the custody. *Held*, that the language of s. 337 (*a*) would be wide enough to cover the case and that, under cl. 3 of the section, the District Munsiff was authorised to leave the judgment-debtor in the custody of the process server. The accused, therefore, was guilty of escaping from lawful custody. **1 Weir 717.**

(23)—*Ss. 350 and 359—Power of Court to send insolvent to Magistrate on an enquiry independent of that under s. 350, C.P.C., 1882.*—Where, on an application for declaring the petitioner an insolvent, an enquiry is held under s. 350, and an order is passed under s. 351, declaring the petitioner an insolvent, the Court has no jurisdiction to make a fresh enquiry under s. 359 and to send the petitioner to a Magistrate upon the basis of such fresh enquiry. Though s. 359 does not say that an application under that section must be made at the hearing under s. 350 or soon thereafter, any order, under that section (s. 359), must be based on the findings arrived at in an enquiry under s. 350. No new enquiry is contemplated by s. 359. **15 M.L.J. 12.**

(24)—*S. 359—Misconduct of debtor—Offence.* —Although the misconduct of a debtor is

1.—Imperial Acts—continued.

Act XIV of 1882 (Code of Civil Procedure)—*continued.*

rendered punishable by the Civil Court only at the instance of a creditor, it is none the less a criminal offence, and the offender, when sentenced to be imprisoned, should be confined in the criminal, not in the civil, jail. Civil Courts, when sentencing an offender to imprisonment under s. 359 of the Civ. Pro. Code, should specify in the warrant, which should be addressed to the officer in charge of the criminal jail, whether the imprisonment awarded is simple or rigorous. **1 Weir 718.**

(25)—*See* No. 23, *supra.*

(26)—*S. 359 (5)—Imprisonment by Civil Court, nature of.*—The imprisonment which the Civil Court is empowered to award under s. 359, Civ. Pro. Code, may be either rigorous or simple. **1 Weir 718.**

(27)—*Ss. 359 and 652—Imprisonment of debtor under s. 359, Civ. Pro. Code—Power of High Court to order the creditor to provide for maintenance.*—The High Court has no power under s. 652, Civ. Pro. Code, to frame a rule imposing on a creditor the obligation to provide for the maintenance of a debtor imprisoned, under s. 359, Civ. Pro. Code, the powers conferred by s. 652 being restricted to matters of procedure. **1 Weir 718.**

(28)—Ss. 503, 505—*See* CRIM. PRO. CODE, *s.* 145, 22 A. 214.

(29)—S. 505—*See* No. 28, *supra.*

(29-*a*)—S. 568—*See* No. 36, *infra.*

(29-*b*)—S. 569—*See* No. 36, *infra.*

(30)—*Ss. 588 (29), 651—Conviction for escape from lawful custody—Appeal.*—Whether a person who has been convicted under s. 651, for escaping from lawful custody and has been sentenced for one month, has the right of appeal under s. 588 (29), Civ. Pro. Code. **5 A. 318.** [*F.*, 27 A. 258=1 A.L.J. 595=A.W.N. 1904, 229.]

(31)—S. 591—*See* CONTEMPT OF COURT, 7 B. 5.

(32)—S. 622—*See* HIGH COURT, JURISDICTION OF, 1 A.L.J. 481=A.W.N. 1904, 170.

(33)—S. 622—*See* HIGH COURT, JURISDICTION OF, 8 C.W.N. 73.

(34)—S. 622—High Court's power of revision of District Judge's appellate order granting sanction to prosecute.—*See* SANCTION TO PROSECUTE, 6 O.C. 216.

(35)—S. 622—*See* SANCTION TO PROSECUTE, 3 A.L.J. 394=A.W.N. (1906), 103=3 Cr. L.J. 400=1 M.L.T. 219=28 A. 554, 10 C.W.N. 1026=4 Cr. L.J. 168, 26 M. 139=2 Weir 197, A.W.N. 1908, 273=5 A.L.J. 749=30 A. 38=9 Cr. L.J. 39=1 Ind. Cas. 569, 3 A. 508.

(36)—Ss. 622, 647, 568, 569—Revisibility of proceedings under s. 195, Crim. Pro. Code, before Judges of Civil Courts.—*See* 2 M.L.T. 84=17 M.L.J. 128=5 Cr.L.J. 288=30 M. 311.

1.—Imperial Acts—continued.

Act XIV of 1882 (Code of Civil Procedure)—*concluded.*

(37)—*S. 640—Commission to examine witnesses.*—In an application to examine the plaintiff under commission, it was admitted that she had appeared personally in the Police Court and had been examined by the Magistrate. Ordered that a commission do issue to examine the plaintiff. **3 C.W.N. 753.**

(37-*a*)—S. 642—*See* ARREST, 4 A. 27.

(38)—S. 643—*See* CRIM. PRO. CODE (1898), s. 476. 1 C. 450.

(39)—S. 643—*See* CRIM. PRO. CODE (1898), s. 435, 4 O C. 96.

(40)—S. 643—*See* HIGH COURT, JURISDICTION OF, 23 C. 532.

(41)—S. 643—*See* SANCTION TO PROSECUTE, 7 A. 871, F. B., 23 C. 532.

(42)—S. 643—*See* No. 16, *supra.*

(43)—*S. 647.*—The effect of s. 647, Civ. Pro. Code, is not to make the provisions of the Civ. Pro. Code applicable to proceedings under s. 195, Crim. Pro. Code, which are of a criminal, rather than a civil, nature. **30 M. 311=2 M.L.T. 84=17 M.L.J. 123=5 Cr. L.J. 288.**

(44)—S. 647—*See* Nos. 11, 36, *supra.*

(45)—*S. 651—Arrest of judgment-debtor—Warrant.*—The officer arresting a judgment-debtor must have the warrant of arrest in his possession at the time of making the arrest, otherwise it is illegal. The escape of the judgment-debtor from the custody of the person apprehending without the warrant is not punishable under s. 651 of the Civil Procedure Code. **5 A. 318.** [*F.*, 27 A. 258=1 A.L.J. 595=A.W.N. 1904, 229].

(46)—S. 651—*See* PENAL CODE, ss. 224 and 225, 1 Weir 211.

(47)—S. 651—*See* No. 30, *supra.*

(48)—S. 652—*See* No. 27, *supra.*

Act XV of 1882 (Presidency Small Causes Courts).

[REP. IN PART, ACT XII OF 1891; ACT VII OF 1896; ACT V OF 1908. REP. IN PART AND AMENDED, ACT I OF 1895. AMENDED, ACT VII OF 1892, S. 12; ACT III OF 1899; ACT IV OF 1906.]

(1)—S. 35—*See* SANCTION TO PROSECUTE, 27 B. 130=4 Bom.L.R. 940.

(2)—*S. 56—Room in chawl rented by a particular person—Dwelling.*—Whether a room in a *chawl* rented by a particular person is the dwelling house of that person, and its outer door an outer door which a bailiff who has entered the *chawl* cannot break open under s. 56. **Rat. Un Cr. C. 949.**

Act XX of 1882 (Indian Paper Currency).

[REP. IN PART, ACT XIII OF 1898, S. 18. REP. IN PART AND AMENDED, ACT VIII OF 1893. AMENDED, ACT XXI OF 1896; ACT

1.—Imperial Acts—continued.

Act XX of 1882 (Indian Paper Currency) —*concluded.*

XXII OF 1899, S. 3; TEMPORARILY, ACT VIII OF 1900. DECLARED IN FORCE IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN ANGUL AND KHONDMALS, REG. I OF 1894, S. 3; IN BRITISH BALUCHISTAN, REG. I OF 1890, S. 3: IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

(1)—*S. 16—Contract Act (IX of 1872), s. 108—Currency note—Legal tender—Bona fide transfer.*—Under s. 16 of the Paper Currency Act, 1882, currency notes are legal tender within the circles of issue and cannot be treated as ordinary articles of moveable property. Transfer of a currency note for money cannot be called a sale of the note within the meaning of the Contract Act. Where the Criminal Court directed the plaintiff, a *bona fide* holder of a currency note stolen from the complainant, to make over the same to him and the plaintiff sued the defendant who had passed the note to the plaintiff—*Held*, that the defendant being a *bona fide* holder the suit did not lie. The order of the Criminal Court was wrong but it did not give a claim to the plaintiff which he did not possess. **115 P.L.R. 1904.**

Act XXI of 1883 (Indian Emigration).

[REP. IN PART AND AMENDED, ACT XVIII OF 1890. AMENDED, ACT I OF 1896; ACT VII OF 1897. DECLARED IN FORCE IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3, REP. WHOLLY BY ACT XVII OF 1908.]

(1)—*As amended by Act (X of 1902), ss. 6, 107, 111—Magistrate—Magistrate, First Class, in s. 111, includes Presidency Magistrate—Agreement with native of India to depart out of India by sea to work as an artizan—Agreement made without the permission of the Protector of Emigrants—Liability of master for criminal acts done by servant on the master's behalf—Master liable for agreements entered into on his behalf by his servant in violation of s. 111—Protector of Emigrants has power to impose reasonable terms before issuing permission—Summons, issue of—Fresh summons issued on the same information—Irregularity in procedure—Criminal Procedure Code (1898), s. 537.*—The term "Magistrate of the first class" used in s. 111 of the Emigration Act, 1883, means a Magistrate appointed to exercise the highest Magisterial powers, ordinarily prescribed by the Criminal Procedure Code, within his jurisdiction and includes a Presidency Magistrate. Where, on an information, a summons is issued to the accused, and owing to its disclosing no offence, a fresh summons is issued without any fresh or supplemental information, the error, omission or irregularity in the fresh summons, is not sufficient, under s. 537 of the Criminal Procedure Code, to upset the finding and sentence, unless it has in *fact* occasioned "a failure of justice," that is, unless it has unfairly affected the accused's defence on the merits.

1.—Imperial Acts—continued.

Act XXI of 1883 (Indian Emigration) —*concluded.*

Sub-section 1 of s. 111 of the Emigration Act hits at not merely entering into an agreement, but also at any attempt to enter into it. An attempt consists in some external act, which shows that progress is made in the direction of it, or towards maturing and effecting it, that is, something tangible and ostensible, of which the law can take hold, which can be alleged and proved. Where a penal statute has been infringed by servants, and criminal proceedings are taken against the master, although it lies upon the prosecutor to establish the master's liability, yet the question whether he is liable turns necessarily upon what is the true construction to be placed upon the statute. The statute should be construed not merely with reference to its language, but also its subject matter and object. Sub-section 1 of s. 111 of the Emigration Act, 1883, does not break in upon the rule of law embodied in the maxim *qui per alium facit per seipsum facre videtur* (he who does an act through another is deemed in law to do it himself). The word "whoever" in the clause is 'whoever either by himself or through his agent.' In other words, the Act leaves untouched the right of every person to enter into such agreements through an agent. It merely provides that such agreements shall not be entered into, without the previous permission of the Local Government. The intention of the section is to hold the master liable for his servant's act, provided the act was done by the servant so as to bind the master according to the law of contract. The coupling of the word "conditions" with the word "terms" in s. 107 of the Act makes out the intention of the Legislature to be that the officer authorised to grant the permission should have power to impose any reasonable terms and conditions he thinks proper as conditions precedent to the grant, whether they relate to the terms of the agreement itself, or being extraneous to it, relate to the execution, or other considerations, which have to be taken into account, in order to protect the interests of the native of India departing out of it by sea. S. 29 of the Emigration Act, 1883, makes the execution of the agreement referred to there, in the presence of the protector, compulsory. In s. 108 of the Act, the power conferred on the Local Government, who have delegated their power to the protector, is discretionary, and it is left to that Government to decide whether in any particular case any agreement referred to in s. 107 shall be executed or not in its presence, that is, in the presence of the Protector acting as its delegated authority. The two sections being thus distinguishable, the language of one cannot be invoked to aid the construction of the other, especially, where the language of each is plain. **9 Bom. L.R. 967 = 6 Cr. L.J. 240.**

(2)—*S. 107—Master and servant—Servant violating the provisions of the Emigration Act in the course of his employment—Knowledge or consent of the master—Master's liability for servant's act—Artizan—Engine-driver on board*

1.—Imperial Acts—continued.

Act XXI of 1883 (Indian Emigration)—*cld.*

a steamer.—If a servant, having been appointed as an agent for a particular business by his master, enters into an agreement in connection with that business, everything which he does within the scope of his employment, for that purpose, will be binding upon the master, and the master will be criminally liable for such acts of the servant under the Indian Emigration Act. In such a case, the master's express knowledge or consent to the act is not necessary, because, from the very fact of the appointment of the servant as an agent in such a business, the master's knowledge of, or consent to, every act done by the servant or agent, within the scope of his employment, is implied by law.

A person engaged to drive an engine on board a steamer, is an artizan within the meaning of the Indian Emigration Act. **9 Bom. L.R. 1059 =32 B. 10=7 Cr. L.J. 238.**

Act III of 1884 (Criminal Procedure Code Amendment).

[REP., ACT V OF 1898.]

—*S.* 8 (6)—*Trial by District Magistrate of European British subject with a jury—Power of District Magistrate to refer case to High Court on dissenting from verdict of jury—Crim. Pro. Code (1882), ss. 307, 418, 423—Powers of High Court, s. 307.*—What is contemplated by s. 8 (6) of Act III of 1884 is to confer upon a District Magistrate trying an European British subject with the aid of a jury, precisely the same authority as the Sessions Judge had under s. 307 of the Code; and if he disagrees with the verdict of a jury so completely that he considers it necessary to submit the case to the High Court, he ought to do so, and the High Court should deal with the reference by the Magistrate in exactly the same way as it can upon a reference by a Sessions Judge, pure and simple, under s. 307. The expression "trial by jury" in s. 8 (6) of Act III of 1884 should not be limited to that period of time at which the jury pronounce their verdict. It refers, as in the similar case of s. 307, Crim. Pro. Code, to trial by jury as contradistinguished from trial with the help of assessors, or in any other manner mentioned in the Code. A trial by jury or any other trial cannot be, legally speaking, concluded until judgment and sentence are passed; in those cases in which the Sessions Judge trying with the help of a jury differs from the verdict of the jury, and suspending judgment, refers the case to the High Court, the trial cannot be said to have concluded, but remains open for the High Court, upon the reference, to conclude and complete it, either by maintaining the verdict of the jury and causing judgment of acquittal to be recorded, or by setting aside the verdict of acquittal, and causing conviction and sentence to be entered against the accused. The clear provisions of s. 307 are not in any way curtailed by ss. 418, 423. The High Court's jurisdiction to deal with a case referred under s. 307, Crim. Pro. Code, are not limited only to cases, where

1.—Imperial Acts—continued.

Act III of 1884 (Criminal Procedure Code Amendment)—*concluded.*

there has been an error in law in the proceedings below. In cases where the jury delivers a perverse or obtuse verdict, the District Judge should be afforded an opportunity of reporting to the High Court. The same applies to a reference by a District Magistrate under s. 8 (6) of Act III of 1884. **9 A. 420.** [*R.*, 14 B. 160.]

Act IV of 1884, (Indian Explosives).

[REP. IN PART, ACT X OF 1889; ACT XII OF 1891.]

(1)—"*Patakhas*" *or crackers, whether* "*fire-works*"—*License, whether necessary for sale.*—*Patakhas*, which are small packets, wrapped in a paper, of coloured potash mixed with small pieces of *kankar*, and which explode with slight report when thrown with force against wall or *other* hard surface, are not *fire-works* within the meaning of the Explosives Act, and so no license is necessary for the manufacture or sale of "*Patakhas.*" **8 P.R. 1910 Cr.**

(2)—*S. 5—License for manufacture of explosives.*—A licensee for the manufacture of explosives is not at liberty to associate other persons with himself in the manufacture and sale of explosives without such other persons being approved of by the authorities and being provided with licenses. **1 Weir 756.**

(3)—*Ss. 5 and 7—Rules framed under the sections—Possession of explosives.*—Accused's house was searched for opium and in it were found three cartridges of blasting powder and three detonators. He was convicted under s. 5 of the rules for the manufacture, possession and sale of explosives in Burma, for possessing an explosive without a license. *Held* that licenses under these rules are not required for the possession of explosives of this nature in moderate quantities. The rules are not applicable to the case. But cartridges and detonators are "ammunition" as defined in s. 4, Indian Arms Act and the accused might properly have been convicted under s. 19 (*f*) of that Act. **U.B.R. (1897—1901). Vol. I, 193.**

(4)—S. 7—*See* No. 3. *supra.*

Act XIII of 1885 (Indian Telegraph).

[AMENDED, ACT XI OF 1888.]

—*S. 29—Penal Code, ss. 71, 420, 465, 511—Attempt to cheat by means of forged telegram—Separate punishments.*—Where, with the object of ultimately obtaining payment to the sender of a large sum of money to which he was not entitled, a false telegram was despatched under a fictitious name addressed to the person under whose authority the claim, if just, might have been discharged, *held* that the sender of such telegram might be properly convicted of an offence under s. 29, Act XIII of 1885, as well as of an attempt to cheat under s. 420, read with s. 511, and possibly also of forgery under s. 465; but that, at all events, as regards the two former offences, s. 71, I.P.C.,

1.—Imperial Acts—continued.

Act XIII of 1885 (Indian Telegraph)—*cld.*

applied, and he could not be punished for more than one such offence. **A.W.N. 1903, 26.**

Act II of 1886 (Indian Income-tax).

[REP. IN PART, ACT XII OF 1891; ACT VI OF 1902. AMENDED, ACT XI OF 1903.]

See ACT XXXII OF 1860.

„ ACT IX OF 1869.

„ ACT XXIII OF 1869.

(1)— *S. 25—Collector hearing objections—Revenue Court—Judicial proceedings—Power of Collector to order prosecution of the objector under s. 476, Crim. Pro. Code.*—Accused put in an application objecting to his assessment as to Income-Tax. The Collector, who enquired into the matter, decided that the accused had made a false declaration, within the meaning of s. 25 of the Income Tax Act and ordered his prosecution for an offence under s. 177, Penal Code. The Magistrate, who tried the case, convicted the accused of an offence under s. 193, Penal Code. The Sessions Judge, on appeal, set aside the conviction for the reason, among others, that the Collector's order was not "an order under s. 476, Crim. Pro. Code, because the Collector, acting under the Income Tax Act, was not a Revenue Court," and that the proceeding wherein he ordered the prosecution was not a 'judicial proceeding' within the meaning of s. 476, Crim. Pro. Code. On appeal, from the acquittal on behalf of the Crown, *held*, that the Collector, hearing objections to assessment under the Income Tax Act was a Revenue Court and his proceedings were judicial proceedings so that it was competent for him to pass an order under s. 476, Crim. Pro. Code, for prosecution of the objector. **44 P.R. 1905 Cr.=187 P.L.R. 1905=3 Cr. L.J. 128.**

(2)—Ss. 25 and 28—*See* MADRAS ACT III OF 1878, ss. 14 and 15, 1 Weir 782.

(3)—S. 28—*See* No. 2, *supra.*

Act XII of 1886 (Petroleum).

[REP., ACT VIII OF 1899.]

(1)—Ss. 2 (2), 10, 15—*See* ACT VII OF 1899, ss. 1 (3), 11 and 15, 7 C.W.N. 658.

(2)—*S. 8, Rule 3—Importation of petroleum.*—Rule 3 of the Rules framed for the regulation of the importation of petroleum, refers only to importation of petroleum from any *port* beyond the limits of British India and not from any place which is not a port. **Rat. Un. Cr. C. 643 =Cr. Rg. 16 of 93.**

(3)—S. 10—*See* No. 1, *supra.*

(4)—S. 15—*See* No. 1, *supra.*

Act I of 1887 (General Clauses).

[REP., ACT X OF 1897].

See ACT X OF 1897.

1.—Imperial Acts—continued.

Act I of 1887 (General Clauses)—*concluded.*

(1)—*Ss. 2 and 7—Crim. Pro. Code (1882), s. 195—Sanction to prosecute—Prosecution commenced 6 months after granting of the sanction—Intervention of holidays.*—A sanction to prosecute can remain in force only for six months from the date on which it was given; and the period for such sanction cannot be extended by reason of the period expiring during the Court holidays. S. 7 of the General Clauses Act will have no application to such a case, as the Code of Criminal Procedure was passed before the passing of the former Act. **22 C. 176.** [*R.*, Rat. Un. Cr. C. 803; *D.*, 2 Weir 200.]

(2)—S. 7—*See* ACT III OF 1877, 6 O.C. 153.

(3)—S. 7—*See* No. 1, *supra.*

Act IV of 1889 (Merchandise Marks).

[REP. IN PART AND AMENDED, ACT IX OF 1891; ACT XVI OF 1904; DECLARED IN FORCE IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

(1)—*S. 2 (c)—Penal Code, s. 482—False property mark--Books, whether goods—False trade description—Crim. Pro. Code (1898), s. 203.*—The case against the accused was that he printed and published, in another press, without the complainant's permission, an unauthorised edition of a book known as "A Manual of Telugu Grammar by P. Abboy Naidu" with the contents and title page and outer cover exactly the same as in the authorised edition. The Magistrate dismissed the complaint under s. 203 of the Code of Criminal Procedure. On a Revision Petition to the High Court, *held*, that books are goods within the meaning of the Merchandise Marks Act (Act IV of 1889). *Held*, also, that the phrase "All rights reserved" in the outer cover of the spurious edition is a trade description under s. 2 (*c*) of the Merchandise Marks Act, and may be untrue, but the complainant should prove that it is untrue in a material respect. In order that the case may come under s. 482 of the Penal Code, the question will be, whether the accused has marked the book in a manner reasonably calculated to cause it to be believed that it is the manufacture or merchandise, which it is not, or belongs to one to whom it does not belong. In order to show that the name "P. Abboy Naidu" is a property mark, the complainant should prove that the buyers ask for and believe that they are getting not merely a work of which P. Abboy Naidu is the author, but a work of which the complainant is the proprietor. **17 M.L.J. 490=6 Cr.L.J. 374.**

(2)—*S. 2 (4)—Penal Code, s. 486—Selling books with counterfeit property mark.*—Books are the subject of trade and are covered by the word "goods" in s. 2, cl. (4), Act IV of 1889. Therefore, a person selling a book with a counterfeit property mark is liable to be convicted under s. 486, Penal Code. **26 C. 232= 3 C.W.N. 97.** [*F.*, 17 M.L.J. 490; *R.*, 3 Bom. L.R. 883=26 B. 289.]

(3)—Ss. 4 and 6—Using title of book—Trade mark—Trade description.—*See* PENAL CODE ss. 478, 482, 26 B. 289=3 Bom. L.R. 883.

1.—Imperial Acts—continued.

Act IV of 1889 (Merchandise Marks)—*cld.*

(4)—S. 6—*See* No. 3, *supra*.

(5)—*Ss. 6 and 7—Bengal Excise Act (VII of 1878), s. 61—Manufacturing and selling exciseable article without a license—Putting false trade marks upon cases containing exciseable articles—Penal Code, ss. 486 and 487—Distinct offences—Crim. Pro. Code (1882), s. 403.*—The offences of manufacturing and selling exciseable articles without a license, and being in possession of such articles without a license (ss. 53 and 61, Excise Act), and the offences of putting false trade mark upon cases containing exciseable articles, and making use of such false trade marks (ss. 486, 487, Penal Code, and 6 and 7, Merchandise Marks Act) are distinct offences, and, therefore, a previous conviction or acquittal on the former offences will not bar a trial on the latter offences. **23 C. 174.**

(6)—Ss. 6 and 7—*See* TRADE MARK, 31 C. 411.

(7)—S. 7—*See* Nos. 5 and 6, *supra*.

(8)—*S. 15—Penal Code, ss. 482 and 486—Using counterfeit-trade mark — Prosecution—Limitation.*—S. 15 of Act IV of 1889 enacts that no prosecution for an infringement of a trade-mark shall be commenced after the expiration of one year after the discovery of the offence by the prosecution. The reason for this limitation is obvious. Ordinarily the infringement of a trade-mark is rather a civil than a criminal wrong, but as civil proceedings may require much time and expenditure to bring them to a conclusion, the Legislature, in its anxiety to protect traders, has allowed resort to the Criminal Courts to provide a speedy remedy in cases when the aggrieved party is diligent and does not by his own conduct show that the case is not one of urgency. If, therefore, the person aggrieved fails to resort to Criminal Courts within a year of the offence coming to his knowledge, the law assumes that the case is not one of urgency, and it leaves him to his civil remedy by an action for injunction. **22 M. 488=1 Weir 821.**

(9)—S. 19 (*a*)—*See* TRADE MARK, 4 C.L.J. 268=10 C.W.N. 107.

See PENAL CODE, ss. 485, 486, 27 C. 776=4 C.W.N. 423.

Act X of 1889 (Indian Ports).

[REP. IN PART AND AMENDED, ACT IV OF 1896. AMENDED, ACT V OF 1891; ACT II OF 1894; ACT III OF 1901. SUPPLEMENTED, BEN. ACT III OF 1867 (SEE S. 19 OF THE ACT OF 1867 AND S. 2 (3) OF THE ACT X OF 1889].

(1)—*S. 6, cl. (k)—Rules 1 to 23 framed thereunder—Order making it obligatory on boat owners to ply for hire, validity of.*—Rules 1 to 23 framed by the Government under s. 6 of the Act, in so far as they purport to make it obligatory on boat owners to ply for hire, are *ultra vires*, and therefore void and of no effect. It is only with regard to boats plying for hire that s. 6 of the Act leaves to the Government authority to make rules. **17 M. 397=1 Weir 859.**

1.—Imperial Acts—continued.

Act X of 1889 (Indian Ports)—*concluded.*

(2)—*S. 6 (k)—Rule 15—Causing impediment to service of boat.*—When a tindal, or boatman in charge of a boat belonging to the agents of a steamer declines to wait for a letter which the Port officer desires to send to the captain of the steamer, the tindal or boatman does not, by wilful misconduct, cause an impediment to the service of a boat within the meaning of Rule 15 of Rules framed under the Act. **1 Weir 860.**

(3)—*Ss. 6 and 8—Rule VIII framed under s. 6—Validity of the Rule.*—Rule VIII, made by the Government under s. 6, cl. (*k*) of the Act, requires boat owners to "carry out at all times all orders issued by the Conservator of Ports in connection with the plying of their boats which are not inconsistent with the regulations issued by Government." The rule, in so far as it purports to give the Conservator the power to make rules, is *ultra vires*, and therefore void. In the case of power being given by statute to the Government or other public body to make rules having the force of law, the maxim *delegatus non potest delegare* must be applied. When the Legislature entrusts to some public body, it may be the Executive Government or a corporation, the duty of making rules, such public bodies cannot relieve themselves of the responsibility and depute other agencies to discharge the duty. **17 M. 118=1 Weir 857=4 M.L.J. 38.**

(4)—*Disobedience to an order of the Conservator of Ports.*—Where the accused, owners and tindals of two licensed cargo boats, were convicted under s. 8, cl. 2, by the Conservator for disobedience to an order issued under s. 6, cl. (*k*), Rule VIII, by the Port Conservator prohibiting the bringing in of boats into the Negapatam river while a certain flag was flying, *held*, that the order was *ultra vires* and that the conviction was illegal. **17 M. 118=1 Weir 857=4 M.L.J. 38.**

(5)—S. 8—*See* Nos. 3 and 4, *supra*.

Act XIII of 1889 (Cantonments).

[REP. IN PART, ACT XII OF 1896; ACT V OF 1898. REP. IN PART, ACT XIII OF 1898, S. 18. REP. IN PART AND AMENDED, ACT XII OF 1891. VIR. REP. IN PART, ACT XII OF 1894, S. 5. AMENDED, ACT I OF 1891, S. 11; ACT XV OF 1897; ACT I OF 1903; ACT V OF 1909. DECLARED IN FORCE—IN BRITISH BALUCHISTAN (WITH ADDITIONS), REG. I OF 1890, SS. 3 AND 4, AS AMENDED BY REG. V OF 1890, S. 45; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

See ACT III OF 1880.

,, BOM. ACT III OF 1867.

,, MAD. ACT I OF 1866.

,, CANTONMENT CODE, 1899.

I.—Imperial Acts—continued.

Act XIII of 1889 (Cantonments)—*concluded.*

(1)—S. 2 (2)—*See* BOMBAY ACT III OF 1867, s. 11, r. 75, Rat. Un. Cr. C. 706.

(2)—*Ss. 2, 5 and 7—Appeal against convictions for offences punishable under Cantonment Rules—Rule 35, under Act XXII of 1864.*—S. 7, Cantonment Act, 1889, has abrogated Rule 35 of the Rules framed under the Cantonment Act XXII of 1864, and appeals against convictions by Cantonment Magistrates of offences punishable under Cantonment Rules lie to the same extent as convictions by other Magistrates of the same class. **1 P.R. 1897 Cr.**

(3)—Ss. 2 and 13—*See* BOM. ACT III OF 1867, s. 21, Rat. Un. Cr. C. 682.

(4)—S. 5—*See* No. 2, *supra.*

(5)—*S. 7—Crim. Pro. Code, Act X of 1882, s. 528—Jurisdiction of District Magistrate over Cantonment Magistrate.*—S. 7 of Act XIII of 1889 makes the Cantonment Magistrate subordinate to the District Magistrate, and the latter can therefore decide, under s. 528 of the Crim. Pro. Code, whether a case pending before the former should be transferred or not. **Rat. Un. Cr. C. 849=Cr. Rg. 16 of 1896.** (9 B. 100, *R.*).

(6)—S. 7—*See* No. 2, *supra.*

(7)—*S. 3—Intoxicating drug—Supply—Interpretation.*—The word "supply" in s. 13 of the Cantonments Act, 1889, must have a restricted meaning put upon it. Its context "barters or sells" indicates that it has the same idea underlying it in common with the words preceding it. It relates to a transaction between two persons dealing at arm's length and, therefore, independent of each other for its purposes. Hence, the servant of a soldier, who buys liquor on his master's behalf and gives it to his master, cannot be said to have "supplied" the liquor to his master within the meaning of s. 13 of the Cantonments Act, 1889. **9 Bom.L.R. 703=6 Cr. L.J. 67=31 B. 523.**

(8)—S. 13—*See* No. 3, *supra.*

(9)—*S. 26—Rule 2—Additional fine for continuing offence, validity of.*—The additional fine mentioned in rule 2 of the General Order of the Government of India framed under s. 26 of the Cantonments Act (XIII of 1889), is not only to be after the first conviction, but is to follow proof that the failure is persisted in. It cannot be imposed as a threat against possible persistence, which, being in the future, cannot be matter of present proof. The continuing failure must, therefore, be matter of later and separate enquiry and proof. **22 B. 841.** (22 B. 766, *F.*)

(10)—*S. 27—Penal Code, ss. 64 to 67—Applicability.*—Ss. 13 and 14 of Bombay Act, III of 1867, having been repealed by the Cantonment Act of 1889, the provisions in ss. 64 to 67 of the Penal Code apply to sentences passed under s. 27 of the Cantonment Act. **Rat. Un. Cr. C. 563=Cr. Rg. 36 of 1891.**

I.—Imperial Acts—continued.

Act XV of 1889 (Indian Official Secrets).

[AMENDED, ACT V OF 1904. DECLARED IN FORCE—IN BRITISH BALUCHISTAN, REG. I OF 1890, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

(1)—*Ss. 3 and 4—Disclosure of Government departmental examination papers.*—The disclosure of Government Departmental Examination papers may be an offence under the Indian Official Secrets Act. **1 L.B.R. 133.**

(2)—S. 4—*See* No. 1, *supra.*

Act VIII of 1890 (Guardians and Wards).

[REP. IN PART, ACT XIII OF 1898, S. 18; ACT VI OF 1900, S. 48, S. 53, ACT V OF 1908. (IN CENTRAL PROVINCES), ACT XXIV OF 1899. DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN THE ANGUL DISTRICT, REG. I OF 1894, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

(1)—*Custody of minor—Habeas Corpus—Act VIII of 1890.*—The petitioner, an ayah earning only eight annas a month as wages, a poor woman of very feeble intellect, obtained under s. 491, Crim. Pro. Code, a rule in the nature of a *Habeas Corpus* calling on the respondent, the Superintendent of the Methodist Episcopal Girls' School, Bombay, to show cause why a certain minor, named *Saithri*, alleged to be illegally and improperly detained by her, should not be delivered to the petitioner, the mother of the girl. The girl was aged 15 years. She was a boarder from the age of eight in the Zenana Mission School. At her tenth year, she was removed to the respondent's school. The petitioner never contributed anything whatever towards the expenses of such education, after she became a boarder. The girl, in the meantime, became a convert to Christianity and would soon be in a position, if allowed to complete her education, to earn a decent livelihood. *Held* that assuming, but by no means admitting, that the rule that a Hindu girl under sixteen would be too young to be able to decide where she could reside, was applicable, it was the duty of the Court to refuse the present application, not being satisfied that it was made *bona fide* by the petitioner. *Held*, further, that having regard to the principles of Courts of Equity to be gathered from a consideration of English cases which were decided as well before as after the coming into operation of the Judicature Act of 1873, and the High Court since its establishment in 1862, being a Court governed by the doctrines of Courts of Equity, the petitioner by her conduct during the last eight years had precluded herself from demanding that her child should now be given up to her, to do which would be manifestly so detrimental to the welfare of the girl. *Held*, further, that, acting upon the doctrine laid down in the case of *Skinner* v. *Orde* (L.R. 4, P.C. 60), which, if applicable, the High Court was bound to follow, and not

1.—Imperial Acts—continued.

Act VIII of 1890 (Guardians and Wards) —*concluded.*

losing sight of the analogy furnished by the provisions of the Guardians and Wards Act, VIII of 1890, as it was clearly for the present and future welfare of the girl that she should remain where she was and that she should not be delivered over to the petitioner, the application should be refused. The girl was discharged from all restraint with liberty to go where she liked. **16 B. 307.** [*R.*, U.B.R. (1892—1896). 415, 84 P.R. 1894, U.B.R. (1897—1901), 435, 25 C. 88=2 C.W.N. 379.]

(2)—*See* PENAL CODE, s. 188, 14 C.P.L.R. 174.

(3)—S. 25—*See* CRIM. PRO. CODE (1898), s. 100, 2 S.L.R. 2 Cr.=10 Cr. L.J. 219.

Act IX of 1890 (Indian Railways).

[REP. IN PART, ACT XIII OF 1898, S. 18. REP. IN PART AND AMENDED, ACT IX OF 1896. DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

See ACT XVIII OF 1854.

„ ACT XXV OF 1871.

„ ACT IV OF 1879.

(1)—*S. 7—City of Bombay Municipal Act (Bom. Act III of 1888), s. 394—Railway Company storing sleepers on their premises—License from the Municipal Commissioner for the use of premises not necessary.*—The G. I. P. Railway Company used certain plots of land in Bombay for the purpose of storing sleepers (timber) for the use of their line. In the Presidency Magistrate's Court, the Agent of the Company was charged, under s. 394 (i) (*d*) of the City of Bombay Municipal Act, with having used the plots for storing timber without a license from the Municipal Commissioners. *Held*, (1) that no license was necessary, as s. 7 (1) of the Indian Railways Act, IX of 1890, enabled the Railway Company to do all acts necessary for making, maintaining, altering or repairing and using the Railway, notwithstanding anything in any other enactment for the time being in force; (2) that the storing of sleepers was necessary for the maintenance, repairing, etc., of the railway line; (3) that, under sub-s. (2) to s. 7, the exclusive control of the Railway administration was vested in the Governor-General in Council, and if the Company was exercising its statutory powers in a manner inconsistent with the health of the inhabitants of Bombay or the safety of property therein, it was open to the Municipal Commissioners to make a representation to that effect to the Governor-General in Council. **11 Bom. L.R. 1181=34 B. 252.**

(2)—*S. 47 and rules thereunder—Criminal offences if created.*—Neither s. 47 of the Railways Act, nor the rules made by a Railway Company under that section, create any criminal offence. The section merely gives to the Company power to frame rules and to enforce them by imposing fines on its own officers. **11 C.W.N. 583=5 Cr. L.J. 463.**

1.—Imperial Acts—continued.

Act IX of 1890 (Indian Railways)—*continued.*

(3)—*Ss. 47, 68 and 112-a—Railway ticket not used on the day of issue.*—One of the rules made by a Railway Company under s. 47 of Act IX of 1890 is that tickets are only available on the day of issue. Therefore, a ticket not so availed of is not a proper ticket within the meaning of s. 68 of the Act. **1 Weir 870.**

(4)—S. 68 - *See* No. 3, *supra.*

(5)—*Ss. 68, 112—Travelling without ticket—Attempt to cheat—Penal Code, ss. 417, 511—Dishonest or fraudulent intention—Offence—Separate sentence—Construction of Statute—General and Special Acts—Repeal by implication—General Clauses Act (X of 1897), s. 26.*—The essence of an offence under s. 112 of the Indian Railway Act is dishonest or fraudulent intention, the intention to defraud the Railway Administration of its just dues. Merely travelling without a ticket is not an offence under the section. Travelling with a false and entirely irrelevant ticket with fraudulent or dishonest intention is an offence under s 112 (*a*) of the Railways Act. Facts which form the basis of a conviction and sentence under one charge cannot form the basis of a conviction and also a separate sentence under another charge. There cannot be cumulative sentences though a conviction might take place on an alternative charge or even both charges. It is ordinarily desirable that when an act or omission is made penal by two Acts, one general and the other special, the sentence should be passed under the Special Act. *Quœre.*—Whether in this country a special penal law repeals by implication, in every case, a previously existing general law relating to an offence of the same nature. **11 C.W.N. 100=4 Cr. L.J. 439=5 C.L.J. 47.**

(6)—*Ss. 68 and 112 (a)—Conviction under s. 112 (a) when sustainable.*—To justify a conviction under s. 112 (*a*) of the Railway Act, the prosecution must prove entry into a carriage in contravention of s. 68, that is, without a ticket and fraudulent intent in so doing. The mere fact that a man having a ticket travels beyond the station named on it does not necessarily warrant the inference that he entered the carriage with a fraudulent intent. **1 Weir 870.**

(7)—*Ss. 68, 112 and 113—Intentionally travelling beyond place of ticket.*—S. 112 does not apply to the case of a person, who, having entered a carriage with a proper ticket, travels on the strength of that ticket beyond the place authorised by it. The Act contains no provision for the judicial punishment of a person who intentionally travels beyond the place for which he has "a proper pass or ticket" and

I.—Imperial Acts—continued.

Act IX of 1890 (Indian Railways)—*continued.*

the only course open to the Railway officers is to proceed, in such cases, under s. 113 of the Act, which provides for a specially high "excess charge" where the passenger has not, before being detected by a Railway servant, notified to the Railway servant on duty with the train the fact of the charge having been incurred. **9 C.P.L.R. Cr. 1.**

(8)—*Ss. 70 and 114—Sale or transfer of single ticket*—Ss. 17 and 114 of the Act apply only to return or season tickets. The sale or transfer of single tickets is neither prohibited nor rendered penal by the Act. Where the accused bought a large number of tickets from the Railway Company during a festival and sold one of them at a rate higher than those for which he had bought them, *held*, that the accused was not guilty of cheating under s. 417, Penal Code, inasmuch as the person who bought the ticket admitted that he was aware of the higher rate and was not misled. **1 Weir 872.**

(9)—*S. 100—Charged and tried under the first part of the section—Procedure as in summons cases—Convicted, under the latter part, of a different offence—Procedure in warrant cases—Not followed, effect of.*—A Magistrate proceeded in the first instance as if the case fell under the first part of s. 100 of the Railways Act and adopted the procedure for summons cases. Eventually the accused was convicted of an offence, under the latter part of the section, which contemplates a warrant case. *Held*, that the action of the Magistrate was illegal. **5 M.L.T. 204.**

(10)—*S. 101—Disobedience of Railway rules and endangering the safety of any person, consequence of—Station-Master, duty and responsibility of.*—Rule 247 of the Railway rules, throws on a Station-Master the responsibility for ensuring that all points are correctly set and all facing points securely locked for the passage of trains So, where a Station-Master omitted to inspect the points and satisfy himself that they were correctly set, before he ordered the signal to be lowered, and allowed the mail to enter the station, and the mail in consequence came in on a side line and collided with the goods train there, *held*, he disobeyed the rule which he was bound to obey and thereby endangered the safety of many persons, and that he therefore committed an offence under cl. (*b*), s. 101 of the Railway Act. **4 L.B.R. 350=9 Cr.L.J. 352.**

(11)—An Assistant Station-Master, after he gave a line-clear ticket to the guard of a down train waiting at his station, received information from the next station to cancel the line-clear so given, in order to allow an up train proceeding from that station. He at once gave line-clear for the up train to come, but without first taking back the line-clear he had already issued to the guard of the down train. So, before he went out to look for the guard, the down train had started and afterwards met the up train between the two stations, though the driver was able to stop the train in time and avoided a collision. *Held*, the act of giving a line-clear for the up train without first getting back the line-clear he had given to the guard of the down train, was a flagrant disobedience of the Railway rules, and that he committed an offence under s. 101 of the Railway Act by endangering the safety of many persons by disobeying a rule which he was bound to obey. **4 L.B.R. 353=9 Cr. L.J. 348.**

(12)—Where, in consequence of the omission of a Station-Master to take down the line-clear signal, a mixed train was run into the station and a collision took place, in which one waggon was derailed, but as the train was moving slowly no person was injured, *held*, that the omission on the part of the Station-Master constituted an offence under s. 101, Railways Act. **11 C.W.N. 173=5 Cr. L.J. 16.**

(13)—*Engine-driver starting train without 'line-clear' ticket—No immediate danger—Whether driver guilty—Meaning of "danger."*—A fireman (accused) in charge of a train breaks the rules of his service and does a rash and negligent act, in starting the train at all, and in driving it down the line, without having been given "line-clear." Although, owing to the distance of the other goods train, running in the opposite direction, and owing to the precautions taken by the drivers of both the trains, the danger was remote, yet a state of danger was created when the accused took his train on to, and proceeded to drive it down, the line. By so doing he "endangered" the 'safety' of the persons on the two trains within the meaning of s. 101. Danger, which means the risk of loss or injury, is a relative term. It may be immediate or remote, but it is none the less danger, because it is remote and there is, therefore, a better chance of avoiding it. Although the danger had been averted by the two trains being brought to a standstill at a distance of some 300 yards from one another, that is practically equivalent to an admission that, up to the time of stopping the trains, there had been danger. **13 P.R. 1906 Cr.=5 Cr. L.J. 81=59 P.L.R. 1907.**

(14)—A Railway guard failed to give to the engine-driver a signal to sound his whistle before starting the engine, which he was bound to do under s. 244 of the Railway Rules. The engine having been put in motion, caused a boy, who was painting a waggon on the line, injury which resulted in his death. The Magistrate convicted him, under s. 101, Railways Act, of endangering the safety of persons by a rash and negligent act, and sentenced him to undergo simple imprisonment for one day and to pay a fine of Rs. 20. *Held*, ordering a new trial, that, as the trying Magistrate had found that the injury on the deceased boy was caused by the negligence of the accused and that the boy died thereupon, s. 304-*a*., I.P.C., appeared more applicable, especially as the trial under it must take place before a higher tribunal. **Rat. Un. Cr. C. 721=Cr. Rg. 47 of 94.**

1.—Imperial Acts—continued.

Act IX of 1890 (Indian Railways)—*continued.*

(15)—Where a driver ran his train at full speed with danger signals against him through a closed gate, *held*, that his act endangered the safety of himself and other persons in the train which he was driving and that the act, therefore, amounted to an offence under s. 101. **1 Weir 869.**

(16)—For a Railway driver to pass a danger-signal and go when the line is not clear must necessarily endanger the lives of all persons crossing the line as well as those in the train. For a gate-keeper to go to sleep and omit to open the gates is productive of a similar danger. **1 Weir 868.**

(17)—*Gateman being absent not opening gate at the approach of train.*—Where a gateman, being absent on duty, did not open a gate, when the train was approaching, *held* that he was liable to be convicted under s. 101, Act IX of 1890, and that he could not escape conviction because of the contributory negligence of engine driver. **9 P.R. 1892 Cr.**

(18)—*Endangering life and property by disobedience to rules—Substantial conviction.*—An Assistant Station-Master was charged with an offence under s. 101 of the Indian Railways Act. The offence consisted in the disobedience to the Railway rules, and thereby endangering the safety of persons travelling in a train, which collided with another train containing waggons. The Assistant Station-Master's duty under the rules was, to inspect all facing points over which the train would run, and he was personally responsible that all such points were correctly set and locked for the running through train. He was also responsible that the signals were not lowered, to admit a train, until all facing points over which the train would pass, were correctly set and secured, and the keys of all facing points over which the train would pass were in his possession. The Assistant Station-Master in this case, allowed the signal to be given for a train to run through his station without satisfying himself, that all the prescribed precautions had been taken by an official subordinate to him. Hence the collision. He was convicted and fined Rs. 30 by a Magistrate, who viewed the offence as a mere technical one, considering that the collision was the result of acts and omissions on the part of a subordinate official, the jamadar. *Held*, the Magistrate's opinion as to the offence of the Station-Master being a mere technical one, was wrong and that the station-master, considering the responsibility thrown on him by the rules, and considering also the extent of the danger to life and property, merited a more substantial punishment than the mere fine. *Held*, also that the essence of the offence consisted, not in the consequences directly referable to the default of the Station-Master, but in the danger or risk which it entailed. **4 L.B.R. 139=7 Cr. L.J. 417.**

(19)—*Sanction.*—No sanction is necessary to the institution of a complaint of an offence punishable under s. 101. **9 P.R. 1892 Cr.**

1.—Imperial Acts—continued.

Act IX of 1890 (Indian Railways)—*continued.*

(19-*a*)—*S. 101—Railway—Rash or negligent act—Act endangering safety of a person.*—Under s. 101 of the Railways Act, the offence consists in (1) disobeying rules or doing any rash or negligent act and (2) thereby endangering the safety of any person. It is not sufficient to show that the act of the accused or any omission on his part was likely to endanger the safety of any person. It must be proved affirmatively that it did, in point of fact, so endanger any person's safety. The Assistant Station-Master of Talwandi allowed a goods train to proceed to the next station Dogra, without informing the staff of the latter station of his doing so, and without previously obtaining a line-clear message from that station. A passenger train was nearing Dogra from the opposite direction, and the goods train was detained at the distant signal of the Dogra station till line was clear to receive the goods train. *Held*, that the Assistant Station-Master could not be convicted of the offence under s. 101 of the Railways Act. **8 P.L.R. 1910 Cr.**

(20)—*See* PENAL CODE, s. 304-*a*, 32 C. 73= 8 C.W.N. 645.

(21)—S. 107.—*See* RASH AND NEGLIGENT ACT, CAUSING DEATH BY, 22 P.R. 1905 Cr.

(22)—*Ss. 107 and 134—Jurisdiction of Criminal Court—Goods sent by Railway from Karachi to Lahore—Goods falsely described—Loss in freight caused to Railway Administration—Cheating—Penal Code, s. 415—Abetment—Penal Code, s. 107.*—*See* **7 P.R. 1900 Cr.**

(23) *S. 110—"Compartment," meaning of—Smoking in compartment.—Per Jenkins, C.J., and Candy, J.*—The term "compartment" in s. 110, Indian Railways Act, 1890, means a division of a Railway carriage, separated from the other divisions by partitions right up to the roof of the carriage; each such division being completely screened off from its adjoining divisions. *Per Ranade, J. contra*:—The word "compartment" is used in s. 110, Act IX of 1890, in the sense in which it is used throughout the Act, and does not necessarily mean a completely partitioned division. **24 B. 293= 1 Bom. L.R. 688.**

(24)—*S. 112—Entry into Railway carriage without ticket.*—The mere entry into a Railway carriage without ticket, without any intent to defraud the Company, does not constitute an offence under s. 112, Act IX of 1890. **27 P.R. 1905 Cr.**

(25)—*Act IV of 1879, s. 32—Father travelling with son aged six years without paying latter's fare.*—Where the accused travelled in company with his son, aged six years, from one station to another station on a railway line without paying the half fare due to his son, *held*, that, even though the accused was not guilty as the principal offender, he was clearly liable as an abettor, to be punished under s. 32. **1 Weir 869, F.B.**

1.—Imperial Acts—continued.

Act IX of 1890 (Indian Railways)—*continued.*

(26)—*Railway fare—Fine.*—The reference in s. 112 of the Railways Act to the amount of the single fare does not mean that the payment of such fare may be ordered in addition to the fine but that the total fine imposed shall not exceed Rs. 100 *plus* the fare referred to. **17 C.P.L.R. 32.**

(27)—*See* Nos. 5, 7, *supra.*

(28)—S. 112-*a*—*See* Nos. 3, 6, *supra.*

(29)—*S. 113—Excess charge and fare, how recoverable—Imprisonment in default.*—S. 113, sub-section 4 of the Railways Act, which directs that on failure to pay on demand excess charge and fare when due, the amount shall, on application, be recovered by a Magistrate as if it were a fine, does not authorize him to impose imprisonment in default. **1 Bom. L.R. 166.** [*R.*, 5 N.L.R. 151].

(30)—The provision in s. 113 of the Railway Act, which directs that, on failure to pay on demand excess charge and fare when due, the amount shall, on application, be recovered by a Magistrate as if it were a fine, does not authorize the Magistrate to impose imprisonment on default. The excess charge and fare referred to in s. 113 is not a fine, though it may be recovered as such. **18 B. 440.** [*F.*, 20 M. 385, 1 Bom. L.R. 166, 5 N.L.R. 151; *R.*, 21 C. 985.]

(31)—S. 113 of the Railway Act directs that on failure to pay on demand excess charge and fare, when due, the amount shall, on application, be recovered by a Magistrate as if it were a fine. The excess charge and fare referred to in s. 113 is not a fine, though it may be recovered as such. A Magistrate is not authorised to impose imprisonment in default of payment of the excess charge and fare. **20 M. 385=1 Weir 871.**

(32)—*Application to recover excess fare—Magistrate not to exercise judicial functions—Procedure.*—A Magistrate is not to exercise judicial functions when an application is made to him by a duly authorized Railway servant to recover the amount of excess fare claimed, but is merely to take the necessary steps to recover it. **L.B.R. (1872—1892), 606.**

(33)—*S. 113—Excess fare and charge—Applicability of s. 64, Penal Code.*—S. 5 of the General Clauses Act makes s. 64 of the Penal Code applicable to the recovery of excess charge and fare ordered to be paid under s. 113 of the Indian Railways Act. **Rat. Un. Cr. C. 871=Cr. Rg. 43 of 1896.**

(34)—*Magistrate's order under the section—Revision.*—A Magistrate's proceedings under s. 113, are open to revision under s. 435, Crim. Pro. Code. **13 P.R. 1891 Cr.**

(35)—*See* No. 7, *supra.*

(36)—*S. 113, sub-s. 1—Travelling without a ticket.*—Under s. 113, sub-s. 1 of the Act, it is

1.—Imperial Acts—continued.

Act IX of 1890 (Indian Railways).—*continued.*

an offence to travel without a ticket It is immaterial to consider how many tickets were issued on that particular date. **1 Weir 871.**

(37)—*Ss. 113, 118, 122—Amount recoverable under s. 113—'should be recovered as if it were a fine'—Imprisonment in default of payment—Legality—Travelling on the footboard without ticket—Applicability of ss. 118, 122.*—B was found travelling without a ticket on the footboard of the brake-van of a goods train. Under s. 113, Railways Act, he was ordered to pay Rs. 1-10-0 and to suffer, in default of payment, seven days' simple imprisonment. *Held* (1) that the words 'shall be recovered as if it were a fine' in s. 113 of the Act only authorize recovery by attachment and sale of moveable property, and not the infliction of imprisonment in default of payment.

Obiter.—If B persisted in riding on the footboard after prohibition, he is liable to prosecution under the second clause of s. 118 of the Railways Act, whilst, if there was no such prohibition before he was finally discovered and removed, but he entered on the railway unlawfully, he is liable to prosecution under s. 122. **5 N.L.R. 151.**

(38)—*Ss. 113, 132—Travelling without ticket—Imprisonment in default of payment of fine.*—Travelling in a train by a passenger without having a proper ticket with him is not an offence under the Railways Act of 1890. A Magistrate is not, therefore, competent to sentence the accused to imprisonment in default of payment of the excess charge and penalty ordered to be paid. **20 A. 35.** [*R.*, 5 C.L.J. 47=11 C.W.N. 100.]

(39)—*Ss. 113, 132 and 133.*—A person failing or refusing to pay an excess charge under s. 113 does not become guilty of an offence, and cannot be punished by a Magistrate, whose duty it is to recover the sum payable by a passenger as if it were a fine. S. 133 does not apply to proceedings under s. 113; neither does s. 31 of the Court Fees Act. **U.B.R. (1892—1896), Vol. I, 300.** (L.B.R., 1872—1892, 606, *R.*)

(40)—S. 114—*See* No. 8, *supra.*

(41)—*S. 118 (Railways Act, V of 1879, s. 33)—Applicability of the section to non-passengers.*—Where the accused, a seller of fruit at the platform of a railway station, stood on the footboard of the carriage selling fruit to the passengers and continued so to stand after the bell for the departure of the train had been rung, *held*, that the accused, not being a passenger, was not punishable under s. 33 of Act IV of 1879. **1 Weir 873.**

(42)—S. 118—*See* No. 37, *supra.*

(43)—S. 118 (2)—*See* CHEATING, 25 P.R. 1903 Cr.

(44)—S. 120—*See* PENAL CODE, s. 95, 1 N.L.R. 139.

1.—Imperial Acts—continued.

Act IX of 1890 (Indian Railways)—*continued.*

(45)—*S. 121—Right of way claimed by accused, charged with obstructing a Railway servant.*—A Railway Company cannot, any more than a private individual, by their orders, make it the duty of their agent to interfere with an existing right of way. Where the accused was convicted under s. 121, Railway Act, with having obstructed the Resident Engineer in putting down a line for a fence, which the accused alleged would have interfered with his right of way, *held* that the conviction of the accused without deciding whether or not the alleged right of way existed, was not proper. **Rat. Un. Cr. C. 675 = Cr. Rg. 41 of 93.**

(46)—*S. 122—Easements Act, s. 24—Entry on railway premises by dominant owner to effect necessary repairs.*—The Company, whose servants the accused were, had a mill on one side of the Railway line and a ginning factory on the other, and to bring water from the one to the other, there was a pipe laid beneath the Railway line and brick reservoirs at each side to preserve the proper level of the water. The Magistrate had convicted the accused under s. 122, Railway Act, because they entered on the railway premises to do some repairs to the pipe and reservoirs, without having first obtained the permission of the Railway Company to their entry. There was evidence to show that the repairs were necessary. *Held* that as the pipe and reservoirs belonged to the Company, and were kept in repair by them, they, as the dominant owners, would have a right to enter on the premises of the Railway Company, the servient owners, to effect any repairs that might be necessary. The conviction was, therefore, wrong. **22 B. 525.** [*R.*, 30 B. 348 = 8 Bom. L. R. 22 = 2 Cr.L J. 216.]

(47)—*Crim. Pro. Code (1898), s. 190 (1) (h).*—This section is not one of those mentioned in s. 131 which confers the power of arresting without warrant for certain offences under the Act, and the procedure applicable to non-cognizable cases must be followed. **U.B.R. (1897—1901), Vol. I, 54.** (U.B.R., 1892—1896, Vol. I, 28 and 328, *R.*).

(48)—*See* No. 37, *supra.*

(49)—*S. 125, cls. 1 and 2—Permitting cattle to stray upon Railway— Respective liability of the owner and of person in charge of the cattle —Direction of Magistrate.*—Where, owing to the negligence of the person in charge of any cattle, the cattle is allowed to stray upon a Railway, there is nothing in cl. 1 of s. 125 to restrict the discretion of the Court in ascertaining whether the owner or the person in charge is guilty, and awarding punishment accordingly. But, under the second clause of the section, which makes punishable wilful acts of driving or knowingly permitting cattle to be upon a Railway line, the Railway authorities are given the option to prosecute the owner instead of the person in charge. This provision is of a very penal character, and removes the discretion as to the person to be held liable to punishment from the Court to the Railway authorities. **18 M. 228 = 1 Weir 874.**

1.—Imperial Acts—continued.

Act IX of 1890 (Indian Railways)—*concluded.*

(50)—*S. 126—Offence under the section, what constitutes.*—Where the accused unlocked and turned the turn-table at a railway station, *held*, that the accused was guilty of an offence under s. 126, although, in the circumstances of the case, there was little likelihood of injury being caused by him, no engines being on either side of the line just then. **1 Weir 875.**

(51)—*Placing stones on rails—Defence.*—A person charged with having placed a stone on the rails under s. 126 of the Railways Act cannot be allowed to plead that no train was due at the time. **Rat Un. Cr. C. 829 = Cr. Rg. 72 of 1895.** (19 B. 716, *F.*)

(52)—*Abetment of the offence.*—Where a person confessed that he knew of the plot to remove the rails and that he kept watch while the act was being done, *held* that he was guilty of abetment of the offence mentioned in s. 126, Railways Act. **1 Bom. L.R. 682.**

(53)—*Ss. 126 and 130—Throwing stones at a railway train.*—An offence under s. 126 cannot be tried by a Magistrate of the first class. All such cases should be sent to the District Magistrate for trial. Provision for the whipping of minors under the Act pointed out. **U.B.R. (1892—1896), Vol. I, 302.**

(54)—S. 127—*See* ACT VI OF 1864, s. 5, 11 C.P.L.R. 8 Cr.

(55)—*Ss. 127 and 130—Offences under—Jurisdiction to try.*—An offence under s. 127 of the Railways Act is punishable with transportation for life, or with imprisonment for a term which may extend to ten years, and is triable only by a Court of Session, or by a Magistrate invested with special powers under s. 30 of Cr. P.C. **14 C.P.L.R. 176.**

(56)— S. 128—*See* CRIM. PRO. CODE (1898), ss. 235, 239, 587, 29 C. 385 = 6 C.W.N. 468

(57)—S. 130—*See* Nos. 53, 55, *supra.*

(58)—S. 132—*See* Nos. 38, 39, *supra.*

(59)—*S. 133—Offences under section by whom triable.*—Under s. 133 of the Railways Act, offences under that Act cannot be tried by Magistrates of the third class. **U.B.R. (1897—1901), Vol. I, 374.**

(60)—S. 133—*See* No. 39, *supra.*

(61)—S. 134—*See* No. 22, *supra.*

See PENAL CODE, s. 186, 1 C.W.N. 74.

Act XI of 1890 (Prevention of Cruelty to Animals).

[DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3; AS AMENDED BY REG. III OF 1899, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4]

(1)—*Ss. 2 and 3—Scope of the Act—Crabs.*—The provisions of the act apply to cruelty exercised towards any animal which is either

1.—*Imperial Acts*—continued.

Act XI of 1890 (Prevention of Cruelty to Animals)—*concluded.*

domestic or which being *ferae naturæ* has been captured and is in captivity. A crab being an animal, it may be presumed, in the absence of proof to the contrary, that to pull the legs of a living crab and to crush its shell are acts, which must necessarily cause pain to it. So long as an animal is *ferae naturæ*, and it is not brought under subjection and control of man, it is not protected by the Act. But when it is captured or domesticated, the law protects it from cruelty, if such cruelty is practised at a place, or in the manner, laid down in the Act. **1 C.W.N. 642.**

(2)—*Ss. 2 and 3—Scope of the Act—Crabs.*—The provisions of Act XI of 1890 applied to cruelty exercised towards any animal which is either "domestic" or which being *ferae naturæ* has been "captured" and is in captivity. The word 'animal' ordinarily means an organised or living being having sensation and power of voluntary motion, an inferior or irrational being as distinguished from man, and crabs are " animals " within the definition of s. 2 of the Act. Where a person exposed live crabs for sale with all their legs pulled off, and broke the backs of some living crabs with the shell of a dead crab, *held*, that he was guilty under s. 3 of the Act. **24 C. 881.**

(3)—S. 3—*See* Nos. 1, 2, *supra*.

(4)—*S. 3, cl. (a),(c)—Starving a calf to death—Ill-treatment, if includes starvation.*—The mere starving a calf to death is not an offence within the meaning of s. 3, cl. (*c*) of the Act, which applies only where a person offers, exposes or has in his possession, for sale, any live animal. Starvation, however is, in view of the collocation of words in the said section, one kind of ill-treatment, and the words " otherwise ill-treats any animal " in s. 3, cl. (*a*) include starvation of an animal. **2 C.L.J. 624=3 Cr.L J. 116.**

(5)—*S. 3 (b)—Town Police Act, XLVIII of 1860, s. 21—Cruelty to animals by servants of Railway Company—Liability of Company.*—Act XI of 1890 is aimed at the individual who actually practises the cruelty and was not intended by the Legislature to make a master penally liable for the act of his servant done in the course of the servant's employment, and certainly not when the act is done contrary to the orders of the master. When a Railway Company's servant inflicts cruelty to animals in spite of the Company's instructions to the contrary, the Company cannot be prosecuted for the acts of their servant under s. 3 (*b*) of Act XI of 1890. **26 B. 609=4 Bom. L.R. 290.**

(6)—S. 5—*See* CRIM. PRO. CODE (1898), ss. 190, 191, 260 and 537, 31 P.L.R. 1905=2 Cr.L.J. 187.

(7)—*S. 6 (1)—" Permit," explained.*—The word " permit" in s. 6 (1) of Act XI of 1890, implies knowledge of that which is permitted. **20 A. 186.**

1.—*Imperial Acts*—continued.

Act III of 1891 (Evidence Act, 1872, Amendment).

[REP. IN PART, ACT V OF 1898; ACT V OF 1899, s. 5. DECLARED IN FORCE IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3.]

See EVIDENCE ACT, SS. 6, 14 and 54, 27 C. 139=4 C.W.N. 97.

Act IV of 1891 (Crim. Pro. Code, 1882, Amendment Act).

[REP., ACT V OF 1898].

—*Crim. Pro. Code (1882), ss. 250 and 560—Order of compensation—Person not really the complainant.*—A Civil Court peon was sent by a Munsiff to attach the property of a judgment-debtor. The peon reported to the Munsiff that he had been obstructed. The Munsiff sent the case to a Deputy Magistrate for investigation and trial. The Magistrate dismissed the case and directed the peon to pay compensation to the accused. *Held*, that the award of compensation was illegal, as the peon was not the real complainant, nor could the proceedings properly be said to have been instituted before the Magistrate upon his information. **20 C. 481.** [*F.*, A.W.N. 1903, 216=26 A. 183]

Act IX of 1891 (Merchandise Marks and Sea Customs Acts Amendment).

See ACT IV OF 1889.

„ TRADE MARK, 31 C. 411.

Act XI of 1891 (Indian Factories).

See ACT XV OF 1881.

Act XVIII of 1891 (Bankers' Books Evidence).

[AMENDED, ACT I OF 1893, ACT XII of 1900. DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN UPPER BURMA (EXCEPT SHAN STATES), ACT XIII OF 1898, S. 4.]

(1)—*Ss. 2 and 4—Companies not coming under the Act—Admissibility of certified copies of entries.*—Certified copies of entries in the books of a Bank are not admissible in evidence, if the Bank does not come within the definition of a " company " as defined in sub-s. 2 of the Act. **4 C.W.N. 433, F.B.**

(2)—S. 4—*See* No. 1, *supra*.

Act I of 1894 (Land Acquisition).

[APPLIED TO THE CALCUTTA MUNICIPALITY, WITH MODIFICATIONS, BEN. ACT III OF 1899, S. 557. DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XII OF 1898, S. 4.]

See CRIM. PRO. CODE (1898), S. 476, 27 C. 820.

See PENAL CODE, s. 193, 27 C. 820.

1.—Imperial Acts—continued.

Act I of 1894 (Land Acquisition)—*concluded.*

(1) *Ss. 9 and 10—Penal Code, s. 177—False information to Collector in proceedings under Act I of 1894.*—A Deputy Collector made a complaint against the lessor and the lessee, claiming to hold a portion of the land taken up, under the Land Acquisition Act, that thay had given false information within the terms of s. 177, Penal Code and s. 10 of the Land Acquisition Act in certain written statements that they had made to the Collector in response to a call from him under s. 9. But, neither in the complaint made by the Deputy Collector nor in his examination by the Magistrate was there any reference to any particular statement made by either of the accused as being a false statement. The complaint was that the written statements put in were false and they contained more than one statement. Further, the Deputy Collector did not put in the written statements upon which he desired to proceed, either with his written complaint or at the time of his examination by the Magistrate. *Held*, that the Magistrate had acted without proper discretion in issuing process for the attendance of the accused. He was bound to require from the complainant the particular statement or statements on which the accusation was made. **27 C. 985=5 C.W.N. 131.**

(2)—S. 10—*See* No. 1, *supra*.

(3)—*S. 53—Collector acting under the Act, whether a "Court"—Power of Collector to administer oath.*—S. 53 of the Act declares that the provisions of the Code of Civil Procedure applies to the proceedings before the Court under that Act. But the context clearly shows that by the expression "the Court" a Collector is not included. The whole of Part VIII of the Act in which s. 53 appears distinguishes between orders by or before a Collector and those by or before a Judge or Court. There is no authority given to the Collector to administer an oath or to require a verification. The nature of his duties also shows this, as he can pass no final order save with the consent of parties. **27 C. 820.**

Act IX of 1894 (Prisons Act).

[REP. IN PART, ACT XIII OF 1898, S. 18. DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED REG. III OF 1899, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

See ACT XXVI OF 1870.

(2)—*Ss. 45 and 52.*—Separate sentences should not be passed under ss. 45 and 52 at the same trial. **U.B.R. (1892—1896), Vol. I, 298.**

(3)—*S. 52—Trial—Procedure.*—Where a Magistrate deals with an offence under s. 52 of the Prisons Act, he must frame a charge and record the examination of the accused under s .364 of the Crim. Pro. Code and proceed otherwise in a regular manner. **A.W.N. 1900, 183.**

1.—Imperial Acts—continued.

Act IX of 1894 (Prisons Act)—*concluded.*

(4)—*Presidency Magistrate, whether a "District Magistrate" or "Magistrate of the First Class" under—Jurisdiction to try offences under the Act.—Held*, that ordinarily a Presidency Magistrate would not be included in the terms "District Magistrate" or "Magistrate of the First Class," and that therefore a Presidency Magistrate has no jurisdiction to try offences under s. 52, Act IX of 1894. **32 M. 303.**

(5)—*See* No. 2, *supra*.

(6)—*S. 54.*—The Magistrate convicted a prison warder under s. 54 read with Rule 217 of the Jail Manual. But the accused was not a constable of the jail police guard and jail police guards became obsolete in 1884. As the accused was convicted under a rule not applied to him, the conviction was quashed. **U.B.R. (1892—1896), Vol. I, 299.**

(7)—S. 60 (*t*)—*See* LOCAL GOVERNMENT, Rat. Un. Cr. C. 827.

Act III of 1895 (Indian Criminal Law Amendment).

[S. 5 REP., ACT IV OF 1909; S. 6 REP., ACT V OF 1900; S. 7 REP., ACT VI OF 1898. DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3.]

(1)—*S. 4—Whipping in addition to imprisonment in case of dacoity.*—Under s. 4 of the Whipping Act, 1895, a sentence of whipping in addition to imprisonment is not legal in the case of a conviction for dacoity which was committed prior to the previous conviction for a similar offence. **25 B. 712=3 Bom. L.R. 419, F.B.**

(2)—*Sentence of whipping when to be executed.*—It is not competent to a Judge to postpone a sentence of whipping till after the expiry of the sentence of imprisonment imposed upon the accused. **4 Bom. L.R. 929.**

See ACT VI OF 1864, 4 Bom. L.R. 436.

,, CRIM. PRO. CODE, s. 391 (3), 4 Bom. L.R. 436.

Act VIII of 1895 (Police Act, 1861, Amendment).

[REP. IN PART, (IN RANGOON), BUR. ACT IV OF 1899, S. 2 (WHEN NOTIFIED). PORTIONS EXTENDED TO CALCUTTA AND SUBURBS, WITH MODIFICATIONS. BEN. ACT I OF 1898. DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872, S.3, AS AMENDED BY REG. III OF 1899, S. 3.]

—S. 34—*See* ACT V OF 1861, s. 34, 27 C. 655.

Act VI of 1896 (Penal Code Amendment).

[DECLARED IN FORCE IN THE SANTHAL PARGANAS REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S, 3.]

See PENAL CODE, ss. 28, 230, 235, 47 P.L.R. 1903.

1.—Imperial Acts—continued.

Act XI of 1896 (Legal Practitioners).

See ACT XVIII OF 1879.

(1)—S. 1—*See* ACT XVIII OF 1879, s. 1, 3 P.R. 1900 Cr.

(2)—*See* REVISION, P.L.R. 1900, p. 17, Cr.

See ACT XVIII OF 1879, ss. 13 and 14, 31 P.W.R. 1909 Cr.

See TOUT, 27 P.W.R. 1909 Cr.

Act XII of 1896 (Excise).

[REP. IN PART, ACT XIII OF 1898, S. 18. DECLARED IN FORCE IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

(1)—*Possession of intoxicating drug, when punishable under—Possession of hemp whether punishable under—,Majum, whether an intoxicating drug—Evidence Act,s. 25—Incriminating statement made by the accused to Police officer, whether admissible in evidence.*—Possession of an intoxicating drug to be punishable must be possession with knowledge and assent. The Excise Act does not render the possession of hemp punishable, but only the possession of *ganja*, *bhang* or *charas* or any preparation or admixture of the same. *Ganja*, *bhang* and *charas* are the narcotic products of hemp. Unless *ganja*, *bhang*, and *charas* represent all the parts or products of the hemp plant from which *majum* can be prepared, it is obvious that *majum* might not be an intoxicating drug within the meaning of the Excise Act. S. 25, Evidence Act, absolutely bars proof of an incriminating statement made by an accused person to a Police officer. **U.B.R. (1909), 3rd Quarter, Excise, 1.**

(2)—*Penal Code, s. 201—"Offence," if includes breach of provisions of Excise Act.*—The term "offence" in s. 201. Penal Code, does not include a breach of the provisions of the Excise Act, as such breach is not punishable with imprisonment for a term of six months or upwards. **1 L.B.R. 308.**

(3)—*See* CRIM. PRO. CODE (1898), ss. 202, 204, 242, 244 and 439, 1 P.R. 1908 Cr. = 4 P.R. 1908 Cr. = 86 P.L.R. 1908 = 7 Cr. L.J. 202.

(4)—*Ss. 2 (2), 37, 41 and 57—Excise officers—Arrest—Report—Jurisdiction to try accused.*—An Inspector of Police is authorised by Punjab Government Notification No. 735½, dated the 26th March, 1885, which is in force under s. 2 (2) of Act XII of 1896 to arrest persons for possession of prohibited articles under s. 37 of the Act. Under s. 41 such Inspector is required to report the arrest to his official superior and to take the accused with all convenient despatch to the Magistrate for trial.

It is a sufficient compliance with s. 41 if the officer sends the accused to the Magistrate and a delay in sending the accused does not affect the jurisdiction of the Magistrate to hear the case. *Held* that under s. 57 of Act XII of 1896 a Magistrate is competent to try an offence upon a police report made by a Deputy Inspector of Police. **46 P.L.R. 1901.** (9 P.R. 1897, *D.*)

1.—Imperial Acts—continued.

Act XII of 1896 (Excise)—*continued.*

(5)—*S. 3—Presumption as to spirits.*—Ordinarily the presumption with respect to spirits, which were not imported and for the sale of which the license did not provide, found in the possession of a person other than a licensed vendor of distillery spirits was that such spirits were country spirits. **U.B.R. (1892—1896), Vol. I, 87.**

(6)—*Spirit—Joint possession of father and son—Mixture of spirit and lahan.*—*See* **10 P.R. 1901 Cr.**

(6-*a*)—S. 3 (*k*)—*See* No. 26, *infra*.

(7)—*Ss. 3 (1) (n), 30, 51—Illegal possession of larger quantity of liquor—Possession for private use—Burden of proof, on the accused—Evidence Act, ss. 105 and 106.*—Where a person is charged with having in his possession any quantity of fermented liquor larger than that specified in s. 3 (1) (*n*) of the Excise Act, and pleads that he purchased it for his private use and not for sale, the burden of proving such special exception lies on him under s. 105 or s. 106, Evidence Act. **5 L.B.R. 52, F.B. = 2 Ind. Cas. 543.**

(8)—*Ss. 3, 30 and 38—Possession of liquor.*—S. 3, cl. (*k*) of the above Act says that a person can legally possess 2 imperial gallons or 12 reputed quart-bottles of foreign liquor or fermented liquor, and Finance and Commerce Notification No. 42, dated 26-6-1890 says that beer manufactured at Mandalay Brewery shall be deemed to be foreign fermented liquor. Hence possession of the same within the said limits was no offence. **U.B.R. (1892—1896), Vol. I, 92.**

(9)—*Ss. 5 and 30—Manufacture and possession of liquor.*—Manufacture and possession of fermented liquor form different offences under s. 30 of Excise Act, 1896. Hence s. 71 of I.P.C. is not necessarily applicable to these. It is possible for a person to contravene s. 5 without contravening s. 21, and to contravene s. 21 without contravening s. 5 of the above Act, and there seems to be no reason why he should not contravene both at the same time. S. 65, I.P.C., applies where an offence is punishable, not with imprisonment or fine, but with imprisonment as well as fine, which an offence under s. 33 of the Excise Act is. **U.B.R. (1892—1896), Vol. I, 93.**

(10)—*S. 21—Sale—Not for profit.*—P, who held no license under the Excise Act, obtained some methylated spirits from a shop for the Secretary of a Club, sent it from there to the club, but made no profit on the transaction; *held*, that the transaction did not amount to a sale within the meaning of s. 21 of the Act. **6 A.L.J. 238 = 31 A. 293 = 9 Cr. L.J. 503 = 2 Ind. Cas. 192.**

(10-*a*)—*See* No. 26, *infra*.

(10-*b*)—S. 22—*See* No. 26, *infra*.

(11)—*S. 30—Possession of foreign spirits.*—Foreign spirits found in the accused's possession and purchased by him for his private use and

1.—Imperial Acts—continued.

Act XII of 1896 (Excise)—*continued.*

not for sale, is no cause of offence under s. 30 of the Act. **U.B.R. (1892—1896), Vol. I, 97.**

(12)—S. 30—*See* Nos. 7, 8, 9, *supra.*

(13)—*Ss. 30 and 46, cl. (c)—Introduction of foreign spirits into places to which the Act is applicable.*——S. 46, cl. (*c*) of the Excise Act makes the bringing of any quantity of foreign spirits into any territory to which the Act extends, illegal and punishable under the Act, irrespective of the quantity or of the purpose for which it may have been brought. **14 P.R. 1907 Cr.**

(14)—*Ss. 30 and 51—What constitutes possession.*—The collection of toddy in pots on a tree is held to constitute possession, although the owner may have the pots hanging on the tree, till it suits him to remove them. If the contents of the pot exceed four reputed quart bottles, he will be liable to punishment under s. 30 of the Excise Act. **U.B.R. (1892—1896), Vol. I. 98.**

(15)—*Ss. 36, 37, 38, 41, 57—Excise Act (XXII of 1881), ss. 27, 28, 29, 30, 34, 47—Excise officer.*—An officer, who, before the coming into force of Act No. XII of 1896, is one of the class of officers on whom had been conferred powers to act as Excise officer under ss. 27, 28, 29 of Act XXII of 1881, and who had therefore power in certain events to take a case before a Magistrate under s. 32, is an Excise officer within the meaning of s. 47 of Act XXII of 1881. **20 A. 70.** [*F.*, A.W.N. 1908, 157 = 5 A.L.J. 444 = 30 A. 377 = 8 Cr. L.J. 5; *R.*, 103 P.L.R. 1903.]

(15-*a*)—*Ss. 36, 37, 38, 44, 57, 49 and 52—Police Officer invested with powers under s. 44, whether Excise officer—His authority to make a complaint of an offence under s. 52 or 49.*—A Police Officer invested with powers under s. 44 can only be treated as an Excise officer for the purpose of ss. 36 to 38, but he is not an Excise officer within the meaning of s. 57, so as to be competent to make a complaint or report of an offence punishable under ss. 49 or 52 of the Act. **13 P.R. 1910 Cr.**

(16)—*Ss. 36, 38, 45 and 57—Absence of complaint—Police report.*—*Held*, that a Magistrate is competent to take cognizance of an offence under s. 45, Act XII of 1896, on the *chalan* of a Deputy Inspector of Police under s. 190 (*b*), Crim. Pro. Code. Under the Punjab Government Notification 735, dated 26th March, 1885, which, under s. 2 (2) of the Act, is still in force, Deputy Inspectors of Police are Excise officers with powers under ss. 36 and 38 of the Excise Act XII of 1896. **76 P.L.R. 1901.** (9 P.R. 1897 Cr., *D.*; 22 P.R. 1900 Cr., 15 P.R. 1887 Cr., 4 P.R. 1893 Cr., *F.*). *See, also*, 8 P.R. 1901 Cr.

(17)—S. 37—*See* Nos. 4, 15, *supra.*

(18)—*Ss. 37 and 41—Charas, possession of, in contravention of rules—Jurisdiction of Magistrate—Report—Complaint.*—The accused

1.—Imperial Acts—continued.

Act XII of 1896 (Excise)—*continued.*

was convicted for being in possession in contravention of rules of 'Charas' under s. 48 of Act XII of 1896. He was arrested by a Sergeant of Police, who reported the case at the Police Station. The case was investigated by a Sergeant of Police attached to the Police Station, who challanned the accused on the third day after his arrest to the District Magistrate, through the District Superintendent of Police. The District Magistrate made the case over for trial to one of the Magistrates subordinate to him. The order sending the case for trial only bore the initials of the District Magistrate without any designation of his office. It was contended for the accused that the Magistrate was not competent to try the case, as there was no complaint or report of the Collector or an Excise officer to give the Magistrate jurisdiction. *Held*, that the contention was not valid. As the District Magistrate was the same individual as the Collector, and as the case would be reported to him in the same way by the Police whether as District Magistrate or Collector, it would be reasonable to hold that the order was passed by him in his capacity of Collector, as well as in his capacity of District Magistrate, and that the Magistrate had jurisdiction to try the accused. *Held*, further, that the Magistrate had jurisdiction under s. 41 of Act XII of 1896. **103 P.L.R. 1903.** (8 P.R. 1901 Cr. = 76 P.L.R. 1901, 20 A. 70, 22 P.R. 1900 Cr. = 46 P.L.R. 1901, *R.*)

(19)—*Ss. 37, 44 and 57—Court taking cognizance of an Excise offence on Police Chalan, Crim. Pro. Code (1898), s. 190 (6)*—A Magistrate is competent to try a person accused under s. 57 of Act XII of 1896, on the report or Chalan of a Deputy Inspector of Police, authorised to make the report under the Notification under s. 44 of the Act on an arrest made by a Police Inspector who has, under Punjab Notification No. 735½, dated 26th March, 1885 (which notification under s. 2 (2) is still in force) to arrest the accused. The police chalan is a police report of the fact constituting an offence. **22 P.R. 1900 Cr.** (9 P.R. 1897 Cr., *D.*) [*F.*, 8 P.R. 1901 Cr., 9 P.R. 1903 Cr.]

(20)—S. 38—*See* ACT I OF 1878, ss. 14, 15 and 16, 4 L.B.R. 121 = 14 Bur.L.R. 202 = 7 Cr.L.J. 87.

(21)—S. 38—*See* Nos. 8, 15, 16, *supra.*

(22)—*S. 39—Sale of liquor by licensed vendor's relative or servant.*—Where an accused person, the aunt of the retail licensed vendor, sold liquor during his temporary absence to a customer, though she had no license in her name, *held* that she acted in every way as his servant, the license not prohibiting the employment of servants by a licensed vendor. **S. C. 179, Oudh.**

(23)—*S. 41—Accused being taken before Magistrate.*—Under s. 41 of the Act it is not essential for an Excise officer that he should himself take the person arrested before the Magistrate; it is enough if an accused was

I.—Imperial Acts—continued.

Act XII of 1896 (Excise)—*continued.*

with all convenient despatch taken before a Magistrate, by the ordinary procedure by which the accused are brought before the Magistracy. **9 P.R. 1903 Cr.**

(24)—S. 41—*See* Nos. 4, 15, 18, *supra*.

(25)—*Ss. 41, 21, 22 and 3 (k)*—Possession of liquor or spirit within the quantity allowed by s. 3, cl. (*k*) not punishable.—To be punishable under s. 41, it must be proved or admitted that the person accused has contravened either s. 21 or s. 22. The possession of a quantity of liquor or spirit, illicitly manufactured or obtained within the quantity allowed by s. 3, cl. (*k*) does not contravene s. 21 and is not punishable under s. 41. **L.B.R. (1893—1900), 121.**

(26)—S. 44—*See* No. 19, *supra*.

(27)—*Ss. 44 (1), (2), 46 and 57—Report by police officer invested with powers under s. 44 (1).*—Police officer invested with powers under s. 44 (1) of Act XII of 1896 cannot be regarded as Excise officers, except for purposes strictly connected with the exercise of those powers. A licensed vendor of liquor cannot be prosecuted for the breach of his license on the report of a Deputy Inspector of Police. **9 P.R. 1897 Cr.** [*D.*, 22 P.R. 1900 Cr., 8 P.R. 1901 Cr.]

(28)—*Ss. 44 (2), 48 and 57—Definition—Excise officer—Jurisdiction.—Held*, that a head constable is an Excise officer within the meaning of s. 57 of the Excise Act, 1896. A.W.N. 1908, 157=5 A.L.J. 444=30 A. 377=8 Cr. L. J. 5.

(29)—*S. 45—Extracting tari, if an offence.*—Extracting the sap of a *tari* tree is not manufacturing fermented liquor and is not an offence punishable under s. 45 of the Act. **L.B.R. (1893—1900), 336.**

(30)—*S. 45—Illegal search—Conviction of offence—Reward.*—An acoused may be convicted of an offence under s. 45 of the Excise Act, 1896, though his house was entered and searched without legal authority. Persons, who make a search illegally, render themselves liable to be sued for damages, but their illegal action does not affect the question whether the person whose house is illegally searched has committed an offence against the Excise Law. It may, however, properly be made a ground for not granting a reward upon a conviction, which would be improper under such circumstances. **L.B.R. (1893—1900), 369.**

(31)—*S. 45—Hastening fermentation by artificial means is not "manufacturing" fermented liquor.*—The use of artificial means to hasten the fermentation of what is already fermented liquor, and to preserve it or make it more palatable, does not amount to "making or manufacturing" fermented liquor within the meaning of s. 45. To manufacture is to convert, by some artificial process, raw material into something else. **U.B.R. (1905), Excise, 5.**

I.—Imperial Acts—continued.

Act XII of 1896 (Excise)—*continued.*

(32)—*S. 45—Tapping tari tree or leaving sweet tari to ferment, whether, amounts to manufacturing tari (Burma).*—The accused was convicted of manufacturing fermented *tari*. *Held*, that tapping a *tari* tree is not manufacturing *tari* and that leaving sweet *tari* to ferment is not manufacturing either, as sweet *tari* the moment it is tapped, is fermented liquor within the meaning of the Act. The offence of manufacturing fermented *tari* is a physical impossibility. Conviction set aside. **U.B.R. (1905), Excise, 3=2 Cr. L.J. 470.**

(33)—S. 45—*See* REVISION, 121 P.L.R. 1904.

(34)—S. 45—*See* No. 16, *supra*.

(35)—*Ss. 45 and 51—Illicit working or possession of still—Illicit possession of spirits—Double conviction and sentence—Crim. Pro. Code (1898), ss. 235 and 35—Penal Code, s. 71.—Distinct and separable offences.*—Separate convictions under ss. 45 and 51 of the Act for illicitly keeping a still and for being in possession of spirits manufactured in that still, are permissible, but separate sentences under the same sections are illegal. **1 L.B.R. 33.**

(36)—*Ss. 45 and 51—Emptying a vessel containing* lahan—*Evidence of general repute not admissible.—Held*, that B was neither guilty under s. 45 nor under s. 51 of the Excise Act, 1896, where the implements for preparing fermented liquor were found in the house of M and everything that happened took place on his premises and the only fact found against B, was that he assisted M to empty a vessel containing *lahan* especially when there was no proof of this fact independent of the evidence of the *Darogah* and two constables; *held*, also, that the evidence of general repute that B was in the habit of selling illicit liquor was not admissible against him. **2 P.W.R. 1907 Cr.**

(37)—*Ss. 45, 51 and 30—Tapping tree—Drawing* tari.—Possession of more than four quarts without license, whether an offence.—Although a person may tap and draw *tari* from his own toddy-tree without committing an offence punishable under s. 45 of the Act, yet the moment that a quantity of it larger than four quarts is in his possession, he commits an offence punishable under s. 51 of the Act, unless he has a license contemplated by s. 30 of the Act. **1 L.B.R. 214.**

(38)—S. 46 (*c*)—*See* REVISION, 1 P.L.R. 1904.

(39)—S. 46 (*c*)—*See* Nos. 13, 23, *supra*.

(40)—S. 48 (*e*)—*See* SENTENCE, 1 L.B.R. 89.

(41)—*S. 49—License, nature of.*—A license is a personal grant, largely made for personal reasons, and it does not, after death of the licensee, attach itself in any way to his property or devolve upon his heirs, during the unexpired portion of the period mentioned in the license. **22 A. 441.**

1.—Imperial Acts—continued.

Act XII of 1896 (Excise)—*continued.*

(42)—*S. 49—Sale of liquor to Burmans.*—Under the excise rules at present in force, the sale of liquor to Burmans is punishable under s. 49 of the Excise Act. **U.B.R. (1892—1896), Vol. I, 95.**

(43 & 44)—If a licensee lets a Burman have liquor at all on payment of money through a third person not a Burman, he runs a risk of being charged under s. 52 of the Act along with the abettor, the Burman who purchased it. **U.B.R. (1892—1896), Vol. I, 100.**

(45)—There is no legal presumption that a seller of *tari* is a seller of *gin*. Further an uncorroborated testimony of an accomplice is of very little value in evidence. **U.B.R. (1892—1896), Vol. I, 103.**

(46)—*Revision.*—To interfere without necessity on revision where there is evidence to support the conviction, would be practically to grant an appeal where the law says there shall be none. **U.B.R. (1892—1896), Vol. I, 101.**

(47)—*S. 49—Illegal sale by servant of manager or agent of a licensed liquor shop—Privity of manager or agent to such sales.*—The manager or agent of a licensed liquor shop, who is not in any way privy to the illegal sale of liquor by his servant, or present at such sale cannot properly be convicted under s. 49. **L.B.R. (1893—1900), 489.** (L.B.R., 1893—1900, 373, *Diss.*)

(48)—*S. 49—Causing a licensed vendor to contravene his license—Abetment—Abettor guilty though principal has committed no offence—Penal Code, s. 108.*—The accused, in this case, purchased a bottle of liquor from a licensed vendor, for the use of a soldier and handed it to the latter in contravention of the vendor's license. The vendor sold it in good faith, not being aware of the intended use by the soldier. The lower Court acquitted the accused, holding that, as the vendor committed no offence, it could not be said that the accused abetted the commission of an offence. *Held*, on appeal, that, under s. 108, Penal Code, read with the Exp. iii and illustration (*d*), the accused must be found guilty of abetment of the breach of the vendor's license, though the vendor himself might, under the circumstances, have committed no offence. **55 P.R. 1905 (Cr.) = 201 P.L.R. 1905 = 3 Cr.L.J. 135.**

(49)—*Ss. 49 and 52—Selling liquor to European soldier under officer's permission.*—To supply liquor to European soldiers travelling under the command of an officer, as provided in art. 542, or to soldiers travelling alone or in small parties without an officer, as provided in art. 543, Army Regulations, India, Vol. X, up to the amount allowed in that article, is not a breach of the condition of License, Form VIII, by which the sale of liquor to European soldiers is forbidden. **1 U.B.R. (1902—1903), Excise, 1.**

1.—Imperial Acts—continued.

Act XII of 1896 (Excise)—*continued.*

(50)—*Ss. 49, 59—Possession of spirit within the quantity allowed by law—not an offence—Extorting admission from accused—New charge by Magistrate in the absence of evidence.*—Possession of half a bottle of spirit is no offence and a man is not bound to account for such mere possession. Where no offence was committed and the accused was illegally arrested, the Magistrate should at once discharge him instead of proceeding to get him to plead guilty to the charge of committing an offence of which there was no evidence before the Magistrate. In the absence of any evidence against the accused, it is improper on the part of a Magistrate to proceed to make a new charge against the accused. An admission of guilt should not be extorted from an accused person. **1 L.B.R. 43.**

(51)—*Ss. 49 and 59—Sale of liquor to a Burman by a person without a license.*—A native of India who buys liquor for a Burman from the liquor shop-keeper does not commit the offence of abetment of sale of liquor to a Burman since the purchase was legal, but commits an offence under s. 49 of selling liquor without a license. **U.B.R. (1892—1896), Vol. I. 105.**

(52)—*S. 51--Liability to confiscation.*—Animals and conveyances liable to confiscation under the Excise Act are those on which illicit liquor is loaded and an animal on which a man is merely riding with such liquor in his pockets does not come under that description. **10 P.R. 1898 Cr.**

(53)—*S. 51—Fermented liquor, meaning of Kazawye, if included in the definition of.*—Kazawye, a generic term for fermented liquor, has not been declared to be included in the term "fermented liquor" as defined in s. 3 (*h*) of the Excise Act. In convictions under that Act for the illegal possession of fermented liquor, it is necessary to prove that the fermented liquor is one of those within the meaning of the term as used in the Act. **1 L.B.R. 172.**

(54)—*Interpretation of the concluding words.*—The concluding words of s. 51, *viz.*, that "the vessel or conveyance used in carrying the liquor shall be liable to confiscation" have not received judicial interpretation. The question of confiscation is a matter for the discretion of the Magistrate in each case. **L.B.R. (1893—1900), 632.** (L.B.R., 1893—1900, 405, *R.*)

(55)—*S. 51*—Bona fide *custody of liquor*—A *bona fide* custodian of liquor is not liable to be convicted of unlawful possession under s. 51 of the Act. **2 L.B.R. 136.** (25 A. 262, *R*).

(56)—*Liquor, joint possession of.*—S. 51 of the Excise Act must be held to prohibit the joint possession by several persons of more spirit or liquor than may be sold retail to one person. The words "no person" in s. 51 are to be read in the plural as well as in the singular. **L.B.R. (1893—1900), 405.**

1.—Imperial Acts—continued.

Act XII of 1896 (Excise)—*continued.*

(57)—*Punishment for illegal possession of liquor.*—A Burman who possesses Malt liquor such does not commit any offence merely because liquor may not be sold to him. **U.B.R. (1892—1896), Vol. I, 107.**

(58)—*Illegal possession of liquor, burden of proof of legality on the accused.*—The possession of more than a prescribed number of quarts of beer being *prima facie* illegal under the Act, it was *held* that the *onus* lay on the accused, charged with such illegal possession, to prove that he purchased the beer for his private use and not for sale. **U.B.R. (1906), Excise, 30.**

(59)—*See* CONFISCATION, 1 L.B.R. (1900—1902), 3.

(60)—*See* Nos. 7, 36, 37, *supra.*

(61)—*S 52—"Any persons, &c., a," meaning of—License—Breach of condition by servant—License-holder, liability of—Servant acting in the course of management—Master's liability.*—The words "any person who breaks .....any condition of license granted under this Act" refer only to the actual licensee. A licensee, deputing a servant to manage a retail liquor shop, is responsible for the acts of the latter done within the scope of his employment, and is punishable for any breach of condition committed by him, even if he has expressly forbidden the servant to commit the same. The test of the master's liability in such cases is whether the servant's act was done in the course of management and within the scope of his authority. **1 N.L.R. 81=2 Cr. L.J. 659.**

(62)—It is not necessary for the purpose of convicting the accused under s. 52 that he should himself have sold the liquor in contravention of the terms of his license or that his servant should have done so with his knowledge or by his direction. The act of the servant, if within the scope of his authority, is the act of the master, and a breach of the terms of the license by the former under such circumstances is tantamount to a breach by the latter. **9 P.R. 1897 Cr.**

(63)—A master is not ordinarily liable for the criminal acts of his servant. There must be some evidence to show instigation or complicity before the master can be held liable **U.B.R. (1892—1896), Vol. I, 109.**

(64)—*See* CRIM. PRO. CODE, s. 556, A.W.N. 1908, 95=5 A.L.J. 357=7 Cr. L.J. 393.

(65)—*See* No. 49, *supra.*

(66)— *S. 57—Cognizance of certain offences on complaint or report of the Collector or an Excise officer only.*—All offences falling under the above section must be instituted by means of a complaint or a police report, or a report from the Excise officer. Otherwise the Court trying the offence has no jurisdiction, and all its proceedings are therefore void. **U.B.R. (1892—1896), Vol. I, 111.**

1.—Imperial Acts—continued.

Act XII of 1896 (Excise)—*concluded.*

(67)—A prosecution, of a licensed vendor, for a breach of the conditions of his license, instituted by a Deputy Inspector of Police was held to be not maintainable, as it was not instituted by a competent authority. **9 P.R. 1897 Cr.** [*D.*, 22 P.R. 1900 Cr., 8 P.R. 1901 Cr.].

(68)—*See* Nos. 4, 15, 16, 19, 28, 29, *supra.*

(69)—S. 59—*See* Nos. 50, 51, *supra.*

Act III of 1897 (Epidemic Diseases).

[REP. IN PART, ACT XIII OF 1898, S. 18. DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

See MAD. ACT IV OF 1884, BYE-LAW No. 48, 23 M. 213=1 Weir 750.

See PENAL CODE, s. 188, 1 Bom. L.R. 223.

See SANCTION TO PROSECUTE, 24 M. 70=2 Weir 158.

(1)—Ss. 2 and 3—*See* QUARANTINE, Rat. Un. Cr. C. 966.

(2)—S. 3—*See* No. 1, *supra.*

(3)—Rule 2 (Proviso)—*See* PENAL CODE, s. 188, 1 Bom. L.R. 51.

(4)—*Rule 6—Information as to plague patient.*—Rule 6, framed under the Epidemic Diseases Act, does not require the person who is himself attacked with plague to give information of his own sickness, *albeit* he is an occupant of the house in which he is attacked. Looking at the language in which the rule is worded, it refers to third persons only. **Rat. Un. Cr. C. 978.**

Act IV of 1897 (Indian Fisheries).

See BOM. ACT XXXV OF 1850.

„ „ ACT II OF 1868.

„ BUR. ACT VII OF 1875.

„ MISCHIEF, 28 A. 204=A.W.N. 1905, 255=2 A.L.J. 826.

(1)—*Ss. 7, 8—Erecting obstructions in fishery without permission—Lessee, if criminally responsible for acts of sub-lessee—Burma Fisheries Act and Rules, s. 7 and 30.*—Rule 30 made under s. 8, cl. (*c*) of the Burma Fisheries Act does not extend the scope of s. 7 of the same Act, and, therefore, does not give authority for holding the lessee criminally responsible for the acts of the sub-lessee. **L.B.R. (1893—1900), 594.**

(2)—S. 8—*See* No. 1, *supra.*

Act VIII of 1897 (Reformatory Schools).

[S. 30 REP., ACT III OF 1900. DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

1.—Imperial Acts—continued.

Act VIII of 1897 (Reformatory Schools)—*ctd.*

See ACT V OF 1876.

(1)—*Reformatory Schools Act V of 1876 and VIII of 1897—Persons empowered under old Act—Jurisdiction under new Act.*—After the repeal of Act V of 1876, by Act VIII of 1897, persons who were empowered to act under the Reformatory Schools Act, 1876, were held, unless they had been specially empowered by the Local Government, under s. 8 (2) of the Act of 1897, to be not competent to act under the latter Act. **Rat. Un. Cr. C. 936 = Cr. Rg. 45 of 97.**

(2)—*Application of the Act.*—A youthful offender convicted of murder and sentenced to transportation for life, is eligible for despatch to the Reformatory School. But he should not ordinarily be sent to such a school, *e.g.*, where the conduct of the accused argued great depravity. **4 N.L.R. 180 = 9 Cr. L.J. 99.**

(3)—*Ss. 1, 2, 3 and 8—Reformatory Schools Act (V of 1876), ss. 2 and 7—Order of detention in Reformatory Schools—Valid order.*—The High Court set aside as contrary to law an order of a Magistrate substituting detention in a Reformatory School for two years for a sentence of imprisonment, on the ground that the order could not be sustained under s. 7 of Act V of 1876, as that Act had been repealed before the date of the order and the commission of the offence, nor under s. 8 of Act VIII of 1897 as the order did not comply with the provisions of the latter Act, the least period of detention being three years according to that Act. **25 C. 333 = 2 C.W.N. 11.** [*R.*, 19 A.W.N. 138 = 21 A. 391, F.B., 1 L.B.R. 68]. (12 M 94, 14 B. 381, *R.*)

(4)—*Ss. 1 and 16—Detention in Reformatory School in lieu of sentence of imprisonment—Jurisdiction of High Court to alter or set aside the sentence.*—S. 16 of Act VIII of 1897 does not in any way take away the jurisdiction of the High Court, as a Court of revision, to alter or set aside the sentence in substitution of which an order for detention in a reformatory school is made. The power of the Court remains intact to consider the propriety or legality of any sentence passed upon a youthful offender. Where a young lad who was found abstracting a piece of coal from a waggon, was, on conviction for theft, sentenced to a month's rigorous imprisonment and ordered, in lieu thereof, to be detained in a reformatory school for 4 years, *held*, that, as the accused was a young lad and the offence was his first offence, the sentence of one month's imprisonment was improper. The accused was directed to undergo a whipping of 5 stripes by way of school discipline. **28 C. 423 = 5 C.W.N. 211.**

(4-*a*)—S. 2—*See* No. 3, *supra*.

(4-*b*)—S. 3—*See* No. 3, *supra*.

(5)—*S. 4 (a)—Youthful offenders—Proof.*—Although a Magistrate is not incompetent to find from the appearance of a person convicted by him that he is a youthful offender within the definition given in the Act, yet, it is generally desirable that, when it is procurable, there should be some reliable evidence on the point, and especially when it may be necessary to determine the period of the detention, which is limited to his attaining 18 years of age. **27 C. 133.**

(6)—*S. 4 (a)—Person over 15 years of age.*—A Magistrate had no jurisdiction to order a person not under 15 years of age, to be confined in a Reformatory School, on and after the 11th March, 1897, when the Act came into force. **Rat. Un. Cr. C. 905 = Cr. Rg. 15 of 1897.**

(7)—*Ss. 4, 8, 16—Powers of High Court.*—S. 16 of Act VIII of 1897 precludes the High Court from interfering in appeal or revision with an order for detention in a Reformatory School, passed in substitution for an order of transportation or imprisonment. **20 A. 158; and 159.** [*Overruled*, 21 A. 391, F.B.; *Diss.*, L.B.R. (1893—1900), 441.

(8)—*Ss. 4 and 11—Jurisdiction of Magistrates.*—In order that a Magistrate should have jurisdiction under the Reformatory Schools Act, it is necessary that the offender should be under 15 years of age at the time of the conviction. Unless the Magistrate is satisfied as to this matter, he should not proceed under the Act. S. 11 of the Act further requires a Magistrate before sending an offender to a Reformatory to make an enquiry, and record a finding, as to the exact age of the offender as nearly as may be. **1 Weir 879.**

(9)—*S. 8—Power to order detention in Reformatory.*—Where an accused, who was convicted of offences under ss. 454 and 380, I.P.C., was sentenced to one year's rigorous imprisonment, but being fourteen years old was directed to be detained in the Reformatory for the period; the High Court reversed this latter direction on the grounds that the Magistrate had not been specially authorised and that the order was opposed to the provisions of s. 8 of the Act. **Rat. Un. Cr. C. 947 = Cr. Rg. 53 of 1897.**

(10)—*Procedure under s. 8.*—A Magistrate should first pass a sentence of imprisonment and then direct that, instead of undergoing the sentence, the offender should be sent to a Reformatory School for such period as the Act and the Rules framed thereunder direct. **1 Weir 879.**

(11) Under s. 8 of the Act, it is irregular for a Magistrate to sentence an accused between 15 and 16 years of age to be detained in a Reformatory for 4 years without first sentencing him to imprisonment. **L.B.R. (1893 - 1900), 648.** (L.B.R., 1893—1900, 242, *R*).

(12)—*Imprisonment in a reformatory passed in lieu of sentence of fine—Imprisonment as a substantive sentence and imprisonment in default of payment of fine—Crim. Pro. Code (1890), s. 398.*—S. 8 of the Reformatory Schools Act does not refer to imprisonment awarded in default of payment of fine to which an offender has been sentenced. There is no authority for directing that imprisonment in a reformatory shall terminate on payment of a fine. **L.B.R. (1893—1900), 491.**

1.—Imperial Acts—continued.

Act VIII of 1897 (Reformatory Schools)—*ctd.*

(13)—'*Youthful offender*,' *definition of—Detention in Reformatory School in lieu of imprisonment—Term of such detention.*—A youthful offender was sentenced to 3 years' detention in a Reformatory School in lieu of 3 months' rigorous imprisonment. The boy was over 13 years of age. *Held*, s. 8 of the Act, combined with the Judicial Department Notification, No. 237, dated 12th June, 1897, and Rule 1, cl. (iii), provides that, if a youthful offender is over 13 years of age, he should be sent to a Reformatory School for such period as will bring him to the age of eighteen. Notice was issued to the accused to show cause why he should not be detained in the Reformatory School till he attains eighteen. 3 L.B.R. 46.

(14)—Rules framed under the old Act, whether in force, after the passing of the new Act.—*See* ACT V OF 1876, s. 22, 21 M. 430=1 Weir 880.

(15)—*See* CRIM. PRO. CODE (1898), s. 399, Rat. Un. Cr. C. 915.

(16)—Procedure to be adopted under section —*See* PRACTICE AND PROCEDURE, 2 L.B.R. 216.

(16-*a*)—*See* Nos. 3, 7, *supra*, and No. 29, *infra*.

(17)—*Ss. 8 and 9—Order for detention in Reformatory School, when can be made?*—An order for the detention of a youthful offender in a Reformatory School, when no sentence of imprisonment or of transportation has been passed, is bad in law. 5 C.W.N. 210.

(18)—*Ss. 8, 9 and 11—Power of Appellate Court to pass order for detention in a Reformatory School.*—An Appellate Court is competent to pass an order for detention in a reformatory in supersession of the order for imprisonment, if he has sufficient materials before him on which such an order can be founded. If there is no evidence as to the age of the accused or to show that he is a youthful offender within the terms of the Act, or to indicate the period of detention in the Reformatory which he might be ordered to undergo, he must take evidence within the terms of s. 11 regarding these points before passing the order. **4 C.W.N. 225.**

(19)—*Ss. 8, 9, 11, 13 and 16—Omission of Magistrate to mention the exact period of detention.—Magistrate to decide age of youthful offender.*—Where a Magistrate, who sentenced a youthful offender for six months, and directed that, in lieu of the imprisonment, he should be detained in a Reformatory School, unless he shall attain the age of 18 years at an earlier date, *held*, that the order directing the detention of the boy in a Reformatory School was not properly made, inasmuch as it had not fixed the exact period. In some cases under the Act, it may not be necessary for the Magistrate, to ascertain the exact age of the boy. So long as he is not over 15, the Magistrate may rightly

1.—Imperial Acts—continued.

Act VIII of 1897 (Reformatory Schools)—*ctd.*

fix a period of 3 years, or if the boy is not over 11, he may fix a period of 7 years without further inquiry. But if inquiry is necessary in order to fix the period, as it would be when the boy is over 11 and the Magistrate wishes to make the period as long as possible, then the Magistrate must find, as well as he can, the exact age of the boy, and he is not at liberty to leave the decision of the question to Reformatory officials. **24 M. 13=1 Weir 882.**

(20)—*Ss. 8, 9 and 16—Accused to be sentenced before being sent to Reformatory School.*—The language of ss. 8 and 9 of the Reformatory Schools Act shows that a sentence must be passed and then a direction given that, instead of undergoing the sentence, the youthful offender shall be sent to a Reformatory School. **1 Bom. L.R. 162.** [*R.*, 21 A. 391, F.B.]

(21)—*Ss. 8 (2), 11 (1)—Application of Act.*—In this case the Sub-divisional Magistrate ordered the accused to furnish security for good behaviour under s. 110, Crim Pro. Code, and in default to be rigorously imprisoned for one year. The accused appealed to the District Magistrate, who dismissed the appeal, but in his order stated that the Superintendent of the jail had pointed out that the accused prisoner should be confined in a Reformatory, and the District Magistrate added that "a revised warrant should be sent." Accordingly the Sub-divisional Magistrate issued another warrant directing that, instead of undergoing his sentence, the accused should be detained for a period of one year in a reformatory School. *Held* that the order was illegal for the following reasons:—(1) The prisoner was 16 years old and was therefore not a youthful offender as defined in the Reformatory Schools Act, not being under the age of 15. (2) That the period of detention shall not be less than three yearse and the Magistrate ordered detention for on, year. (3) The Magistrate had not been specially empowered to exercise the powers under the Act. (4) The accused had not been sentenced to imprisonment within the meaning of s. 8 of the Act. An order for imprisonment in default of furnishing security is not a sentence of imprisonment. **U.B.R. (1897—1901), Vol. I, 375.**

(22)—*Ss. 8, 11, 16 and 31—Order under the Act—High Court's power of revision.*—The High Court is not debarred from altering or revising an order for detention in a Reformatory School in substitution for transportation or imprisonment, if such order is not properly passed, *i.e.*, if it does not conform to the rules made by the Local Government, under s. 8 of the Act. Where a youthful offender was convicted for stealing a *lota* from the side of a sleeping man, and where it was admitted that it was a first offence, *held*, that the accused did not come within the definition of "youthful offenders" and that the case should have been dealt with under s. 31 of the Act. **27 C. 133.** [*F.*, 1 L.B.R. 68.]

1.—*Imperial Acts*—continued.

Act VIII of 1897 (Reformatory Schools)—*ctd.*

(23)—*Ss. 8 and 16—Order for detention in a reformatory in lieu of a sentence of whipping--Power of High Court to deal with such an order passed without authority.*—S. 8 of the Reformatory Schools Act permits an order for detention in a Reformatory instead of the offender undergoing a sentence of transportation or imprisonment. Where there is no such sentence except one of whipping, no order for detention in a reformatory could legally be passed, in lieu of the whipping. Where the Magistrate has no authority to order detention in a reformatory, the provisions of s. 16 of the Act do not bar the jurisdiction of the Court of the Judicial Commissioner, acting as a High Court, to alter, on revision, the order of detention. **L.B.R. (1893—1900), 493.** (L.B.R., 1893—1900, 441, *F.*)

(24) S. 9—*See* Nos. 17, 18, 19, 20, *supra.*

(24-*a*) --*Ss. 9 and 16—Reference to District Magistrate—Transfer to Sub-divisional Magistrate—Proper procedure.*—Under s. 9 of the Act, the District Magistrate alone has power to pass orders. The Sub-divisional Magistrate has no jurisdiction to make any such order. He is empowered under s. 8, not under s. 9, of the Act. S. 16 does not prevent the exercise by the High Court of its revisional powers in cases where orders have been passed without jurisdiction. The proper procedure is that the District Magistrate should proceed to dispose of the case under s. 9, sub-s. (2) of the Act. **2 L.B.R. 121.**

(25)—*S. 10—Enquiry into youthful offender's age.*—An inquiry must be made into the age of a youthful offender. S. 10 of the Act is inapplicable to the case of an accused who is not a youthful offender within the definition, and even if the accused is a youthful offender, a District Magistrate cannot without an appeal alter the nature of the sentence. **15 C.P.L.R. 151 Cr.**

(26)—*S. 11—Definition of "youthful offender"—Finding as to age of accused to be recorded before order of detention.*—A youthful offender, under the Reformatory Schools Act, is one who is *under* the age of 15 years. By s. 11 (1) the Court, before directing any youthful offender to be sent to a Reformatory School, must inquire into his age and record a finding, and by s. 11 (2), a similar inquiry and finding must be made and recorded before the offender is sent by the trying Magistrate to the District Magistrate for his orders. The inquiry and finding under s. 11 must be held before the order of detention is made. Merely asking the accused his age and recording his reply is not a compliance with the provisions of s. 11, unless it happens that no further inquiry is possible. **1 L.B.R. 126.**

(26-*a*)—S. 11—*See* Nos. 8, 17, 18, 19, 21, 22, *supra.*

(27)—*Ss. 11 and 13—Rules for detaining a youthful offender in Reformatory School.*—In respect to the time of detention of youthful

1.—*Imperial Acts*—continued.

Act VIII of 1897 (Reformatory Schools)—*ctd.*

offenders in Reformatory Schools, the Act lays down three rules :—first, the youthful offender must be a boy under the age of 15 years at the date of his conviction ; secondly, the period of detention in the school should not be less than three years ; and, lastly, that the period must not exceed seven years. In order to give effect to these rules, the Magistrate is directed (s. 11) to inquire into the question of age and the age so ascertained must be stated in his order of detention. The effect of the Government Notification regulating the period of detention of youthful offenders is only to fix a minimum of 5 years for all cases in which such a period is legally possible, and it does not prevent the Magistrate from fixing a period short of 5 years, but not short of 3 years, in the case of a boy over 13. **24 M. 13=1 Weir 882.**

(27-*a*)—S. 13—*See* Nos. 19, 27, *supra.*

(28)—*S. 16—"Imprisonment," meaning of.*—Imprisonment in s. 16 means a legal sentence of imprisonment. When there has been no sentence of imprisonment at all, the High Court may give effect to its finding on that point by declaring the order for substitution void. **1 L.B.R. 42.**

(29)—*Ss. 16 and 8—Powers of High Court.*—Where an order for detention in a Reformatory School is not passed in substitution for an order for transportation or imprisonment, but is passed when the person to whom it relates has not been convicted of any offence, *held*, the High Court is not precluded from dealing with the order. **20 A. 160.** [*R.*, 21 A. 391, F.B.]

(30)—*S. 16—Scope of the section—Revisional powers of the High Court.*--S. 16 of the Act does not authorise the Appellate Court or the Court of revision to interfere with the finding of the Magistrate as to the age of a youthful offender, or to alter or modify an order of detention in substitution of imprisonment or transportation. But it does not affect the High Court's jurisdiction, to consider the legality or the propriety of the sentence or of any order other than that mentioned in that section. **5 C W.N. 210.**

(31)—Under s. 16 of the Act, a Court of appeal is not authorised to alter or reverse, in appeal cr revision, any order passed by the lower Court with respect to the age of a youthful offender, or the substitution of an order for detention in a Reformatory School, for transportation or imprisonment. But that section does not relieve an Appellate Court of the duty of seeing whether a conviction or sentence passed on a youthful offender is maintainable according to law. **18 P.R. 1907 Cr.=43 P.W.R. 1907=55 P.L.R. 1908.**

(32)—An order passed by a competent Magistrate relating to a youthful offender, contravening any rules made by the Local Government, though illegal, is yet an order made under the Reformatory Schools Act and

1.—Imperial Acts—continued.

Act VIII of 1897 (Reformatory Schools)—*ctd.*

cannot be altered in appeal or revision. When the Magistrate finds an accused to be 15 years of age and therefore not a youthful offender under the Reformatory Schools Act, the Act gives him no authority to order his detention in a Reformatory School. The Court of the Judicial Commissioner, as a High Court, is not barred from altering the order of detention passed against accused persons, who are not youthful offenders. S. 16 of the Reformatory Schools Act is a bar only in the case of an order passed by a competent Magistrate as to a youthful offender. **L.B.R. (1893—1900), 441.** (20 A. 158, *Diss.*; 20 I.A. 165, *Appl.*)

(33)—*Appellate or revisional jurisdiction.*—S. 16 of the Reformatory Schools Act does not exclude the exercise of appellate or revisional jurisdiction in all cases where a subordinate Court has ordered an offender to be detained in a Reformatory School. The exclusion is limited to the question of determination of the age of a youthful offender. **6 Bom. L.R. 550.**

(34)—*Substitution of imprisonment for an order of detention in Reformatory Schools by Appellate Court—Object of Reformatory.*—Under s. 16 of the Act, an Appellate Court cannot convert an order of detention in a Reformatory School into one of imprisonment. It is to avoid contamination by association with the inmates of a jail that detention in a Reformatory School has been introduced by the Legislature. Before passing an order for detention of a boy in a Reformatory School, there should be a definite finding as to the age of the boy. **3 C.W.N. 576.**

(35)—*Age of accused—Order for detention in a Reformatory in lieu of imprisonment—Power of High Court to interfere—Magistrate's order to be precise and definite.*—Where an accused gave his age as 14 years, and the Magistrate, though apparently having reasons to suspect his statement as being below the mark, accepted it and sentenced him, in lieu of imprisonment, to be detained in a Reformatory until he attained the age of 18 years, *held* that the Magistrate should not have ordered the accused to be detained in prison until he attained the age of 18. S. 16 of the Reformatory Schools Act clearly debarred the High Court from altering the order passed by the Magistrate with respect to the age of the offender or from substituting an order for detention in a Reformatory School for imprisonment, and that the order of the Magistrate, not being illegal on the face of it or made without jurisdiction, the High Court had no power to interfere with such an order. A sentence or order by a Magistrate must be as precise and definite as possible and should not leave the term of detention to be ascertained by the authorities of the Reformatory School. **1 L.B.R. 63.**

(36)—*Jurisdiction to interfere with orders under the section.*—The exclusion of the exercise of revisional or appellate jurisdiction by

1.—Imperial Acts—continued.

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s. 16 of Act VIII of 1897, in cases where a Subordinate Court has ordered an offender to be detained in a Reformatory School is limited to two specified matters. The first of these is the age of the youthful offender and the second is the substitution of an order for detention in a Reformatory School for transportation or imprisonment. If such substitution is made in the absence of jurisdiction, or is not made in compliance with the provisions of the Act, the High Court has jurisdiction, both in appeal and in revision, to interfere with the order. **21 A. 391, F.B.** [*F.*, 1 L.B.R. 68, 6 Bom. L.R. 550; *R.*, 3 L.B.R. 30.]

(37)—*Finding of Magistrate as to age of a youthful offender, nature of.*—The finding of a Magistrate regarding the age of a youthful offender ordered to be detained in a Reformatory School is final in the sense that it cannot be altered on appeal or in revision. But in case the Magistrate should have made a mistake and understated the age in the order for detention, it is competent to the Local Government, on the motion and report of the commission of visitors or the Board of management to order the removal of the boy, if and when he is found to have attained the age of 18 years. **24 M. 13=1 Weir 882.**

(38)—*Reformatory—Order of detention improperly passed—High Court, powers of, to interfere—Term of detention, enhancement of.*—A High Court has power to interfere in appeal or revision, when an order of detention in a Reformatory is opposed to the rules framed by the Local Government under Act VIII of 1897. If an order for detention in a Reformatory School is not properly passed, that is, if it does not conform to the rules made by the Local Government, the High Court is not debarred by s. 16 of the Act from altering or reversing such order. **1 L.B.R. 68.** (21 A. 391, 27 C. 133, *F.*; 25 C. 333, *Diss.*)

(38-*a*)—*See* Nos. 4, 7, 19, 20, 22, 23, 24, *supra.*

(39)—*S. 31—Accused sentenced to whipping—Applicability of.*—A boy aged 14 was convicted of causing hurt with a dangerous weapon and was sentenced, under s. 5 of the Whipping Act, to 15 stripes with a light rattan. The question for decision in the case was whether, under s. 31 of the Reformatory Schools Act, the boy could be delivered to his parents on their giving a bond. *Held*, that the section did not permit a bond being given after a whipping had been inflicted. **3 L.B.R. 30.**

(40)—*See* HOUSE TRESPASS, 1 L.B.R. 279.

(40-*a*)—S. 31—*See* No. 22, *supra.*

(41)—*S. 47—Youthful offender over 10 years of age.*—The notification of the Government of India, dated 30th June, 1887, does not require that a youthful offender over 10 years of age shall be detained in the Reformatory, until he is 18 years of age in every case. It only requires

1.—Imperial Acts—continued.

Act VIII of 1897 (Reformatory Schools)—*cld.*

that he should be detained for a period of at least five years, unless he would, before the expiration of that period, attain the age of eighteen. In the latter case his detention should be ordered only for such a shorter period as would bring him up to eighteen years of age. **1 Weir 884.**

Act X of 1897 (General Clauses).

[REP. IN PART AND AMENDED, ACT I OF 1903. DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN THE CHITTAGONG HILL TRACTS, REG. I OF 1900, S. 4; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

See ACT I OF 1868.

,, BOM. ACT III OF 1886.

(1)—*S. 3(2)—Applicability to Bombay Abkari Act.*—The General Clauses Act has no application to the Bombay Abkari Act, passed by the Governor of Bombay in Council. **1 Bom. L.R. 164.**

(2)—S. 3 (27)—*See* EVIDENCE, 7 C.W.N. 635.

(3)—S. 3 (52)—*See* CRIM. PRO. CODE (1898), s. 164, 32 C. 550=2 Cr.L.J. 405.

(4)—*S. 7—Repeal of statute repealing another statute—Effect.*—The repeal of a statute repealing a certain enactment does not revive the repealed enactment. The law on this point, as embodied in s. 7 of Act X of 1897, is the same as in England. **25 C. 333=2 C.W.N. 11.**

(5)—Ss. 8, 24—*See* ACT VIII OF 1899, ss. 1 (3), 11 and 15, 7 C.W.N. 658.

(6)—S. 10—*See* SANCTION TO PROSECUTE, 2 Weir 200.

(7)—*S. 13—Words in singular number.*—The General Clauses Act provides that words in the singular shall include the plural and *vice versa*; this provision applies only where there is nothing repugnant in the subject or context. **33 C. 292=10 C.W.N. 32=3 Cr. L.J. 126.**

(8)—*See* CRIM. PRO. CODE (1898), s. 408 (*b*), U.B.R. (1897—1901), Vol. I, 94.

(9)—*See* JOINDER OF CHARGES, 10 C.W.N. 32=33 C. 292=3 Cr. L.J. 126.

(10)—S. 24—*See* No. 5, *supra.*

(11)—S. 25—*See* ACT III OF 1867, s. 4, L. B.R. (1893—1900), 385.

(12)—*See* PENAL CODE, s. 65, L.B.R. (1893—1900), 494.

(13)—*See* SENTENCE—IMPRISONMENT, 1 L.B.R. 150.

(14)—S. 26—*See* ACT XI OF 1878, s. 19 (*e*), 3 L.B.R. 218, F.B.

(15)—*See* ACT IX OF 1890, ss. 68, 112, 11 C.W.N. 100=4 Cr. L.J. 439=5 C.L.J. 47.

See VILLAGE MAGISTRATE, 27 M. 223=2 Weir 208=14 M.L.J. 74.

1.—Imperial Acts—continued.

Act VI of 1898 (Indian Post Office).

[REP. IN PART, ACT XIII OF 1898. AMENDED, ACT II OF 1903.]

See ACT XVII OF 1854.

,, ACT XIV OF 1866.

(1)—*Ss. 20 and 61—Obscene advertisements through post cards.*—The circulation, by post, of a postcard containing an advertisement regarding a patent medicine in language of an obscene character is an offence under s. 61, Post Office Act. **32 C. 247=2 Cr. L.J. 201.**

(2)—S. 52—*See* ACT XVII OF 1854, s. 50, 2 Weir 454=1 M.H.C. 83.

(3)—S. 55—*See* XIV OF 1866, s. 50, 1 Weir 862.

(4)—S. 61—*See* No. 1, *supra.*

(5)—*Ss. 61 and 72—Transmission of obscene article—Prosecution—Complaint—Crim. Pro. Code, s. 4, cl. (h).*—A prosecution under s. 61 of the Act, although authorised by the Postmaster-General, is illegal, unless such prosecution takes place on a complaint as defined in s. 4, cl. (*h*) of the Code. **10 C.W.N. 1029=4 C.L.J. 170.**

(6)—*S. 64—Order to send a parcel by value payable post insured—Bona fides of sender—Rule 133.*—G ordered the accused to send her a parcel of clothes insured for a certain amount. The accused sent the parcel by value payable post uninsured and certified that it was sent in execution of a *bona fide* order. The Magistrate convicted him under the Post Office Act under s. 64, Rule 133. *Held*, that the *bona fide* order contemplated by Rule 133, is an order to send, without regard to the manner of sending, and that the accused could not be convicted under s. 64 of the Post Office Act. **6 A.L.J. 481=9 Cr. L.J. 537=2 Ind. Cas. 228.**

(7)—*V.P. Post—Rule framed under the Act requiring declaration as to existence of bona fide order—Signing false declaration—Whether offence under s. 64—Rules framed under the Act, effective as the Act itself.*—K sent a copy of his magazine by V. P. post to W, signing a declaration to the effect that the article was sent in execution of a *bona fide* order received by him; without which declaration the Post Office would not, by reason of the rule issued under the Post Office Act (VI of 1898), have accepted the article for transmission by V. P. post. The accused was charged under s. 64 of the Act for making a false declaration in violation of the terms of the Act. It was found that the accused had received no order from W and that the declaration signed by him was false. But the Magistrate thought that the prosecution must fail, because the Post Office Act itself, that is, the sections in the body of the Act do not require such a declaration to be made and the rule framed under the Act is not part of the Act. *Held* that the Magistrate's view was wrong, and that the rules and bye-laws framed for the purpose of carrying out the objects of an Act

1.—Imperial Acts—continued.

Act VI of 1898 (Indian Post Office)—*concld.*

under the powers conferred by it, shall have effect as if enacted by the Act. An order to send the article cannot be inferred merely because the addressee did not refuse to receive, nor returned by post any of the previous issues sent to him, and did not make a protest even after he received intimation that he had been enrolled as a subscriber and that the issue in question would be sent by V. P. post. But, if the addressee had paid for the issue sent to him by V. P., and continued to receive further issues, say for about an year, and then an issue was sent to him V. P. for the amount of subscription for that year, it might be well that one could infer an order under such circumstances. **7 M.L.T. 69.**

(8)—S. 72—*See* No. 5, *supra*.

Act II of 1899 (Indian Stamp).

[AMENDED, ACT VI OF 1900; ACT XV OF 1904; ACT V OF 1906; ACT VI OF 1910.]

See ACCEPTING INSTRUMENT NOT DULY STAMPED.

(1)—*Ss. 2 (24), 3, 11, 27, 31, 62, 64, sch. I, arts. 33, 58—Instrument of gift or settlement—Execution.—See* **U.B.R. (1892—1896), Vol. I, 303.**

(2)—S. 3—*See* No. 1, *supra*.

(3)—S. 11—*See* No. 1, *supra*.

(4)—S. 27—*See* No. 1, *supra*.

(5)—*Ss. 30 and 65—Refusing or neglecting to give a receipt when required to do so.*—Where the accused had sent the complainant a stamped and receipted bill for a certain amount, and, on the complainant paying a portion of the bill by cheque, declined to give a receipt for the cheque, *held* that the accused had failed to comply with the requirements of the law and had been properly convicted under s. 30 of the above Act. **U.B.R. (1897—1901), Vol. I, 378.**

(5-*a*)—S. 31—*See* No. 1, *supra*.

(6)—*Ss. 33, 38 (2), 40—Documents produced under search warrants—Disposal of impounded documents.*—The words "comes in the performance of his function" in s. 33, sub-s. 1 are sufficiently wide to include documents produced before a Magistrate under a search warrant. Where certain documents had been impounded and forwarded to the Collector under s. 38 (2), *held*, that the Collector should return them to the impounding officer under s. 40, sub-s. 3 and, when they have been so returned, the latter officer might dispose of them according to law. **25 M. 525 = 2 Weir 670.**

(7)—*S. 33.*—The impounding of a document under s. 33 of the Indian Stamp Act was not requisite to the initiation of proceedings under the Act. The only requisite to a prosecution was the sanction of the Collector or other officer authorised in that behalf. **U.B.R. (1892—1896), Vol. I, 313.**

(8)—S. 38—*See* No. 6, *supra*.

(9)—S. 40—*See* No. 6, *supra*.

1.—Imperial Acts—continued.

Act II of 1899 (Indian Stamp)—*continued.*

(10)—*Ss. 35 (b), 42—Stamp and penalty—Admission of receipt—Endorsement.*—In applying the proviso (*b*) of s. 35 of Act II of 1899, the Court should not levy the duty of one anna as well as the penalty of one rupee. When a receipt is admitted under the proviso, it should be endorsed in the manner provided for in s. 42. **24 A. 374.**

(11)—*Ss. 40 and 70.*—Where the essential ingredient of the offence is to defraud, it is not necessary nor possible for the Collector to collect any duty until it has been decided in a proper enquiry what was the real value of the property. Hence, if there is fraud, no action need be taken by the Collector under s. 40 before a prosecution is sanctioned under s. 70 of the Act. **U.B.R. (1892—1896), Vol. I, 307.**

(12)—*Ss. 43, 62—Offence under s. 62, necessity for intent to evade law—Criminal Procedure Code, s. 556—Magistrate disqualified under, is debarred from interfering in revision to prejudice of accused.*—A Collector sanctioned a prosecution under s. 62 of the Stamp Act, after the deficient duty and penalty had been levied by a Civil Court. The Magistrate, who tried the case, discharged the accused on the ground that the object of the accused was not evasion of duty. But the District Magistrate in revision convicted the accused and sentenced them to pay fine. *Held*, in a summons case, the accused must be either convicted or acquitted, and the accused having pleaded guilty to the offence, in which intent is not an ingredient, the Magistrate was bound to convict. In consideration of the absence of intent to evade the law, he might have inflicted a merely nominal penalty. *Held*, further, that the District Magistrate, having as Collector, directed the prosecution of the accused, was not competent to try them. If he was disqualified from trying the case, he was equally disqualified from interfering in revision to the prejudice of the accused. **U.B.R. (1905), Crim. Pro. Code, 37 = 2 Cr. L.J. 468.**

(13)—*S. 62*—"*Accepting*"—"*Presenting*"—*Meaning.*—"Accepting" is a technical term and does not apply to the mere taking of a promissory note in one's favour from the debtor. 'Presenting' like 'accepting' is a technical term and is so used in s. 62 of the Act. It would be straining the provisions of s. 61 of the Act to apply them to the demand for payment of a promissory note made through the instrumentality of the Court in a suit. **U.B.R. (1892—1896), Vol. I, 312.** (7 M. 71, *F*).

(14)—*Held*, that, 'accepting' does not mean 'receiving' but 'executing as acceptor.' **U.B.R. (1892—1896), Vol. I, 311.** (7 M. 71, *F*.)

(15)—*Offence under—Bond—Promissory note.*—A document written on a paper, bearing a one anna stamp, whereby the maker promises to pay to the accused or to his order a certain sum of money, which he, (the maker), had borrowed from the accused, cannot be treated as a bond, merely because it was attested by witnesses. **U.B.R. (1897—1901), Vol. I, 380.**

1.—Imperial Acts—continued.

Act II of 1899 (Indian Stamp)—*continued.*

(16)—*Mere receipt of an unstamped instrument does not constitute abetment of an offence.*—The conviction of a person, who merely received a promissory note executed on plain paper, in his favour, of abetment of the offence under s. 62 of the Act is bad in law. The person, who makes an unstamped instrument, and not the person in whose favour it is made, commits the offence and the receiving by the latter of the unstamped instrument made by the former does not constitute abetment of the execution of it. **1 N.L.R. 163.**

(17)—The mere receipt of an unstamped instrument does not constitute the offence of abetment of the execution of the instrument. **U.B.R. 1904, 2nd Qr., Stamps, 1.** (7 B. 82, 20 A. 440 and U.B.R., 1892—1896, 313, *R.*)

(18)—*Arbitration award—Parties signing otherwise than as witnesses—Meaning of—Construction of Statute in favour of subject.*—A penal Act must be read as favourably as possible to the subject. A dispute was referred to arbitration and an award was passed. The parties to the proceedings signed the award and acted upon it. The award not being stamped, the parties had to pay the duty and penalty. They were then criminally prosecuted. *Held* that the only person liable to sign the award was the arbitrator, and the other parties who signed it could not be said to have signed it otherwise than as witnesses within the meaning of s. 62 of Act II of 1899. **7 A.L J. 180.**

(19 & 20)—*See* No. 1, *supra.*

(21)—*S. 62 (b)—Unstamped receipt issued by an unauthorised gomastha.*—Where an unstamped receipt was issued by a gomastha of a firm evidencing payment of money to the firm, and the accused, the sole surviving member of the firm, admitted the receipt of the money paid, but there was no proof that the receipt was written or granted by the gomastha in the presence or under the authority of the accused, *held*, that he could not be convicted of an offence under cl. (*b*) of s. 62. **8 C.W.N. 378.**

(21-*a*)—*S. 62 (1) (a)—Entry in creditor's book—Promissory note.*—An entry of receipt of money made by a debtor in his creditor's book, with the addition that the amount borrowed would be paid on a certain date, but to whom it did not appear, is not executing a promissory note without the necessary stamp, for, the entry does not amount to a promissory note. **A.W.N. 1903, 174.**

(21-*b*) *Ss. 62 (1) (b), 64 (c)—Entry in account book made by debtor.*—A money-lender and cloth-seller, being illiterate, kept a register divided into columns, in which his customers used to make or caused to be made entries of the loan taken or purchases made by them. They also noted or caused to be noted in the book the payments made by them. A pleader, who owed him a sum of Rs. 90-2-0, paid this sum, and caused his clerk to enter in the column of remarks in the account book with reference to this payment, a note to the effect that the full amount had been repaid. No receipt for money paid was asked for. *Held* that the money-lender could not be convicted either under s 62 (1) (*b*), Act II of 1899, as the entry was not made by the accused, or under s. 64 (*c*), of the commission of "any other act calculated to deprive the Government of any duty" under the Act. **A.W.N. 1903, 173.**

1.—Imperial Acts—continued.

Act II of 1899 (Indian Stamp)—*concluded.*

(22)—S. 64— *See* No. 1, *supra.*

(23) *S. 64 (a)—Non-disclosure of certain facts, liability for.*—R purchased certain property for Rs. 20,000 paying Rs. 1,000 in cash and leaving Rs. 19,000 with the vendors to be drawn upon whenever necessary, but which was never paid. Subsequently R re-transferred the property to the vendors by a deed for Rs. 1,000, making no mention of the Rs. 19,000. The Sub-Registrar impounded the document. *Held* that the real consideration was Rs. 1,000 *plus* an oral agreement cancelling the liability of the vendors for payment of Rs. 19,000, and that the omission in the sale deed to make any reference whatever to the unpaid consideration could only have been intended to avoid the question of stamp duty being raised. The vendor therefore committed an offence under s. 64 (*a*) of the Stamp Act. **7 A.L.J. 110.**

(24)—S. 65—*See* ACT I OF 1879, s. 64, 1 Weir 906.

(25)—S. 65—*See* No. 5, *supra.*

(26)—S. 68—*See* ACT I OF 1879, s. 67, 1 Weir 907.

(27)—S. 70—*See* No. 11, *supra.*

(28)—Art. 33—*See* No. 1, *supra.*

(29)—*Sch. I, art. 53 (c)—Stamp—Receipt for rent—Receipt for money paid out of Court in satisfaction of a decree for rent.*—Although a receipt for the rent of an agricultural holding is exempt from payment of stamp under art. 53 (*c*) of the Act, a receipt for payment, out of Court, of money due under a decree for such rent is not so exempt. **A.W.N. 1908, 272=5 A.L.J. 747=31 A. 36=9 Cr. L.J. 42=1 Ind. Cas. 568.**

(30)—Art. 58—*See* No. 1, *supra.*

See ACT VII OF 1870, 24 M. 319.

Act VIII of 1899 (Indian Petroleum).

[REP. IN PART, ACT XI OF 1901.]

See ACT XII OF 1886.

(1)—*Ss. 1 (3), 11 and 15—Repealed Act XII of 1886, ss. 2 (2), 10 and 15—Notification in Gazette extending repealed Act to Cuttack—New Act not expressly preserving the same—General Clauses Act, ss. 8, 24.*—A notification in the Calcutta Gazette extending the operation of the Act XII of 1886 to Cuttack was held to have been preserved under Act VIII of 1899 by the operation of ss. 8 and 24 of the

***1.—Imperial Acts*—continued.**

Act VIII of 1899 (Indian Petroleum)—*concld.*

General Clauses Act, although the Act of 1886 itself was repealed and there was no provision in the present Act expressly preserving the notifications issued under the provisions of the repealed Act. 7 C.W.N. 658.

(2)—S. 11—*See* **No. 1,** *supra.*

(3)—S. 15— *See* **No. 1,** *supra.*

Act III of 1900 (Prisoners).

[REP. IN PART, ACT VI OF 1900. REP. IN PART AND AMENDED, ACT I OF 1903. AMENEED, ACT IV OF 1908.]

See ACT V OF 1871.

,, ACT XV OF 1869.

(1)—Ss. 7 and 8—*See* CRIM. PRO. CODE **(1898), s. 307, 29 C. 286=6 C.W.N. 254.**

(2)—S. 8—*See* **No. 1,** *supra.*

(3)—*S. 40—Scope.*—**The High Court of Bombay refused to address a letter to the Government of Bombay, under s. 40 of Act III of 1900, requesting them to ask the Kolhapur Durbar to permit a prisoner, who was in prison in that State, to come out of jail to answer charges in a criminal proceeding pending against him in British territory. 7 Bom. L.R. 566=2 Cr. L.J. 504.**

See ACT IV OF 1871, 31 C. 1.

Act V of 1900 (Whipping).

[REP., ACT IV OF 1909.]

See ACT VI OF 1864.

,, WHIPPING.

(1)—*S. 3.*—**Under s. 3 of the Whipping Act, juvenile offenders are liable to whipping for attempts to commit offences not punishable with death under the Penal Code or any other law. Therefore, a sentence of whipping for an attempt to commit an offence when the accused is not a juvenile offender is illegal. 2 L.B.R. 123.**

Act XV of 1903 (Indian Extradition).

(1)—*S. 7—Power of Political Agent—Incompetency of Chief Court to interfere—Revision—Crim. Pro. Code, Act V of* 1898, *s. 439.*—*Held*, **that the Chief Court has no power to interfere in respect of a warrant issued by a Political Agent of a Native State under s. 7 of Act XV of 1903, on the grounds either (1) that there is no *prima facie* case against the petitioner or (2) that the circumstances, under which that officer was originally moved, do not justify him to exercise his power under the said section. 36 P.W.R. 1908 Cr.=9 Cr. L J. 3=3 P.R. 1909.,**

(2)—*Ss. 7 and 8—Magistrate's jurisdiction to hold to bail the person arrested to appear before a tribunal in a Foreign State.*—**Neither the Code of Criminal Procedure nor any provision in the Extradition Act authorizes a Magistrate to hold a person to bail to appear before a tribunal in a state to which the Act applies.**

***1.—Imperial Acts*—continued.**

Act XV of 1903 (Indian Extradition)—*concld.*

The Magistrate could bind over the prisoner to appear before himself, and then, when the prisoner had surrendered to his bail, after receiving the warrant from the Political Agent for the State, could proceed to execute it under s. 7, cl. (2), or, if the warrant had been duly endorsed by the Political Agent under s. 8 (1) could bind the prisoner over to appear at the time and place indicated in the warrant. In this case, the warrant had not been so endorsed by the Political Agent. 33 C. 1032=4 Cr.L.J. 366.

(3)—*Ss. 7, 15—Preliminary enquiry by Magistrate—Warrant by Political Agent—High Court, jurisdiction of.*—*Per Russell, J.*—**In all cases where enquiries are held by Magistrates with a view of extraditing accused persons, it would be desirable that the accused should, if possible, be present thereat. S. 15 of Act XV of 1903 ousts the jurisdiction of the High Court to enquire into the propriety of a warrant, but leaves open the question of the High Court's power to intefere with a Magistrate's action, if it was proved that such action was consequent upon a warrant issued by a Political Agent which was plainly illegal** *Per Aston, J.*— **There is no provision in Act XV of 1903, or in the Code of Criminal Procedure or in any other law, making an enquiry by a competent British Court in British India into the truth of the accusation, whether, in the presence of the accused or otherwise, a condition precedent to the issue and execution of the warrant of a Political Agent under s. 7 of Act XV of 1903. 7 Bom. L.R. 463=2 Cr. L.J. 439.**

(4)—*S. 8—Warrant issued by Political Agent, endorsement in—Jurisdiction of Magistrate to release arrested person on bail, where no such endorsement.*—**Where a person was arrested upon a warrant issued by a Political Agent, under the Indian Extradition Act, and was placed before a Magistrate, and such Magistrate passed an order releasing him on bail and directing him to appear before the Political Agent on a certain date, although there was no endorsement on the warrant, giving the Magistrate power to pass such an order.** *Held*, **that in the absence of such an endorsement under s. 8 of the Act, the Magistrate had no authority to pass such an order. 7 C.L.J. 171=7 Cr. L. J. 198=12 C.W.N. 602.**

(5)—S. 8—*See* **No. 2,** *supra.*

(6)—*S. 10—Scope of section.*—**Under s. 10 of the Act, jurisdiction is distinctly conferred on the Magistrates in British India to make preliminary enquiries and to take evidence on the information given or complaint laid in regard to offences alleged to have been committed by Native Indian or British Subjects of His Majesty, within and beyond the limits of British India, not being in a Foreign State, as defined in that Act and to order warrant to issue for the arrest of such accused persons. 8 Bom. L.R. 507=4 Cr.L.J. 49.**

(7)—**S. 15**—*See* **No. 3,** *supra.*

1.—Imperial Acts—continued.

Act V of 1908 (Code of Civil Procedure).

See ACT XIV OF 1882.

(1)—S. 11—*See* MAINTENANCE, 32 C. 479 = 13 C.W.N. 150.

(2)—S. 115—*See* SANCTION TO PROSECUTE, 13 C.W.N. 1038.

(3)—O. 21, r. 24—*See* PENAL CODE, s. 186, 14 C.W.N. 282.

Act VII of 1908 (Newspapers, Incitements to Offences).

(1)—*'Incitement,' meaning of, need not be direct—Liability of newspaper, how to construe—Printing Press, confiscation of.*—Under Act VII of 1908, no question as to the criminality of any 'person' arises and there need not necessarily be any 'direct' incitement to murder or any other act of violence. Nor need the incitement be addressed to any particular person or persons. The only question is, whether the newspaper contains any incitement to murder or to any offence under the Explosive Substances Act, 1908, or to any act of violence, *i.e.*, whether the article in question is calculated directly or indirectly to move to action, to stir up, to stimulate, to instigate or to encourage to murder or acts of violence. The word "incitement" bears the plain dictionary meaning. *Per Ryves, J.*—There can be no hard and fast canon to decide what words or whether a given set of words constitute an "incitement." The article must be read as a whole and read, as far as possible, in the sense in which it was read by that section of the public to whom it was addressed, bearing in mind the occasion and place of its publication and the class or status of persons who are likely to be affected by it. **9 C.L.J. 143 = 13 C.W.N. 672 = 36 C. 405 = 9 Cr. L.J. 545 = 2 Ind. Cas. 285.**

(2)—*S. 3—Order—Forfeiture of press.*—S. 3 of the Newspaper (Incitement to Offences) Act, 1908, provides for the making of a conditional order, declaring the printing press used for the purpose of printing or publishing the offending newspaper to be forfeited. The section refers to the whole of the press, and no order could be made under it limited only to such portions of the press as were employed in printing the offending newspaper. **12 Bom. L.R. 120.**

Act IX of 1908 (Limitation).

See ACT XV OF 1877.

Act XIV of 1908 (Criminal Law Amendment Act).

(1)—*Barristers—Right of exclusive audience—Special Tribunal*—Barristers have the right of exclusive audience before the Special Tribunal formed to try cases sent up for trial to the High Court under the provisions of the Criminal Procedure Amendment Act, 1908. **13 C.W.N. 605.**

(2)—*Ss. 12, 14 (1)—High Court's power to grant bail to accused tried under the Act—Criminal Procedure Code (Act V of 1898),*

1.—Imperial Acts—concluded.

Act XIV of 1908 (Criminal Law Amendment Act)—*concluded.*

ss. 498, 497—Discretion, exercise of—Cognizance, taking, what amounts to.—The power of the High Court to grant bail to an accused person under s. 498, Crim. Pro. Code, is untouched by the provisions of the Criminal Law Amendment Act (XIV of 1908). But, in exercising its discretionary power under that section, the High Court will take into consideration the terms of s. 12 of the Act, whereby the powers of Courts, other than the High Court and the Sessions Court, of releasing the accused on bail, given by s. 497, Crim. Pro. Code, have been made subject to the proviso that no person remanded to custody in the course of proceedings under the Act shall be released on bail, if there appear to be sufficient grounds for enquiry into his guilt. Taking cognizance of an offence does not involve any formal action or indeed any action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of the offence. **14 C.W.N. 512.**

(3)—*S. 14 (1)—Sessions Judge's power to grant bail—Crim. Pro. Code (Act V of 1898), s. 498—Sessions Court, superior to District Magistrate—District Magistrate's duty to send records to Sessions Judge when called for.*—Where the provisions of Part I of the Criminal Law Amendment Act have been applied to proceedings before a Magistrate in respect of an offence, the Sessions Judge ceases to have jurisdiction to grant bail under s. 498, Crim. Pro. Code, the exercise of such jurisdiction being inconsistent with the special procedure prescribed in the said Part. The proper Court to apply to for bail in such a case is the High Court, whose power to admit to bail is not affected by the Act. The District Magistrate acted improperly in not sending the records to the Sessions Judge, when he called for them. **14 C.W.N. 516.**

(4)—S. 14 (1)—*See* No. 2, *supra*.

Act IV of 1909 (Whipping).

See ACT VI OF 1864.

2.—Bengal Acts.

* **Act IV of 1840 (Affrays, Bengal).**

[REP., ACT XVII OF 1862].

See ACT XV OF 1877, ART. 47.

—S. 3—*See* BURDEN OF PROOF, W.R. F.B. 7, 1 Ind. Cas. O.S. 35.

See POSSESSION, 1 Agra 20.

* **Act I of 1848 (Forgery, Bengal).**

[REP., ACT XVII OF 1862].

—Forgery committed before January 1st, 1862—Procedure.—A case of perjury or forgery, alleged to have been committed in a case before a Civil Court before the 1st January, 1862, can be

* These local Acts were passed by the Imperial Legislature.

2.—Bengal Acts—continued.

Act I of 1848 (Forgery, Bengal)—*concluded.*

dealt with only under the Old Procedure Law (Act I of 1848), according to which the sanction of the Court, before which the offence is alleged to have been committed, is necessary before criminal proceedings can be instituted. **5 W. R. Cr. 8=1 Ind. Jur. N.S. 97.** [*F.*, 5 W.R. Cr. 43.]

* **Act XI of 1849 (Abkari, Calcutta).**

[REP., BEN. ACT VII OF 1878].

See BEN. ACT XXI OF 1856.

„ BOM. ACT V OF 1878.

„ MAD. ACT III OF 1864.

„ „ „ I OF 1886.

—*S. 9—License to sell liquor—Matter concerning revenue—Jurisdiction of High Court.*—Under s. 9 of the above Act as amended by Bengal Act III of 1873, s. 1, whenever a license was granted for the retail sale of intoxicating liquors, the Collector was authorised to demand such fee, tax, or duty as may, from time to time, be fixed with the sanction of the Board of Revenue, or a fee, tax or duty, adjusted or regulated in such manner, and in accordance with such rules as the Board of Revenue might prescribe. In a case where the matter related wholly to revenue, it was held that, under 21 Geo. III, c. 70, s. 8, the High Court had no jurisdiction to interfere with the action of the Board of Revenue. **11 B.L.R. 250.**

* **Act XVIII of 1852 (Pleaders, Lower Provinces).**

[REP., ACT XX OF 1865].

See ACT XX OF 1865, 6 W.R. Mis. 5.

Act XXXVII of 1855 (Santhal Parganas).

[REP. IN PART, ACT XIV OF 1870; ACT XII OF 1891; REG. V OF 1893. AMENDED, ACT X OF 1857. SUPPLEMENTED, REG. V OF 1893. REP., ACT XIV OF 1874 (WHEN NOTIFIED). SS. 1, 2 AND 3 DECLARED IN FORCE IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3.]

(1)—*Appeal—Conviction—Sonthal Parganahs.*—No appeal lies to the High Court, under the above Act from a conviction by the Deputy Commissioner of the Sonthal Parganahs. **17 W.R. Cr. 11.**

(2)—*See* CRIM. PRO. CODE (1898), s. 526, 18 C. 247.

(3)—*S. 4 (1) (Scheduled Districts)—Sentence of imprisonment—Revision.*—Under s. 4, cl. 1, all sentences in criminal cases are final; so that an order, under the Act, sentencing an accused to imprisonment is not open to revision under chapter 32 of the Criminal Procedure Code (1882). **12 C. 536.**

* These local Acts were passed by the Imperial Legislature.

2.—Bengal Acts—continued.

***Act XXI of 1856 (Abkari, Bengal).**

[REP. (EXCEPT IN BENGAL AND ASSAM), ACT X OF 1871; (IN BENGAL AND ASSAM), BEN. ACT VII OF 1878].

See BEN. ACT XI OF 1849.

„ BOM. ACT V OF 1878.

„ MAD. ACT III OF 1864.

„ „ „ I OF 1886.

(1)—*Realization of fine—Act VIII of 1869—Crim. Pro. Code (1861), s. 61.*—The provisions of s. 61, Crim. Pro. Code, 1861, did not apply to fines imposed under the Act; such fines cannot be levied by distress and sale of the offender's property. **8 B.L.R. App. 47.**

(2)—*Cultivation of ganja, if offence.*—Cultivation of ganja without a license is not punishable under this Act. **Colm. Dig. Crim. No 2. (1871).**

(3)—*Abetment.*—This Act contains no provision for the punishment of abetment. **7 W.R. Cr. 53.**

(4)—*Power of Magistrate—Fine under the Act.*—A Magistrate may impose a fine exceeding Rs. 1,000 under the above Act, s. 22 of the Cr. Pro. Code, notwithstanding. **7 W.R. Cr. 29.**

(5)—*Levy of fines and forfeitures—Simultaneous imprisonment and distress.*—The provisions of s. 61, Crim. Pro. Code, 1861, as amended by Act VII of 1869, are not applicable to fines and forfeitures under the Act, so as to allow of imprisonment and distress going on simultaneously. **17 W.R. Cr. 7.**

(6)—*Effect of Act X of 1871.*—This Act has not been repealed, so far as it relates to the Lower Provinces of Bengal, by Act X of 1871. **22 W.R. Cr. 31.**

(7)—*Ganja sale in excess of license—Responsibility of owner of shop.*—Where a sale of an excess quantity of ganja took place, and the man effecting the sale pleaded that he was only a servant, while the owner contended that he did not conduct the shop, and gave no authority to his servant to sell ganja in excess of his license, *held*, that the owner of the shop was responsible for the offence committed, and liable to the fine which had been imposed on him. **25 W.R. Cr. 42.**

(8)—*S. 38—Revocation of license.*—According to the above section, no conviction can be had under s. 50 against a person whose license has not been recalled. **16 W.R. Cr. 69; Rev. Ed., p. 59.**

(9)—*S. 43—Abkari licenses.*—Under the above section only persons holding licenses, and not their servants, are subject to the penalties specified in the section. **8 W.R. Cr. 4.** [*R.*, 25 W.R. Cr. 42].

(10)—*License—Liquor—Agent.*—Where a person sells liquor in contravention, and under color of, a license which stands, not in his own

* This local Act was passed by the Imperial Legislature.

2.—Bengal Acts—continued.

Act XXI of 1856 (Abkari, Bengal)—*concluded.*

name, but in that of the person for whom he is the recognised agent, he cannot be allowed to evade the provisions of this section by setting up that it is not a license to himself. **19 W.R. Cr. 34.** [*F.*, 8 C. 207, 9 C. 847 ; *R.*, 17 C. 566, 2 Bom. L.R. 663 ; *Expl.*, 29 C. 606, F.B.]

(11)—*Ss. 48 and 90—Abkari—Country-spirit.*—To warrant a conviction under s. 48, the accused must have manufactured some country-spirit made by the native process of distillation as described in s. 90 of the Act, or they must have sold spirituous or fermented liquors or intoxicating drugs. **22 W.R. Cr. 8.**

(12)—*S. 49—Offences, convictions for which are allowed by confiscation—Summary trial—Crim. Pro. Code (Act X of 1872), s. 222 = s. 260 of the present Code.*—Where fine is prescribed as a punishment for an offence, and confiscation of the accused's property follows as a consequence, the fact that such confiscation follows cannot alter the nature of the case as regards the mode of trial that may be adopted, (*e.g.*), an offence under s. 49, Act XXI of 1856, which is punishable with fine, can be tried summarily, though confiscation follows the sentence of fine as a necessary consequence. **3 C. 366 = 1 C.L.R. 442.**

(13)—*S. 53— Opium— Possession.*— Where opium was found in the possession of a person who was a servant of the accused, and who alleged that he obtained it from the accused's wife who bought it from an opium cultivator, it was heid that the accused could not be convicted under this section as it had not been shown that the purchase by his wife was authorized by the accused, and, therefore, her possession of the opium or that of the servant could not be considered as the possession of the accused. **20 W.R. Cr. 54.**

(14)—S. 90—*See* No. 11, *supra.*

***Act XXI of 1857 (Howrah Offences).**

[REP. IN PART, ACT XVI OF 1874 ; ACT XII OF 1891 ; BEN. ACT V OF 1876; BEN. ACT III OF 1884. AMENDED, BEN. ACT III OF 1897. REP. (IN SUBURBS OF CALCUTTA), BEN. ACT VIII OF 1868.]

(1)—*S. 12—Rules under the Act.*—This Act not being in force in the Punjab, the conviction of an accused under the above section was held to be illegal. **17 P.R. 1905 Cr. = 29 P.L.R. 1905 = 2 Cr. L.J. 185.**

***Act X of 1859 (Recovery of Rent).**

[REP. IN PART, ACT XXXVI OF 1860 ; ACT VII OF 1870 ; ACT XIV OF 1870 ; ACT XII OF 1891. REP. IN PART (LOCALLY), ACT XX OF 1865; (IN BENGAL), BEN. ACT VI OF 1862 ; (IN NORTH-WEST PROVINCES), ACT XIV OF 1863, S. 5. REP. (LOCALLY IN BENGAL), ACT VIII OF 1885 ; BEN. ACT I OF 1879. REP., (N.-W. PROVINCES), (EXCEPT AS TO CERTAIN SCHEDULED DISTRICTS), ACT XVIII OF 1873 ; (IN CENTRAL PROVINCES), ACT IX OF 1883.]

* These local Acts were passed by the Imperial Legislature.

2.—Bengal Acts—continued.

Act X of 1859 (Recovery of Rent)—*concluded.*

See BEN. ACT VIII OF 1869.

(1) *Appeals against decrees and orders made by Deputy Collector.*—Appeals against decrees and orders made by a Deputy Collector, acting under the provisions of Act X of 1859, ordinarily lie to the Collector, and not to the District Judge. **23 C. 971.**

(2)—S. 145—*See* BEN. ACT VIII OF 1869, 10 W.R. Cr. 46 = 2 B.L.R. S.N. 4.

***Act XXII of 1860 (Chittagong Hill Tracts).**

[REP., REG. I OF 1900.]

—*S. 1—Appeals from conviction of offences within Chittagong Hill Tracts—Jurisdiction of the High Court.*—By Act XXII of 1860, s. 1, the tracts of country described in the schedule to the Act and known as Chittagong Hill Tracts are removed from the jurisdiction of the existing Civil and Criminal Courts. Consequently, the High Court has no jurisdiction to hear appeals in respect of sentences passed on conviction of offences committed in those districts. **27 C. 654.**

Act IX of 1862 (Registration of Deeds).

[REP., BEN. ACT II OF 1865.]

(1)—*Mohurrir—Public servant.*—Money received by a *Mohurrir* appointed under the above Act, by way of fees for registering deeds, is money entrusted to him as a public servant. **20 W.R. Cr. 49.**

Act III of 1863 (Transport of Native Labourers).

[REP., BEN. ACT II OF 1870.]

—*Special law—Punishment — Fine — Sub-Magistrate of the first class.*—A Sub-Magistrate of the first class has power to deal with the case of an offence provided for by a special law, as the above Act, when the punishment awardable is six months, fine and fine only. S. 67 and not s. 65, I.P.C., is applicable to such a case. **10 W.R. Cr. 30.**

Act VI of 1863 (Calcutta Municipality).

[REP., BEN. ACT IV OF 1876.]

(1)—*Construction of Act—Right of way.*—The words "lands, walks, gangways, or other thoroughfares" must, in case of obstruction, be restricted to mean those spaces over which the public, by consent or dedication of the owner, enjoy the right of passing and re-passing for market purposes. **1 Ind. Jur. N.S. 102.**

(2)—*Conviction of owner of bazaar for permitting obstruction.*—In order that a conviction may be sustained against the owner of a bazaar under bye-law 7 of the above Act, it must be shown that he actually permitted an obstruction in the paths of the bazaar. **Bourke. O.C. 512.**

(3)—*S. 18 - Duties of Justices of the Peace for the Town of Calcutta—Supplying tanks for water.*—Where the Justices had closed a tank

* This local Act was passed by the Imperial Legislature.

2.—Bengal Acts—continued.

Act VI of 1863 (Calcutta Municipality)—*cld.*

for the purpose of constructing in its place a different means of water supply, a *mandamus* was issued directing the Justices to maintain the tank and supply it with water, or to substitute another tank in its place and supply that with water. **2 Ind. Jur. N.S. 182.**

(4)—*Ss. 151, 226, 229 and 230—Liability of Justices for compensation for damage in making sewers, etc.—Negligence—Amount of damages—Writ of* mandamus.—*See* **8 B.L.R. 433=17 W.R. 364.**

(5)—*S. 200—Warrant for search and seizure—Jurisdiction of Chairman of Justices—Procedure.*—The above Act does not empower the Chairman of the Justices, as such, to issue a warrant under s.200; such a warrant must show, on the face of it, that the Justice issuing it had jurisdiction ; the application under the section must be reduced to writing ; the evidence taken therefrom must be recorded ; and notice must be given to the party proceeded against. **Bourke O.C. 232.**

(6)—*S. 226—Suit against Justices for damage in repairing drains—Contractors—Negligence—Cause of action—Notice of action.*—*See* **8 B.L.R. 265.** [*R.*, 34 C. 257, 5 C.L.J. 148, 17 B. 307.]

(7)—*See* No. 4, *supra.*

(8)—S. 229—*See* No. 4, *supra.*

(9)—S. 230—*See* No. 4, *supra.*

Act III of 1864 (District Municipal Improvement).

[REP., BEN. ACT V OF 1876.]

(1) - *Power of Municipal Commissioners to close or divert public highways.*—Act III of 1864, which vests public highways in Municipal Councillors, does not empower them to stop up or divert such public highways. **1 J.G. 13.**

(2)—*Land let to tenants by owner—His liability.*—Where the owner has let the land to tenants, then the owner is not liable, but the occupiers. **3 W.R. Cr. 57** ; 8 W.R.Cr. 45.

(3)—*Public highways—Powers of Municipality.*—The fact that, under Act III of 1864 (B.C.), public highways are vested in the Municipality, does not, *ipso facto*, empower it to stop up or divert them. **2 C. 425.**

(4)—*Ss. 6, 79—Power of Municipal Commissioners to administer oath—Order to close burning ground.*—As every Municipal Commissioner is vested by s. 6 with the powers of a Magistrate under s. 23 of the Crim. Pro. Code, 1872, such Commissioner is authorised to administer an oath, if the purposes of the Act require that he should do so. **19 W.R. 309.** [*D.*, 25 C. 425].

(5)—*S. 19—Refusal to permit excavation of tanks—Discretion of Municipality.*—Under the above section of the bye-laws of the Howrah Municipality framed under s. 84, and confirmed by the Lieutenant-Governor, the

2.—Bengal Acts—continued.

Act III of 1864 (District Municipal Improvement)—*continued.*

Municipality has discretion to refuse permission for the excavation of a tank, and the Courts have no power to interfere with the *bona fide* exercise of such discretion. **17 W.R. 215.**

(6)—*S. 27—Warrant of arrest—Chap. XV, Crim. Pro. Code (1861)*—A Magistrate or Municipal Commissioner has no power to issue a warrant for the arrest of a person who may have failed to appear on a summons to answer a charge under the above section, for using the premises as a straw or wood depot without a license. The provisions of Ch. XV of the Code of Criminal Procedure, 1861, are not applicable to offences under the Act. **16 W.R. Cr. 1.**

(7)—*S. 57—Obstruction of drain by tree blown down.*—The obstruction of a drain by a tree blown down by a cyclone was held not to be an obstruction within the meaning of the above section. **3 W.R. Cr. 33.**

(8)—*Blocking up private drain.*—The Municipal authorities have no power under the above Act, to impose a fine on a person for blocking up a drain which is not shown to be public property, or along the side of any highway. **14 W.R. Cr. 23.**

(9)—*S. 63—Right to pull down ruinous house—Notice of action.*—Under the above section, if Municipal Commissioners deem a house or a building to be in a ruinous state, they may, after the notice prescribed by that section, cause the same to be taken down. **9 W.R. 279.**

(10)—*Bye-law of Municipality—Roofs with inflammable material.*—A bye-law made by the Howrah Municipality in the exercise of the authority vested in it by s.63, forbidding the erection or renewal of the external roof and walls of buildings with inflammable materials, was held to forbid the renewal even of the portion of the roof with such material. **24 W.R. Cr. 70.**

(11)—*Ss. 65 and 66—Nuisance—Prospective fine.*—In a case in which the accused was convicted of a nuisance under s. 66, Act III (B.C.) of 1864, and sentenced to pay a fine of Rs. 10, and further fined Rs. 2 a day for every day the nuisance continued unabated, the High Court (following a precedent cited) set aside only so much of the order as inflicted the fine prospectively. **20 W.R.Cr. 64=12 B.L.R. App. 2** (18 W.R. Cr. 44, *D.*). [*F.*, 25 W.R. Cr. 6.]

(12)—S. 66—*See* No. 11, *supra.*

(13)—*S. 67—Fine for suffering premises to be in filthy state—Owners and occupiers* —Where a land was occupied by tenants and the owner lived in another district, and there was nothing to show that he suffered the land to be in a filthy state, the imposition of a fine on the owner would not be a proper exercise of the discretion given under the above section. **8 B.L.R. App. 9=16 W.R. Cr. 70.**

2.—Bengal Acts—continued.

Act III of 1864 (District Municipal Improvement)—*continued.*

(14)—*S. 67—Allowing ground to remain in filthy state.*—The owner of the ground is liable under the above section whether his ground was made dirty by himself or by somebody else. **3 W.R. Cr. 33.**

(15)—*Ss. 67, 73—Omission to clear away jungle—Power of Magistrate as Municipal Commissioner.*—In this case upon a notice being served on a party under s. 73, he did not choose to clear away the jungle referred to. *Held*, it was open to the Magistrate, as Commissioner of the Municipality, either to clear the jungle at the expense of the party in possession or to inflict a fine under s. 67. **24 W.R. Cr. 79.**

(16)—*S. 73—Expense of clearing away jungle after notice to defendant.*—The Municipal Commissioners are entitled, under the above section, to recover from the defendant the expense of clearing away any jungle which they found on his land, upon his failure after the notice to clear it himself within the time specified in the notice. **7 W.R. 213.**

(17)—S. 73—*See* No. 15, *supra.*

(18)—*S. 77—Notice of action—Suit against Municipal Commissioners.*—A notice of action against Municipal Commissioners is absolutely necessary under the above section. A notice of objection to, and demand for, a reconsideration of the order complained of is not sufficient. **7 W.R. 92.**

(19)—*S. 77—Omission to take out license.*—The accused was charged for not taking out a license for a wood yard. He pleaded that the yard had been in existence prior to 1864. *Held*, that the Magistrate was wrong in refusing to inquire into the allegation as to the existence of the yard prior to 1864. **15 W.R. Cr. 84.**

(20)—*S. 77—"Using premises" for offensive trades.*—The words "uses any premises" in the section means using and employing the premises as a place for the carrying on of the offensive trades mentioned in that section. **16 W.R. Cr. 4.**

(21)—*S. 77—Burning bricks for private use.*—This section refers to the burning of bricks for trading purposes. It does not refer to cases where bricks are made for the particular use of the person burning them; such person need not take out a license for that purpose. **20 W.R. Cr. 65.**

(22 and 23)—*S. 79—Scope of section—Closing burning ground—Interference by Municipality Proceedings under Act—Reports by medical men.*—This section does not authorise Municipal Commissioners to close a burning ground which has been used for very many years, merely because they think that the burning of dead bodies is offensive. It allows them to interfere only when it shall appear to them upon the evidence of competent persons that any burning *ghat* or ground is in such a state as to be dangerous to the health of persons living in the

2.—Bengal Acts—continued.

Act III of 1864 (District Municipal Improvement)—*concluded.*

neighbourhood thereof. [*Dist.*, 25 C. 425.] Regular reports signed by Medical men would constitute evidence within the meaning of the above section. A proceeding taken under s. 79 is not a judicial proceeding, and the evidence referred to therein means evidence without oath. **19 W.R. 309.**

(24)—S. 79—*See* No. 4, *supra.*

See JUDICIAL OFFICERS, LIABILITY OF, 13 W.R. 340.

Act V of 1864 (Canals).

[REP. IN PART, ACT XII OF 1873. REP., (IN ASSAM), ACT V OF 1897].

—*Conviction, when sustainable, under the Act.*—A conviction cannot be had under the Act unless it is charged and proved that the accused *wilfully* obstructed the navigation. **11 W.R. Cr. 18=2 B.L.R. A.C. 23.**

S. 16—*See* OBSCENE PUBLICATION. 2 B. L.R. A.C. 23.

Act VII of 1864 (Salt).

[REP. IN PART, ACT XII OF 1873; ACT XII OF 1882. AMENDED, BEN. ACT I OF 1873. REP. (IN ASSAM), ACT V OF 1897. DECLARED IN FORCE IN SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3.]

See ACT XII OF 1882.

,, BOM. ACT XXVII OF 1837.

,, ,, ,, XXXI OF 1850.

,, ,, ,, VII OF 1873.

,, ,, ,, II OF 1890.

,, MAD. ACT XVII OF 1840.

,, ,, ,, VI OF 1871.

,, ,, ,, I OF 1882.

,, ,, ,, IV OF 1889.

,, U.P. ACT XXXVI OF 1855.

(1)—*Ss. 12 and 16—Confiscation of salt found without pass—Intention to sell.*—When salt of a quantity exceeding five seers is found within the limits prescribed by s. 12, unprotected by a pass, the salt is contraband and such salt is liable to seizure, the parties transporting it being liable to be punished under s. 16. It matters not whether any attempt or intention to sell is proved or not. **6 B.L.R. 381; 15 W.R. Cr. 21.**

(2)—*S. 16—Rawana, endorsement of, by police or customs officers.*—A *rawana* as defined by this Act is complete on the face of it without any certificate by way of endorsement, signed by the superintendent showing that the endorsement made by the preventive officers of customs have been examined by him. The section only gives power to fine when the salt is not specified in the *rawana*. **23 W.R. Cr. 6.**

2.—*Bengal Acts*—continued.

Act VII of 1864 (Salt)—*continued.*

(3)—*S. 16—Salt carried partly by land and partly by water.*—Where a person, who had taken a quantity of salt under a *rawana* for transit from Calcutta to his *golah*, part of the journey to be performed by water and part by land, conveyed a portion of it to his *golah* where the *rawana* was, and was conveying the rest in two separate batches by land, it was held that he could not be convicted under s. 16. **22 W.R. Cr. 71.**

(4)—S. 16—*See* No. 1, *supra*.

(5)—*Ss. 16 and 18—Possession of contraband salt.*—A conviction for possession of contraband salt would be set aside, if the salt had already reached its destination and was not *en route*. **22 W.R. Cr. 82.**

(6)—*Ss. 16 and 21—Possession and sale of salt.*—Where a person was convicted under s. 16 and another under s. 21 of the same Act, the former with having had in his possession salt not covered by a *rawana* and the latter with having sold to the former the said salt, *held* that the conviction of the former under s. 16 was illegal, the salt in his possession having been a portion of salt for which the latter had taken out a *rawana*, but that the conviction of the latter under s. 21 was proper, as he had failed to certify the salt sold by him to the former on the back of the *rawana*. **18 W.R. Cr. 64.**

(7)—*S. 17—Infliction of penalty on owner and servant.*—In a case of conviction for having in possession contraband salt, the penalty cannot be inflicted on the owner of the salt and also on the servant or *gomastha* of the owner who has the salt in his possession. In the above case, the possession of the servant was held to be the possession of the master. **22 W.R. Cr. 9.**

(8)—*S. 18—Confiscation of salt—Power of releasing from confiscation.*—Under the above section, salt not being conveyed by the route and to the place prescribed in the *rawana* becomes absolutely confiscated. The power of releasing any such salt is vested in the Board of Revenue under s, 39 and not in the Magistrate. **7 W.R. Cr. 48.**

(9)—*S. 18—Salt seized, power of Magistrate to release.*—A Magistrate has no authority to release salt seized under circumstances in which the seizure is found, on the trial of an offender, to have been warranted by s. 18, Act VII of 1864 (B.C.). **8 W.R. Cr. Cir. 1.**

(10)—*S. 18—Conviction of both principal and agent.*—A Magistrate can, under the above section, convict both the owner of contraband salt and his agent who transports it. The Magistrate need not pass sentence on the *manjees* of the boat in which the salt was being transported when seized, when their boat has been already confiscated by the Magistrate. **23 W. R. Cr. 7.**

2.—*Bengal Acts*—continued.

Act VII of 1864 (Salt)—*concluded.*

(11) S. 18—*See* No. 5, *supra*.

(12)—S. 21—*See* No. 6, *supra*.

(13)—*S. 29—Power of Magistrate to confiscate salt.*—The power of a Magistrate under s. 29 to confiscate salt not protected by a *rawana* in a prohibited district is not affected, because there was no attempt or intention to sell the salt within the prohibited district. **15 W.R. Cr. 21.**

Act VI of 1865 (Transport of Native Labourers).

[REP., BEN. ACT II OF 1870].

(1)—*S. 31—Procedure under section—Crim. Pro. Code (1861), s. 444.*—The procedure under s. 31 must be conducted in accordance with s. 444, Crim. Pro. Code, 1861. **3 B.L.R. A. Cr. 39=12 W.R. Cr. 29.**

(2)—*Ss. 31 and 32—Protector of labourers, power of—Wages of labourers—Mode of taking account.*—Until an enquiry is made under s.31, the Protector of labourers is not competent to act under s. 32. **3 B.L.R. A.Cr. 39=12 W.R. Cr. 29.**

(3)—*S. 32—Essentials for a conviction under section.*—To support a conviction under s. 32, it must be shown that the wages or part of the wages due have remained unpaid for more than six months. But in an account current, the payments are not to be appropriated for the wages of the month in which the payment was made. **3 B.L.R. Cr. 39=12 W.R. Cr. 29.**

(4)—*See* No. 2, *supra*.

Act VII of 1865 (Slaughter-house).

[REP. (IN SUBURBS OF CALCUTTA), BEN. ACT IV OF 1876; (IN ASSAM), ACT V OF 1897.]

(1)—*License for carrying on slaughter-house—Notice of revocation.*—The length of notice to be given to persons holding licenses for carrying on slaughter houses under the Act must be determined in each case according to its own particular circumstances. **6 W.R. Cr. 77.**

(2)—*S. 1—Using place as slaughter house.*—No person is liable to any penalty under the section except a person who, without a license, uses a place or building as a slaughter-house either by letting it out for such purpose, or by employing servants and others for the purpose of killing cattle therein; but a person who may be the mere servant of a butcher killing cattle in a particular slaughter-house or a butcher resorting accidentally or occasionally to a slaughter-house for the purpose of killing an ox or a sheep there, does not use the place as a slaughter-house within the meaning of the above section. **16 W.R. Cr. 4.**

(3)— *S. 7—Slaughtering cattle—Owner of a slaughter-house.*—The owner of a slaughter house, by giving it in lease to another, parts with his interest in it, and ceases to have any

2.—Bengal Acts—continued.

Act VII of 1865 (Slaughter-house)—*concluded.*

power to allow or disallow the slaughtering of cattle therein, and in such a case, he does not bring himself within the terms of the above section. **14 W.R. Cr. 67=6 B.L.R. Ap. 28.**

Act I of 1866 (Ferries, amending Bengal Regulation VI of 1819).

[REP. (IN BENGAL), BEN. ACT I OF 1885; (IN ASSAM), ACT XII OF 1891.]

—S. 2—Suit to re-open a ferry against the provisions of the section not maintainable—*See* FERRY, 15 W.R. 132.

Act IV of 1866 (Calcutta Police).

[REP. IN PART, ACT XII OF 1873; ACT XII OF 1875; ACT IV OF 1877; BEN. ACT II OF 1867, S. 17; BEN. ACT I OF 1869, S. 8; BEN. ACT IV OF 1879; BEN. ACT I OF 1890, SS. 1, 3. AMENDED, BEN. ACT II OF 1876, S. 12; BEN. ACT II OF 1886, SS. 2 TO 4; BEN. ACT II OF 1895; BEN. ACT III OF 1897].

See ACT V OF 1861.

„ „ VIII OF 1895.

„ BOM. ACT XIII OF 1856.

„ „ „ XLVIII OF 1860.

„ „ „ IV OF 1902.

„ BUR. ACT IV OF 1899.

„ MAD. ACT XXIV OF 1859.

„ „ „ I OF 1885.

„ „ „ III OF 1888.

(1)—*S. 5—Powers of Deputy Commissioner.*—A Deputy Commissioner of Police, under s. 5 of Bengal Act IV of 1866, has all the powers of a Commissioner, subject to the control of that officer, that is to say, the Commissioner may at any time set aside his orders, or he may give, either in printing or otherwise, any special direction with regard to any matter. Apart from such special direction, any act of the Deputy Commissioner, provided it be within the powers of the Commissioner, is made valid under that section. No instructions either in writing or otherwise, or either general or in regard to specific acts, are necessary. **20 C. 670.**

(2)—*S. 9—Circular order authorising the Calcutta police to inquire into matters.*—S. 9 of the Act authorises the Commissioners to issue orders from time to time for various purposes, amongst which, one is "to render the police force efficient in the discharge of all duties." The circular order authorising the Calcutta police to inquire into matters comes within the scope of such a purpose. **7 C.W.N. 883.**

(3)—*S. 26—Power of Magistrate.*—A Police Magistrate had power to convict summarily, under the above section, for an offence punishable under s. 166, Penal Code. **1 B.L.R. O. Cr. 39.**

(4)—Ss. 36 and 37—*See* ACT I OF 1878, s. 39, **13 C.L.R. 336.**

2.—Bengal Acts—continued.

Act IV of 1866 (Calcutta Police)—*concluded.*

(5)—S. 37—*See* No. 4, *supra.*

(6)—*S. 46—Search warrants—Power of Deputy Commissioners.*—A Deputy Commissioner is empowered to issue search warrants under s. 46 of the Act. **20 C. 670.**

(7)—*Ss. 46, 72—Common gaming house—Presumption under s. 46 of the Calcutta Police Act, under what circumstances it may arise—Existence of a warrant which has been executed against other persons who has since been convicted and tried, hardly a justification for arrest, when the arrest is not really made under it—Indian Penal Code, ss. 323, 332.*—When a person is arrested for an offence not really under warrant, the mere fact that a warrant had been issued for his arrest, which warrant had been executed against other persons, who have since been convicted, can hardly be put forward as a justification for the arrest. Where an arrest of a person, who was gambling in an open place in view of the police, is sought to be justified as having been made under s. 74 of the Calcutta Police Act, it must be found that the place where the gambling was taking place was a common gaming house. The presumption referred to under s. 46 of the Calcutta Police Act, cannot arise in a case where the arrest is not made on a warrant. **4 C.L.J. 92=4 Cr.L.J. 71.**

(8)—S. 72—*See* No. 7, *supra.*

(9)—*S. 99 (1)—Term "prosecutions" explained.—Inspector detaining persons in custody for police enquiry.*—The word "prosecutions" in cl. (1) of s. 99 of the Calcutta Police Act means "criminal prosecutions"; and the clause, so far as the rule of limitation goes, applies to criminal prosecutions as well as to civil actions. Where a Police Inspector in Calcutta, purporting to act under a circular order issued by the Commissioner of Police, detained a person in custody for the purpose of police inquiry, *held* that the act of the Inspector was done or at least intended to be done under the provisions of the Calcutta Police Act, in the absence of any evidence to show that he did so in abuse of his authority and under colour of it for the purpose of harassing or injuring the accused. Therefore, a prosecution of the Police Inspector under s. 342. I.P.C., after expiry of three months from the date of the commission of the act is barred by cl. (1) of s. 99. **7 C.W.N. 883.**

Act II of 1867 (Gambling).

[AMENDED, BEN. ACT III OF 1897. REP. (IN ASSAM), ACT XII OF 1891. DECLARED IN FORCE IN SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3].

See ACT III OF 1867.

„ BOM. ACT III OF 1866.

„ „ „ IV OF 1887.

„ BUR. ACT XVI OF 1884.

„ „ „ I OF 1899.

2.—Bengal Acts—continued.

Act II of 1867 (Gambling)—*continued.*

(1)—*Instruments of gaming—Public place—Horse raising machine called "little horses"—"Public place," defined.*—The accused kept a machine known as "little horses" which consisted of metal figures of horses which could be made to move in concentric circles by turning a handle. The horse which occupied a certain position when the machine halted after being thus set in motion, is the winning horse. The public staked their money on any of the horses before the machine was started. The accused took all the stakes returning four times their stakes to those who had staked on the winning horse. The place, in which the machine was kept, was an open piece of ground near a bazaar and was not separated from it by any wall or fence, although it was private property. *Held*, that the machine was an instrument of gaming and the place was a public place. A place may be a public place, though it may be the private property of an individual. Where a place is in any way dedicated to the use of the public, it is of course a public place. But when it is owned privately, and such dedication has taken place, the question whether it is a public place seems to depend on the character of the place itself and the use actually made of it. If the place is an open piece of ground, the presumption that it is a public place is naturally more easily created than where it is a building, or is surrounded by a wall. **31 C. 542=8 C.W.N. 458.** [*R.*, 9 P.R. 1905 Cr.=2 Cr. L.J. 46=123 P.L.R 1905.]

(2) *See* PENAL CODE, s. 218, 27 C. 144.

(3)—*Ss. 1 and 6—Instruments of gaming—Coins and cowries.*—Although coin and cowries may not necessarily be implements of gaming, yet, when it is found that they are actually used in gaming, they do become within the meaning of the Act "instruments of gaming." **5 C.W.N. 503.**

(4)—*S. 2—Government notification—Subsequent notification.*—The notification issued by Government under the above section should specify the limits of any town to which it is intended the Act should apply, and must be published in three consecutive Gazettes. Where a first notification, which extended the Act to a town with specification of limits to which it was intended to be applied, was published only once, and a subsequent notification, published three times, extended the Act to the town without specifying the limits to which the Act was to apply, it was held that the subsequent notifications were not sufficient, but that did not prevent the operation of the Act in places which are shown to be undoubtedly within the town according to its ordinary designation. **21 W.R. Cr. 23.**

(5)—*Ss. 3, 10—Game of chance, of skill—Ring game—Chief element, skill—Certain amount of chance—No offence.*—If a game is one of skill, it is not an offence under the Gaming Act; if it is a game of mere chance, it is; where the chief element of a game is one of skill, the game is not an offence, although there is an element of chance in it. **6 C.L.J. 708.**

2.—Bengal Acts—continued.

Act II of 1867 (Gambling)—*continued.*

(6)—*S. 4—Gambling—Common gambling house*—Where the premises of Messrs. J. and Co., were used, during the night, when they were deserted for business purposes, for the purpose of gambling for months together, to the profit of the *durwans* left in charge thereof, *held* that the premises could not be regarded as a "common gambling house," even though the *durwans* might have made some profit out of the gambling which went on there. **11 C.W.N. 972=6 Cr. L.J. 228.**

(7)—To sustain a conviction under s. 4 of the Act, two things have to be established, first, that the accused were found gaming, and, second, that the place where they were found was a common gaming house within the meaning of the Act. The mere fact of gambling having taken place in the house on previous occasions is not sufficient to make it a common gaming house within the meaning of the Act. **25 C. 432.**

(8)—*Ss. 5 and 6—Gambling—Unauthorised entry and arrest.*—A Magistrate can convict persons under s. 5 of Act II of 1867 (B.C.) even on an unauthorised and illegal arrest by a police officer, provided there is proof, independent of the presumption raised in s. 6 of the Act, that the house, where the arrest was made, is a gaming house. **4 C. 659.** [*R.*, U.B.R. (1892—1896), 123].

(9)—Where a Sub-Inspector of Police, not authorised to do so by the District Magistrate or Superintendent of Police, under s. 5 of the Act, enters an alleged gambling-house and arrests persons, a Magistrate cannot convict them, even the presumption of evidence created by s. 6 not arising in such a case. **4 C. 710.**

(10)—*S. 6—Common gaming house.*—A house cannot be considered, as exclusively private in its character, which is used for the purpose of gaming, by a large party of people of different social position and standing who would not ordinarily be friends or guests of the owner. S. 6 would raise a presumption that such a house in which coins and cowries were found was a common gaming-house. **5 C.W.N. 503.**

(11)—*Cowries—Instruments of gaming—Presumption.*—Although coins are not instruments of gaming, yet, *cowries* being different from coins, may be treated as instruments of gaming, when they are used as counters, or as a means to carry on gaming. The finding of cowries, in a house upon search made under a warrant, will, under s. 6 of the Act, raise a rebuttable presumption that the house is used as a common gaming house. **25 C. 432.**

(12)—*See* Nos. 8 and 9, *supra.*

(13)—S. 10—*See* No. 5, *supra.*

2.—Bengal Acts—continued.

Act II of 1867 (Gambling)—*concluded.*

(14)—*S. 11*—"*Place*," *meaning of—Confiscation.*—The words "place" in s. 11 cannot but be a public place, and is evidently *ejusdum generis*, with the other words in the section, public market, fair, street, or thoroughfare. A place within a *thakurbari* surrounded by a high compound wall is not a public place. [*R.*, 8 C.W.N. 458=31 C. 542, 31 C. 910=8 C.W.N. 592; *R.*, 8 Bom. L.R. 22=30 B. 348 =3 Cr. L.J. 216.] If the conviction under s. 11 cannot be sustained, the order for confiscation must also fall. **6 C.W.N. 33.**

(15)—*Public place*—Osara *enclosed on all sides with doors opening towards the road.*—The accused were convicted under s. 11 of the Bengal Gambling Act. The place in which the gambling was held, was an *osara*, enclosed on all sides, with doors opening towards the road, and with a platform between the *osara* and the road, and was a part of a building, the private property of certain individuals. It was used during the day as a shop, but not so in the night. The gambling in question took place after midnight on a certain day. *Held*, that the place was not a public place within the meaning of s. 11 of the Act. **31 C. 910=8 C.W.N. 592.**

(16)—*Public verandah of a private house.*—Gambling in an *osara* (verandah) belonging to a private owner would not be an offence under s. 11 of the Act, if the verandah is not used as a common gaming house, although the verandah may be accessible to the public in the sense that there is no physical obstruction to a person desirous of stepping on to it. **31 C. 912 note.**

Act VI of 1868 (District Towns).

—Sch. K., cl. (1).—*See* JUDICIAL OFFICERS, LIBILITY OF, 14 B.L.R. 254=21 W.R. 391.

Act VIII of 1869 (Landlord and Tenant Procedure).

[REP. IN PART, ACT VII OF 1870. REP. (IN BENGAL), ACT VIII OF 1885].

(1)—*Suit against agent for rent received and misappropriated.*—A suit will lie against an agent under the Rent Act for rents received by him, whether or not he has committed in respect of such rents an offence under the Penal Code. **2 W.R. Act X, 105.**

(2)—*Fraudulent removal of property—Decree of Collector's Court—Penal Code, s. 206—Act X of 1859, s. 145 (B.C.).*—A person, who fraudulently removes property, intending thereby to prevent that property from being taken in execution of a decree made by a Collector, commits an offence, and is punishable under s. 206, I.P.C. and not under s. 145, Act X of 1859. **10 W.R. Cr. 46=2 B.L.R.S.N. 4.**

(3)—S. 6.—*See* WRONGFUL DISTRAINT, 8 C.L.R. 204.

2.—Bengal Acts—continued.

Act VIII of 1869 (Landlord and Tenant Procedure)—*concluded.*

(4)—Ss. 72, 74, 76—*See* CRIMINAL TRESPASS, 7 C. 26.

(5)—S. 74—*See* No. 4, *supra.*

(6)—*See* No. 4, *supra.*

(7)—*S. 101—Procedure—Wrongful restraint.*—When proceedings are taken before a Munsiff under the above section, he is bound first to inquire whether an offence has been committed, and if he is satisfied that it has, the only order he can make against the offenders (not being tenants) is that they shall pay the value of the crops distrained. **20 W.R. 445.**

(8)—*Act X of 1859, ss. 145 and 160—Complaint—Suit.*—A complaint under s. 145 is not a suit within the description of suits in which, under s. 160, an appeal was given to the Zillah Judge. **6 B.L.R. 569=15 W.R. 136.**

(9)—S. 160—*See* No. 8, *supra.*

Act VI of 1870 (Village-Chowkidari).

[REP. IN PART AND AMENDED, BEN. ACT I OF 1892. AMENDED, BEN. ACT I OF 1871; BEN. ACT I OF 1886. APPICATION EXTENDED—(LOCALLY IN ASSAM), BEN. ACT V OF 1876, S. 375; (IN BENGAL AND LOCALLY IN ASSAM), BEN. ACT III OF 1884, S. 364.]

See PENAL CODE, s. 188, 25 C. 274.

(1)—*S. 8—Fine imposed by Sub-Divisional officer on a member of village* punchayet—*Nature of the order—Revision by High Court.*—An order under s. 8 of the Act imposing a fine on the collecting member of a *punchayet* is an order by the Magistrate in his judicial capacity. The order being made under the provisions of an Act of the Bengal Council, the person on whom the fine is imposed is guilty of an offence (s. 4 (*p*), Crim. Pro. Code), and the fine is realisable under the provisions of the Penal Code and Crim. Pro. Code. Such a person could, therefore, be sentenced to imprisonment in default of payment of the fine. An order of this nature is, therefore, a judicial order, and consequently subject to revision by the High Court. **23 C. 421.**

(2)—S. 39—*See* CRIM. PRO. CODE (1898), s. 56 (1), 10 C.W.N. 287 =5 Cr. L.J. 201.

(3)—*S. 39, cl. (2)—Daffadar's authority to arrest—Continuing offence—Theft—Offence, how long continues.*—Under s. 39, cl. (2) of Act VI B.C. of 1870, a *daffadar* is only entitled to arrest a person for theft committed in his presence. One R after having cut down some plantain tress belonging to J with the intention of dishonestly taking them, loaded them in a cart and was driving away the cart. J pursued the cart and on his crying out that R had cut and was taking away his plantain trees, a *daffadar* came up and arrested R. *Held*, that the offence of theft did not continue when the *daffadar* came up and as the offence of theft was completed before the *daffadar* came up, and arrested

2.—*Bengal Acts*—continued.

Act VI of 1870 (Village Chowkidari)—*concld.*

R, the arrest was illegal and therefore the rescue of R from the *daffadar's* custody was not an offence. **12 C.W.N. 367 = 7 Cr. L.J. 188 = 35 C. 361.**

(4)—S. 45—*See* PENAL CODE, s. 186, 14 C. W.N. 282.

*** Act VI of 1871 (Bengal Civil Courts Act).**

[REP., ACT XII OF 1887].

(1)—*S. 24—Evidence Act, s. 57 (1)—Judicial notice of Mahomedan Ecclesiastical law—Penal Code, ss. 79, 296—Disturbing a religious assembly.*—In a *masjid* used by the members of the Hanifi sect, who use the word "*amen*" in their prayers in a low tone of voice, the accused, a Muhammadan of another sect called out "*amen*" in a loud tone of voice, according to the tenets of his sect, and was convicted of an offence under s. 296, I.P.C. *Held* by the Full Bench (*Mahmood, J. dissenting*). The Magistrate should re-try the case, having regard to the following questions:

(1) Was there an assembly lawfully engaged in the performance of a religious worship?

(2) Was such assembly in fact disturbed by the accused?

(3) Was such disturbance caused by acts and conduct on the part of the accused by which he intended to cause such disturbance, or which acts and conduct at the time of such acts and conduct, he knew or believed to be likely to cause such disturbance?

Per Mahmood, J.—(*a*) To say that the utterance of the word "*amen*" aloud, after the Imam has recited the "*Surai-Fateha*" causes a disturbance in the prayer of a congregation, some or many of whom say the word in a low tone, is to contradict the express provisions of the Muhammadan Ecclesiastical Law as explained by the four orthodox Imams.

(*b*) A mosque once consecrated by public worship cannot in any case revert to the founder, and every Muhammadan has the legal right to enter it, and perform devotions according to his own tenets, so long as the form of worship is in accord with the recognized rules of Muhammadan Ecclesiastical Law.

(*c*) The discussion said to have taken place after the act of the accused, could have only taken place during the interval when the prayers were not going on, and would not, therefore, fall under the purview of s. 296.

(*d*) The accused being fully entitled by law to enter the mosque, to join the congregation, and to say the word "*amen*" aloud, was justified by law in exercising his right of worship within the meaning of s. 79, I.P.C. *Per Mahmood, J.*:—The Courts are bound to take judicial notice of the Muhamadan Ecclesiastical Law, and the rules of the law need not be proved by specific evidence. **7 A. 461, F.B.** [*R.*, 12 A. 494, F.B., 18 C. 448, P.C., 13 A. 419, F.B., 1 C.W.N. 76, 15 P.R. 1902, F.B. Cr = 104 P.L.R. 1902, 35 C. 294 = 12 C.W.N. 289 = 7 C.L.J. 433 = 3 M.L.J. 191].

2.—*Bengal Acts*—continued.

Act VI of 1871 (Bengal Civil Courts Act)—*cld.*

Act II of 1872 (Jute Warehouse and Fire Brigade).

[REP., BEN. ACT V OF 1879].

(1)—*Ss. 4 and 34—Procedure—Storing jute—License.*—Before a conviction for storing jute in a ware-house without a license can be had under s. 4, proceedings should be taken under the provisions of Ch. XV of the Code of Criminal Procedure, 1861, as required by s. 34 of the former Act. **19 W.R. Cr. 4.**

(2)—S. 34—*See* No. 1, *supra*.

Act III of 1873 (Excise).

[REP., BEN. ACT VII OF 1878].

See ACT X OF 1871.

" " XXII OF 1881.

" BEN. ACT II OF 1876.

" " " VII OF 1878.

" " " IV OF 1881.

—S. 1—*See* ACT XI OF 1849, 11 B.L.R. 250.

Act II of 1876 (Excise, Amending Ben. Act IV of 1886).

[REP., (EXCEPT S. 12), BEN. ACT VII OF 1878].

See ACT X OF 1871.

" " XXII OF 1881.

" BEN. ACT III OF 1873.

" " " VII OF 1878.

" " " IV OF 1881.

" BEN. ACT IV OF 1866, 13 C.L.R. 336.

Act V of 1875 (Bengal Survey).

[REP. IN PART (IN BENGAL), BEN. ACT VII OF 1880. REP. (IN ASSAM), ACT XII OF 1891. DECLARED IN FORCE IN ANGUL AND THE KHONDMALS, REG. I OF 1894, S. 3].

—*S. 45—Obstruction to Canongoe appointed by Settlement Officer—Penal Code, s. 186.*—Where a Canongoe appointed by a Settlement Officer in connection with the settlement of certain *khas mehal* belonging to Government was obstructed in his attempt to drive some pegs in the land by way of demarcating the boundary, *held*, that he was not acting in the discharge of any public function within the meaning of s. 186, as either of the two conditions required by the Act had not been proved. **6 C.W.N. 120.**

Act I of 1876 (Registration of Mahomedan Marriages and Divorces).

See PENAL CODE, s. 419, 17 C. 606.

* This local Act was passed by the Imperial Legislature.

2.—Bengal Acts—continued.

Act IV of 1876 (Calcutta Municipal Consolidation).

[REP., BEN. ACT II OF 1888.]

(1)—*Prosecution by Corporation—Competency of its servant to try as Justice of the Peace.*—A servant of the Calcutta Corporation was held to have such an interest in the result of a prosecution by the Corporation (under s. 77 of Act IV of 1876) as to disqualify him from trying it as Justice of the Peace. **7 C 322=9 C.L.R. 193.**

(2)—*Ss. 11 and 12—Person having no beneficial interest in the property for which he paid taxes, whether qualified under above sections.*—Where it is found that a certain person has himself no beneficial interest in the property for which he paid rates and taxes, he being simply the manager and trustee of such property, *held*, that he was not qualified under the above sections. If his name has been entered in the list of candidates eligible for election as Municipal Commissioners, the Chairman will be directed to expunge his name from the list. **19 C. 195 (Note)** [*R.*, 19 C. 192.]

(3)—S. 12—*See* No. 2, *supra*.

(4)—*Ss. 75 and 79—License—Assessment—Finality of.*—It is only where any person, by reason of his exercising a specified profession, is *admittedly* under a duty to take out a license under s. 75 of Bengal Act (IV of 1876), that an assessment should be made; and the finality of the Chairman's decision referred to in s. 79 has reference only to such cases. The language of s. 78 does not authorise the Chairman to determine (when the fact is denied), whether a particular person is bound to take out a license under s. 75. If that person denies his liability, the question can only be determined *judicially*, *i.e.*, after taking evidence by a competent Court in a prosecution under s. 77. **7 C. 322=9 C.L.R. 193** [*R.*, 9 C. 397.]

(5)—*See* TRANSFER OF CRIMINAL CASES, 2 C. 290.

(6)—*S. 77—Condition for conviction—Sentence of fine.*—For a conviction under s. 77 of Bengal Act IV of 1876 for keeping a boarding-house without a license, there must be proof of the accused having held himself out to the public as one whose business or profession it is to receive boarders for profit. A proper sentence of fine under s. 77 of Bengal Act IV of 1876 should be supported by evidence of the assessment on the accused's place of business and the amount payable for the license. **8 C. 891=11 C.L.R. 357.** [*Expl.*, 10 C. 194.]

(7)—*Prosecution under section—Refusal to hear evidence—Legality.*—Where, in such a prosecution, the accused denied his liability, a refusal to hear evidence on the point, on the ground of the finality of an (improper) assessment by the Chairman of the Corporation, is illegal. **7 C. 322=9 C.L.R. 193.**

(8)—S. 79—*See* Nos. 4 and 5, *supra*.

2.—Bengal Acts—continued.

Act IV of 1876 (Calcutta Municipal Consolidation)—*concluded.*

(9)—*S. 88—Annual value—meaning.*—"Annual value," in the above section, means "annual letting value." Per Wilson, J. **11 C. 275.**

(10)—*S. 104—Scope of section—Quere.*—Whether the above section ought to be regarded as an interpretation clause, or as only directory as containing instructions to the Commissioners how to proceed when exercising the jurisdiction under s. 88 of the Act. **11 C. 275.**

(11)—*S. 117—Certiorari.*—The High Court will interfere and quash proceedings on *certiorari*, notwithstanding the provisions of the above section, if it appears that that the Commissioners have acted without or in excess of jurisdiction. **11 C. 275.**

(12)—*S. 248—Conviction for keeping animals without license—Continuance of same offence before conviction.*—Under s. 248 of Beng. Act IV of 1876, a milkman, who has been convicted and fined under the section for keeping an animal without a license, cannot be again prosecuted for the continuance of the same offence before the date of the conviction. Nor can such a milkman be separately prosecuted for the offence, for each day the offence is continued as a separate and distinct offence under the above section before conviction. **13 C. 108.**

Act V of 1876 (Bengal Municipality).

[REP. IN PART, ACT II OF 1901. REP. (IN BENGAL AND LOCALLY IN ASSAM), BEN. ACT III OF 1884.]

(1)—*Bye-law* ultra vires *under Bengal Municipal Act (Bengal Act V of 1876)—Effect of s. 2 of Bengal Municipal Act (Bengal Act III of 1884—Bye-law 83—Validity.*—The word 'prescribed' in s. 2 of Act III of 1884, must mean "duly" or lawfully prescribed, and the section cannot make *intra vires* a bye-law which is obviously *ultra vires* under Act V of 1876. The bye-law 83 purporting to be made under s. 313, Bengal Act V of 1876, and sanctioned by the local Government provides that persons failing, after service of notice, to trim trees overhanging tanks, which are likely to foul the water thereof shall be liable to a fine not exceeding Rs. 10 and to a daily fine not exceeding Rs. 2 until such requisition be complied with. *Held* that the bye-law was *ultra vires*. **21 C. 837.**

(2)—*S. 216, prosecution under—Bench of Magistrates, power of—Omission to remove obstruction*,—In a prosecution under s. 216 of Bengal Act V of 1876, a Bench of Magistrates has jurisdiction to determine whether the order that had not been carried out was a proper one or not. **9 C. 38.**

Act VII of 1876 (Land Registration).

[REP. IN PART, BEN. ACT VII OF 1880. AMENDED, BEN. ACT V OF 1878. DECLARED IN FORCE IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III of 1899, S. 3.]

2.—*Bengal Acts*—continued.

Act VII of 1876 (Land Registration)—*cld.*

(1)—Ss. 52, 53, 84—*See* PENAL CODE, ss. 191, 193 (2), 9 C.W.N. 127.

(2)—S. 53—*See* No. 1, *supra*.

(3)—S. 56—*See* PENAL CODE, ss. 174, 175, 186 and 188, 29 C. 236=6 C.W.N. 141.

(4)—S. 84—*See* No. 1, *supra*.

(5)—*S. 88—Board of revenue, rule passed by—How far binding—Evidence—Admissibility—Deposition before Land Registration Deputy Collector not taken in accordance with the provisions of Civ. Pro. Code.*—Rules passed in the course of a proceeding of the Board of Revenue, and not drawn up by the Board under s. 88 of the Land Registration Act (VII B.C. of 1876), have not the force of law. Where the Deputy Collector, in a proceeding under the Act of 1876 recorded the deposition of a witness, which was not read over and interpreted to the witness, *held*, that the deposition was not inadmissible in evidence, as the rule of the Board of Revenue, which directed that "the depositions of witnesses are to be taken as directed in the Civ. Pro. Code, by the presiding officer, and not by the *amla* of the Court," was passed in the course of the Board's proceeding, and not drawn up by the Board under s. 88 of the Land Registration Act, and, therefore, has not the force of law. **11 C.W.N. 470=5 Cr.L. J. 281.**

Act VIII of 1876 (Estates' Partition).

[REP., BEN. ACT V OF 1897.]

(1)—*Ss. 112 and 116—Functions of a* butwari *amir—Penal Code, s. 186.*—S. 112 of the Act is limited to those cases where the community of interest in the land in dispute between the proprietors of the estate under partition as a body and the proprietors of other estates is admitted. Where there is no such community of interest, it will not be within the legitimate functions of a *butwari* amin to proceed to measure the lands without a special order from the Collector, made after a preliminary enquiry. **22 C. 286.**

(2)—S. 116—*See* No. 1, *supra*.

Act VII of 1878 (Excise).

[REP. IN PART, ACT XIII OF 1889; ACT V OF 1897. REP. IN PART (IN BENGAL AND LOCALLY IN ASSAM), BEN. ACT VII OF 1880. REP. IN PART AND AMENDED, BEN. ACT IV OF 1881. AMENDED, ACT IX OF 1885, S. 3; ACT XIII OF 1890, SS. 6 AND 7; BEN. ACT I OF 1883. DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN THE ANGUL AND THE KHONDMALS, REG. I OF 1894, S. 3.]

See ACT X OF 1871.
„ „ XXII OF 1881.
„ BEN. ACT III OF 1873.
„ „ „ II OF 1876.
„ „ „ IV OF 1881.

2.—*Bengal Acts*—continued.

Act VII of 1878 (Excise)—*continued.*

(1)—*Vendor of spirits—Breach of condition of license—Conviction of servant—Rank of excise officer.*—The conviction of the servants of a licensed vendor of spirits for a breach of the license is not necessarily illegal; and a Magistrate is competent to punish more than one such servant, if each of them was guilty of a breach. [*F.*, 9 C. 847; *Overruled*, 29 C. 606, F.B.; *R.*, 17 C. 566, 1 N.L R. 81]. The excise officer, to whom a licensed vendor of spirits is bound to produce his license, must be of the higher grades and not any Police officer exercising the powers of an Excise officer. **8 C. 207 =10 C.L.R. 389.**

(2)—*Ss. 4, 40 and 75—Foreign excisable article—Gurjat-Ganja—Penal Code, ss. 99, 147 and 353—Resistance to a public officer acting without legal authority.*—Where the accused offered resistance to an Excise Sub-Inspector in his attempt to search the house of one of the accused persons for *Gurjat-Ganja*, *held*, that *Gurjat-Ganja* was a foreign excisable article, as defined in s. 4 of Act VII of 1878, as amended by Act IV of 1881, and consequently the excise officer had no legal authority to enter and search the house and that the accused were, therefore, not guilty of an offence either under s. 147 or 353, Penal Code. *Held*, also, that s. 99 of the Penal Code could not protect the officer as his conduct was altogether illegal. **24 C. 324=1 C.W.N. 233.**

(3)—*S. 14—Selling toddy to European soldiers—Power to cancel license—Act III of 1880, s. 14.*—The words "spirituous liquors," in s. 14 of the Bengal Excise Act, must be interpreted in their popular sense. So taken, fermented toddy comes within the words of s. 14 of the Act, which forbids the sale of any spirituous liquor, wine or intoxicating drug to European soldiers. In his judicial capacity, a Cantonment Magistrate has no authority to cancel the license of a person convicted of an offence under s. 14 of the Act, as the power to cancel licenses belongs to the revenue authorities. **15 C. 452.**

(4)—*S. 15—Sale by wholesale, what is.*—Under s. 15 of the Bengal Excise Act, a sale of more than twelve quart bottles of spirituous or fermented liquors of the *same kind*, made at one transaction, is a sale by wholesale. **6 C. 832=8 C.L.R. 152.**

(5)—*See* No. 21, *infra*.

(6)—*Ss. 15, 17 and 61—Sepcified quantity of spirits—Maximum amount.*—Any lesser quantity of country spirits, which the Chief Commissioner of Assam, exercising the powers of the Board of Revenue, may have declared to be the maximum quantity, by any rule or order made by him under the provisions of s. 15 of the Act, cannot be deemed to be "the quantity specified in s. 15, within the meaning of s. 61." **8 C. 214=10 C.L.R. 155.** [*F.*, 9 C. 847.]

(7)—S. 17—*See* No. 6, *supra*.

2.—*Bengal Acts*—continued.

Act VII of 1878 (Excise)—*continued.*

(8)—*Ss. 17 and 61—Possession of liquor.*—Certain liquor was consigned to a company of licensed vendors at Agra from Europe. The petitioner, at the request of the consignee, cleared this liquor at Calcutta by paying the duty and landing charges. The Abkari authorities seized it, while it was being conveyed to Howrah station for despatch to the consignee at Agra, and the petitioner was convicted of having the liquor in his possession in contravention of ss. 17 and 61 of the Excise Act, *held*, that the conviction was wrong. **11 C.L.R. 427.**

(9)—*Ss. 39 and 40—Arrest under the Act, when a lawful one.*—Where an excise Sub-Inspector arrested some persons found illicitly distilling liquor and took them to a neighbouring village and asked for the assistance of a *Punchayet* who, instead of giving assistance, collected men and rescued them, *held*, that the arrest was a lawful one. **4 C.W.N. 245.**

(10)—S. 40—*See* Nos. 2, 9, *supra*.

(11)—*S. 53—Sale in presence of master—Liability of servant.*—The accused, a servant in the employ of a licensed retail vendor, sold to a person a quantity of *Puchwai* in excess of the quantity allowed to be sold by the master's license, in the presence of his employer and at his request. He simply handed the liquor to the vendee. *Held* that the accused could not be convicted under s. 53 of the Bengal Excise Act, as the facts proved did not establish a sale by the accused, and the mere mechanical act of handing the liquor could not be regarded as a sale by the accused. **17 C. 566.** [*D.*, 29 C. 496.]

(12)—*S. 53—Ganja sold by master in contravention of the terms in the presence of servant—Receipt of money by servant—Penal Code, ss. 34 and 114.*—Where a servant received the money for *ganja* sold by his master in contravention of the terms of his license, master and servant both being present at the sale, *held*, that the servant was guilty of the offence by the provision of s. 34, Penal Code, and not as an abettor of s. 114, Penal Code, not being applicable to the case. **29 C. 496.**

(13)—*S. 53—Term, "spirituous liquor" explained.*—Although the term "spirituous liquor" is not defined in the Act, it does not include a medicinal preparation, merely because it is a liquid substance containing alcohol in its composition. The case would be different, if a person has been found manufacturing alcohol or spirits separately for the purpose of being used in the preparation of a medicine. **24 C. 157=1 C.W.N. 1.**

(14)—*Ss. 53, 59—Prosecution under s. 59.*—The person prosecuted under s. 59 for breach of license should be the licensed vendor, and not his servants. **11 C.L.R. 416.**

(15)—*Ss. 53, 59, 60—S. 53, when applicable.*—S. 53 does not apply to sales by a licensed vendor contrary to the terms of his license;

2.—*Bengal Acts*—continued.

Act VII of 1878 (Excise)—*continued.*

but provides for a breach of the conditions of a license not covered by the second clause of s. 59. **6 C. 621.**

(16)—*Ss. 53, 59 and 61—Offence under ss. 53 and 61—License for sale and possession at a certain place—Sale at a different place—S. 59 of the Excise Act, offence under—Servant's liability for the master's act.*—The servant, who delivers *ganja* to purchasers at the bidding of his master and who sells it and receives the price, cannot be convicted of offences under ss. 53 and 61 of the Excise Act (VII, B. C. of 1898).

When a person having a license for the sale and possession of *ganja* at a certain place sells it at a different place, he commits an offence under s. 59, and not under ss. 53 and 61 of the Excise Act. **12 C.W.N. 461=7 C.L.J. 377=7 Cr. L.J. 344.**

(17)—*S. 58, Award of maximum sentence under—Additional alternative sentence of imprisonment—Competency of Magistrate.—Conditions of offence under s. 58.*—When the accused were sentenced under s. 58 of the Bengal Excise Act to the maximum term of imprisonment awardable under the section and were, in addition, sentenced, under s. 74, to an alternative sentence of imprisonment, *held*, the Magistrate had not thereby exceeded his powers under s. 12 of the Presidency Magistrates' Act, as the additional sentence could not affect his powers in respect of the original sentence under s. 58. To constitute an offence under the latter part of s. 58 the offender must have introduced or attempted to introduce for sale spirituous liquors manufactured at another place into the *limits fixed* for the consumption of such liquors manufactured at a distillery established under s. 9 of the Act, without a special pass from the Collector; where, therefore, such limits have not been fixed under the section, a conviction is bad. **6 C. 575=8 C.L.R. 250.**

(18)—*S. 59—Licensed manufacturer or vendor—Breach of license by servant—Servant, whether liable.*—The servant of a manufacturer or vendor under Bengal Act VII of 1878 is not liable under s. 59 of the Act to the penalty provided by that section for the commission of an act in breach of any of the conditions of the license of such manufacturer or vendor not otherwise provided for in the Act. **29 C. 606=6 C.W.N. 674, F.B.**

(19)—*See* Nos. 14, 15, 16, *supra*.

(20)—S. 60—*See* No. 15, *supra*.

(21)—*Ss. 60 and 15—Sale by servant—Liability.*—The licensed retail vendor is the only person liable to conviction under s. 60, and not the servant of such vendor. *Quære*—Whether a sale of twelve quart bottles of one kind and three of another, at the same time, comes within the prohibition in the Explanation clause of s. 15? **6 C. 832=8 C.L.R. 152.** [*Appr.*, 29 C. 606, F.B.; *Diss.*, 8 C. 207; *R.*, 17 C. 566.]

2.—*Bengal Acts*—continued.

Act VII of 1878 (Excise)—*concluded*.

(22)—*S. 61—Imported liquor—Possession without pass by Agent of consignee.*—The possession of liquors by an agent, authorised to land and forward them to the consignees, would not constitute sufficient possession to justify a conviction under s. 61 of Bengal Act VII of 1878 for being in possession of them without a pass. **9 C. 223.**

(23)—*S. 61—Sale by servant of licensed vendor—Cooly employed by servant—Conviction under s. 61.*—The conviction of a cooly, who carried eight quart bottles of country spirit sold by the servant of a licensed vendor, under s. 61 of Bengal Act VII of 1878, is illegal and must be set aside. But the conviction of the servant would be proper; whether it is under s. 53 or s. 60 is immaterial. **9 C. 847 = 12 C. L.R. 451.** [*R.*, 17 C. 566, 1 N.L.R. 81.]

(24)—*See* ACT IV OF 1889, ss. 6 and 7, **23 C. 174.**

(25)—*See* Nos. 6, 8 and 16, *supra*.

(26)—*S. 74—Provision for additional punishment.*—S. 74 providing for additional punishment in the case of a "previous conviction for a like offence" merely contemplates the conviction for an offence punishable with a fine of Rs. 200 or upwards, and another conviction for another offence punishable similarly, it not being necessary that the previous conviction should have been for the same offence. **6 C. 575 = 8 C.L.R. 250.** [*F.*, 16 C. 799; *R.*, 4 C.L.J. 408 = 33 C. 1036.]

(27)—*S. 74—Selling wine by retail with a wholesale license.*—The offence of selling wine by retail, with a wholesale license, is an offence like to the offence of selling wine without a license at all; it is equally the offence of selling wine without having a license so to sell it. **16 C. 799.**

(28)—*S. 75, interpretation of—Excise law—Confiscation in the owner's absence.*—The boat, in which excisable articles are carried in contravention of the excise law, should not be confiscated under the provisions of s. 75 of the Bengal Excise and Licensing Act (VII B. C. of 1878), unless it is found that the owner of the boat was in some way implicated in the offence under the excise law. **12 C.W.N. 139.**

(29)—S. 75—*See* No. 2, *supra*.

Act IX of 1880 (Cess).

[REP. IN PART AND AMENDED, BEN. ACT III OF 1885 (WHEN AND WHERE DECLARED IN FORCE). AMENDED, ACT VII OF 1881; BEN. ACT II OF 1881.]

(1)—Ss. 14, 94 and 95—*See* PENAL CODE, s. 177, 11 Cr. L.J. 11=4 Ind. Cas. 578=13 C.W.N. 191=5 M.L.T. 93.

(2)—S. 94—*See* No. 1, *supra*.

(3)—S. 95—*See* No. 1, *supra*.

2.—*Bengal Acts*—continued.

Act IV of 1881 (Excise Act Amendment Act).

[REP. IN PART, ACT V OF 1897. DECLARED IN FORCE IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3.]

See ACT X OF 1871.
" " XXII OF 1881.
" BEN. ACT III OF 1873.
" " " II OF 1876.
" " " VII OF 1878.

See BEN. ACT VII OF 1878, 24 C. 324=1 C.W.N. 233.

Act II of 1882 (Embankment).

[REP. IN PART, ACT IX OF 1890.]

(1)—*Ss. 6, 76, 80—Failure to comply with the provisions of ss. 6 and 80, effect of—Commission of acts prohibited by s. 76 (6).*—The direction in s. 6 as to the publication of the notification in the manner directed by s. 80 is merely directory and intended to inform people living in the locality. The further directions in s. 80, as to the publishing of the proclamations and the issuing of notices are intended to serve the same purpose. Failure to comply with either provisions cannot override the declaration in s. 6 that the provisions of the notification shall take effect one month from the publication of the notification. But compliance with such provisions would be most material on the question of punishment in a prosecution under s. 76. On the principle that ignorance of law is no excuse, a person who has committed any of the acts prohibited by s. 76 (6), one month after the publication of the notification in the Gazette, cannot escape prosecution by denying all knowledge of the publication. **7 C.W.N. 286.**

(2)—*Ss. 6, 80—Notification—Manner of publication.*—The notification referred to in s. 6 of the Act must be published in the manner provided by s. 80; so that a publication of it in the *Calcutta Gazette* alone would not be sufficient. **11 C. 570.**

(3)—*S. 76—Offence under—Adding to embankment.*—S. 76 of the Bengal Embankment Act prohibits, not only the construction of new *bundhs*, but also adding to old *bundhs* so as to obstruct the flow of water. **12 C.W.N. 344=7 C. L.J. 239=7 Cr.L.J. 185.**

(4)—S. 76—*See* No. 1, *supra*.

(5)—*Ss. 76 (a), 79—Addition to the height of an embankment.*—The words "shall add to any existing embankment" in s. 76 (*a*) of Act II (B.C.) of 1882, include an addition to the height of an embankment. **30 C. 481=7 C.W. N. 284, F.B.**

(6)—*S. 76, cl. (b)—"Shall add to existing embankments," meaning of.*—The words "shall add to existing embankments" in s. 76 of the Act, are not intended to mean any repair to an existing embankment, even if the effect of such

2.—*Bengal Acts*—continued.

Act II of 1882 (Embankment)—*concluded.*

a repair be to make the embankment higher or broader; they only mean an extension in the length of an existing embankment. **11 C. 570.** [*Overruled*, 30 C. 481=7 C.W.N. 284, F.B.]

(7)—*S. 77—Sand bank artificially formed—Public embankment.*—A bank of sand which has artificially formed between the two spurs erected by Government for the protection of an embankment is not an embankment, nor is it a public embankment. The cutting through of such a sand bank for the protection of one's own cultivation is not an offence under s. 77 of the Act. **5 C.W.N. 108.**

(8)—S. 79—*See* No. 5, *supra*.

(9)—S. 80—*See* Nos. 1 and 2, *supra*.

Act III of 1884 (Municipality).

[REP. IN PART, ACT II OF 1901. REP. IN PART (IN BENGAL), BEN. ACT II OF 1888; BEN. ACT I OF 1893, S. 46. REP. IN PART AND AMENDED—BEN. ACT IV OF 1894; BEN. ACT II OF 1896; (IN DARJEELING), BEN. ACT I OF 1900. AMENDED, BEN. ACT III OF 1886; ACT V OF 1897. DECLARED IN FORCE IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3.]

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 23 C. 44.

(1)—S. 2—"Prescribed," meaning of—*See* BEN. ACT V OF 1876, 21 C. 837.

(2)—*Ss. 6 (13), 30 and 217 (5)—Obstructing road not vested in the Municipality.*—The word "road" in clause 5 of s. 217 is not limited to roads vested in the Municipality. A path through a paddy field, over which the public has a right of way, would amount to a "road" within the definition of the term in s. 217 (5). **17 C. 684.**

(3)—S. 30—*See* No. 2, *supra*.

(4)—*S. 45—Delegation of powers of Chairman to Vice-Chairman—Written order of delegation.*—The proviso to s. 45 of the Act must not be understood as altogether over-riding the body of the section. It, merely, relates to specific acts in which an express or implied consent may have been given, or held to have been given. A general authority given orally by the Chairman to the Vice-Chairman to institute prosecutions under the Act, without any written order, does not come under s. 45 of the Act and is not a valid delegation of the power. The law requires not express consent, but a written order, where such general powers are delegated by the Chairman. **20 C. 448.**

(5 & 6)—*S. 133—Application for license—False statement—Magistrate's power to take cognisance of offence on his own motion—Crim. Pro. Code (1882), s. 191—Penal Code, ss. 182, 199, 417 and 511—Applicability of Penal Code to offences under Act.*—Where a Deputy Magistrate instituted proceedings, of his own

2.—*Bengal Acts*—continued.

Act III of 1884 (Municipality)—*continued.*

motion, against an accused for making a false statement, regarding the number of horses in his possession, in an application to a Municipality for a license, and charged the accused under ss. 182, 199 and 417 read with s. 511, *held*, on an application to the High Court during the hearing of the case, that the proceeding was not properly instituted, as there was no private complaint before the Magistrate and as he was not empowered to take cognisance of offences of his own motion in the manner prescribed by clause (*c*) of s. 191 of the Code of Crim. Procedure. *Held* that s. 182, Penal Code, was not applicable to the case, as the applicant could not be said to have tried to dishonestly induce the Municipality to omit to inspect his premises under s. 140 of the Municipal Act, merely by presenting his application in that form. For, under the section, the Commissioners had no power to inspect them at all, unless there was some other reason which justified their doing so, and that, for the same reason, the accused was not guilty of the offence of attempting to commit cheating under s. 417 read with s. 511 of the Penal Code. *Held*, further, that the accused was not guilty of an offence under s. 199 of the Penal Code, as the statement made by the accused for the purpose of taking out the licenses was no evidence at all against any one but himself, and could only be evidence against himself as proving an admission by him. Whenever there is an intention to apply the provisions of the criminal law to acts authorised or required by particular statutes, that intention is always made clear by express words to that effect. As there is no such provision in the Bengal Municipal Act, the Act is intended to be complete in itself as regards offences committed against the Municipality. No penalty is attached to the omission to make a return under s. 133, and there are no words in the Act constituting the making of a false return a penal offence. **22 C. 131.** [*R.*, 11 C.W.N. 100=5 C.L.J. 47.]

(7)—*Ss. 155 and 156—Meaning of the term "ferry"—Plying ferry without license within prescribed limits—Unlicensed boat—Rights of ferryman to demand tolls from passengers.*—A ferry, under the Act, means the exclusive right to carry passengers across a stream from one bank to the other, on payment of prescribed tolls, and the object of s. 155 is to prevent the crossing of passengers from one bank of the river to the opposite bank by a boat plying for hire without a license within the prescribed limits. The crossing of the bar of a stream so as to enter another stream would constitute no breach of ss. 155 and 156, and a Magistrate will not be right in adopting, as a matter of law, the precedent of an erroneous judgment of the Sessions Judge holding that the crossing of the bar at the mouth of a *khal* so as to enter a river and to land passengers on the opposite bank constituted a breach of the Municipal Act. A ferryman has, under no circumstances, authority to demand tolls from persons who are

2.—*Bengal Acts*—continued.

Act III of 1884 (Municipality)—*continued.*

merely passengers in an unlicensed boat; his remedy lies under s. 156 against the person who keeps the ferry boat without a license. **27 C. 317=4 C.W.N. 348.**

(8)—S. 156—*See* No. 7, *supra*.

(9)—*Ss. 202, 218—Removal of a wall and a privy—Owner or lessee—Requisition or notice to remove—Service on person who has built—Failure to comply with requisition—Liability.*—The notice contemplated by s. 202 of the Bengal Municipal Act (III of 1884) for the removal of any wall or other obstruction erected on any road or drain should be served upon the person, who may have erected the same, and on failure to comply with such requisition, he alone is liable to a prosecution under s. 218 of the Act. So where a wall and a privy were erected by the lessee, and not the owner of a land or building, the lessee alone is liable to a prosecution for non-compliance with a requisition issued to remove such wall and privy. **2 C.L.J. 226=2 Cr. L.J. 613.**

(10)—*S. 204—Construction of the Act.*—This section applies only to the case of a projection, which is caused by a building which is new *i.e.*, erected after the passing of the Acts referred to in this section, and it does not apply to the case of a projection forming part of a building which is merely in substitution for an old building, which had existed upon the same site, before the passing of the Acts mentioned in the section. [*Appr.*, 23 B. 248.] The words "which may have been so erected or placed," in this section mean erected or placed for the first time. **25 C. 160=1 C.W.N. 660.**

(11)—S. 217 (5)—*See* No. 2, *supra*.

(12)—S. 218—*See* No. 9, *supra*.

(13)—*Ss. 218, 353—Obstruction to drains—Removal—Limitation.*—Although the offence of erecting culverts on *pucca* drains may be continuous in its nature, a prosecution for that offence cannot be instituted, under s. 353, more than six months after the commission of the obstruction was brought to the notice of the Chairman. S. 218 is not applicable to such a case. **1 C.W.N. 492.**

(14)—*Ss. 224, 246—Notice under s. 246.*—Regard being had to the fact that the Municipality is empowered to issue a notice under s. 224, the notice here under s. 246, *re* the demolition of a *pucca* privy, was *held* to be a substantial compliance with the provisions of the law. **26 C. 811=3 C.W.N. 508.**

(15)—*Ss. 230, 231, 270—Nature of the offence of constructing a latrine in contravention of the provisions of ss. 230, 231.*—The offence under sub-s. 3 of s. 270, namely, the construction of latrines in contravention of the provisions of ss. 230 and 231, is not a continuous offence. **6 C.W.N. 167.**

(16)—S. 231—*See* No. 15, *supra*.

2.—*Bengal Acts*—continued.

Act III of 1884 (Municipality)—*continued.*

(17)—*Ss. 236 and 273 (1)—Commencement of building second storey without permission, whether an offence under s. 273 (1)—Crim. Pro. Code (1898), ss. 438 and 439.*—Where a Subdivisonal Magistrate, who was also the Chairman of the Municipality, had in one order convicted the accused under s. 273 (1) of the Bengal Municipal Act, 1884, and, in addition to sentence, had, as Chairman, in the same order directed the demolition of the second storey commenced to be built without permission, *held*, that the whole order should be set aside as the case did not come under s. 273 (1), and as there was no necessity for permission to build a second storey, the act not amounting to building or rebuilding a house, nor to obstruction or encroachment on roads. **29 C. 491.**

(18)—*Ss. 237 and 238—Notice of intention to build—Commencement of building in anticipation of sanction—Refusal of sanction—Effect.*—Although a person commencing to build a house after giving the notice required by s. 237, without waiting for the six weeks mentioned in it, does not necessarily contravene the law, yet, when he so acts, the reasonable view must be that he does it at his risk, his act being liable to be treated as one in contravention of any legal order of the Commissioners issued within the statutory period of six weeks, if such order does not sanction the proposed building. **25 C. 419.**

(19)—S. 238—*See* No. 18, *supra*.

(20)—*Ss. 238, 273—Sanction to build not given in proper time—Right to build without sanction.*—A person building according to his own plans six weeks after his submission of plans and specifications for the sanction of the Municipal Commissioners cannot be convicted under s. 273, for building without a sanction. The fact that certain alterations were made after such period at the suggestion of the Municipality, would not make him forfeit his rights, under s. 238, to build on his own plan. **5 C.W.N. 42.**

(21)—*Ss. 243, 244, 267—Hut, erection of, without notice to Commissioners, offence—Notice to remove hut, not condition precedent to conviction.*—S. 243 of the Bengal Municipal Act forbids the erection of a hut within a Municipality, without a month's notice to the Municipal Commissioners. When, therefore, a person was prosecuted under s. 267 of the Act for having erected a hut without such notice, and it was found that the hut was so erected: *held*, upon the facts found, the accused ought to have been convicted, *held*, also, s. 267 of the Act provides for two distinct classes of offences, namely, (1) erecting a hut without a month's notice to the Commissioners, and (2) failing to remove a hut, erected without such notice, when required to do so, the latter only being an offence of a continuous nature, liable to be punished with a daily fine. Notice to remove

2.—Bengal Acts—continued.

Act III of 1884 (Municipality)—*continued.*

the hut is not a condition precedent to a conviction for the first class of offences mentioned above. **10 C.L.J. 17=10 Cr. L.J. 191=2 Ind. Cas. 939.**

(22)--S. 244—*See* No. 21, *supra.*

(23)—*Ss. 245,246—Suit against Municipality—Civil Court's jurisdiction for challenging acts of Municipality, when they are in conformity with statutory powers.*—A Civil Court can restrain a Municipality from doing anything *ultra vires*, but it has no jurisdiction to try the question whether the Municipality, when it was acting within the limits of its statutory power, was right in its judgment that a certain thing should be done. If a Municipality having proceeded in accordance with the provisions of ss. 245, 246, Bengal Municipal Act (III of 1884), decides that certain works are necessary, that conclusion, in the absence of *mala fides*, or fraud or considerations of that nature, cannot be successfully challenged and cannot be gone into, in a Civil Court. **26 C. 811=3 C.W.N. 508.** [*R.*, 58 P.R. 1907.]

(24)—S. 246—*See* Nos. 14, 23, *supra.*

(25)—*Ss. 263 and 273—Keeper of hackney carriages—Milk man.*—Where a person had a number of ponies and also some cows and sheep and let out a carriage and pair on monthly hire, keeping the same in his stable, and also kept other ponies for sale, and supplied milk to others out of his cows, *held*, that the facts found did not render him liable within the terms of s. 273. **5 C.W.N. 331.**

(26)—S. 267—*See* No. 21, *supra.*

(27)—S. 270—*See* No. 15, *supra.*

(28)—*Ss. 271, 272—Conviction under the sections, when awardable.*—In the absence of any finding or material in the judgment to show that the requisition was served upon the accused and what the requisition was about, a conviction either under s. 271 or s. 272, cannot be maintained. **6 C.W.N.167.**

(29)—S. 272—*See* No. 28, *supra.*

(30)—*S.273—Period of sanction, computation of.*—The period of six weeks during which the Municipal Commissioners should sanction an application to build, is to be computed from the date when complete plans and specifications are submitted in such a form as to make it possible of being considered by the Commissioners. **5 C.W.N. 42.**

(31)—S. 273—*See* Nos. 17, 20, 25, *supra.*

(32)—Ss. 320, 321—Liability for keeping a factory in a filthy state.—*See* ACT XV OF 1881, ss. 18, 91, cl. (*g*), proviso 1 and 17, 25 C. 454.

(33)—S. 321—*See* No. 32, *supra.*

(34)—*Ss. 337, 338, 344 and 339.—Resolution extending provisions of s. 337 to a Municipality—Order as contemplated by s. 337.—Power to grant license—Jurisdiction of Courts.*—The

2.—Bengal Acts—continued.

Act III of 1884 (Municipality)—*concluded.*

Municipal Commissioners of Madaripur at a meeting passed the following resolution:—"That the provisions of s. 337 of the Act be extended to this Municipality." But it also appeared that Part X of the Act, which includes the section, had been previously extended to the Municipality by an order of the Government of Bengal. *Held*, that the resolution of the Municipality was not such an order as was contemplated by s. 337, and its terms were not sufficiently precise, so as to convey a definite meaning, and it merely purported only to do what the Bengal Government had already done some time previously. Therefore, the conviction of a person, under s. 344 of the Act, for holding a market on his land, after the passing of the resolution, without any license, was set aside. It is entirely within the discretion of the Municipal Commissioners, under the provisions of s. 339 of the Bengal Municipal Act, to grant or refuse a license, and the Courts have no longer any jurisdiction to control such power, however arbitrarily exercised. **20 C. 654.**

(35)—S. 338 -- *See* No. 34, *supra.*

(36)—S. 339—*See* No. 34, *supra.*

(37)—S. 344—*See* No. 34, *supra.*

(38)—S. 353—*See* No. 13, *supra.*

Act II of 1885 (Calcutta Municipal Consolidation).

[REP., BEN. ACT III OF 1899].

—S. 87 and the Second Schedule—Insurance Companies registered in England—Business in India carried on through agency of general merchants.—An Insurance Company, which is registered in England, with a paid up capital of £100,000, which issues policies, and carries on the general business of insurance in Calcutta, through the agency of general merchants there, is not liable to the license tax imposed by s. 87 of the Act, as such company does not come either under the section or any of the classes mentioned in the Second Schedule of the Act. **22 C. 581.** [*Appl.*, 21 M. 5; *R.*, 24 M. 205; *D.*, 25 C. 483].

Act III of 1885 (Local Self-Government).

[S. 45 and Sch. II amended, Act I of 1903],

(1)—S. 78—*See* No. 2, *infra.*

—Ss. 139 and 78—Bye-law made under—Authority of the District Board to make the bye-law not ultra vires.—Where the bye-law of a District Board, made under s. 139 of the Bengal Local Self-Government. Act, was in these terms:—"Whoever encroaches on any road by cultivating crops or by ploughing it up for cultivation, or by the construction of any building or structure thereon, except by the permission of the Chairman of the District Board, shall be liable to a fine not exceeding Rs. 50 and to a further fine not exceeding Rs. 2 for every day on which the offence is continued;" *held* that the bye-law was not *ultra vires* of the District

2.—*Bengal Acts*—continued.

Act III of 1885 (Local Self-Government)—*cld.*

Board, which had power, under s. 139 read with s. 78 of the Bengal Local Self-Government Act, to make such a bye-law. The building of the part of a house over part of a public road, without the permission of the Chairman of the District Board, is punishable under the bye-law. **11 C.W.N. 1099=6 Cr. L.J. 319.**

*** Act VIII of 1885 (Tenancy).**

[AMENDED, ACT VIII OF 1886; BEN. ACT III OF 1898. SUPPLEMENTED, BEN. ACT III OF 1895, SS. 28 TO 32, 36 (*c*). S. 84 DECLARED IN FORCE IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3].

(1)—*S. 58 (3)—Crim. Pro. Code (1898), ss. 4 (o), 29 (2)—Jurisdiction of Magistrates to try a landlord for the act specified in s. 58 (3).*—Reading the definition of "offence" in s. 4 (o) with s. 29 (2), and the last entry in Sch II, Crim. Pro. Code, a Magistrate has jurisdiction to try a landlord for the act specified in s. 58 (3) of the Bengal Tenancy Act, namely, failure to prepare and retain counterfoils and rent receipts. But the trial of such offences must be conducted with the ordinary procedure. A conviction under s. 58 (3), Bengal Tenancy Act, based merely on an admission alleged to have been made by the accused, and recorded in a report written by a Police officer in another case, after the examination of the accused on oath, was held to be irregular. **9 C.W.N. 816 =2 Cr. L.J. 532.**

(2)—*S. 69 Penal Code, s. 186—Person nominated by Collector under s. 69 of the Act—Public servant.*—A person nominated by a Collector, under s. 69 of the Bengal Tenancy Act, for the purpose of making a division of crops between the landlord and tenant is not a public servant within the meaning of the Penal Code. **18 C. 518.** [*D.*, 26 C. 158.]

(3)—*Ss. 69 and 70—Crim. Pro. Code (1882), s. 195—"Court," meaning of—Collector acting under ss. 69 and 70 of the Act.*—The word "Court" is not defined in the Crim. Pro. Code, but it certainly has a wider meaning than a Court of Justice as defined in the Penal Code. Having regard to the obvious purpose for which s. 195 was enacted, the widest possible meaning should be given to the word "Court," as therein mentioned and it will include a tribunal empowered to deal with a particular matter and authorised to receive evidence on that matter, in order to arrive at a determination. A Collector, acting under ss. 69 and 70 of the Bengal Tenancy Act is such a tribunal, and is, therefore, a 'Court' within the meaning of s. 195 of the Crim. Pro. Code. **17 C. 872.** [*R.*, 2 Weir 170 = 24 M. 121.]

(4)—S. 70—*See* No. 4, *supra.*

(5)—Ss. 90, 188—*See* CRIM. PRO. CODE (1898), s. 107, 9 C.W.N. 618 =2 Cr. L.J. 338.

* This local Act was passed by the Imperial Legislature.

2.—*Bengal Acts*—continued.

Act VIII of 1885 (Tenancy)—*concluded.*

(6)—S. 188—*See* No. 5, *supra.*

(7)—*S. 95—Penal Code, ss. 193 and 199—Proceedings without jurisdiction—False statement given in such proceedings.*—There is no provision in the Bengal Tenancy Act authorising a District Judge to direct a person to deliver certain accounts and papers belonging to an estate to a common manager appointed under s. 95 of the Act, nor is there any power given to him to institute a proceeding on the person's failure to comply with the order and to examine him on oath in such proceeding. Therefore, a person making a false statement in that proceeding cannot be convicted under s. 193 or s. 199 of the Penal Code. **20 C. 724.**

(8)—*S. 123—Public servant, obstruction to—Warrant—Cutting crops distrained under s. 123 of the Act—Penal Code, ss. 143 and 186—Absence of complaint by public servant concerned—Crim. Pro. Code (1898), ss. 4 and 195.*—A person, acting under the orders of a Munsiff, was cutting crops which were distrained under s. 123, Bengal Tenancy Act. While doing so with the assistance of a number of labourers, the petitioners in a mob threatened the labourers and prevented the peon from having the crops cut. The peon lodged information of the occurrence, and the petitioners were convicted under ss. 186 and 143, Penal Code. *Held*, that the conviction under s. 186, Penal Code, should be set aside as there was no complaint of the public servant concerned with s. 195, Crim. Pro. Code, taking complaint as defined in s. 4, Crim. Pro. Code. **30 C. 285.** [*R.*, 8 C.W.N. 17=30 C. 910].

Act II of 1888 (Calcutta Municipal Consolidation).

[REP., BEN. ACT III OF 1899].

See BEN. ACT III OF 1899, ss. 449, 452, 579, 7 C.W.N. 554.

(1)—*List of Voters—Chairman's duty.*—The Chairman's duty is to publish the general or original list of voters, 60 days before the day for each general election, and, if required, to revise the list in the manner laid down in s. 22 of the above Act. **22 C. 717.**

(2)—*Ss. 8 and 19—Exercise of power of voting.*—There is nothing specific in the Acts, which prevents or disentitles a person who is qualified to vote under s. 8, from exercising his right in the event of his name not appearing in the revised list of voters. The only prohibition of this nature which exists is that found in the rules of the Local Government issued under s. 19 of the Act. **22 C. 717.**

(3)—Ss. 11 and 12—*See* BEN. ACT IV OF 1876, 19 C. 195, Note.

(4)—S. 12—*See* No. 3, *supra.*

(5)—*Ss. 14 and 24—Right of Hindu joint family to empower one to vote on its behalf.*—The portion of the Municipal Act, which deals with persons qualified to be elected, is to be

2.—Bengal Acts—continued.

Act II of 1888 (Calcutta Municipal Consolidation)—*continued.*

found in s. 14 of the Act. The right of a Hindu joint family to empower a person to vote on its behalf is given by s. 24, which does not precede s. 14. **19 C. 192.** [*Appl.*, 22 C. 717.]

(6)—S. 19—*See* No. 2, *supra.*

(7)—*Ss. 19, 21, 22, 23—Revised list of voters—Supplementary list.*—Neither the above Act, nor the Local Government's Rules issued under s. 19 of that Act, require that the names of either the candidate or his proposer, seconder, or approvers, should appear in the revised list of voters, prepared under ss. 21, 22 and 23 of the Act. There is no sanction for the issue of any supplementary list of voters to be found either in the Act or under the rules issued by the Local Government under s. 19 of the Act. The Chairman cannot even revise the original list of voters on his own motion at any time. He can only do so in the manner stated in s. 22, or, on an application made under s. 21, or in pursuance of orders made by the Presidency Magistrate under s. 23. **22 C. 717.**

(8)—S. 21—*See* No. 7, *supra.*

(9)—S. 22—*See* No. 7, *supra.*

(10)—S. 23—*See* No. 7, *supra.*

(11)—S. 24—*See* No. 5, *supra.*

(12)—*Ss. 24 and 25—Interpretation of the Act.*—The Legislature intended to provide that a family, firm, company, or association should be represented by one of their own members, on whom they could rely and who would do as they desired, and that, although the omission so to provide appeared to be a grave defect in the Act, which the Legislature might well take into consideration, still, it is not possible to introduce into the above section, words which were not to be found in such section, *namely*, "such person being a member of such joint Hindu family, etc." Therefore, in this case, the Court reluctantly came to the conclusion that it would not be justified in putting such an interpretation on the Act as would involve the addition in the Act of words which the Legislature had left out. **19 C. 198.**

(13)—S. 25—*See* No. 12, *supra.*

(14)—*S. 31—Compliance with the section—Chairman's power—Duty of candidate standing for election:*—Where there is a *prima facie* compliance with the above section, the Chairman has no power to go further and determine questions affecting the *status* of persons claiming to be candidates duly qualified under the Act, and he has no judicial discretion to interfere with the list of candidates. (19 C. 192, *Appr.*). It seems, in such cases, the High Court has jurisdiction, by a proceeding in the nature of a *quo warranto*, to restrain a person duly elected from exercising the functions of a duly elected commissioner. According to the above section, a candidate for election must, within the time

2.—Bengal Acts—continued.

Act II of 1888 (Calcutta Municipal Consolidation)—*continued.*

mentioned, send in his own name, together with the names of the proposer, seconder, and approvers. This rule cannot be waived by the Chairman. **22 C. 717.**

(15)—*S. 31—Interference with list of candidates for election as Municipal Commissioners.*—No order can be made, under s. 45, Act I of 1877, unless, amongst other things, it is shown that the doing, or the forbearing to do an act by any person holding a public office or by any corporation or inferior Court, is clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character. The Chairman of a Municipality cannot be ordered to show cause why the name of a particular person should not be removed from the list of candidates for election as Commissioner, since the above section does not impose on the Chairman of the Municipality the duty of exercising any judicial discretion or taking any judicial action on the list of candidates prepared under that section. **19 C. 192.** [*Appr.*, 22 C. 717].

(16)—*S. 87 and Schedule II, Rule 7 (6)—License tax—Liability of joint-stock company having no registered place of business.*—A joint-stock company having no registered place of business in Calcutta, but carrying on, through an agent, a business prescribed in the Second Schedule of the Act, comes within the scope of s. 87, and is bound to take out a personal license, although it is not liable to take out a local license. **25 C. 483 = 2 C.W.N. 328.**

(17)—*Ss. 236, 241—Material alterations of the structure of a house—Sanction.*—The words "material alteration of the structure of any house" in s. 236, contemplate the erection of anything on a site attached to, or detached from, any building standing on it, so as to alter the structure of the house, that is to say, of the house with all the building standing on that site. Sanction is necessary for such building, and failure to obtain the same entails the liability under s. 241. But an order of demolition under s. 449 of Act III of 1899 is not legal. **7 C.W.N. 374.**

(18)—S. 241—*See* No. 17, *supra.*

(19)—*Ss. 307, 336, Rule 6, Sch. 2—Keeping animals without license—Premises in lessee's possession—Validity of prosecution of owner.*—The words of s. 336, though apparently general, must be read with this limitation, namely, that the penalty under the section attaches to the owner for permitting any animals to be kept thereon for profit without taking out a license when he has direct possession of the premises in question; but when the property is let out, it is the duty of the lessee to obtain the license. In the latter case, the owners of the premises cannot be prosecuted under s. 307. **25 C. 625 = 2 C.W.N. 289.**

(20)—*Ss. 335 and 336—License—Cow-shed.*—By paragraph 2 of s. 335, the owner of a cow-

2.—Bengal Acts—continued.

Act II of 1888 (Calcutta Municipal Consolidation)—*concluded.*

shed is allowed time up to the 1st June of every year to take out a license. Therefore, a person cannot be prosecuted under s. 336 of the Act before the 1st June for keeping an unlicensed shed. **24 C. 360.**

(21)—S. 336—*See* Nos. 19, 20, *supra.*

(22)—*S. 364—Sale of adulterated mustard oil.*—Where a person was charged with having sold mustard oil mixed with other kinds of oil on the evidence of a chemical analyst, and he proved that what was known as mustard oil in the market was ordinarily prepared in the same manner as the specimen, *held*, that the accused was protected under the first proviso to s. 364 of the Act. **3 C.W.N. 66.**

(23)—*Ss. 381 and 382—Certificate prohibiting the use of a burial ground.*—S. 381 of the Act requires that, in stating the period on a certificate under the section (*e.g.*, prohibiting the use of a burial ground), the point of time from which the period is to run must be mentioned; in the absence of any express mention of the point of time from which the period is to run, it cannot be taken to run from the date of the certificate itself. **25 C. 492=2 C.W N. 145.**

(24)—S. 382—*See* No. 23, *supra.*

(25)—*Ss. 412 and 417—Power of the corporation to make bye-laws for taking out permit—Bye-laws (C), 4,6—Failure to take out permit—Quære.*—Whether it was competent for the Municipal Commissioners to make bye-laws, under s. 412 of the Act, creating the duty or obligation of taking out a permit, and whether disobedience to such bye-law would constitute a punishable offence. Where a milkman having been convicted, for not taking out before the 1st December, a half-yearly permit in accordance with bye-laws (*C*), 4, 6, made under the provisions of s. 412 of Bengal Act II of 1888, by the Municipal Commissioners of Calcutta, was charged again with continuing the offence by failing, for the space of seven days subsequent to the said conviction, to take out the permit for the same half-year, whilst still carrying on the business as a milkman, *held*, that the offence of not taking out a permit, on or before the 1st December, was complete, when that day had passed, and that, as he had already been punished for it, he could not be again convicted for the same offence. **20 C. 605.**

(26)—S. 417—*See* No. 25, *supra.*

Act II of 1889 (Private Fisheries Protection).

(1)—*S. 3—Fishing in private waters*—Bona fide *dispute as to boundaries—Jurisdiction of Criminal Courts.*—Where, in a charge under s. 3, of having fished in the waters of another person, the accused pleaded a *bona fide* claim to it and it was shown that there had been dispute and litigation between the parties, *held*, that the matter should not be tried by a Criminal Court and still less in a summary way. **4 C.W.N. 247.**

2.—Bengal Acts—continued.

Act II of 1889 (Private Fisheries Protection)—*concluded.*

(2)—*Fishing in private waters*—Bona fide *claim of right.*—Where a person has a *bona-fide* claim of right of fishing in private waters upon the basis of a lease, he cannot be convicted of an offence under s. 3. The question, whether the lessee ought to have satisfied himself thoroughly that the lessor has a good title to the property, is not a matter that properly comes under the Fisheries Act. **6 C.W.N. 118.**

Act I of 1892 (Village Chowkidars, Amending Bengal Act VI of 1870).

[REP. IN PART, ACT V OF 1897].

See EVIDENCE ACT, ss. 25 and 26, 2 C.W.N. 637.

—*S. 13—See* CHOWKIDAR, 27 C. 366=4 C.W.N. 252.

Act I of 1895 (Public Demands Recovery).

[REP. IN PART AND AMENDED, BEN. ACT I OF 1897. DECLARED IN FORCE IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3].

—*Certificate under the Act—Powers of Court.*—The Court issuing the certificate, under the Public Demands Recovery Act, is vested with all the powers conferred by the Law on a Civil Court to enforce a compliance with the certificate by the payment or by realisation through distress of the amount so declared to be due. **28 C. 217=5 C.W.N. 291.**

See PENAL CODE, s. 206, 28 C. 217=5 C.W.N. 291.

Act I of 1899 (General Clauses).

[DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN THE CHITTAGONG HILL-TRACTS, REG. I OF 1900, S. 4].

—S. 8—*See* BEN. ACT III OF 1899, ss. 449, 452, 579, 7 C.W.N. 554.

Act III of 1899 (Calcutta Municipality).

[SUPPLEMENTED, BEN. ACT II OF 1900].

(1)—*S. 3(25)—"Building" defined—Masonry wall.*—The word "building" in the term "masonry building" is applied to that which can be used as a warehouse or dwelling-house or a public hall, or hospital, or for like purposes. A detached wall built of masonry is not a "masonry building." **8 C.W.N. 487.**

(2)—*Ss. 198, 199, 466, 466 (1) and 574—Sch. II, and Rule 7 of the Act—Trade license, and license for storing lime—Liability to take out both the licenses—Licenses under ss. 198 and 466—Connection between.*—The purposes, for which the licenses under ss. 198 and 466 of the Calcutta Municipal Act are necessary, are widely different, and there is no necessary connection between the two licenses. The taking out of the

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license under s. 198 of the Act is itself no excuse for not taking out another license under s. 466. The scheduled rules that apply to the one have no application to the other. Where a person carried on the business of lime-trader and used a certain premises for storing lime, *held* he was bound to take out a trade license under s. 198 of the Calcutta Municipal Act, as well as a license under s. 466 for storing lime, and his omission to take out a license under the latter section is punishable under ss. 466 (1) and 574 of the Act. **11 C.W.N. 885 =6 C.L.J. 183=6 Cr. L.J. 148=34 C. 913.**

(2-*a*)—S. 199—*See* No. 2, *supra*.

(2-*b*)—S. 270—*See* No. 8, *infra*.

(3)— *Ss. 320 and 574—Receiver appointed by Court, whether "owner" of premises he is holding.*—A Receiver appointed by the High Court is not the "owner" of the premises he holds as a Receiver, within the definition of the term "owner" in the Municipal Act. If he receives rent for such premises, he does not do so on his own account, or as agent. or trustee for any person or society, or for any religious or charitable purpose, but as an officer of the Court and as manager of the property on its behalf. **30 C. 721=7 C.W.N. 706.**

(4 and 5)—Ss. 320,574—*See* CRIM. PRO. CODE (1898), ss. 197, 423, 30 C. 927=7 C.W.N. 750.

(6)—*Ss. 325, 574—Consolidation of cases based on different facts, irregular—Magistrate dictating judment to clerk, not in accordance with law—Liability of plumber to prosecution for defect in work not absolved by subsequent sanction granted.*—Where two separate prosecutions were started by the corporation against a licensed plumber for defect in his works in connection with two different premises, and the Municipal Magistrate consolidated the two cases together : *held*, that such a procedure was irregular. Where the Magistrate did not write the judgment himself but dictated and signed it, *held*, that the dictation of the judgment contravened the provisions of s. 367 of the Crim. Pro. Code. Where the work of a licensed plumber was found, on inspection after submission of the completion report, to be defective and in contravention of Rule 4 of Sch. XV of the Calcutta Municipal Act, *held*, that the plumber was liable to prosecution notwithstanding that the defects were subsequently remedied and the officers of the Corporation subsequently sanctioned the requisite connections. Laxity in the administration of the Rules and Bye-laws of the Municipality by the officers thereof condemned. **4 C.L.J. 411=4 Cr. L.J. 394.**

(7)—*Ss. 341, 450, 574, 631—Fixture—Demolition—Limitation period in s. 631, whether applies to demolition order.*—Where, a notice under s. 341 of the Calcutta Municipal Act having been served in January 1907 upon the petitioner to remove a certain fixture, proceedings were instituted against the petitioner in 1907 under s. 450, and on the 30th October, 1909. the Municipal Magistrate ordered under s. 450 (*b*) that the fixture should be demolished by the Chairman of the Corporation at the expense of the petitioner, *held*—that s. 631 has no application to the order of the Magistrate, and the order of demolition was not illegal on the ground of having been made after the limitation period prescribed by the section. **14 C.W.N. 591.**

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(8)—*Ss. 350 and 270—Bye-law No. 64 made under s. 350*—Ultra vires—*Reasonable construction—Interference with private property by Municipality—Tethering bullock by a private drain—Allowing offensive matter to be thrown into a private drain.*—The road or drain referred to in cl. (2) of s. 270 of the Bengal Municipal Act is a road or drain belonging to the Municipality. If the bye-law No. 64, made under s. 350 of the Bengal Municipal Act, authorises the Municipality to interfere with private property, it is *ultra vires*. **10 C.W.N. 667=3 Cr. L.J. 450.**

(9)—*Ss. 372, 383 and 449 (1)—Demolition of a building erected without sanction—Notice under s. 383, whether condition precedent to the passing of order for demolition.*—No notice under s. 383 of the Calcutta Municipal Act (III B. C. of 1899) is necessary, before an order under s. 449 (1) of the Act, directing the demolition of a building erected without sanction in contravention of s. 372, can be passed. **12 C.W.N. 271=7 Cr.L.J. 110=7 C.L.J. 243.**

(10)—*Ss. 383, 449—Notice before taking proceedings under sub-section 1 of s. 449.*—There is nothing in the Act making a notice under s. 383 a condition precedent to a proceeding under the first sub-section of s. 449. **7 C.W.N. 554.** [*F.*, 12 C.W.N. 271=7 Cr. L.J. 110=7 C.L.J. 243].

(11)—S. 383—*See* No. 9, *supra*.

(12)—*Ss. 391, 449—Scope of the Act.*—The Calcutta Municipal Act relates only to acts done after the commencement of that Act, including acts done to complete a building commenced before the Act came into operation. **7 C.W.N. 374.**

(13)—*Ss. 406, 407, 408 and 474—Notice under s. 408—Standard plan—Necessity of attaching a copy of the plan to the notice*—Bustee *improvement—Power and duty of the Corporation in respect thereof.*—The duty of the corporation in improving *bustees* is a most important one and they have been invested with the most ample power, but when certain penal sections enforced by the Criminal law are put in motion on the report of the servants of the Municipality, it is incumbent on the Magistrate and the authorities of the Corporation to see that the legal procedure, which is a condition precedent to any conviction, is strictly and properly carried out. Where a letter was issued by the Deputy Chairman requiring the petitioners to do certain works, but no notice under s. 408 was issued directing them to specifically carry out the

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works. *Held*, the conviction of the petitioners under ss. 574, 408 of Act III (B.C.) of 1899 for neglecting to carry out the works, cannot stand. When the Municipality directs one of several owners of a *bustee* to carry out certain improvements and issues a general notice under s. 408 of Act (B.C.) of 1899, it is the duty of the Municipality to serve him with a copy of the standard plan approved by the General Committee, under s. 407, and point out to him on that plan what work he is to do. **11 C.W.N. 508=5 Cr. L.J. 293.**

(14)—*Ss. 406, 408, 409, 574—The power of the General Committee to proceed either under s. 406 or s. 408—Sub-Committee's power to sanction amendment of the original plan—Officers who should inspect a* bustee *and submit report—Objections of the owners of a* bustee *to standard plan, how to be made.*—The standard plan prepared on a report made by two officers—the medical officer and the engineer—on an inspection of a *bustee* under the provisions of s. 406 of Act III (B.C.) of 1899 does not become bad in law, because one of the officers, the engineer, was not a permanent servant of the Municipality. Notices under s. 408 of Act III (B.C.) of 1899 having been served upon all the owners of land of a *bustee*, one of the owners objected to a certain proposed road in the standard plan going in a certain direction and on his objection, the Sub-Committee decided that the road be deflected. The standard plan thus modified was approved by the General Committee, who served a notice upon the petitioner to carry out the improvements according to the standard plan so modified, and for her non-compliance they prosecuted the petitioner. *Held*, that the petitioner was not entitled to a fresh notice with regard to the deflection of the road, in order to enable her to urge her objections to the deflection, before the General Committee. The law contemplates that all persons interested will be present before the Sub-Committee, and will present not merely their own objections to the scheme but also any objection which they have to any modification of the scheme on the objections raised by others. It is the duty of each of the persons, at the time when the matter is before the Sub-Committee, to ascertain what the various objections of the other persons are, and then to oppose those objections if necessary. Under the Calcutta Municipal Act, the Sub-Committee have power to sanction any amendment of the original plan, even though the amendment be necessary for the purpose of avoiding expense, and not for the purpose of improving the *bustee*. The Calcutta Municipal Act gives the General Committee full discretion to proceed either under s. 406 or under s. 409. **12 C.W.N. 1116.**

(15)—*Ss. 406, 408, 574, 645—Power of the General Committee of Calcutta Corporation to determine the owner for carrying out improvements under the Act—High Court's power of revision.*—Under s. 645, the General Committee of the Calcutta Corporation has power, where there are gradations of owners or persons, to determine who may be regarded as owners, or where there is a doubt as to who is the owner bound to perform the duty, to determine which of such owners shall be deemed to be bound to carry out the improvements. That discretion having been by law vested in the General Committee, the High Court has no power, in the exercise of its Revisional Criminal Jurisdiction, to set aside or question the acts done in the exercise of that discretion, if these acts have otherwise been done in accordance with the provisions of laws. Where there is no stipulation in a lease, providing by which party (*i.e.*, lessor or lessee) any improvements ordered by the Corporation under the Act or to be carried out, the obligation cast upon the owner to carry out such improvements will remain *prima facie* unaffected by the terms of the lease. **34 C. 30=5 Cr. L.J. 137=11 C.W.N. 671.**

(16)—S. 407—*See* No. 13, *supra*.

(17)—S. 408—*See* Nos. 13, 14, 15, *supra*.

(18)—*Ss. 408, 419 and 575*—Bustee *improvement—Failure to make road as in standard plan of* bustee—Bustee *ceasing to be so.*—After huts have been removed from a *bustee* land, the land ceases to be a *bustee* land and the provisions of s. 408 of the Calcutta Municipal Act can then no longer have any operation on the owner. **12 C.W.N. 72.**

(19)—*Ss. 408, 419, 574 and 681—Limitation for starting prosecution under ss. 408 and 574—S. 419, effect of, in enlarging time after the commission of the offence.*—Where a notice under s. 408 of the Calcutta Municipal Act was served upon the petitioner, on the 3rd March, 1906, requiring her to make certain improvements in a *bustee* within three months, and on her non-compliance with the notice within the time, a reminder was sent by the Corporation on the 21st June, 1906, and then on the 2nd July, 1906, a notice under s. 419 of the Act was sent by the petitioner to the Chairman, and on the expiry of six months from the date of this notice, prosecution was started against the petitioner on the 23rd January, 1907, with the result that she was convicted under ss. 408 and 574 of the Act and sentenced to a fine of Rs. 25, *held* that the conviction and sentence were bad in law and must be set aside, as the prosecution, having been started more than three months after the expiry of the notice under s. 408 of the Act, was barred by limitation; that the notice under s. 419 of the Act, having been served after the offence of the petitioner under ss. 408 and 574 had been committed, could not have the effect of enlarging the time by six months. A notice under s. 419 of the Act, in order to be effectual, must be served before the offence is committed. **11 C.W.N. 1097=34 C. 909=6 Cr. L.J. 317.**

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(20)—*Ss. 408 and 574—Notice to owners of property pending litigation, failure to comply with, whether amounts to an offence under the sections.*—At the time when the General Committee of the Corporation caused a written notice to be served upon the owners of the property in question, calling upon them to carry out improvements under s. 408 of the Act, the property was under litigation, *viz.*, a suit for partition, during the pendency of which it was not open to the owners, either individually or collectively, to alter the property by carrying out the improvements, which they were called upon, by the Corporation, to make. *Held*, setting aside the conviction of the owners under ss. 408 and 574 of the Act, the former section must reasonably be construed and when the directions given to the owner were such as he was not in a position to carry out, the failure to comply with the notice containing such directions could not amount to an offence under the said sections. **33 C. 699=4 Cr. L.J. 47.**

(21)—S. 409—*See* No. 14, *supra*.

(22)—S. 419—*See* Nos. 18, 19, *supra*.

(23)—*S. 449—Demolition of building, order for—Deviation from plan sanctioned—Assessment on the deviation—Acquiescence—Order made long after notice—Order, if proper—Order, propriety of—High Court jurisdiction of, to revise such order—Crim. Pro. Code (1898), s. 435—Revision, power of—Discretion of Magistrate.*—The General Committee, if satisfied, of the existence of the circumstances mentioned in s. 449 of the Act, may or may not make an application to the Magistrate for the demolition of a building or a portion of it, erected in violation of, or contrary to, the plan sanctioned by the Municipality, but when such an application is made to the Magistrate, he also has a discretion either to make or refuse the order under s. 449 of the Act. When a Magistrate has not properly exercised his discretion, the order is not a proper order and the High Court has power to set it aside. **3 C.L.J. 90=10 C.W.N. 182=3 Cr. L.J. 211=33 C. 287.**

(24)—*Sch. XVII, Rule 17—Demolition of buildings outside sanctioned plan and existing for a long time, illegal.*—What a Magistrate is empowered to direct to be demolished, under s. 449 of the Calcutta Municipal Act, is work which forms part of the plan sanctioned, and which contravenes some provision of the Act or of the bye-laws in force, with reference to the erection of buildings, and not buildings outside such sanctioned plan and existing for a long time. **3 C.L.J. 571=3 Cr. L.J. 465=33 C. 646.**

(25)—*See* Nos. 9, 10, 12, *supra*, *and* 51, *infra*.

(26)—*Ss. 449, 450, 452, 579—Demolition of building, order for—Discretion of Magistrate—Analogy to case of mandatory injunction—Difference—Waiver, acquiescence and delay, effect of—Danger to public—Cumulative penalty*

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—Fine and demolition.—It is discretionary with the Municipal Magistrate to make or not an order of demolition under s. 449 of the Calcutta Municipal Act. This discretion is to be exercised after receiving evidence and hearing the defence. The Municipal Magistrate should exercise the discretion vested in him under ss. 449, 450 and 452 of the Calcutta Municipal Act with due regard to those rules which guide Courts of Equity in granting injunctions—with this difference that he has also to consider whether or not a building ought to be demolished on the ground of its being a danger or obstruction to the public. It is the duty of the Municipal Corporation to procure the demolition of a building which is a danger or obstruction to the public. In other respects, the Corporation stands, unless the law expressly directs, in practically the same position as a private individual wronged by a tortious act. Although the Municipal Act does not prescribe any period of limitation for an action under s. 449 or 450 of the Act, the Court in directing demolition should consider how far the delay in the institution of the proceeding has affected the action. The fact that in respect of the same deviation from the sanctioned plan of a building, the Municipal Corporation instituted two different proceedings at different times, *viz.*, for fine under s. 579 and demolition under s. 449—cannot deprive the Magistrate of his discretion under s. 452 of the Act. This section applies even when the two proceedings are not simultaneous. **11 C.W.N. 30=4 Cr. L.J. 408 =34 C. 341.**

(27)—*Ss. 449 (1), 451 and 574—Rule No. 2 of Part II, sch. 17 of the Act, interpretation of—Height-limit of building facing street and an open platform—Angle of 45 degrees whence to be drawn.*—On one side of a street was a bathing platform open to the sky. On the opposite side, a building was erected facing the street and the platform; *held*, in determining the height-limit of the building in accordance with Rule No. 2 of Part II, sch. 17 of the Calcutta Municipal Act (III, B.C. of 1899), the angle of 45 degrees must be drawn from the street alignment on the side of the street and not from the side of the platform farthest from the street. **13 C.W.N. 74=9 Cr.L.J. 302.**

(28)—*Ss. 449, 452, 579—Sanction for building under the old Act, II of 1888—Deviation from the plan, effect of—Bengal Act I of 1899 (General Clauses), s. 8—Question of penalty.*—If the building as constructed was a deviation from the plan as sanctioned under the old Act so as to render the owner liable to a penalty under the old Act, then, he cannot show that he had acquired under the old Act, before the new Act came into force, a right entitling him to build in contravention of the provisions and rules laid down by the new Act. so as to bring himself within cl. (c) of s. 8 of the Bengal General Clauses Act; he will then be liable to a prosecution under the new Act. The question of what penalty should be enforced under

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ss. 449, 452 and 579 of Act III of 1899 is in the discretion of the Magistrate, and is not a question of law which the High Court will answer. **7 C.W.N. 554.** [*F.*, 12 C.W.N. 271=7 Cr. L.J. 110=7 C.L.J. 243].

(29)—*Ss. 449, 575—Acquittal under s. 575—Refusal to return a plan to which sanction has been obtained by misrepresentation and fraud—Order precluding the petitioner from building according to such plan—Magistrate not competent to make such order.*—Where, in a prosecution under s. 449 of the Act, the Magistrate acquitted the accused under s. 579, but found that the sanction to the plan had been obtained by misrepresentation and fraud, and made an order prohibiting the petitioner from building the second storey on the basis of such plan and directing that the sanctioned plan filed by him be not returned to him; *held*, that the Magistrate was not competent to make an order of that description. **3 C.L.J. 138=3 Cr. L.J. 215.**

(30)—*Ss. 449 and 580—Sanction for erection of a building under misapprehension—Scope of sections.*—A sanction given by the Municipal Corporation for the erection of a building under a misapprehension due to the applicant's omission to draw the attention of the Corporation to all the necessary facts connected with the position and surroundings of the proposed building will not exonerate the applicant from liability under the Act, if the building be afterwards found to have been constructed in contravention of the provisions of the Act. S. 580 of the Calcutta Municipal Act does not merely provide for the punishment of offences committed under s. 449 of the Act. It itself creates the offences, both the primary offences, consisting of default in carrying out an order under s. 449 and the secondary or continuing offence committed on each day thereafter by reason of the continuance of the default. **7 C.W.N. 853.**

(31)—*Ss. 449, 628, 629 and 631—Demolition of unsanctioned building—Punishment of the offender—Civil suit—"Magistrate," scope of the term.*—The Municipal Act provides a means both for punishing the offender and securing the demolition of an unsanctioned building. The Corporation will be ill-advised to abandon their remedy under the Act in favour of a Civil suit which would possibly not lie before the remedy has been exhausted. The words, "a Magistrate" in s. 449 mean any Magistrate having jurisdiction in Calcutta, and includes a Municipal Magistrate. He has, therefore, power not only to try offences, under the Act, but also to make an order for the demolition of an unsanctioned building. **9 C.W.N. 18.**

(32)—*Ss. 449 and 631—Scope of the section—Nature of the proceedings—Crim. Pro. Code (1898), s. 432.*—The limitation for the prosecution of offences, prescribed in s. 631 (1) has no application to proceedings taken under s. 449. S. 631 only applies to complaints made before a Magistrate in order to the punishment

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of a person for an offence against the Act or any rule, or bye-laws, or regulation under the Act. [*R.*, 9 C.W.N. 18]. S. 449 provides for applications to be made to a Magistrate by the General Committee in order to the issue of an order directing the demolition or alteration of work which has been unlawfully executed under certain circumstances. Proceedings under that section are not instituted on a "complaint," nor is the demolition of an unlawfully executed work a "punishment" within the meaning of s. 631, sub-s. 1. **8 C.W.N. 142.**

(33)—S. 450—*See* Nos. 7, 26, *supra*.

(34)—S. 451—*See* No. 27, *supra*.

(35)—S. 452—*See* Nos. 26, 28, *supra*.

(36)—S. 466—*See* No. 2, *supra*.

(37)—*Ss. 466, 574, sch. XVIII, cl. 8—Iron—Steel.*—In schedule XVIII, cl. (8) of the Calcutta Municipal Act, the term "*iron*" includes *steel*, so that a person, who used premises for storing steel joists, without a license granted under s. 466 (1), was held to have been rightly convicted under s. 574. **10 C.L.J. 486.**

(38)—S. 474—*See* No. 13, *supra*.

(39)—*S. 495—Sale of mustard oil adulterated with* til *oil.*—Where, on a prosecution by the Food Inspector, the accused was convicted under s. 495 of Bengal Act III of 1899, for having sold mustard oil adulterated with *til* oil, *held*, that the accused was rightly convicted, inasmuch as it was not necessary for the purpose of manufacturing mustard oil to use any hard seed (such as *til* oil) to assist in expressing the oil, as what was commercially known as mustard oil was the pure oil and not oil adulterated with *til* or other oil, and as such adulteration was to the prejudice of the purchaser. **30 C. 643=7 C.W.N. 637.**

(40)—*Ss. 502 and 505—Order under s. 505, when can be made.*—In order to justify an order under s. 505, Calcutta Municipal Act, the Magistrate has to be satisfied that the article directed to be destroyed comes within the provision of s. 502 of the Act. He is to be satisfied that the article is either exposed, or hawked about, for sale, or brought to any place for the purpose of sale, or of preparation for sale and is intended for human food. Before a Magistrate could order the destruction of damaged rice, the judgment should contain an affirmative finding that the rice was brought for the purposes of sale, or that it was intended for human food. **30 C. 421=7 C.W.N. 27.**

(41)—S. 505—*See* No. 40, *supra*.

(42)—*Cl. (18) of ss. 559, 561 (b), 631—Bye-laws, section 1—Encroachment on a public street by raising pillars—Obstruction, removal of, notice for—Notice, disobedience to the requisition of—Proceedings, institution of, three months after the expiration of the period of the requisition—Limitation—Offence, if continuous.*—

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A Bye-law must conform with the provisions of the enactment under which it purports to be made. Bye-law, s. 1, so far as it relates to obstruction, comes within the provisions of clause (18) of section 559 of the Calcutta Municipal Act (III of 1899). S. 561 (*b*) only authorises the penalty for the continuance of a breach, where notice follows breach. The penalty is attached to a breach, which only arises after the notice, and there is no provision for any subsequent notice, which could come within the provisions of s. 561, requiring that there should be notice after breach. The Bye-law purports to create a continuous breach, which is outside of and fails to comply with the provision of s. 561, clause (*b*), under which alone it can claim vitality. There is, therefore, no provision for a continuing breach, that could take the case outside the provision of s. 631 of the Calcutta Municipal Act. **10 C.L.J. 623**=14 C.W.N. 614=4 Ind. Cas. 259=10 Cr. L.J. 522.

(43)—S. 561—*See* No. 42, *supra*.

(44)—S. 574 - *See* Nos. 2, 3, 4, 6, 7, 14, 15, 19, 20, 27, 37, *supra*.

(45)—S. 575—*See* No. 18, *supra*.

(46)—S. 579—*See* Nos. 26, 28, 29, *supra*.

(47)—S. 580—*See* No. 30, *supra*.

(48)—S. 628—*See* No. 31, *supra*.

(49)—S. 629—*See* No. 31, *supra*.

(50)—S. 631—*See* Nos. 7, 31, 32, 42, *supra*.

(51)—*Ss. 632, 449*—"*Nuisance*," *building sanctioned by Municipality, if may be—Nuisance, if must be public—Building in contravention of regulations, if to be proceeded against only under s. 449—Partition decree, effect of.*—The term "nuisance" in s. 632 of the Calcutta Municipal Act does not refer only to nuisances affecting the public generally. It applies as well to nuisances affecting an individual. The mere fact that the Municipality could have proceeded against a building erected contrary to the building regulations under s. 449 of the Act does not preclude the Municipal Magistrate from interfering with it under s. 632, at the instance of the person whose house has been deprived of light and air by the building. If a building is a nuisance, it is no answer in a proceeding under s. 632 to say that the Corporation had sanctioned it. Whether erected with or without sanction, or in contravention of the building regulations or not, any person residing in Calcutta affected by it can move the Magistrate, and it is within the jurisdiction of the Magistrate to pass an order under s. 632, if in his discretion he is so advised. A partition decree previously passed, which purported to specify the easements reserved to the portion which fell to the complainant, cannot be held to override the provisions of the Calcutta Municipal Act, which is directed to provide for public sanitation among other public considerations. **14 C.W.N. 637.**

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(52)—S. 645—*See* No. 15, *supra*.

(53)—S. 681—*See* No. 19, *supra*.

(54)—*Sch. 17, rules 22 and 24—Construction of the rules.*—An open square or the like to come within Rule 24 must at least be four feet wide. If the open space is not less than four feet wide on the other side, the owner of the house is to leave at least four feet of open space more as indicated by cl. (*b*) of paragraph 2 of the Rule 24. **7 C.W.N. 853.**

Act VI of 1901 (Assam Labour and Emigration).

—*S. 164*—"*Emigrate*," *meaning of—Inducement to emigrate to Fiji—Subsequent inducement at another place to emigrate to Sylhet—Place of trial—Jurisdiction of Criminal Court—Emigration.*—Where the accused induced L to leave Cawnpore in order to go to Fiji for work, and, on the way at Arrah, told him that he would have to go to Sylhet, and placed him in a train bound therefor, *held* that the Magistrate at Arrah, and not the Magistrate of Cawnpore, had jurisdiction to try the case. L was not induced to leave Cawnpore in order to go to Sylhet, but in order to go to Fiji, and no offence was therefore committed at Cawnpore. The inducement to go to Sylhet was made at Arrah, and so the Arrah Court alone had jurisdiction. **37 C. 27.**

Act III of 1906 (Disorderly House).

—*S. 2—Dancing girls—Singing obscene-songs—Brothel—Habitual prostitution.*—In order to bring a case under s. 2 of Act III (B.C.) of 1906, it must be shown, first, that the house is in the vicinity of an educational institution or a boarding house, hostel or mess, and secondly, that it is used as a brothel for the purpose of habitual prostitution or is used by disorderly persons of any description. Where a house is occupied by a male and the members of his family, two of the members of which are dancing girls, who are kept mistresses of gentlemen and who sing songs sometimes of an obscene character, *held*, that the house is not used as a brothel or for the purpose of habitual prostitution. **6 C.L.J. 710.**

Act II of 1907 (Eastern Bengal and Assam).

(1)—*Ss. 2, 3, 6—Eastern Bengal and Assam—Disorderly Houses Act (II of 1907)—Offence under—Procedure of the Magistrate in making inquiry under the Act—Criminal Court, whether a Magistrate acting under s. 2, is—Irregularity in the proceedings, effect of—Revision—Criminal Procedure Code (Act V of 1898), ss. 435, 439,*—A Court acting under s. 3 of the Eastern Bengal and Assam Disorderly Houses Act (II of 1907) is a Criminal Court within the meaning of s. 435, Crim. Pro. Code, and the High Court has jurisdiction to interfere under ss. 435 and 439, Crim. Pro. Code. Ss. 2 and 3 of the Act do not create any offence and the only offence created by the Act is that created by s. 6. The power

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Act II of 1907 (Eastern Bengal and Assam)—*concluded.*

conferred by ss. 2 and 3 is not a power to hold a Criminal trial or to take any preliminary proceedings under the Criminal Procedure. It is a power similar to those conferred on Criminal Courts by Chaps. VIII, X, XI and XII of the Code. The Eastern Bengal and Assam Disorderly Houses Act does not prescribe any particular procedure except such as is indicated by the last paragraph in s. 2 and ss. 4 and 5. The Magistrate may make his enquiry under ss. 2 and 3 in any way that does not violate ordinary rules of fairness and propriety, and in making the enquiry he performs an administrative duty and not a judicial duty. Where, in any inquiry under s. 2 of the Act, it was contended that the Magistrate had erroneously administered oaths to witnesses, *held* that, the proceedings of the Magistrate having been perfectly fair and reasonable in themselves, the error, if any, did not vitiate them. **14 C.W.N. 404.**

(2)—S. 3—*See* No. 1, *supra*.

(3)—S. 6—*See* No. 1, *supra*.

3.—Bombay Acts.

*** Act XXVII of 1837 (Salt).**

[REP. (EXCEPT IN SIND), BOM. ACT VII OF 1873.]

(1)—*Salt thrown overboard to avoid measurement—Presumption.*—In a case where a vessel was seized on suspicion of having a greater quantity of salt than was allowed by its permit, and immediately afterwards, a number of men boarded the boat and threw some of the salt overboard, *held* that, from the above circumstances, a presumption arose that there was, at the time of the seizure, an excess of salt on board the vessel, beyond that allowed by the permit. **7 B.H.C. A.C.J. 89.**

(2)—*Salt removed in excess of the permit—Confiscation.*—Where a vessel, holding a permit to pass a certain quantity of salt on which duty had been paid, removed a larger quantity, the whole of such salt must be considered as removed contrary to the provisions of the above Acts; and the whole of such salt, and not merely the exception, is liable to confiscation. **7 B.H.C.A.C.J. 89.**

(3 and 4)—*S. 7—Act XXXI of 1850—Removal of one's own salt—Detention.*—Removal of one's own salt from the bed of a creek, not forming part of any salt-work, is not an offence under the Penal Code nor under either Act XXVII of 1837 or Act XXXI of 1850, though, under s. 7 of the former Act made applicable by s. 8 of the latter, the salt removed becomes liable to detention. **Rat. Un. Cr. C. 66 = Cr. Rg. 12—9—72.** [*R.*, 10 B.H.C. A.C. 74.]

* This local Act was passed by the Imperial Legislature.

3.—*Bombay Acts*—continued.

Act XXVII of 1837 (Salt)—*concluded.*

(5)—But a dishonest removal of salt naturally formed in a creek, which was under the supervision of an officer belonging to the Customs Department, constitutes theft, the salt having been legally appropriated by such officer. (*Per* Bayley and West, JJ.) **10 B.H.C.A.C.J. 74.**

*** Act XIX of 1838 (Coasting Vessels, Bombay).**

[REP. IN PART, ACT XIV OF 1870; ACT XVI OF 1874; ACT XII OF 1876. DECLARED IN FORCE THROUGHOUT THE PRESIDENCY OF BOMBAY, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 5.]

(1)—*S. 13—Using boat without number and certificate of registry—Jurisdiction.*—A full power Magistrate alone has jurisdiction to convict an accused person under s. 13 of Act XIX of 1838. **5 B.H.C.R. 6 Cr.** [*R.*, Rat. Un. Cr. C. 134.]

(2)—*See* SENTENCE, 7 B. 280.

See St. 17 and 18 Vic., *c.* 104, ss. 24 and 26, 14 B. 170.

*** Act XI of 1843 (Hereditary Officers, Bombay).**

[REP., BOM. ACT III OF 1874.]

—S. 8—*See* CONTEMPT OF COURT, 8 B.H.C, Cr. 19.

*** Act XI of 1846 (Khandesh and Ahmednagar).**

[REP., AS TO KHANDESH, ACT XIV OF 1874; REP., AS TO AHMEDNAGAR, ACT XII OF 1876.]

(1)—*Jurisdiction of High Court to deal with cases under the Act.*—The High Court of Judicature at Bombay has the same jurisdiction as was possessed by the Sudder Fouzdari Adawlat to deal with cases under Act XI of 1846, either by way of confirmation or of appeal. **Rat. Un. Cr. C. 939.**

(2)—*S. 3—Jurisdiction—Appeal to High Court.*—Rule 44 of the rules framed under s. 3 of Act XI of 1846 was held to be *ultra vires*, as no power was given by Act XI of 1846 to the Government to confer appellate powers on the Sadar Fouzdari Adawlat, as was practically done by the rule. Act XI of 1846 being repealed in the Mehwassi Village by Act XIV of 1874, rule 44 could not be continued either by the notification published in the Bombay Government Gazette for 1879, Pt. I, p. 115, or by the notification published in the Bombay Government Gazette for 1887, Pt. I, p. 19. In this case the accused were convicted, under s. 201, I.P.C., of an offence committed in the village of Gulamba, in the Mehwasi Eastate of Nal, in the Khandesh District, and each of the accused was sentenced by the Agent to the Governor to suffer

* These local Acts were passed by the Imperial Legislature.

3.—Bombay Acts—continued.

Act XI of 1846 (Khandesh and Ahmednagar) *--concluded.*

rigorous imprisonment for five years. The Agent tried the case under the rules framed under Act XI of 1846. The accused appealed to the High Court under Rule 44 of the rules framed under s. 3 of Act XI of 1846. *Held*, no appeal lay to the High Court. **15 B. 505.** [*Diss.*, 25 B. 667 ; *R.*, Rat. Un. Cr. C. 939.]

(3)—*Scheduled Districts Act IV of 1874—Rule 35 of the rules framed under Act XI of 1846—Reference to High Court from conviction in Scheduled District.*—The Collector of Khandesh, acting in his capacity as Political Agent for the Mehwasi Estates, tried the accused on the charge of the murder of his wife at a village in a Scheduled District, and sentenced him to transportation for life, subject to the confirmation of His Excellency the Governor in Council. The accused also presented a petition of appeal to the same authority. The Government directed the Political Agent to submit the proceedings to the High Court, and the reference was accordingly made by the Political Agent under Rule 35 of the Rules promulgated in July 1855, under the powers conferred on Government by s. 3 of Act XI of 1846. The accused's appeal also was forwarded to the High Court. *Held* that the High Court had jurisdiction to hear and determine the reference. **25 B. 667.**

*** Act XXXI of 1850 (Salt Revenue, Bombay).**

[REP., BOM. ACT VII OF 1873.]

See BOM. ACT XXVII OF 1837, 7 B.H.C. A.C.J. 89, 10 B.H.C.A.C.J. 74 (note) = Rat. Un. Cr. C. 66.

(1)—*Crim. Pro. Code (1861), s. 45—Applicability of s. 65, I.P.C.—Imprisonment in default of payment of fine.*—S. 45, Crim. Pro. Code, 1861, makes applicable the provisions of s. 65, I.P.C., to every case in which a Magistrate has jurisdiction under s. 21, Crim. Pro. Code. Where an accused person convicted under s. 3, Act XXXI of 1850, was sentenced to pay a fine of ten rupees, or in default to suffer one month's simple imprisonment, the imprisonment in default was reduced to three weeks' simple imprisonment. **5 B.H.C.Cr. 61.**

(2)—*See* PENAL CODE, ss. 69, 70, Rat. Un. Cr. C. 40.

(3)—S. 8—*See* THEFT, 10 B.H.C. 74 (note).

*** Act XXXV of 1850 (Ferries, Bombay).**

[REP., BOM. ACT II OF 1868.]

(1)—*S. 9—Jurisdiction - Zillah Magistrate—Reg. XII of 1827.*—A full power Magistrate has no jurisdiction to convict for an offence under s. 9 of the Bombay Ferries Act, since only a Zillah Magistrate as defined by Reg. XII of 1827 has jurisdiction in such cases. **3 B.H.C.Cr. 11.**

* These local Acts were passed by the Imperial Legislature.

3.—Bombay Acts—continued.

Act XXXV of 1850 (Ferries, Bombay)—*cld.*

(2)—*S. 14—Construction.*—Conveying for hire passengers from an island in the harbour to the mainland of Bombay is not an offence under s. 14 of the Bombay Ferries Act. **3 B.H.C. Cr. 41.**

(3)—*S. 16—Appeal from Zillah Magistrate's decision—Reg. XIX of 1827, s. 14—Time for appeal.*—An appeal lies to the Sessions from the summary decision of the Zillah Magistrate under s. 16 of the Bombay Ferries Act. Such an appeal need not be preferred within eight days as required by s. 14 of Regulation XIX of 1827. **6 B.H.C. Cr. 45.**

*** Act III of 1852 (Spirituous Liquors, Bombay).**

[REP., BOM. ACT V OF 1878.]

—Penal Code, s. 205—Prosecution under Act III of 1852.—A prosecution under Act III of 1852 is a criminal prosecution within the meaning of s. 205 of the Penal Code. **Rat. Un. Cr. C. 59 = Cr. Rg. 14—12—71.**

*** Act XIII of 1856 (Police, Bombay Town).**

[REP. IN PART, ACT XLVIII OF 1860 ; ACT XIV OF 1870 ; ACT XVI OF 1874 ; ACT XII OF 1875 ; ACT IV OF 1877 ; ACT XII OF 1891; BOM. ACT IV OF 1887. AMENDED, BOM. ACT I OF 1872 ; BOM. ACT II OF 1879. SUPPLEMENTED, ACT XLVIII OF 1860 ; ACT III OF 1888. REP. (IN CALCUTTA), BEN. ACT IV OF 1866 ; REP.. (IN MADRAS), MAD. ACT VIII OF 1867, S. 81.]

(1)—*S. 35 (1)—Fraudulent possession of property reasonably suspected to be stolen.*—The Police Act being a penal enactment which shifts the burden of proof of innocence at a certain point on the accused, it has to be construed strictly. Before the accused can be called on to account for the property under s. 35 (1), there must be evidence amounting to proof to the satisfaction, not of the police officer or witness, but of the Court, that the accused possessed or conveyed a thing of which, after judicial consideration by the Court, it may be said that it "may be reasonably suspected of being stolen or fraudulently obtained." **20 B. 348.**

(2)—S. 51—*See* No. 2, *supra.*

(3)—*Ss. 57, 58, 111—Form of warrant—Irregularity—Effect.*—A warrant issued under s. 58 of the Police Act should be addressed, not to all constables and peace officers, but to some one or more superior officers of Police, or at least to superior officers of Police generally. But this defect in the warrant is not such an irregularity, having regard to s. 111 of the same Act, as to vitiate a conviction on the merits for an offence under s. 57. **8 B.H.C. Cr. 1.**

(4)—*Act XLVIII of 1860, s. 15—Recital in warrant—Evidence—Found gaming.*—S. 15 of Act XLVIII of 1860 does not render the recitals

* These local Acts were passed by the Imperial Legislature.

***3.—Bombay Acts*—continued.**

Act XIII of 1856 (Police, Bombay Town) —*concluded.*

in a warrant to the effect that information of gaming has been given on oath to the Magistrate, *prima facie* evidence of the use of the room. The proper construction to be put on the section does not require that the accused should be actually arrested in the place where the gaming has been going on. It is enough that gaming was seen to take place there. **8 B.H.C. Cr. 1.**

(4-*a*)—S. 58—*See* No. 3, *supra*.

(5)—*S. 77—Power of Commissioner of Police to prohibit procession—Quære.*—Whether, under s. 77, Bombay Act XIII of 1856, the Commissioner of Police has power to issue orders prohibiting processions altogether. **7 B. 42.**

(6)—S. 111—*See* CERTIORARI, WRIT OF, 10 B.H.C. 102.

(7)—*See* No. 3, *supra*.

*** Act XLVIII of 1860 (Police, Bombay Town).**

[REP. IN PART, ACT XIV OF 1870; ACT XVI OF 1874; ACT IV OF 1877; ACT XVI OF 1895; BOM. ACT IX OF 1867; BOM. ACT IV OF 1887; BOM. ACT III OF 1888; REP. IN PART (AS TO STRAITS SETTLEMENTS), ACT III OF 1863. AMENDED, BOM. ACT IV OF 1882. SUPPLEMENTED, BOM. ACT I OF 1872. REP. (IN CALCUTTA), BEN. ACT IV OF 1866; (IN MADRAS), MAD. ACT VIII OF 1867, s. 81.]

(1)—*S. 2—Police office—Clerk of Magistrate of Police.*—The words "Police office" in this section did not apply to a Police Magistrate. **Bourke O.C. 186.**

(2)—*S. 8—Escape from custody—Arrest under Civil process—Offence.*—Down to 1856, escapes from custody under civil process in the mofussil, and down to the end of 1855, such escapes in Bombay, were not by any legislation rendered punishable. Nor could it be held that, under s. 8 of Act XLVIII of 1860, "legal custody" meant custody under civil process and escape therefrom is not an offence. It is doubtful whether in England it was punishable criminally, and even if it was, it would be only a misdemeanour. **6 B.H.C. Cr. 15.**

(3)—*S. 10, Presidency Town Police Act—Order for maintenance—Muhammadan—Divorce—Effect.*—An order for maintenance validly made against a Muhammadan husband under s. 13 of the Presidency Town Police Act Amendment Act, can no further be executed after the divorce of the wife by the husband. **8 B.H.C. Cr. 95.** [*F.*, 5 C. 558, 5 A. 226, 7 B. 180; *R.*, 12 B. H.C. 281, L.B.R. (1872—1892), 145, 19 A. 50; *D.*, 15 A. 143].

(4)—*S. 11—Boarding-house—License.*—A boarding-house, where regular customers take

* These local Acts were passed by the Imperial Legislature.

***3.—Bombay Acts*—continued.**

Act XLVIII of 1860 (Police, Bombay Town) —*continued.*

their meals at specified hours, requires a licens under s. 11 of Act XLVIII of 1860. **3 Bom L.R. 765, F.B.**

(5)—*Refusal of license.*—The sole circumstance that the Police Commissioner refused to grant license to the accused under s. 12 of Act XLVIII of 1860 is no good defence to a prosecution under s. 11, when it is proved that the accused keeps such an eating house as is described in that section. **Rat. Un. Cr. C. 835 = Cr. Rg. 1 of 1896.**

(6)—*S. 11, cl. (2)—"Hotel, tavern, shop or place," construction of words.*—The words "hotel, tavern, shop or place," in cl. 2, s. 11 of Act XLVIII of 1860 are wide enough to include every place mentioned in the first clause of the section. **15 B. 530.**

(7)—*Ss. 11, 12—Discretion in granting licenses—Act I of 1877, s. 45—"Personal right," meaning of.*—Where a person, who purchased the business and stock in trade of an eating house which was carried on under a license granted by the Commissioner of Police, Bombay, under Act XLVIII of 1860, subsequent to his purchase, applied to the Commissioner of Police for a transfer of the license to his name, which was refused, and thereupon applied to the High Court, under s. 45, Specific Relief Act, for an order directing the Commissioner to grant a license to him: *held*, that no order could be made under s. 45, Specific Relief Act, as the Commissioner of Police, had, under ss. 11 and 12, Act XLVIII of 1860, a discretion in the matter of granting licenses. The five conditions mentioned in s. 45, Specific Relief Act, are not disjunctive, the effect of which is that, if any one of them is not complied with, the section cannot be put into operation. The words "personal right" in s. 45 (*a*), Specific Relief Act, are intended to cover rights *in rem* such as every human being in a civilised society possesses independently of any act of his own. **3 Bom. L.R. 653.**

[*See* 26 B. 396].

(8)—*Ss. 11, 12—Meaning of "shall" in s. 12—Granting of license for eating-house in Bombay town, if in absolute discretion of Commissioner of Police.*—The conditions set forth in s. 45, Specific Relief Act, are cumulative. The word "shall," used as it is in s. 12, Act XLVIII of 1860 (Town Police), is *prima facie* imperative. The first part of s. 11, in effect, means, first, that the Commissioner of Police shall grant licenses, and, secondly, that he shall grant them upon the conditions indicated. The Commissioner of Police in Bombay is not, therefore, vested with any absolute discretion to refuse to grant licenses, for eating houses within the town of Bombay, under Act XLVIII of 1860. If they be a legal nuisance, then, any resident prejudicially affected will have his proper remedy, but the mere apprehension of

3.—Bombay Acts—continued.

Act XLVIII of 1860 (Police, Bombay Town)—*concluded.*

the residents is no justification for refusing a license under the Act. **4 Bom. L.R. 1.** (5 Moo. P.C. 296=11 Jur. 857, *F*).

[*See* 26 B. 396.]

(9)—S. 12—*See* Nos. 7 and 8, *supra*.

(10)—S. 15—*See* BOM. ACT XIII OF 1856, ss. 57, 58, 111, 8 B.H.C. Cr. 1,

(11)—S. 21—*See* ACT XI OF 1890, s. 3 (*b*), 26 B. 609=4 Bom. L.R. 290.

Act V of 1862 (Bhagdari and Narwadari Tenures).

[REP. IN PART, ACT XII OF 1873; ACT XII OF 1876; BOM. ACT III OF 1886. DECLARED NOT TO BE IN FORCE IN THE PANCH MAHALS, ACT VII OF 1885,].

—*Contempt—Bhagdaree and Narvadaree Tenures Act (Bom.) V of 1862—Mamlatdar—Summons.*—Bombay Act V of 1862 does not provide for the attendance of persons before the Mamlatdar for the purposes of an inquiry held under that Act. So, a conviction for disobeying a summons issued by the Mamlatdar under that Act is illegal. **Rat. Un. Cr. C. 70=Cr. Rg. 17—4—73.**

Act V of 1863 (Gas Companies).

[REP. IN PART, BOM. ACT III OF 1886. AMENDED, ACT XVI OF 1895].

See BOM. ACT III OF 1888, ss. 429, 430, 7 Bom. L.R. 460=2 Cr. L.J. 439.

Act VI of 1863 (Public Conveyances).

[REP. IN PART, ACT XII OF 1873; ACT XII OF 1876; BOM. ACT III OF 1886; BOM. ACT III OF 1888. AMENDED, ACT XVI OF 1895; BOM. ACT V OF 1887.]

See ACT XVI OF 1861, Rat. Un. Cr. C. 327.

(1)—*Tonga used for carrying Her Majesty's mails.*—A tonga, when used for carrying Her Majesty's mails, is not a public conveyance within the definition contained in s. 1 of the Bombay Public Conveyances Act. **Rat. Un. Cr. C. 521=Cr. Rg. 46 of 1890.**

(2)—*S. 2—Essentials for conviction.*—To support a conviction under s. 2 of the Public Conveyance Act, it must be proved that the carriage was a public conveyance, and that the accused kept or let it for hire. **Rat. Un. Cr. C. 900.**

(3)—*Jurisdiction of Magistrate of Hubli.*—Under a Notification issued by the Bombay Government under s. 34 of the Bombay Public Conveyances Act, the second class Magistrate of Hubli alone is empowered to try cases under that Act. **Rat. Un. Cr. C. 921=Cr. Rg. 26 of 1897.**

(4)—*S. 4—License—Maximum weight.*—S. 4 of Bombay Act VI of 1863 does not require that licenses granted under the Act shall contain any particulars as to the maximum weight of goods to be carried in a public conveyance. **Rat. Un. Cr. C. 415=Cr. Rg. 81 of 88.**

3.—Bombay Acts—continued.

Act VI of 1863 (Public Conveyances)—*ctd.*

(5)—*S. 6—Refusal of license to carriage not on sealed pattern.*—The Commissioner of Police cannot refuse a license to a public conveyance on the ground that the fashion on which it is built is obsolete or objectionable, unless the Commissioner can also say that, in the particular instances before him, he has satisfied himself that the defects appearing in the pattern have been reproduced in the conveyance in question, which renders it unfit for public use. **5 Bom. L.R. 133,** (on appeal from **4 Bom. L.R. 768**).

(6)—*S. 6—Public conveyances not conforming to Police Commissioner's sealed pattern.*—The Commissioner of Police at Bombay is not justified, by s. 6 of Bombay Act VI of 1863, in refusing licenses for hack-victorias, which were so constructed as not to comply with his "sealed pattern," though they might otherwise be most perfect and up-to-date carriages. **4 Bom. L.R. 768.** [On appeal, 5 Bom. L.R. 133].

(7)—*S. 22—Meaning of "stand to ply."*—The expression "stand to ply for hire" has not been defined in the Public Conveyances Act. The question, therefore, whether drivers of public conveyances are liable under s. 22 of the Act for driving slowly along the road to pick up a fare, is one of fact and not of law. **Rat. Un. Cr. C. 539=Cr. Rg. 10 of 1891.**

(8)—*See* BOM. ACT III OF 1888, 7 Bom. L.R. 460.

(9)—*Ss. 22 and 25—Application of the Act outside Municipal limits—Refusal to drive—Receiving pre-payment of fare—Order* ultra vires—*Power of High Court to interfere—Use of preamble.*—The journey, to which s. 22 refers, must be a journey within the limits to which the Act applies. It is no offence to demand pre-payment of fare for a journey outside the said limits. The accused's refusal to proceed to a place outside the Municipal limit is not an offence under s. 22. Where the facts found by a Magistrate do not constitute an offence under the Act, the conviction is not under the Act, and will be *ultra vires*, and s. 25 of the Act is no bar to the interference of the High Court in revision. When the words of a section are ambiguous, the preamble of the Act may be consulted. **2 Sind L.R. 20 Cr.=10 Cr. L.J. 233.**

(10)—*Ss. 22 and 35—Omission to fulfil engagement by driver.*—The driver of a public conveyance, who had been engaged beforehand to call in the evening at a gentleman's house and take him out to dinner, omitted to fulfil the agreement. *Held* that the omission was not punishable under s. 22, as the driver, when he entered into the agreement, was not 'plying for hire;' also, that s. 35 debars the High Court from reversing an improper conviction under the Act. **Cr. Rg. 24—3—1881.**

3.—Bombay Acts—continued.

Act VI of 1863 (Public Conveyances)—*cld.*

(11)—S. 25—*See* No. 9, *supra.*

(12)—S. 35—*See* No. 10, *supra.*

Act IX of 1863 (Cotton-frauds).

[REP., BOM. ACT VII OF 1878.]

(1)—*S. 2—Adulteration of cotton.*—Possession of adulterated cotton, even though accompanied by the knowledge that the cotton was adulterated, would not be sufficient to sustain a conviction, unless accompanied by the offering of it for sale or compression. **1 B. 228.**

(2)—*Jurisdiction—Crim. Pro. Code, Act XXV of 1861, s. 411—Appeal.*—Where there was no evidence of mixing of cotton or that such mixing, if any, was done within the jurisdiction of the trying Magistrate, *held* that the conviction under s. 2 of Bombay Act IX of 1863 was illegal.

Quære:—Whether, under s. 411 of the Crim. Pro. Code, there is an appeal to the Sessions Court against such a conviction? **3 B.H.C. Cr. 12.**

(3)—*Mixing cotton.*—Ginning two varieties of cotton, which had already been mixed together by another person, is a continuation of the process of mixing, and is an offence under s. 2 of the Bombay Cotton Frauds Act. **11 B.H.C. 144.**

(4)—*Ss. 2, 8—Proof of fraudulent intent or knowledge.*—In order to convict a person of the offence of offering adulterated cotton for compression, it is not necessary for the prosecution to prove that the accused had a fraudulent intention, or that he knew that the cotton was either adulterated or deteriorated. **10 B.H.C. 295.**

(5)—S. 8—*See* No. 4, *supra.*

Act II of 1864 (Civil and Criminal Justice, Aden.)

[REP. IN PART, ACT XVI OF 1891].

See ACT XIV OF 1874, ss. 3, 5, 6, 10 B. 274.

(1)—*Island of Perim—Jurisdiction of Resident at Aden.*—1. By a Government Notification No. 2336, dated 6th May, 1884, the island of Perim was included within the Sessions Division and District of Aden; and the officer in command of the troops stationed at Perim was empowered to commit persons for trial to the Court of Sessions at Aden. *Held*, that, notwithstanding the notification, the resident had no jurisdiction over the island of Perim, and the resident had never been appointed a Judge of a Court of Session for that island. Where a person charged with murder was committed for trial before the Court of the Resident at Aden, and was convicted and sentenced to death, the High Court annulled the conviction and directed the prisoner to be tried before a Court of competent jurisdiction. Act II of 1864 (Aden Act) does not by its own force extend to Perim, as it cannot be regarded as

3.—Bombay Acts—continued.

Act II of 1864 (Civil and Criminal Justice, Aden)—*continued.*

part of Aden. The Court created by Act II of 1864 was the Court of the Resident; the powers of that Court and a Court of Session were not made commensurate, as appears clearly from s. 20 and the other sections. In order to properly carry out the intention of the Legislature, a Court of Sessions for a Sessions Division, including Perim, remains to be created, and a Judge appointed thereto by the Local Government. **10 B. 263.** [*R.*, Rat Un. Cr. C. 825, 96 P. L.R. 1901.]

(2)—*Reg. II of 1891—Village of Sheikh Othman—Aden.*—For the purposes of Act II of 1864, the village of Sheikh Othman is, by Reg. II of 1891, made a part of the Settlement of Aden and subject to the jurisdiction of the Resident at Aden. **Rat. Un. Cr. C. 825 = Cr. Rg. 67 of 1895.** (10 B. 258, *R.*)

(3)—*Crim. Pro. Code, ss. 1, 3, 7, 9—Aden Act, II of 1864—Island of Perim—Jurisdiction of Resident at Aden.*—The island of Perim, having been occupied with a view to its permanent retention, is a part of British India under 21 and 22 Vic., Chap. 106 and of the Presidency of Bombay. The Penal Code and Criminal Procedure Code are in force in that island. For certain purposes, the Court of the Resident at Aden, established under Act II of 1864, may be regarded as a Court of Sessions, and the local area to which that Act applies is a Sessions Division. It is doubtful whether the Court of the Resident could be held to be a Court of Session within the intention of the Code, for the trial of cases arising in the island of Perim, and also whether the Resident could be held to be a Sessions Judge within the meaning of the Code for the trial of such cases. The High Court intimated a wish to have these points argued by counsel, and subject to further argument on the whole question of jurisdiction, admitted the appeal by a person convicted by the Resident at Aden for an offence committed in the island of Perim. **10 B. 258.** [*R.*, Rat. Un. Cr. C. 825, 96 P.L.R. 1901.]

(4)—S. 3—*See* No. 3, *supra.*

(5)—S. 7—*See* No. 3, *supra.*

(6)—S. 9—*See* No. 3, *supra.*

(7)—S. 20—*See* TRANSFER OF CRIMINAL CASES, 29 B. 575 = 7 Bom.L.R. 104.

(8)—*Ss. 29, 30—Court of Resident at Aden—Review of Criminal Case by Bombay High Court—Certificate of the Advocate-General—High Court can go only into questions of law—Penal Code, s. 161—Public servant taking illegal gratification—Bribery—"In the exercise of his official functions"—"As a motive or reward."*—There is nothing in ss. 29 or 30 of the Aden Courts Act, 1864, which can operate either by express words or by necessary implication, to limit the application of those sections to cases tried by the Resident as a Court of Session or to exclude appeals from their purview. S. 30 of the Act empowers and requires the

3.—Bombay Acts– continued.

Act II of 1864 (Civil and Criminal Justice, Aden)—*concluded*.

High Court of Bombay to review the case, or such part of it as may be necessary, with reference only to the points of law specified in the certificate of the Advocate-General, and the section does not contemplate that any decision by the Resident on a point of fact should be questioned in review, save in so far as such decision may be dependent, for its validity, on the determination of a point of law mentioned in the certificate. S. 161 of the Indian Penal Code requires proof that an official has obtained as a motive or reward for official conduct an illegal gratification for himself or another. That other may or may not be an official and, therefore, may be wholly unconnected with official conduct. The conduct, which is contemplated as the consideration for the bribe, must be that of the official obtaining it. To obtain a bribe, as a motive or reward for another's conduct, does not fall within the section, though it may be an abetment of that offence or cheating. The performance of the act which is the consideration for the bribe is not essential. But it is essential that the bribe should be obtained "as a motive or reward." That phrase evidently means 'on the understanding that the bribe is given in consideration of some official act or conduct.' Such an undertaking need not be proved by explicit evidence of any precise agreement. It may be inferred from circumstances. **9 Bom.L.R. 331 =5 Cr.L.J. 309=31 B. 335.**

(9)—S. 30—*See* No. 8, *supra*.

Act V of 1864 (Mamlatdars' Courts).

[REP., BOM. ACT III OF 1876.]

See SANCTION TO PROSECUTE, Rat. Un. Cr. C. 118.

(1)—*Disobedience of illegal order by Mamlatdar—Penal Code, s. 188.*—A Mamlatdar was not legally empowered under Act V of 1864 (Bombay) to promulgate an order directing one person not to obstruct another in going and coming by his gateway, and to keep it open. Disobedience to such an order was not, therefore, punishable under s. 188, I.P.C. **5 B. H.C.Cr. 21.**

(2)—*Order directing accused to keep open right of way to privy—Jurisdiction—Penal Code, s. 188.*—An order by a Mamlatdar directing the accused to keep open a right of way to a privy was held to be an injunction to refrain from disturbing the possession of the parties and, therefore, within the jurisdiction of the Mamlatdar. A disobedience of such order was, therefore, punishable under s. 188, I.P.C. **5 B.H.C. Cr. 46.**

(3)—*Penal Code, Act XLV of 1860, s. 188—Mamlatdar's jurisdiction.*—A Mamlatdar, under Bombay Act V of 1864, has no jurisdiction to make an order of the nature described in s. 188 of the Penal Code. **2 B.H.C.Cr. 53.**

3.—Bombay Acts—continued.

Act I of 1865 (Survey and Settlement).

[REP. IN PART, ACT XII OF 1873; ACT X OF 1876; BOM. ACT IV OF 1868, SS. 16, 20. SUPPLEMENTED, AND APPLICATION DECLARED (LOCALLY), BOM. ACT IV OF 1868. AMENDED. BOM. ACT I OF 1875. REP. LOCALLY (EXCEPT SS. 37 AND 38), BOM. ACT V OF 1879. SS. 37 AND 38 REP. (LOCALLY), BOM. ACT I OF 1880.]

(1)—*Ss. 10, 14—City Surveys Act (Bom.) IV of 1868—Sanad—Omission to attend—Offence.*—An omission to attend to receive a sanad, which, it is incumbent on the Collector to issue under s. 12 of Bom. Act IV of 1868, is not an offence, the purpose being not one of those specified in ss. 10 and 14 of Bom. Act I of 1865. **Rat. Un. Cr. C. 67 = Cr. Rg. 13 - 11—72.**

(2)—S. 14—*See* No. 1, *supra*.

Act III of 1866 (Gambling).

[REP., BOM. ACT IV OF 1887.]

(1)—*S. 1, cl. 2*—"*Three miles*," *meaning of.*—The expression "three miles" in s. 1, cl. 2 of Bombay Act III of 1866 must be taken to mean three miles measured in a straight line along the horizontal plane. **4 B.H.C. Cr. 9.** [*F.*, Rat. Un. Cr. C. 138.]

(2)—*Ss. 3, 4, 5 and 9—Search warrant—Complaint on oath—Finding of instrument of gaming.*—Although under s. 5 of Act III of 1866, a complaint on oath was necessary in order to authorise the issuing of the warrant, yet, if there was sufficient evidence otherwise from which the Magistrate might find the accused guilty of the offence charged, a search warrant might be issued. It is not necessary to make use of the finding of instruments of gaming in a house as evidence that the house was used as a common gaming-house, and that the persons were present there for the purpose of gaming. **5 B.H.C. Cr. 1.**

(3)—S. 4—*See* No. 2, *supra*.

(4)—S. 5—*See* No. 2, *supra*.

(5)—*S. 6—Common gaming-house.*—A house suspected to be used as a common gaming-house, in which any instruments of gaming are found, and which is entered in the warrant issued under the provisions of the Bombay Gambling Act, is presumed to be a common gaming-house until the contrary is proved. **Rat. Un. Cr. C. 216 = Cr. Rg. 8—10—85.**

(6)—S. 9—*See* No. 2, *supra*.

(7)—*S. 11—Coin—Instruments of gaming.*—An instrument of gaming means an implement devised or intended for that purpose. A coin is not an instrument of gaming within the meaning of s. 11 of Bombay Act III of 1866. **6 B. 19; 16 B. 283.** [*F.*, Rat. Un. Cr. C. 314; *Appl.*, 16 B. 283. F.B.; *R.*, 18 A. 23; *D.*, 25 C. 432.]

(8)—A coin is not an instrument of gaming, which means an implement devised or intended for that purpose. **Rat. Un. Cr. C. 75=Cr. Rg. 19—6—73.** [*F.*, Rat. Un. Cr. C. 314.]

3.—Bombay Acts—continued.

Act III of 1866 (Gambling)—*concluded.*

(9)—*Pieces of tile.*—Pieces of tile are not instruments of gaming within the meaning of s. 11 of the Bombay Gambling Act, 1866. **Rat. Un. Cr. C. 314 = Cr. Rg. 72 of 1886.**

(10)—*S. 14—Gambling-house, what is—Penal Code, s. 268.*—A common gambling-house is one kept for the profit or gain of the person keeping such house, and such a house may be a public nuisance. But, in the absence of evidence that it was so kept, or in such a manner as to cause a public nuisance within the meaning of s. 268 of the Penal Code, it cannot be held that every person who admits gamblers into the house and every person who goes in is guilty of the offence of public nuisance. **7 B.H.C. Cr. 74.** [*R.*, L.B.R. (1872 to 1892), 59.]

Act VIII of 1866 (Sale of Poisons).

[REP. IN PART, ACT XII OF 1873; ACT XVI OF 1895; BOM. ACT III OF 1886.]

(1)—*S. 11—Scope.*—A conviction under s. 11 of Bombay Act VIII of 1896 can only be had before a Magistrate of the first class. **4 B. 167.**

(2)—*S. 13—Omission to keep accounts for sales of poison—Jurisdiction.*—A first class Magistrate alone can try an offence of omitting to keep accounts of the sale of poisons under s. 13 of the Bombay Poisons Sales Act, and a second class Magistrate has no jurisdiction to try such a case. **Rat. Un. Cr. C. 292 = Cr. Rg. 35 of 86.**

Act III of 1867 (Cantonment).

[REP., ACT XIII OF 1889.]

See ACT XIII OF 1889.

(1)—*S. 9—Rules—Sanction of Committee and declaration of Magistrate.*—Any temporary construction within the limits of a Cantonment is an offence only if it shall be declared to be objectionable by the Cantonment Magistrate with the sanction of the Cantonment Committee, according to the rules framed under Act III of 1876. **Rat. Un. Cr. C. 875 = Cr. Rg. 54 of 1896.**

(2)—*S. 10—Cantonment Rules, R. 3—Closing of public road—Interpretation*—Though the Rules framed under the Cantonment Act should be construed so as to uphold their legality, yet, it cannot be held that s. 10, cl. 6 of the Act intended to authorize the Commanding Officer to altogether close a public road to traffic at all times. **Rat. Un. Cr. C. 476 = Cr. Rg. 35 of 89.**

(3)—*S. 11—Cantonment Rules—Public nuisance—Drum-beating.*—The beating of a drum at a certain specified time does not amount to a public nuisance and does not fall within s. 11 of Bombay Act III of 1867. A rule prohibiting such an act goes beyond the powers conferred by the Act. **Rat. Un. Cr. C. 480 = Cr. Rg. 45 of 1889.**

(4)—*Rule 39—Admixture of water with milk—Penal Code, s. 420.*—The mere admixture of water with milk, not being ordinarily sufficient to render it noxious as drink, cannot be punished as an offence of adulterating milk by mixing water with it so as to render it noxious as drink as contemplated by Rule 39 of the rules; but such cases (that is, cases in which there is no proof that the adulteration is noxious) when penal, are generally so on account of their involving the offence of cheating, and should be dealt with under s. 420, I.P.C. **Rat. Un. Cr. C. 367 = Cr. Rg. 14 of 1888.**

3.—Bombay Acts—continued.

Act III of 1867 (Cantonment)—*continued.*

(5)—*Rule 57—Cantonment—Repair of house, neglect of.*—It is not an offence punishable under Rule 57, Ch. III of the Cantonment Rules, to neglect to repair a *house* within the Cantonment limits. **Rat. Un. Cr. C. 636 = Cr. Rg. 11 of 1893.**

(6)—*S. 11, R. 15—Act XIII of 1889, s. 2 (2)—Common gaming-house.*—In order to constitute a house a common gaming-house, it should be found that the instruments of gaming were kept for the benefit or gain of the person keeping the house, whether by way of charge for the use of the instruments of gaming or of the house, room or place, or otherwise howsoever. A house rented by some members of the Joanese community in the name of one of the persons who kept the house, restricted to the use of the members only, is not "a common gaming house" by the mere fact of the members playing for money with cards, in the absence of proof that the member keeping the house was making any profit by way of charge for the use of either the cards or the house. **Rat. Un. Cr. C. 706 = Cr. Rg. 39 of 94.**

(7)—*S. 11, 12, 14—Conviction without complaint—Report of police and medical officers—Simultaneous sentences of fine and imprisonment.*—The report of a police officer and a medical officer that a prostitute, having been served with notice, did not appear for examination by the Civil Surgeon as required by s. 11 of Bombay Act III of 1867, is no proper substitute for a complaint on oath, and a conviction thereon is illegal. Simultaneous sentences of fine and of imprisonment in default of payment of fine, under s. 12, Bombay Act III of 1867, are illegal. Imprisonment can only be awarded under s. 14 of the Act in the event of no property sufficient for the payment of the fine being found. **7 B.H.C. Cr. 87.**

(8)—S. 12—*See* No. 7, *supra.*

(9)—*Ss 13 and 14—Default of payment of fine—Imprisonment—Penal Code, ss. 40, 64*—Notwithstanding the amendment, by s. 1 of Act VIII of 1882, of s. 40, I.P.C., and the amendment by s. 2 of the Act of s. 64 of the Code, the provisions of ss. 13 and 14 of Bombay Act III of 1867, which is a special and local law, still remain unaffected under s. 5, I.P.C. The ruling in *Reg* v. *Lallu* (8th August, 1870) that, in cases coming under the Cantonment Act, 1867, simultaneous sentences of fine and imprisonment in default of payment of fine, are illegal, was held to be still in force. **Rat. Un. Cr. C. 221 = Cr. Rg. 3—12—85.**

3.—Bombay Acts—continued.

Act III of 1867 (Cantonment)—*concluded.*

(10)—S. 14--*See* Nos. 7 and 9, *supra.*

(11)—*S. 21—Act XIII of 1889 (Cantonment), ss. 2 and 13—Punishment of whipping.*—Since the repeal of s. 21 of Bombay Act III of 1867 by XIII of 1889, which substitutes a new s. 13 containing no mention of whipping, that punishment is not kept alive by s. 2 of Act XIII of 1889. **Rat. Un. Cr. C. 682 = Cr. Rg. 49 of 93.**

(12)—*R. 17—Bombay Act III of 1867—Butcher taking diseased cattle to Inspector—Offence.*—Where the accused, butchers, took diseased cattle to a public slaughter-house for getting them passed by the Inspector as fit for food, *held* this act was not punishable under Rule 34 of the Cantonment Rules as that Rule applies only to owners or occupants of places used as slaughter-houses who have killed a diseased animal therein or have failed to report that such an animal had been taken there for being killed. **Rat. Un. Cr. C. 471 = Cr. Rg. 28 of 89.**

(13)—*R. 48—Offensive trades—Declaration.*—In the case of offensive trades, the Cantonment Magistrate should, before instituting proceedings, make the declaration specified in Rule 48 of the Rules framed by the Bombay Government under Act III of 1867. **Rat. Un. Cr. C. 54 = Cr. Rg. 17—8—71.**

(14)—*Rule 71—Lock Hospital—Public place.*—A lock hospital is not a public place within the meaning of Rule 71 of the Cantonment Rules. **Rat. Un. Cr. C. 361 = Cr. Rg. 4 of 1888.**

(15)—*R. 76—Omission to appoint resident agent—Offence.*—R. 76 of the Cantonment Rules, which requires every absent owner of property within the limits of a Cantonment to appoint a resident agent, is a rule of procedure and convenience only, and an omission to comply with it is not penal under s. 11 of the Cantonment Act. **Rat. Un. Cr. C. 497 = Cr. Rg. 3 of 1890.**

See SANCTION TO PROSECUTE, 5 B. 137.

Act VII of 1867 (District Police).

[REP. IN PART, ACT X OF 1872; ACT XII OF 1873; ACT XVI OF 1874; ACT X OF 1886, S. 20. REP. IN PART AND AMENDED, BOM. ACT III OF 1886. REP. (SAVE SS. 33 AND 34), EXCEPT IN SINDH, BOM. ACT IV OF 1890. SS. 33 AND 34 REP. LOCALLY AND TEMPORARILY, BOM. ACT I OF 1889. SS. 16 AND 17 REP. IN SINDH, WHEN SS. 25, 25-A. AND 26 OF BOM. ACT III OF 1900 COME INTO FORCE THERE, BOM. ACT IV OF 1900, S. 26-A. (INSERTED BY BOM. ACT III OF 1898, S. 9). SUPPLEMENTED, ACT III OF 1888.]

(1)—*British-born subject in Mofussil—Jurisdiction.*—The Bombay District Police Act passed by the Governor of Bombay in Council, is *ultra vires* in so far as it confers criminal jurisdiction upon Magistrates in the mofussil,

3.—Bombay Acts—continued.

Act VII of 1867 (District Police)—*continued.*

being also Justices of the Peace, over British-born subjects. The Acts of Parliament, under which the High Court is constituted, confer exclusive jurisdiction on the High Court in this matter except as limited by 53 Geo. III, c. 155, s. 105, and certain subsequent Acts of the Government of India. Though the East India Company had power, under the Charter of 1661 and 1668 of Charles II, to legislate about British-born subjects, yet this power ceased at the time of *Queen Anne*, and from that time up to 1834, when the Governor-General's Council became the sole legislative power in India, no authority was given to the Indian Governments to legislate about such subjects except within the local limits of Presidency towns. **7 B.H.C. Cr. 6.** [*R.*, 7 B.H.C. Cr. 77].

(2)—*Crim. Pro. Code (1882), s. 555—Applicability—Personal interest.*—Though s. 555 of the Crim. Pro. Code, does not apply to village police officers, the principle contained therein does, and a Police Patel cannot try a case in which he is personally interested. **Rat. Un. Cr. C. 433.**

(3)—*S. 3—Duties of Police—Duty of destroying stray dogs.*—The duties of the police are divisible into three heads:—(1) those imposed upon them by the rules framed by the Commissioner and approved by the Government, (2) those imposed by the rules or orders which the Commissioner may make preventing abuse or neglect of duty and (3) those imposed by law. The duty of destroying stray dogs is one which can only be brought under the first of these heads, and, as the rule relating to it, though it has been in force for many years, is stated not to have received the approval of the Government, it is on this account invalid and a conviction for a breach of it is illegal. **Rat. Un. Cr. C. 107.**

(4)—*S. 7—Village Mahars—Patel's order to assist the Public Works Department.*—A Police Patel has no authority, under s. 7 of the Bombay District Police Act, to order the village Mahars to assist a subordinate officer of the Public Works Department in measuring the road. And the Mahars cannot be convicted under cl. 1 of s. 15 for refusing to obey such an order. **Rat. Un. Cr. C. 509 = Cr. Rg. 28 of 1890.**

(5)—*Ss. 7, 26—District Police—Jurisdiction*—A Superintendent of Police, even if he is also a full power Magistrate, has no jurisdiction to try a Police officer for an offence under s. 26 of the Bombay District Police Act in having permitted prisoners to escape from his custody and not reporting the same to his superior. **Rat. Un. Cr. C. 29 = Cr. Rg. 10—2—70.**

(6)—*S. 8--Sanction of Government.*—An Inspector of Police being an officer who may be removed from office, under s. 8 of the Bombay District Police Act, without the sanction of the Government, the sanction of the Government

***3.—Bombay Acts*—continued.**

Act VII of 1867 (District Police)—*continued.*

is not necessary in order to give a Magistrate jurisdiction to entertain a complaint against him of an offence committed in his capacity as a Police Officer. **Rat. Un. Cr. C. 142.**

(7)—*S. 9—Railways Act XVIII of 1854, s. 27—Railway Police.*—Members of the Railway Police, though they hold commissions from the Commissioner of Police under s. 9 of the District Police Act, are amenable to the provisions of the Railways Act for neglect of duty. **Rat. Un. Cr. C. 51=Cr. Rg. 15—6—71.**

(8)—*S. 16—Police Patels—Remission of fine by District Magistrate—High Court.*—A District Magistrate cannot remit any portion of a fine inflicted by a Police Patel under s. 16 of the Bombay Village Police Act, so as to make it conform to law, but must refer the matter to the High Court. Police Patels have always been treated as subject to the superintendence of the High Court. **Rat. Un. Cr. C. 478=Cr. Rg. 41 of 89.**

(9)—*S. 23—Right of police officer to examine witnesses.*—S. 23 of Bombay Act, XII of 1867, does not give any right to a police officer to examine or cross-examine witnesses in a Criminal Court. **Rat. Un. Cr. C. 28.**

(10)—*Crim. Pro. Code (1882), s. 495—Power of Police officer below the rank of Inspector to prosecute.*—The special local law, Bombay Act VII of 1867, has been preserved by the Code, whether intentionally or through oversight. Therefore, a prosecution instituted by a police officer, below the rank of an Inspector, that is to say, a chief constable, was held to be valid. **8 B. 534.** [*R.*, 2 L.B.R. 337].

(11)—*S. 26—Police officer overstaying leave.*—A police constable overstaying the casual leave granted him, without permission, withdraws from the duties of his office without permission and commits an offence within the meaning of s. 26 of the Act. **Rat. Un. Cr. C. 279=Cr. Rg. 17 of 1886.**

(12)—*See* No. 7, *supra.*

(13)—*S. 27—Prohibition by police of music in private houses.*—S. 27 of Bombay Act VII of 1867 does not empower the police to prohibit the use of music in a private house. **9 B.H.C. 153 A.C.J.**

(14)—*Ss. 27, 29—Powers of District Superintendent to prohibit the carrying of sticks.*—A Police Superintendent cannot, under s. 27 of the Bom. District Police Act, 1867, legally make an order forbidding sticks to be carried by persons attending a certain *jatra* (fair). Hence, a person who, in contravention of such an order, carries a stick at the *jatra*, is not guilty of an offence under s. 29 of the Act. **Rat. Un. Cr. C. 394=Cr. Rg. 51 of 88.**

(15)—*S. 28—Power to issue general order.*—The police have power, under s. 28 of Bombay Act VII of 1867, to issue a general notification ordering people to drive on the proper side of the road. **Rat. Un. Cr. C. 35=Cr. Rg. 16—6—70.**

***3.—Bombay Acts*—continued.**

Act VII of 1867 (District Police)—*continued.*

(16)—*See* CRIM. PRO. CODE (1898), s. 190, Rat. Un. Cr. C. 355=Cr. Rg. 44 of 1887.

(17)—*Ss. 28, 29—Written order if necessary.*—An order issued under s. 28 of the Bombay District Police Act need not be in writing. Disobedience of an oral order is punishable. **7 B. H.C. Cr. 2.**

(18)—*Warning against going along a road.*—The warning or advice given by the Police to certain persons not to go alone on a particular road, as the country was believed to be infested with dacoits, is not such an order as can be legally passed, under s. 28 of the Bombay District Police Act and non-compliance with it is not punishable under s. 29 of the Act. **Rat. Un. Cr. C. 385.**

(19)—S. 29—*See* Nos. 14, 17, *supra.*

(20)—*S. 31—Magistrate on tour—Resident.*—The words "Magistrate resident" in s. 31 of Bombay Act VII of 1867 do not include a Magistrate who happens on his tour to stay a few days at a place. **Rat. Un. Cr. C. 483=Cr. Rg. 49 of 89.**

(21)—*Committing nuisance, not an offence under cl. 3 of s. 31, but only under cl. 4.*—A person committing nuisance on or close to, and within sight of, any public road, street or thoroughfare, is liable to be punished under cl. 4 of s. 31, but cannot be legally convicted of depositing dirt under cl. 3 of the section. **Rat. Un. Cr. C. 521=Cr. Rg. 45 of 1890.**

(22)—*Imprisonment in default of payment of fine, nature of.*—The punishment of imprisonment in default of payment of fine inflicted upon a person convicted under s. 31, cl. 3 of Act VII of 1867 (Bombay) should be simple and not rigorous. **5 B.H.C. Cr. 43.**

(22)—*Resident Magistrate—Need of Government Notification.*—S. 31 of Bombay Act VII of 1867 became at once operative at places, where there was a Magistrate resident, without being specially extended by Government by *Notification.* **5 B.H.C. Cr. 100.**

(24)—*Cruelty to animals.*—A man who, after firing at a dog, refrains from again firing at it to put it out of pain, does not commit an offence under s. 31 of Bom. Act VII of 1867. **Rat. Un. Cr. C. 183.**

(25)—*"Nuisance" defined—Penal Code, s. 268.*—The expression "commits nuisance", in s. 31 of the Bombay District Police Act, does not mean a nuisance within the definition of the term in s. 268 of the Indian Penal Code, but a nuisance within the meaning of the common notice to the public to "commit no nuisance." **Rat. Un. Cr. C. 134=Cr. Rg. 8—4—1878.**

(26)—*S. 31 (2)—Prohibitory notice—River, if a watering place.*—A conviction under s. 31, cl. 2 of Bombay Act VII of 1867 is illegal, if the prohibitory notice specified therein has not

3.—Bombay Acts—continued.

Act VII of 1867 (District Police)—*continued.*

been issued. A river is not a watering place within the meaning of the above clause. **Rat. Un. Cr. C. 55 = Cr. Rg. 31—8—71.**

(27)—*S. 31 (4)—Making water in a public street.*—To perform the offices of nature, as, *e.g.*, to make water in a public street, is an offence punishable under s. 31 (4) of the Bombay District Police Act, provided there be evidence of annoyance to residents or passengers. **Rat. Un. Cr. C. 305 = Cr. Rg. 56 of 1886.**

(28)—*S. 33—Structure contemplated by section, what amounts to—"Booth," defined.*—The accused owned a house on each side of a street and put bamboos across the street from the top windows of one into the top windows of the other house, and laid a covering of cloth over the bamboos, thus making a canopy, roof or awning over the street. The structure was at such a height that no obstruction or inconvenience whatever was caused to persons or animals passing along the street. *Held* that the structure could not be considered to have been constructed on the road, as the use of the word "on" would seem to imply that the structure complained of must be on the road itself and cause some nuisance. *Held*, also, that it was not a booth. S. 33 of the Bombay District Police Act did not, therefore, apply. In Webster's dictionary, the word "booth" is said to mean "a house or shed built of boards, boughs of trees or other light materials for temporary occupation." In Latham's dictionary, it is said to mean "a temporary house constructed with boards or boughs or canvas." **22 B. 742.**

(29)—*Scope—Structures of temporary character—Crim. Pro. Code (1898), s. 133—Per Chandavarkar, J.*—In s. 33 of the District Police Act, the Legislature intended to deal with structures of a temporary character, *e.g.*, cases where a person, without intending to appropriate a public thoroughfare permanently to his own purposes, builds a temporary structure for a temporary purpose such as a booth, shed, stable or the like. Where, however, a person appropriates a public thoroughfare permanently to his own purposes and builds a *pucca* wall, he is liable to be proceeded with under s. 133, Crim. Pro. Code, or punished of offences under s. 269, I.P.C.

Per Aston, J.—Where a person builds a wall on ground forming part of a public street, he can be dealt with under s. 33, District Police Act. **6 Bom. L.R. 358.**

(30)—*Nuisance committed by children outside school—Criminal liability of teacher.*—The masters of a school were convicted of wilfully permitting a common nuisance to continue, by allowing some two hundred pupils to obey the calls of nature daily in a plot of ground within the town and close enough to other houses to cause annoyance and danger to health. *Held* that children once outside the school are not so under the control of the master so as to make the latter criminally responsible, as their parents might be, for a nuisance committed by their children. If a school is so conducted as to be a nuisance, the complainant can get a remedy by injunction. **Rat. Un. Cr. C. 291 = Cr. Rg. 32 of 1886.**

3.—Bombay Acts—continued.

Act VII of 1867 (District Police)—*concluded.*

(31)—*S. 42—Crim. Pro. Code (1882), s. 54—Penal Code, s. 342—Prosecution of Police officer for wrongful confinement without warrant.*—The provisions of s. 42 of Bom. Act VII of 1867, must be held to apply to criminal prosecutions as well as to civil actions, notwithstanding the use of the word "decree" in s. 43 in connection with prosecutions. The prosecution of a Police Officer for an alleged offence of wrongful confinement, punishable under s. 342, I.P.C., the Police officer having, without a warrant, arrested and detained in custody the person in whose possession he found property which he suspected to be stolen, is a prosecution for a thing done or intended to be done under Bom. Act VII of 1867, inasmuch as s. 21 of the Act authorises every Police officer to apprehend all persons whom he is legally authorised to apprehend, and s. 54 of the Crim. Pro. Code, authorises the arrest by a Police officer without warrant of any person in whose possession anything is found which may be reasonably suspected to be stolen property, if the person may be "reasonably suspected of having committed an offence with reference to such thing." Authority given to arrest in such cases implies authority to detain. **Rat. Un. Cr. C. 220 = Cr. Rg. 26—11—85.**

(32)—*Absence of notice—Official act done in good faith.*—Where two Police constables were prosecuted for having severally beaten the complainant in the course of a night patrol duty, but under circumstances apparently showing a complete absence of authority or jurisdiction, without the notice required under s. 42 of the Bombay District Police Act, *held* that such notice was not a condition precedent to the prosecution, and that the protection thereby extended to official acts done in good faith, though in excess of authority, does not exist where there is a total absence of authority. **Rat. Un. Cr. C. 486 = Cr. Rg. 51 of 89.**

Act VIII of 1867 (Village Police).

[REP. IN PART, ACT XII OF 1873; ACT XII OF 1876; BOM. ACT III OF 1886; REP. IN PART (LOCALLY AND TEMPORARILY), BOM. ACT I OF 1889. AMENDED, BOM. ACT I OF 1876; BOM. ACT III OF 1886 (AS AMENDED BY BOM. ACT I OF 1891). SUPPLEMENTED, BOM. ACT IV OF 1890, S. 58].

(1)—*Powers of Police Patel.*—A police patel has no authority, under the Village Police Act, to prevent persons from performing tamashas in their houses. **Rat. Un. Cr. C. 287 = Cr. Rg. 24 of 86.**

(2)—*Inquest—Police Patel.*—The omission of Police patel to hold the inquest, as required by Bombay Act VIII of 1867, should be pointed out by the Courts to the District Magistrate. **Cr. Rg. 44 of 1894.**

3.—*Bombay Acts*—continued.

Act VIII of 1867 (Village Police)—*continued.*

(3)—*Ss. 6 and 14—Police patel—Judicial proceedings before the Police patel—District Magistrate's power to transfer the case to another Court—Transfer of case—High Court—Superintendence—Letters Patent, cls. 26 and 27.*—The duties which are enumerated in s. 6 of the Village Police Act. 1867, are the executive duties of the Police Patel: they are duties imposed upon him quite independently of the authority which he has given to him under s. 14 to try and punish in cases of petty assault and abuse. The authority given to him by s.14 is a judicial and not an executive authority. S. 6, therefore, does not justify the District Magistrate in stopping the judicial proceeding which is already in progress before the Police Patel. Apart from the power expressly conferred by the Act upon the Magistrate in that connection, the only right of superintendence over the judicial functions of the Police Patel created by the Village Police Act, is vested in the High Court by clauses 26 and 27 of the Letters Patent. 10 Bom. L R. 630=8 Cr. L.J. 141.

(4)—*Ss. 6, 15—Patel's authority to summon.*—A Police Patel has authority to summon a person to appear before him in reference to an offence of which he can take cognizance. If the summons is signed by the Patel, refusal to obey it is an offence under cl. 1 of s. 15 of the Village Police Act. Rat. Un. Cr. C. 550=Cr. Rg. 25 of 1891. [*F.*, 8 Bom. L.R. 118=3 Cr. L.J. 239.]

(5)—*S. 9—Police Patel—Not reporting encroachment—Conviction of Police Patel—Legality.*—The duty of reporting encroachments by villagers on the public road is not a duty cast on a Police Patel under Act VIII of 1867, and a conviction under s. 9 for not reporting such a matter is illegal. 7 B.H.C. Cr. 88.

(6)—*See* SANCTION TO PROSECUTE, 4 B. 357.

(7)—*Ss. 10, 11, 12—Duties of Police patel in cases of unnatural and sudden death.*—The ancient village system of Police, regulated formerly by Reg. IV of 1818 and Reg. XII of 1827 and now by Bombay Act, VIII of 1867, remains unaffected by the Code of Criminal Procedure, except where the Code contains a special provision. Under the local law, the Police patel has to do much more than merely inform the District Police under s. 10 thereof. or under s. 45 of the Code. Under s. 10, he has himself to investigate the matter of a crime and obtain all procurable evidence. Under s. 11, if any unnatural or sudden death occur. or any corpse be found, the police patel shall forthwith assemble an inquest and investigate with the *panch* the causes of death and all the circumstances of the case, and make a written report of the same. If, from the inquest, it appears that the death was unlawfully caused, he must give immediate notice to the Police station, and, if the state of the corpse permits, he shall at once forward it to the Civil Surgeon

3.—*Bombay Acts*—continued.

Act VIII of 1867 (Village Police)—*continued.*

or other appointed Medical Officer. Under s. 12, the Police patel can make arrests, and under s. 13, he can take evidence on solemn affirmation and hold searches. 19 B. 612. [*R.*, Rat. Un. Cr. C. 792; Rat Un. Cr. C. 854].

(8)—*S. 11.*—The law, which imposes on the Police Patel the duty of holding an inquest and arresting murderers and empowers him to take evidence on oath, is obviously intended to make justice effectual by means of prompt enquiry in the face of all villagers, and by delivery of the verdict of men not open to the suspicions of undue zeal often cast on the District Police. Like the Coroner's inquest, it also records the evidence and circumstances justifying the accusation of the person denounced or appearing to be the murderer. Like the Coroner's inquest, it saves the innocent from false charges, as people are not likely to bring charges, against an innocent man when they have kept silence at th einquest. The inquest must be held forthwith, so that all the circumstances of the murder may be reported forthwith to the District Police. Rat. Un. Cr. C. 740=Cr. Rg. 8 of 95.

(9)—*See* No. 7, *supra.*

(10)—S. 12—*See* No. 7, *supra.*

(11)—*S. 12 (1)—Arrest—Bail.*—S. 12 (1) of the Village Police Act authorizes Police patels to arrest for "any serious offence." The power of the Police to take bail being regulated by the Crim.Pro.Code, the Court cannot empower a Police constable to take bail for persons sent to him by Police patels under Act VIII of 1867. Rat. Un. Cr. C. 26=Cr. Rg. 12—10—69.

(12)—S. 13—*See* FALSE EVIDENCE, 4 B. 479.

(13)—*S. 14—Term "assault" defined.*—The word "assault" used in s. 14, Bombay Village Police Act, is not confined to the definition given in s. 351, I.P.C., but means what is colloquially called an assault, namely, any unlawful attack upon the person of another, and includes, therefore, what under the Penal Code would amount to the use of criminal force. 1 Bom. L.R. 687.

(14)—*Powers of Police Patel.*—Under s. 14 of the Bom. Village Police Act, 1867, the Police, Patel, on convicting a person of abuse, has authority to punish him with confinement in the Village Chowri for a period not exceeding 24 hours; but has no authority to inflict a fine. Rat. Un. Cr. C. 187=Cr. Rg. 11—1—83.

(15)—*See* No. 3, *supra.*

(16)—*S. 15—Power of Village Police Patel to order imprisonment in default of fine—Penal Code, s. 64—Bombay General Clauses Act (III of 1886), s. 12.*—A Village Police Patel has, under s. 15, jurisdiction either to impose a fine not exceeding Rs. 5 on a person convicted by him of theft under that section, or to confine him in the village *Chowri* for a period

3.—Bombay Acts—continued.

Act VIII of 1867 (Village Police)—*continued.*

not exceeding forty-eight hours, but has no jurisdiction to sentence the accused to confinement in default of payment of fine, s. 64, Penal Code, not being made applicable by the Bombay General Clauses Act to proceedings under the Bombay Village Police Act. **6 Bom.L.R. 357.**

(17)—*Police Patel—Verbal order by a Police Patel sent through a messenger asking a person to be present before him personaily.*—A verbal order sent through a messenger by a Police Patel, under s. 15 of the Act, asking a person to present himself before him to answer an accusation, is not a lawful order issued by the Police Patel personally within the meaning of s. 15. **8 Bom. L.R. 118=3 Cr.L.J. 239.**

(18)—*Non-cognizable offence—Patel's authority to summon.*—A Police Patel has no authority to order the accused to attend at his office in a case of an offence not cognizable by him. Refusal to obey such an order is not an offence under s. 15 of the Act. **Rat.Un.Cr. C. 551=Cr. Rg. 26 of 1891.**

(19)—*See* No. 4, *supra.*

(20)—*Omission to obey Patel's order:*—A mere omission, which is not a refusal, to obey a Police Patel's order, is not punishable under s. 15 of the Bombay Village Police Act. **Rat. Un. Cr. C. 624=Cr. Rg. 49 of 1892.**

(21)—*Power of Police Patel to order removal of wood lying on public road.*—A Police Patel has, under the Bombay Village Police Act, no power to order the removal of a piece of wood lying on a public road; disobedience of such an order, therefore, is no offence under s. 15 of the Act. **Rat. Un. Cr. C. 980.**

(22)—*S. 15 (1)—Refusal to answer questions—Police Patel.*—The refusal to answer questions put by a Poliee Patel in a Criminal proceeding is not "refusal to obey a lawful order issued by a Police Patel personally" within the meaning of s. 15 (1) of the Bombay Village Police Act. **Rat. Un. Cr. C. 610=Cr. Rg. 30 of 1892.**

(23)—*Ss. 15 and 16—Police Patels—Jurisdiction to punish for nuisance or disorderly act.*—The jurisdiction to punish for nuisance or disorderly acts under s. 16 of the Village Police Act, is expressly confined to Police Patels duly empowered under s. 15, cl. 1, and does not extend to their official superiors (the Magistrates in charge of the talukas within which they are Patels). **Rat. Un. Cr. C. 196=Cr. Rg. 6—3—1884.**

(24)—*Ss. 15 and 16 (3)—Refusal to serve at inquest—Unyoking and feeding bullocks if, an offence.*—A refusal to serve on an inquest, when called on by a Police Patel specially empowered under s. 15 of the Bombay Village Police Act, is punishable by the Patel himself. The unyoking of bullocks and feeding them on a road is not punishable under s. 16 (3) of the Act. **Rat. Un. Cr. C. 614=Cr. Rg. 35 of 1892.**

3.—Bombay Acts—continued.

Act VIII of 1867 (Village Police)—*concluded.*

(25)—*See* CRIM. PRO. CODE (1898), ss. 6, 545, Rat. Un. Cr. C. 317=Cr. Rg. 2 of 1887.

(26)—*See* PENAL CODE, s. 64, 6 Bom. L.R. 357.

(27)—*S. 16 (2)—Offences re rivers.*—S. 16 (2) of the Bombay Village Police Act does not apply to offences regarding rivers. **Rat. Un. Cr. C. 609=Cr. Rg. 27 of 1892.**

(28)—*S. 16 (3)—Nuisance outside a house—Liability of the head.*—It is a general principle that the head of the house is responsible for all nuisances which emanate from his house. **Rat. Un. Cr. C. 338=Cr. Rg. 29 of 1887.**

(29)—*S. 16 (5)—Refuse or filth—Milk-bush.*—Milk-bush put in a river for the purpose of catching fisb is not refuse or filth within the meaning of s. 16, cl. 5 of the Village Police Act. **Rat. Un. Cr. C. 379 = Cr. Rg. 30 of 1888.**

(30)—Ss. 28, 29—*See* MAGISTRATE, JURISDICTION OF, Rat. Un. Cr. C. 321 = Cr. Rg. 7 of 1887.

(31)—S. 29—*See* No. 30, *supra.*

(32)—*S. 31—Easing oneself in a public road.*—To ease oneself close to a public road is not an offence under s. 31 of the Bombay Village Police Act, 1867, unless the act is committed within sight of a public road so as to cause obstruction, annoyance, risk, danger or damage to residents or passengers. **Rat. Un. Cr. C. 161.**

(33)—*S.61—Police—Arrest without warrant.*—The Police have no power to arrest without warrant for an offence under s. 61 of the Bombay Village Police Act. **Rat. Un. Cr. C. 533=Cr. Rg. 1 of 1891.**

See CRIM. PRO. CODE (1898), ss. 60, 61, Rat. Un. Cr. C. 22.

See BOM. REG. XII OF 1827, s. 52, 6 B.H.C. Cr. 75.

Act II of 1868 (Ferries).

[REP. IN PART, ACT XII OF 1873; ACT II OF 1901; BOM. ACT III OF 1886; REP. IN PART (EXCEPT IN ADEN AND THE CITY OF BOMBAY), BOM. ACT I OF 1884. AMENDED, BOM. ACT II OF 1878.]

(1)—*S. 14—Conviction—Order for sale of boat, under s. 517, Crim. Pro. Code—Compensation to complainant.*—When a person is convicted under s. 14 of Bom. Act II of 1868, it is not competent to a Magistrate to order sale of the boat under s. 517, Crim. Pro. Code, and to award out of the sale proceeds, compensation to the complainant under s. 545, Crim. Pro. Code. **Rat. Un. Cr. C. 688=Cr. Rg. 10 of 1894.**

(2)—*Construction.*—For an offence under s. 14 of the Public Ferries Act, it is not necessary that both the starting point and the arriving point should be within three miles of the ferry. It is only the latter which has got to be considered. **Rat. Un. Cr. C. 901=Cr. Rg. 10 of 1897.**

3.—Bombay Acts—continued.

Act IV of 1868 (City Surveys and Survey and Settlement Amendment Act).

[REP. IN PART, ACT XII OF 1873. RESIDUE REP. (LOCALLY), BOM. ACT V OF 1879].

See BOM. ACT VI OF 1873, s. 33, 15 B. 516.

—S. 12—*See* BOM. ACT I OF 1865, Rat. Un. Cr. C. 67.

Act III of 1872 (Municipal Act).

[REP., BOM. ACT III OF 1888.]

(1)—*S. 220, as amended by Act IV of 1878—Scope—Power to order structural alteration—Contents of notice.*—The legislature, in enacting s. 220, could not have intended and did not intend, to invest the Municipal Commissioner with the power of directing structural alterations. A notice requiring the owner of a range of buildings to provide ridge ventilation is not legal, and disobedience of such notice is not an offence. When a notice is required by law, it cannot prescribe something which the law itself does not contemplate or involve. **8 B. 151.**

(2)—*S. 225—Storage of wool, without license.*—The accused was charged with using a place within the City of Bombay for the storage of wool, without a license from the Bombay Municipal Commissioner, and fined Rs. 10 under s. 225 of Bombay Act III of 1872 as amended by Act IV of 1878. *Held* that, notwithstanding that there is mention of "wool" for purposes of washing and drying in the first part of the section and none later on, the words "other articles" may include the case of the storage of wool. **Rat. Un. Cr. C. 297 = Cr. Rg. 43 of 1886.**

(3)—S. 226—*See* ACT III OF 1880, s. 22, Rat. Un. Cr. C. 413 = Cr. Rg. 80 of 1888.

Act VI of 1873 (District Municipalities).

[REP., BOM. ACT III OF 1901].

(1)—*S. 3—Building or enclosure—Wattle-fence.*—The "building" or "enclosure" referred to in s. 3 of the Bombay District Municipal Act, is of a substantial kind. A mere wattle-fence does not fall within the definition. **Rat. Un. Cr. C. 428 = Cr. Rg. 92 of 1888.**

(2)—*Ss. 3 and 66—Term "place" explained—Market—Selling vegetables.*—The word "place" as defined in s. 3 of the Act does not include a house or an *ota* of a house. Selling vegetables on the *ota* of one's house is not using it as a market, but only as a shop, and is not an offence under s. 66. **9 B. 272.** [*Appl.*, Rat. Un. Cr. C. 399; *Expl.*, 11 B. 106; *R.*, 10 M. 216 = 1 Weir 743; Rat. Un. Cr. C. 797.]

(3)—*Ss. 11, 26—Police officer—Suspension—Other employment.*—Though a police officer, under ss. 11 and 26 of Act VI of 1873, should not engage himself in any other employment, yet, there is no objection to his doing so for his maintenance during his period of suspension, till he is restored to duty. **Rat. Un. Cr. C. 83 = Cr. Rg. 3—8—1871.**

3.—Bombay Acts—continued.

Act VI of 1873 (District Municipalities)—*ctd.*

(4)—*Ss. 14, 82—Rules—"Payable in advance"—Meaning.*—The words, "payable in advance," in Rule I in s. 5 of Appendix B to the Rules framed under s. 14 of the Bombay District Municipal Act, do not mean that the taxes are payable on the first day of the year, but on demand at any time of the year. **Rat. Un. Cr. C. 868.**

(5)—*Ss. 21, 27, cl. (7), 32—Tax when becomes payable—Resolution at a Municipal special meeting—Permission of presiding authority.*—A tax can only be made payable from the date of its levy being sanctioned by Government under s. 21 of the Bombay District Municipal Act, and, under s. 32, it is payable duly at the expiration of the period for which it is declared payable. The liability to pay a tax arises only at the beginning of the official year next following the rule or law sanctioning it.—(*Per Jardine, J.*; *Parsons, J. contra*). (7 M.H.C.R. 249 and 1 M. 158, *R.*). Where some indication is given of the business of a Municipal special meeting, and a resolution is passed at such meeting where almost all the members of the Council are present, it must be assumed that the permission of the presiding authority was expressly or tacitly given. **Rat. Un. Cr. C. 574 = Cr. Rg. 39 of 1891.**

(6)—Ss. 23, 35—*See* APPEAL—SPECIAL ACTS, Rat. Un. Cr. C. 672.

(7)—S. 26—*See* No. 3, *supra*.

(8)—*S. 33—Power of Municipality to call for sannad under City Survey Act (Bombay Act IV of 1868).*—Under cl. 1 of s. 33 of Bombay Act, VI of 1873, a Municipality is empowered before granting permission to build, to call on the applicant to furnish information as to the limits, design, and materials of the proposed building. But it is not empowered to call for any *sannad* issued under s. 10 of the City Survey Act (Bombay Act IV of 1868), although it may contain information as to the limits and tenure of applicants' holding. **15 B. 516.** [*F.*, 19 B. 27].

(9)—*S. 33—Act III of 1901, ss. 48, 96—Permission to erect a building—Condition.*—A Municipality in granting permission to a person to erect a building can legally impose a condition that he should leave a gully of certain dimensions. **3 Bom. L.R. 842.** [*F.*, 27 B. 221].

(10)—*Re-building on old foundations without notice to Municipality.*—A person who, without giving notice to the Municipality, merely re-erects on the same foundation the part of a wall which has fallen down, does not contravene the provisions of s. 33 of the Act, as he does not, by so re-erecting it, begin to erect any building or to alter externally or to add to any existing building within the meaning of that section. **Rat. Un. Cr. C. 402 = Cr. Rg. 63 of 1888.**

***3.—Bombay Acts*—continued.**

Act VI of 1873 (District Municipalities)—*ctd.*

(11)—*Re-erection of fallen wall on same foundation.*—The re-erection on the same foundation of a wall which has fallen down is not an offence under s. 33. **Rat. Un. Cr. C. 932.**

(12)—*Extended door-step.*—A *katta*, which is permanent in character and which serves as a broad extended door-step or raised platform in communication with the road, is an addition to the existing building within the meaning of cl. 1, s. 33 of the Bombay District Municipal Act. **Rat. Un. Cr. C. 483=Cr. Rg. 47 of 1889.**

(13)—*Wall—Bamboo fence.*—It is a question whether a bamboo fence can be properly described as a wall so as to come within the terms of s. 33, Bombay Act VI of 1873. **Rat. Un. Cr. C. 932.**

(14)—*S. 33 (1)—"Building"—Reed fencing.*—A *karvi* or reed fencing is not a building within the meaning of s. 33 (1) of the Bombay District Municipal Act, 1873. **Rat. Un. Cr. C. 145.**

(15)—*S. 33 (2)—Scope.*—The effect of clause 2 of s. 33 which permits a person to erect the building, of which he has given notice, if, within the period prescribed, the Municipality has failed to issue written orders, is by implication to prohibit the erection of any building within such period, unless in the meantime written orders have been passed. **Rat. Un. Cr. C. 657=Cr. Rg. 22 of 1893.**

(16)—*Ss. 33 (2), 39 (2)—Plan of building—Objection to site of privy—Building privy on the site proposed by applicant after one month.*—The accused gave a notice to the Bandora Municipality, under s. 33 of the Bombay District Municipal Act, of his intention to build a house and submitted a plan of the proposed building. The Municipality replied that the site for the privy shown in the plan was objectionable, and that the plan was, therefore, returned with a view to an amended one being submitted. The accused built a privy on the proposed site after one month had expired. *Held* that the action of the accused in building the privy came within the words of the penal clause of s. 39 (2) of the Act, as there was the construction of a privy, which was, as regards its site, contrary to the directions of the Municipality, and that the action of the accused properly came within the mischief at which s. 39 (2) strikes. **Rat. Un. Cr. C. 819=Cr. Rg. 65 of 1895.**

(17)—*S. 33 (3)—Order under the section—Non-compliance—Duty of Magistrate.*—In dealing with a case of non-compliance with a legal order made by a Municipality, under s. 33 (3) of the Bombay District Municipal Act, a Magistrate has no right to review the order from the stand-point of its propriety, and to consider what kind of structure would be sufficient for the purpose in view. **Rat. Un. Cr. C. 310=Cr. Rg. 63 of 1886.**

(18)—*Ss. 33, 74—External alteration, what amounts to.*—Opening a new external door is

***3.—Bombay Acts*—continued.**

Act VI of 1873 (District Municipalities)—*ctd.*

an external alteration of the building in which the door is opened, and such an act done without notice to the Municipality, contemplated by s. 33 of Bombay Act VI of 1878, is an offence punishable under s. 74 of the Act. But where such an act does not cause any inconvenience to anybody, a nominal fine is an adequate punishment. **9 B. 568.** [*R.*, 2 Bom. L.R. 572.]

(19)—*Ss. 33, 74—Permission to build—Exceeding time allowed.*—The accused obtained permission from the Surat Municipality to make some alterations in his house under a *razachitti*, dated 12th May, 1892, which allowed him a year in which to carry out his work. There was no bye-law under s. 33, of the District Municipal Act, providing a period within which works were to be carried on. *Held* that the accused could not be convicted of an offence under ss. 33 and 74 for having exceeded the period of one year. **Rat. Un. Cr. C. 684=Cr. Rg. 52 of 1893.**

(20)—S. 35—*See* No. 6, *supra.*

(21)—*S. 36—Omission to have printed copies of rules in vernacular.*—The omission by a District Municipality to keep printed copies of the rules in the vernacular for sale, as required by s. 36 of the Municipal Act, does not affect the validity of the rules. **Rat. Un. Cr. C. 615=Cr. Rg. 37 of 1892.**

(22)—*Ss. 36, 39, 74—Notice issued under s. 36 or s. 39 (1)—Non-compliance, whether punishable.*—Clause 1 of s. 74 of Bombay Act VI of 1873 applies only to the second clause of s. 39. Non-compliance with a notice issued under s. 36, or s. 39 (1) is not, therefore, punishable under the Act, as s. 74 (1), does not apply to either of these provisions. **2 B. 527.**

(23)—*Ss. 39 and 74—Notice—Owner.*—Where a notice requiring the *owner* of a house to whitewash the privy was received and the receipt signed by his nephew, *held*, that the nephew could not be convicted for not having complied with the notice, as the Municipal Act concerned itself only with the owner of the house. **Rat. Un. Cr. C. 973=Cr. Rg. 23 of 1898.**

(24)—S. 39 (2)—*See* Nos. 16, 22, *supra.*

(25)—*S. 48—Trial for an offence under the section in the absence of the accused—Crim. Pro. Code (1882), ss. 4, 205.*—A woman was charged with causing obstruction, under s. 48 of Bom. Act VI of 1873. In her absence, her mother-in-law appeared in Court on her behalf and the Magistrate proceeded with the case and convicted her. *Held*, that the conviction was wrong, as the accused was neither present, nor duly represented in the case by a pleader. **Rat. Un. Cr. C. 205=Cr. Rg. 7—8—1884.**

(26)—*Re-erection of old structure.*—The words used in s. 48 of Bombay Act, VI of 1873, should be so construed as referring to the erection of a thing for the first time, and not to the

***3.—Bombay Acts*—continued.**

Act VI of 1873 (District Municipalities)—*ctd.*

simple re-erection of an old structure which had been taken down for a temporary purpose only. **23 B. 248.**

(27)—*Ss. 48, 74—Allowing carriage with horses to stand on public road—Object of Municipal Act and nature of sentences.*—As a carriage with horses is not one of the things contemplated in s. 48 of the Bombay District Municipal Act, a person cannot be convicted, under ss. 48 and 74, of causing obstruction to passers-by in having allowed his carriage to stand half an hour in a public street. **Rat. Un. Cr. C. 324=Cr. Rg. 11 of 1887.**

(28)—*Object of Municipal Act and sentences under the Act.*—The Municipal Act is intended to check many offences petty in their nature, but which may cause grievous injury to the neighbourhood as by facilitating fires or serious annoyance when a house-holder blocks a street. The sentence passed ought to be not only punitive but also deterrent, and the fine should also bear some proportion to the amount awardable at law. **Rat. Un. Cr. C. 719=Cr. Rg. 45 of 1894.**

(29)—*Ss. 51, 74—Conviction under s. 51—Appeal.*—Where a second class Magistrate has dealt with a case as a Magistrate and convicted the accused under s. 51 of Bombay Act VI of 1873, and sentenced him to pay a penalty under s. 74, the District Magistrate should not refuse to hear an appeal from the conviction and sentence. If the conviction does not properly fall within s. 51, that is a ground for reversing it and not for refusing to entertain the appeal. **Rat. Un. Cr. C. 363=Cr. Rg. 6 of 1888.**

(30)—*S. 53—Obeying calls of nature—Street.*—To obey the call of nature elsewhere than in a street is not an offence under s. 53 of the Bombay District Municipal Act. **Rat. Un. Cr. C. 507=Cr. Rg. 24 of 1890.**

(31)—*Dirt—Back of house.*—A person cannot be convicted under s. 53 of the Bombay District Municipal Act for depositing dirt at the back of his house, since it is not "a street, public quarry, jetty or landing place, or any part of the seashore or bank of a tidal river," as described in the section. **Rat. Un. Cr. C. 477=Cr. Rg. 37 of 1889.**

(32)—*S. 53 (1)—Cattle—Members of family.*—Cattle are not members of a family or household within the meaning of s. 53 (1) of the Bombay District Municipal Act, and a person cannot be convicted of an offence under cl. 2 of the section for tying his bullock near the street gutter so as to allow the dung, etc., to drop there. **Rat. Un. Cr. C. 412=Cr. Rg. 78 of 1888.**

(33)—*S. 54—Offensive water, what amounts to.*—The word "offensive" in s. 54 does not include mere waste or dirty water. A person, therefore, who allows mere waste or dirty water to pass to the public street is not liable to the penalty under s. 54 of the Act. **20 B. 83.** [*D.*, 30 B. 558=8 Bom. L.R. 457=4 Cr. L.J. 23.]

***3.—Bombay Acts*—continued.**

Act VI of 1873 (District Municipalities)—*ctd.*

(34)—*S. 61—Washing dirty clothes in a river.*—A person cannot be convicted under s. 61 of the Bombay District Municipal Act, on account of his wife having washed some dirty clothes in a river, without finding (1) that the river in question was a stream, etc., belonging to the Municipality, or (2) that the accused caused clothes to be washed by his wife in such stream, if it appeared that he had simply told his wife to wash the clothes, without saying where they were to be washed. **Rat. Un. Cr. C. 399=Cr. Rg. 59 of 1888.**

(35)—*S. 66—Sale of fruits in private shop—Market.*—What the Municipality have authority to direct under s. 66 of Bombay Act VI of 1873 is, that no place, other than the Municipal markets or other places licensed as markets, should be used by anybody as a *market*. They have no authority to issue a notification affecting other places which may be used for selling vegetables, etc., otherwise than *as a market*. The act of selling fruits without a license in a private shop within six hundred yards of the Municipal market, even if it could be held to be using the shop as a market, is not a violation of the provisions of s. 66, as the section contains nothing to warrant the inclusion of the case of fruit-selling within it. The Municipality of Ahmedabad issued a notification to the effect that no one was to use, within six hundred yards of the Municipal market, any place as a market, and that, if any one acted in contravention of this notification, he would be dealt with according to law. *Held*, that if the prohibition of the Municipality was meant to affect the private rights of persons to use their own places for selling any commodity, that would amount to an excess of the authority conferred by the Bombay Municipal Act. [*Appl.*, 10 M. 216=1 Weir 743; *R.*, Rat. Un. Cr. C. 797]. To constitute the use of a place as a market so as to interfere with any other market, it is not sufficient that it is used as a shop, but there must be something in addition to show that there has been a disturbance of the market rights. **11 B. 106.** [*R.*, U.B.R. (1903), Municipal, 1].

(36)—*Selling fish on road side.*—A person who sold a small quantity of fish on the roadside on her way to the market cannot be convicted under s. 66 of the Bombay District Municipal Act, where it did not appear that the Municipality had issued an order that no place except the licensed one should be used as a market. **Rat. Un. Cr. C. 606=Cr. Rg. 24 of 1892.**

(37)—*Ss. 66 and 67 (2)—Selling meat at one's own house and at another's platform—License.*—The selling of meat in one's own house would not, but the selling of meat on another

3.—Bombay Acts—continued.

Act VI of 1873 (District Municipalities)—*ctd.*

person's platform abutting on a public road would be an offence under s. 67 of the Bombay District Municipal Act, 1873. **Rat. Un. Cr. C. 209.**

(38)—A person selling meat not in a public market, but at his house without permission or license from the Municipality, cannot be punished under s. 67 (2). **Rat. Un. Cr. C. 397 = Cr. Rg. 57 of 88.**

(39)—*S. 66—Slaughter-house, what amounts to.*—A person who kills a goat in his own house for his own consumption cannot be said to use the place as a slaughter-house within the meaning of s. 66, Bombay District Municipal Act. **Rat. Un. Cr. C. 399.**

(40)—S. 66—*See* No. 2, *supra.*

(41)—S. 67 (2)—*See* No. 37, *supra.*

(42)—*S. 68—Crim. Pro. Code (1882), s. 29—Jurisdiction of Third Class Magistrate.*—S. 68 of the Bombay District Municipal Act makes the offender liable to the penalty provided by s. 273, I.P.C. A Magistrate of the Third Class has under s. 29, Crim. Pro. Code, jurisdiction to try an offence under s. 68 of Bom. Act VI of 1873. **Rat. Un. Cr. C. 763 = Cr. Rg. 24 of 1895.**

(43)—*Ss. 69, 74—Order against future continuance of offence.*—An order cannot be made under s. 74 (2) in respect of a possible future continuance of the offence for which an accused person has been punished under cl. (*c*) of the section. In respect of any such ofience, a fresh prosecution is necessary. **Rat. Un. Cr. C. 396 = Cr. Rg. 55 of 88.**

(44)—*S. 70—Act II of 1884, s. 33—Bye-law prohibiting sale of fish or meat outside market.*—A bye-law prohibiting the sale of fish or meat outside the market, purporting to be made by a Municipality under repealed s. 70 of Act VI of 1873, is *ultra vires* of that section and also of s. 33 of Act II of 1884. The bye-law cannot be treated as a direction under s. 66 (1), directing that no place shall be used as a market, as it does not allude to any such use, there being no evidence that the road in question on which fish were sold was used as a market. **Rat. Un. Cr. C. 797 = Cr. Rg. 55 of 1895.**

(45)—*S. 72—Duty of giving information as to birth of child.*—The duty of giving information to the Municipality about the birth of a child is imposed on the parent or guardian of a child, or in the case of the death, illness or inability of the parent or guardian, on the occupant of the house in which the child is born, and not on the servant of such occupant. **Rat. Un. Cr. C. 373 = Cr. Rg. 20 of 1888.**

(46)—*S. 73—Scope—Power to interdict caste-feast on the outbreak of cholera.*—S. 73 of the Bombay Municipal Act (VI of 1873) empowers any Municipality "threatened or visited with an outbreak of any epidemic disease," "to take such measures as may be deemed

3.—Bombay Acts—continued.

Act VI of 1873 (District Municipalities)—*ctd.*

necessary to prevent, meet, mitigate or suppress any such outbreak," with the previous sanction of the Governor-in-Council or any officer authorized by him. The words "take such measures, etc.," imply in themselves something actively to be done by the Municipality, rather than any limitation to be imposed on the private rights of citizens in their relations of daily life. Special measures for the health of the town—such as sulphur fumigation, daily flushing of sewers, insistence on good house sanitation, isolation of infected districts and other similar steps to be taken by the authorities themselves—come naturally within the meaning of the terms of the section. Under that section, a Municipality cannot prohibit the giving of caste-dinners within Municipal limits when more than thirty persons are to assemble. A person disobeying such an order cannot be convicted under s. 188, I.P.C. The Court ought not to strain an act in favour of an interference with private rights which is not justified by the primary sense of the language. **14 B. 180.**

(47)—*S. 74—Crim. Pro. Code (1898), s. 245—Sentence must follow conviction.*—A Magistrate, proceeding under s. 74 of the Bombay District Municipal Act, is bound by the provisions of s. 245, Crim. Pro. Code. **2 Bom. L.R. 611.**

(48)—*See* Nos. 18, 19, 22, 23, 27, 29, 43, *supra.*

(49)—*S. 82—Right of private person to complain.*—S. 82 of the Bombay District Municipal Act does not prevent a private person from making a complaint to a Magistrate where an offensive liquid was allowed to flow from the premises of the accused into the street without the permission required by s. 54. **Rat. Un. Cr. C. 630.** (Rat. Un. Cr. C. 355, *F.*).

(50)—S. 82—*See* CRIM. PRO. CODE (1898), s. 190, Rat. Un. Cr. C. 355 = Cr. Rg. 44 of 1887.

(51)—*See* No. 4, *supra.*

(52)—*Ss. 82, 84—Bom. Act II of 1884, s. 49 (i)—Failure to pay arrears of tax—Offence—Time.*—The effect of the amendment of s. 84 of Bom. Act VI of 1873 by s. 49 (*i*) of Bom. Act, II of 1884, is to make a failure to pay arrears of taxes an offence under s. 82 of the former Act. An information of such failure laid before a Magistrate, though not asking for imposition of penalty, must be laid within three months after the date when the taxes were due and not paid. **Rat. Un. Cr. C. 420 = Cr. Rg. 86 of 1888.** [*R.*, 30 B. 241 = 7 Bom. L.R. 951.]

(53)—*S. 84—Proceedings under section, nature of—Scope.*—Proceedings before a Magistrate under s. 84 of Bombay Act, VI of 1873, are criminal prosecutions. Such prosecutions must be conducted according to the rules applicable to summary trials prescribed in Ch. XXII of the Code. The Magistrate is bound, therefore, before sentencing a defaulter to pay a rate, to satisfy himself as to the extent of his legal

***3.—Bombay Acts*—continued.**

Act VI of 1873 (District Municipalities)—*ctd.*

liability. **17 B. 731.** [*F.*, Rat. Un. Cr. C. 559, 30 B. 241=7 Bom. L.R. 951; *Appr. and D.*, 23 B. 446; *R.*, 109 P.L.R. 1909=23 P.W. R. 1909; *D.*, 22 A. 111].

(54)—The sums that may be due under a contract to collect a tax due to a Municipality do not come within any of the matters provided for by s. 84 of the Bombay District Municipal Act. **22 B. 709.** [*F.*, 26 M. 475=1 Weir 752; *R.*, 130 P.L.R. 1903=23 P.R. 1903 Cr.]

(55)—*Power of Magistrate to impose penalty.*—Although under s. 84 of the Bombay District Municipal Act, a Magistrate has power to inflict, in addition to arrears of cess or other taxes, a penalty, not exceeding in any case one-fourth of such arrears, he has no power to levy any penalty computed as an addition to the expenses. **Rat. Un. Cr. C. 692=Cr. Rg. 19 of 1894.**

(56)—*Liability to penalty on non-payment of taxes—Penalty, meaning of the word—Imprisonment in default—Penal Code, ss. 40, 64.*—As non-payment of Municipal taxes entails liability to a penalty, it appears to be an offence under s. 40, I.P.C. There is no distinction between the word "penalty" in the Bombay District Municipal Act and the word, "fine" in s. 64, I.P.C. The word penalty is used in many places in the Municipal Act as equivalent to a fine or pecuniary punishment for an offence. Imprisonment can, therefore, be awarded in default of payment of the penalty. **18 B. 400.**

(57)—*Penalty in addition to arrears of rent.*—S. 84 of the Bombay District Municipal Act allows penalties to be imposed in addition to arrears of cesses or other taxes, but it does not provide for the imposition of a penalty in addition to arrears of rent. **22 B. 708.**

(58)—S. 84 of the Bombay District Municipal Act does not permit a Magistrate to impose a fine in addition to the payment of arrears of rent. **2 Bom. L.R. 674.**

(59)—The accused was convicted under s. 84 for non-payment of house-tax, and ordered to pay Rs. 10 for house-tax, and a fine of Rs. 2-8-0 and one anna as process fee, but it appeared that there was no rule on the subject framed by the Municipality. *Held*, ordering the return of the penalty and the tax levied, that, as admittedly the Municipality had not framed a rule for the sanction of Government as required by the Acts, and as nothing has been submitted to Government, except some general proposals sent up by the Collector, the conviction was illegal. **Rat. Un. Cr. C. 694=Cr. Rg. 21 of 1894.**

(60)—*Octroi duties on certain articles within Municipal limits.*—A certain Municipality passed a rule or bye-law imposing an octroi duty on certain articles when imported within Municipal limits. Where goods merely passed through the Municipal limits in the course of transit to Bombay, *held*, that the goods were imported, within the meaning of the section, and were liable to the duty. The only remedy was to claim a refund of the duty paid. **22 B. 843.**

***3.—Bombay Acts*—continued.**

Act VI of 1873 (District Municipalities)—*ctd.*

(61)—*Annual letting-value of house made by Municipality—Jurisdiction of Magistrates.*—By the rules framed under the Bombay District Municipal Act, the Municipality is empowered to levy house-tax on a certain scale according to the annual letting-value of the house. The "letting value" is defined to mean the annual rent for which the house might be reasonably expected to let from year to year, if the tenants were liable for all repairs; and Rule 3 provides that an estimate of the annual letting-value of each house shall be made by the Managing Committee and published not later than the 15th March in each year, and that applications for the reduction of the estimate by persons made liable may be presented to, and shall be disposed of by the Managing Committee. *Held*, that the Magistrate should accept as conclusive the amount found by the Managing Committee to be the letting-value of the house and to hold the legal liability of the accused to pay the tax based on this amount to be proved. He has no power to review the decision of the Managing Committee and reverse it on fresh evidence taken before himself. **23 B. 446.** [*Appl.*, 24 B. 607; *R.*, 35 C. 859=12 C.W.N. 709=7 C.L.J. 631].

(62)—*Pendency of prosecution under the old Act, how affected by the passing of the new Act—General Clauses Act, Bombay Act III of 1886, s. 8—Bombay Act III of 1901, s. 2 (1), (a), (b).*—A Municipality instituted proceedings under Bombay Act VI of 1873. During the pendency of the proceedings, the Act was repealed and replaced by Act III of 1901. The Magistrate, thereupon, acquitted the accused on the ground that, under the new Act, he had no jurisdiction to dispose of the complaint. *Held*, reversing the order and directing the Magistrate to rehear the complaint, that, in the absence of any contrary intention in the new Act, the repeal of the old Act could not be deemed to affect any proceedings commenced before the new Act came into force; that the Magistrate was bound to conclude the proceedings which had already been instituted before him under the old Act, and that he could not disclaim jurisdiction, because the procedure laid down for proceedings instituted under the old Act was entirely different. **3 Bom. L.R. 584.**

(63)—*Entries in shipping bills and manifests.*—A person who imports timber by sea into a Municipal District is not bound by the entries in shipping bills and manifests as to its weight and measurement, for the purpose of calculating the duty payable. He may dispute them and is entitled to demand a fresh weighment, but, if he does not do so and fails to prove their incorrectness, he is bound by the entries. **Rat. Un. Cr. C. 541=Cr. Rg. 15 of 1891.**

(64)—*Jurisdiction of Magistrate to inquire into correctness of cess claimed.*—In a prosecution under s. 84 of the Bombay District Municipal Act for recovery of a tax, the Magistrate has jurisdiction to determine whether the amount claimed is correct and to inquire into

3.—Bombay Acts—continued.

Act VI of 1873 (District Municipalities)—*cld.*

all the conditions on which the rate of tax fixed is based. It is nowhere laid down that the statement of amount by the Municipality should be accepted as final. **Rat. Un. Cr. C. 559 = Cr. Rg. 35 of 1891.**

(65)—*Payment of arrears before hearing—Infliction of penalty.*—A Magistrate cannot inflict a penalty under s. 84 of the Bombay District Municipal Act, if the arrears are paid before the case comes on for hearing. **Rat. Un. Cr. C. 618 = Cr. Rg. 42 of 1892.**

(66)—*Cess upon houses—Term "yielding a yearly rent" explained.*—Where a rule prescribes the levying of cess on "every house yielding a certain annual rent," the expression means "capable of yielding a yearly rent." **Rat. Un. Cr. C. 658 = Cr. Rg. 23 of 1893.**

(67)—*See* No. 52, *supra.*

(68)—*S. 99—Approval by Revenue Commissioner.*—The approval by the Revenue Commissioner of the rules is tantamount to approval by the Governor-in-Council within the meaning of s. 99 of the Act. **Rat. Un Cr. C. 615 = Cr. Rg. 37 of 1892.**

See MAGISTRATE, JURISDICTION OF, 18 B. 442.

Act VII of 1873 (Salt).

[REP., BOM. ACT II OF 1890.]

(1)—*Officer of Salt Department whether Police officer—Evidence Act, s. 125.*—Having regard to the distinction drawn throughout Act VII of 1873 (Bombay) between a Police officer and an officer of the Salt Department, the latter cannot be considered a Police officer within the meaning of s. 125, Evidence Act, and may, therefore, be compelled to say whence he obtained information as to the commission of an offence. **Rat. Un. Cr. C. 183 = Cr. Rg. 20—7—1882.**

(2)—*Ss. 3, 18, 19, 49—Peon—Possession of naturally formed salt.*—S. 18 of the Bombay Salt Act does not apply to the case of a peon of the Salt Department being in possession of naturally formed salt for his private use. The act is, however, punishable as an offence under ss. 19 and 49. **Rat. Un. Cr. C. 101 = Cr. Rg. 10—1—1876.**

(3)—S. 18—*See* No. 2, *supra.*

(4)—S. 19—*See* No. 2, *supra.*

(5)—*Ss. 35, 37—Distance of ten miles, how to be measured.*—The distance of ten miles mentioned in ss. 35, 37 of the Bombay Salt Act is to be measured in a straight line "as the crow flies," *i.e.*, along the horizontal plane and not by the nearest mode of practical access. **Rat. Un. Cr. C. 138 = Cr. Rg. 20—2—1879.**

(6)—S. 37—*See* No. 5, *supra.*

(7)—S. 49—*See* No. 2, *supra.*

(8)—*S. 54—Charge under the section.*—S. 54 of the Bombay Salt Act, 1873, is not an enactment under which, by itself, a charge can be

3.—Bombay Acts—continued.

Act VII of 1873 (Salt)—*concluded.*

laid. There must, in addition, be reference to some other provision of the Act or some rule in pursuance thereof according to the actual character of the offence imputed. Nor can a mere loose description of salt as contraband satisfy the requirements of the law as to what is contraband salt for the purposes of the penal sections of the Salt Act. The definitions given in s. 3 must, in each case, be satisfied by evidence of facts giving to the salt the character there indicated. **Rat. Un. Cr. C. 295 = Cr. Rg. 40 of 1886.**

Act I of 1874 (Tramways).

[REP. IN PART, BOM. ACT III OF 1886, REP. IN PART AND AMENDED, BOM. ACT II OF 1895.]

—*S. 24—Regulation for regulating the conduct of the Company's servants.*—The words "regulating the travelling" in s. 24 of Bombay Act, I of 1874, can only mean laying down rules as to how persons shall travel, that is to say, rules for the conduct and behaviour of the persons who travel, and cannot be held to include rules for the conduct of the Company's own servants, prescribing what they shall do or what they shall not do, in the matter, for instance, of the issue of tickets, which rules are only framed by the Company for their own protection against the possible fraud or dishonesty of their servants. **22 B. 739.**

Act II of 1874 (Jails).

[REP. IN PART, ACT IX OF 1894; BOM. ACT III OF 1886. AMENDED, BOM. ACT II OF 1882.]

—*S. 30—Duties of jailor.*—The jailor is, under Bombay Act II of 1874, s. 30, responsible for the execution of a warrant for punishment, unless it be one not within the competence of the Court. If anything prevents his executing a warrant, he should make a return or report to that effect to the Court whence the warrant issued. **Rat. Un. Cr. C. 136 = Cr Rg. 5—8—1878.**

Act III of 1874 (Hereditary Offices).

[REP. IN PART, ACT XII OF 1876; BOM. ACT III OF 1886. REP. IN PART AND AMENDED, ACT XVI OF 1895; BOM. ACT V OF 1886. REP. IN PART, AMENDED AND SUPPLEMENTED (LOCALLY), BOM. ACT VI OF 1887.]

—S. 85—*See* SANCTION TO PROSECUTE, Rat. Un. Cr. C. 147.

Act III of 1876 (Mamlatdars' Courts).

[REP. IN PART, ACT XVI OF 1895; BOM. ACT III OF 1886.]

(1)—*S. 10—Jurisdiction of Mamlatdar to try possessory suits—Crim. Pro. Code (1898), s. 145.*—The jurisdiction of a Mamlatdar to entertain a possessory suit, under Bombay Act III of 1876, is not taken away by the fact that the Magis-

***3.—Bombay Acts*—continued.**

Act III of 1876 (Mamlatdars' Courts)—*cld.*

trate has previously passed an order, regarding the same property, under s. 145 of the Crim. Pro. Code. **26 B. 353=3 Bom. L.R. 919.** [*R.*, 12 C.W.N. 696=7 C.L.J. 547.]

(2)—S. 17—*See* PENAL CODE, s. 166, Rat. Un. Cr. C. 764.

Act IV of 1878 (Municipal Act Amendment and Continuance).

[REP., BOM. ACT III OF 1888.]

See BOM. ACT III OF 1872, s. 225, Rat. Un. Cr. C. 297.

Act V of 1878 (Abkari).

[REP. IN PART, ACT XVI OF 1895. REP. IN PART AND AMENDED, BOM. ACT III OF 1886. AMENDED, BOM. ACT III OF 1892; BOM. ACT V OF 1901.]

(1)—"*Chandul*"—*Preparation of opium—Opium Act.—Chandul* is a preparation of opium, and the provisions of the Bombay Abkari Act V of 1878, cannot be applied to a person found in possession of it. He can, however, be dealt with under the Opium Act. **9 Cr. L.J. 254=1 S.L.R. 8 Cr.**

(2)—*Trial for offence under Bombay Abkari Act and acquittal—Re-trial, when allowed, Jurisdiction of Magistrate.*—All offences against the Bombay Abkari Act being cognizable by a Magistrate of the second class, a person tried for any such offence by any such Magistrate and acquitted is not liable to be tried again for the same offence, unless the acquittal has been set aside by the High Court on appeal by the Government. The jurisdiction conferred by the Code of Criminal Procedure (Act X of 1882) does not affect any special jurisdiction or power conferred by any law in force at the time when the Code came into force. **10 B. 181.** [*R.*, 1 Bom. L.R. 15].

(3)—*Third Class Magistrate, Jurisdiction of, to try cases under.*—A third class Magistrate has no jurisdiction to try cases under the Abkari Act, 1878. **Rat. Un. Cr. C. 184=Cr. Rg. 5—10—1882.**

(4)—*Prosecution under—Distillery Inspector's report—Evidence.*—In a prosecution under the Bombay Abkari Act, the report of a Distillery Inspector to the effect that certain liquor was illicit is not admissible in evidence, and there must be independent evidence to show that it was illicit. **Rat. Un. Cr. C. 298=Cr. Rg. 45 of 1886.**

(5)—*Breach of license—Keeping toddy where it was drawn.*—Where the license provided that toddy drawn should be taken to the shop or distillery by a direct route, no obligation is imposed on the licensee to take the toddy at once. Keeping it at the place where it was drawn is not a breach of the license. **Rat. Un. Cr. C. 552.** (Rat. Un. Cr. C. 290, *R.*)

***3.—Bombay Acts*—continued.**

Act V of 1878 (Abkari)—*continued.*

(6)—*Juice in toddy-producing tree, if spirit.*—Juice in toddy-producing trees is not spirit, which includes toddy in a fermented state only. **9 B. 462.** [*F.*, 20 B. 764; *R.*, 20 B. 803.]

(7)—*Ss. 2 (8), 43 (a)—Liquor manufactured in Native States.*—S. 43 (*a*) of Bombay Act V of 1878 makes punishable the importing or exporting of foreign liquor, and the term, as defined in the Act, does not include liquor manufactured in the Native States. **1 Bom. L.R. 158.**

(8)—*Ss. 3 (9), 62—Cocaine—Intoxicating drug—Medicated article.*—(*a*) The term "medicated article" in s. 62 of Bombay Act V of 1878, applies to something which is manufactured and by such manufacture is imbued with certain medicinal properties. Cocaine does not fall within that term as it is a medicine *per se*.

(*b*) The word "intoxicating" as used in s. 3 (9) cannot be confined to its derivative meaning, namely, "poisonous." but must be taken in its popular sense. Cocaine is an intoxicating drug in the popular sense. **27 B. 551 = 5 Bom. L.R. 498.**

(9)—*Ss. 3 (10), 9 and 43—'Import' meaning of—Sea Customs Act (VIII of 1878), s. 19.*—The intention and requirement of s. 9 of the Abkari Act in the case of articles liable to duty are that the duty shall be paid. That intention and requirement can only be contravened, when reasonable opportunity to pay the duty has been afforded and evaded. The mere entry into the Bombay harbour of a ship conveying the dutiable goods, or mere tying up of such ship against the dockwall, is not importing goods, under s. 43 of the Abkari Act, in contravention of the Act, that is, in contravention of the obligation to pay duty. The word 'import' in the Abkari Act includes the conveying into any part of the Presidency of Bombay by sea. **11 Bom. L.R. 221 = 33 B. 380 = 1 Ind. Cas. 343.**

(10)—*Ss. 3 (11), 43—Drawing toddy, not manufacturing liquor.*—Drawing toddy is not manufacturing liquor as defined in cl. 11 of s. 3 of Bombay Act V of 1878. The mere possession of implements for the purpose of drawing toddy is not an offence punishable under cl. (*f*) of s. 43 of Bombay Act, V of 1878. **18 B. 428.**

(11)—*Ss. 4, 7—Imprisonment in default of payment of fine.*—In passing a sentence upon conviction of more than one person under s. 4, the proper course is to direct that the fine be paid by the prisoners generally, and that, in the event of non-payment by all co-partners, each should suffer the same term of imprisonment, whether it be the full period or any reduced period on part-payment of the penalty, and not to award payment in equal or unequal fixed portions. **Cr. Rg. 23—11—1870.**

(12)—*Ss. 6, 43 (a) and (f)—Importation of* bhang *in Native State—No cession of territory—Offence.*—Where an applicant was charged with

3.—Bombay Acts - continued.

Act V of 1878 (Abkari)—*continued.*

having imported *bhang* into the Bombay Presidency, owing to a parcel containing *bhang* and bearing his name and address being received at Kalol, a railway station in a Native State, it appeared that the criminal jurisdiction along the line of the Railway was ceded to the Government of India, but there had been no cession of territory. *Held*, that no offence was committed unless the importation was into the Bombay Presidency, that is, in territories which formed part of British India; and, if the land upon which the offence was alleged to have been committed had not actually been ceded, it could not form part of British India. **5 Bom. L.R. 873.**

(13)—S. 7—*See* No. 11, *supra.*

(14)—*S. 9—Importation of liquor—When complete.*—Under s. 9 of the Abkari Act, the importation of liquor into a port is not complete till the person importing it has had an opportunity of paying the duty thereon at the Customs House. **Rat. Un. Cr. C. 503=Cr. Rg. 17 of 1890.**

(15)—*See* No. 9, *supra*, and No. 79, *infra.*

(16)—*Ss. 9, 13, 43—Cocaine—Forwarding of cocaine from Lucknow to Bombay by rail without transhipment—Crossing the frontier.*—Where the accused forwarded a large consignment of cocaine from Lucknow to Bombay through railway, and the consignment reached Bombay direct without transhipment and traversed British territory the whole way, it was *held* that neither the mere fact that cocaine was consigned from Lucknow to Bombay city and conveyed thereto without transhipment at the frontier of the Bombay Presidency, nor the mere fact that the journey from Lucknow to Bombay was, throughout, through British territory, prevented cocaine from coming within the provisions of the Act, as soon as it crossed the frontier. **8 Bom. L.R. 601.**

(17)—*Ss. 9, 43—Carrying liquor from one village to another in a Native State through British India.*—The bringing into British India from a Native State, of liquor without a pass or permit authorised by the Abkari Act is an offence punishable under it, notwithstanding that it was so brought only for the purposes of taking into another village of the same State; but where the importing of liquor is not from one portion of British India to another, there cannot be any offence of transporting liquor from one place to another within British India. **Rat. Un. Cr. C. 313=Cr. Rg. 67 of 1886.**

(18)—S. 13—*See* No. 16, *supra.*

(19)—*Ss. 14, 20, 64, 65, 66 and 67—"Tree"—"Toddy-producing tree"—meaning of.*—The words "any tree" in s. 14 and "every toddy-producing tree" in s. 20 of the Bombay Abkari Act, V of 1878, mean all trees in the Bombay Presidency to which the Act applies, from which toddy is drawn or produced. These words

3.—Bombay Acts—continued.

Act V of 1878 (Abkari)—*continued.*

do not mean merely those in regard to which no special rights of drawing toddy previously existed. **6 B. 398.**

(20)—*S. 16—Selling toddy for liquidating a debt, if breach of license.*—Where toddy is not sold but is given in liquidation of a debt, there can be no breach of the license, which provides that the licensee "shall not receive wearing apparel, or ornaments, or any consideration, except coin, for any *toddy* he may sell." **Rat. Un. Cr. C. 586=Cr. Rg. 47 of 1891.**

(21)—*Ss. 17, 47—Mere possession of liquor.*—Mere possession of liquor on which no duty has been paid, is not an offence under s. 47 of the Bombay Abkari Act, irrespective of the quantity fixed by s. 17. **Rat. Un. Cr. C. 593=Cr. Rg. 8 of 1892.**

(22)—S. 20—*See* No. 19, *supra*, and No. 79, *infra.*

(23)—*S. 38—Accused found with a bottle of liquor when travelling—Crim. Pro. Code (1882), s. 103—Evidence Act, s. 91.*—An Abkari officer searched the cart in which the accused was travelling and found a bottle of liquor. The trying Magistrate found that the search was not made in the presence of two or more persons or any list prepared of the things found, as required by s. 103, Crim.Pro.Code, extended to Abkari cases by s. 38, and, considering that under s. 91 of the Evidence Act, oral evidence was inadmissible, acquitted the accused. *Held*, that a cart is not such a place as is contemplated in s. 103, and, therefore, its provisions cannot be applied to the search of a cart. **Cr. Rg. 18—6—1885.**

(24)—*S. 43—Growing* ganja *without permit.*—To grow *ganja* without a permit is not an offence within the meaning of s. 43 of the Act. **Rat. Un. Cr. C. 190=Cr. Rg. 26—4—1883.**

(25)—"*Sell,*" *meaning of.*—The Abkari Act being a penal statute, it should not be strained in its interpretation against the subject. The word "sell" in s. 43 does not include exchange. **Rat. Un. Cr. C. 415.**

(26)—*S. 43 (2)—Possessing apparatus and material—Separate convictions.*—The possession of apparatus and materials for the purpose of manufacturing liquor without a permit is one transaction, and there can be no separate conviction for the possession of distinct materials. **Rat. Un. Cr. C 878.**

(27)—*S. 43 (b)—Transporting toddy—Temporary custody by a girl—Latter's liability—Removal of* ganja *from one field to another.*—The accused, a girl of about 16 years of age, was charged with transporting *toddy* without a pass under s. 43 (*b*) of the Bombay Abkari Act, and, on conviction, was fined eight annas. Her uncle, who held a pass for tapping *toddy* trees and carrying *toddy* to the shop, had told her to drive a buffalo laden with *toddy*, while he himself was busy searching for a runaway

3.—Bombay Acts—continued.

Act V of 1878 (Abkari)—*continued.*

pony. For doing so, she was convicted. *Held*, that the girl should not have been considered as herself transporting *toddy*, seeing that her uncle who had but momentarily withdrawn, might be deemed as still controlling the buffalo laden with it. **Rat. Un. Cr. C. 306 = Cr. Rg. 57 of 1886.**

(28)—Where the accused removed *ganja* grown in one survey number to a threshing floor in the adjoining number for the purpose of preparing it, *held* that the act was not punishable under s. 43 (*b*) of the Bombay Abkari Act. **Rat. Un. Cr. C. 465 = Cr. Rg. 23 of 1889.**

(29)—*S. 43 (c)*—Ganja *cultivation*—"*Manufacture*," *meaning of.*—Mere cultivation of *ganja* plants is not a process of manufacturing intoxicating drugs within the meaning of s. 43 (*c*) of the Bombay Abkari Act. **Rat. Un. Cr. C. 415 = Cr. Rg. 82 of 1888.**

(30)—The word "manufacture" in the Bombay Abkari Act includes the preparation of a spirituous liquor by admixture and is not limited to processes which result in the production of alcohol. The making of Eau-de-Cologne by adding some essential fragrant oils to rectified spirit water is manufacture of liquor within the meaning of s. 43 (*c*). **Rat. Un. Cr. C. 834 = Cr. Rg. 77 of 1895.**

(31)—*Selling of mhowra flowers.*—It is no offence to sell *mhowra* flowers, except in the area in which Bombay Act III of 1892 is in force. The mere fact of a sale would not be in itself sufficient to justify a conviction for abetment of the offence of manufacturing liquor, mentioned in s. 43 (*c*) of the Bombay Abkari Act, 1878. **Rat. Un. Cr. C. 949 = Cr. Rg. 1 of 1898.**

(32)—*Imprisonment in default of payment of fine—I.P.C., s. 65.*—The accused was convicted of an offence under s. 43 (c) of the Bombay Abkari Act and sentenced to pay a fine of Rs. 75, or, in default, to suffer rigorous imprisonment for three months. *Held*, altering the sentence of imprisonment in default of payment of fine to six weeks, that the sentence passed was illegal under s. 65, I.P.C., the maximum term of imprisonment fixed for the offence being six months. **Rat. Un. Cr. C. 979 = Cr. Rg. 37 of 1898.**

(33)—*S. 43, cls. (c) and (f)—Separate convictions and sentences under both clauses—Crim. Pro. Code (1898), s. 35.*—A person was convicted under the Bombay Abkari Act, s. 43 (*c*) for the manufacture of liquor, and under s. 43 (*f*) for being in possession of utensils for the manufacture of liquor, and was sentenced separately for each of these offences. *Held*, reversing the sentence under s. 43 (*f*), *that the second* offence was included in the former, and, under the *explanation* to s. 35 of the Crim. Pro. Code, they were not distinct offences. **1 Bom. L.R. 344.**

3.—Bombay Acts—continued.

Act V of 1878 (Abkari)—*continued.*

(34)—*Manufacturing country liquor—Possession of apparatus—Separate offences.*—The accused was charged with manufacturing country liquor from *mhowra* flowers, and keeping in his possession soaked *mhowra* flowers and apparatus for the purpose of manufacturing liquor from them. He was convicted and sentenced separately for each of the offences under clauses (*e*) and (*f*) of the Bombay Abkari Act. *Held*, that the accused could, under the circumstances, only be convicted and sentenced for the offence of manufacturing country liquor from *mhowra* flowers. **4 Bom. L.R. 720.**

(35)—The possession of materials for manufacturing liquor and the act of manufacturing liquor are two distinct offences punishable under cl. (*f*) and cl. (*g*) of s. 43 of the Bombay Abkari Act, and separate sentences may, therefore, be passed on conviction for both offences. **Rat. Un. Cr. C. 523 = Cr. Rg. 52 of 1890.**

(36)—*S. 43 (d)—Drawing juice from cashew-nut tree.*—The drawing of juice from a cashew-nut tree does not constitute the offence of drawing *toddy*, punishable under s. 43 (*d*) of the Bombay Abkari Act, under the definition of *toddy* as given in the Act. **Rat. Un. Cr. C. 308 = Cr. Rg. 60 of 1886.**

(37)—*Payment of fees—Tapping toddy trees without license.*—There is no provision in the Bombay Abkari Act which authorises a Magistrate, who convicts an accused person under s. 43 (*d*) of the Act, to order the payment by him of any fee that may be leviable in respect of trees tapped by him without a license. **Rat. Un. Cr. C. 535 = Cr. Rg. 4 of 1891.**

(38)—*S. 43 (f)—Possession of apparatus—Intention—Responsibility of head of house.*—To support a conviction under s. 43 (*f*) of the Bombay Abkari Act, it is not enough to prove the possession by the accused of apparatus which can be used for manufacturing liquor, but it must also be proved that he had such apparatus for that purpose. **Rat. Un. Cr. C. 510 = Cr. Rg. 29 of 1890.** (9 B. 556, *R*).

(39)—Where apparatus for the manufacture of liquor is found in a house, the question who is to be proceeded against for the offence is not one to be decided by the principle of civil responsibility, but one of fact. It is possible that a son may contravene the provisions of the Abkari Act, while the father, the head of the house in which the apparatus was found, may be innocent. **Rat. Un. Cr. C. 504 = Cr. Rg. 18 of 1890.**

(40)—*S. 43, cl. (g)—Sale of liquor by servant of licensee without permit, and at rates not specified.*—The penalty prescribed by s. 43, cl. (*g*) of the Bombay Abkari Act, 1878, attaches to the servant of a licensee, who sells liquor without a permit from the Collector. **11 Bom. L.R. 746.**

3.—Bombay Acts—continued.

Act V of 1878 (Abkari)—*continued.*

(41)—The servant of a license-holder under the Bombay Abkari Act selling liquor at rates other than those specified in the license is guilty of an offence under s. 43 (*g*) of the Act. **2 Bom. L.R. 663.** [*R.*, 8 Bom. L.R. 947].

(42)—*S. 43 (g)--Transfer of* ganja *from one shop to another.*—A transfer of *ganja* from one shop to another both shops belonging to the same licensee, does not constitute an offence under s. 43 (*g*) of the Bombay Abkari Act. **Rat. Un. Cr. C. 214=Cr. Rg. 1—10—1885.**

(43)—*S. 43 (h)—Finding of* ganja *plants—Inference of accused being its cultivator.*—The mere fact that three *ganja* plants were found growing in the accused's compound, without any proof of its having been cultivated by him, is not an offence under s. 43 (*h*) of the Bombay Abkari Act, as it could not be inferred therefrom that he cultivated them. The inference which might be justifiable, if a large number of plants were found, did not arise from the existence of three plants alone. **4 Bom. L.R. 98.**

(44)—*Ss. 43 to 46, 53—Servant's offences.—Licensee, if liable.*—The holder of a license under the Bombay Abkari Act can be held criminally liable for his servant's act, under s. 53, only when the act, if committed by the master, would have been a breach of the conditions of the license. *(Per Birdwood, J.).* The second para of s. 53 applies only to acts, which would be offences under ss. 43 to 46, if done by a person when actually in the employ or acting on behalf of a holder of a license, pass or permit. *(Per Parsons, J.).* **Rat. Un. Cr. C. 542=Cr. Rg. 17 of 1891.**

(45)—To a servant not being the holder of a license, s. 45, Act V of 1878 (Bombay Akbari) has no application. Under that section, the servant of the holder of a license is not made liable for any breach of the conditions of the license. Though s. 53 of the Act provides that "the holder of a license under the Act shall be responsible, as well as the actual offender, for any offence committed by any person in his employ or acting on his behalf under s. 43, 44, 45 or 46, as if he had himself committed the same, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence," yet s. 45 does not make "the actual offender," if he be the servant of a licensee, punishable, unless he is himself the holder of a license granted under the Act. **15 B. 45.** [*R.*, Rat. Un. Cr. C. 542, 2 Bom. L.R. 663.]

(46)—*S. 43 (g), 45 (c)—Conviction of licensee and gomasta.*—Where a licensee and his *gomasta* were both convicted under s. 45 (*c*) of the Bombay Abkari Act of selling a larger quantity of toddy than permitted by the rules, the High Court declined to interfere since the *gomasta* was punishable at least under s. 43 (*g*). **Rat. Un. Cr. C. 616=Cr. Rg. 38 of 1892.**

3.—Bombay Acts—continued.

Act V of 1878 (Abkari)—*continued.*

(47)—*Liability of servant holding a* Naukarnama *from his master.*—The servant of a country spirit farmer holding a *naukarnama* issued by his master and countersigned by the Collector, but not himself holding a license under the Act, is not liable to be convicted under s. 45 (*c*) of the Bombay Abkari Act, but can be convicted under s. 43 (*g*) of the Act. **Rat. Un. Cr. C. 671=Cr. Rg. 34 of 1893.**

(48)—*Ss. 43 (b), 47—Cocaine—Illegal possession—Removal—Transportation of cocaine.*—Accused No. 1, who was illegally in possession of cocaine, brought it from his room and gave it to accused No. 2, who stood opposite to his house. The latter carried it to some distance and delivered it to a Purdeshi. The two accused were, under these circumstances, charged with transporting cocaine, an offence punishable under s. 43 (*b*) of the Bombay Abkari Act, 1878. The Magistrate, however, acquitted them of the offence and convicted them of illegal possession of cocaine, under s. 47 of the Act. Against this order of acquittal, the Public Prosecutor appealed to the High Court. *Held*, that the Magistrate was right in declining to convict the accused under s. 43 (*b*) of the Bombay Abkari Act, 1878, inasmuch as the accused's offence consisted, not in moving the cocaine from one place to another, but in the unauthorised possession of it at any place in contravention of the Act. S. 43, cl. (*b*), seems to contemplate rather the case of a person who is in lawful possession of cocaine at one place, but is by law forbidden to remove it either partly or wholly to another place. **12 Bom. L.R. 124 Cr.**

(49)—*Ss. 43, 47—Illegal importation and possession of liquor, when distinct offences.*—A man who illegally imports liquor may keep it in his possession for some time after he imports it. The importation and possession in such a case would be distinct offences. But where the importation involves possession of liquor, the accused, if convicted already for possession, cannot again be convicted for the importation. **14 B. 583.**

(50)—*Ss. 43, 47, 53—Possession of liquor not accounted for.*—If the evidence had shown that the accused had manufactured toddy, or been in possession of a still, or had transported toddy from one place to another, then there would be ground to presume such manufacture or transport to be illegal, and the case would come under s. 43. The sole fact that the accused was in possession of liquor, in excess of that permitted by law, without being able to account for its possession, would only lead to a presumption that the possession was not legal, thereby constituting an offence under s. 47. **14 B. 93.**

(51)—*Ss. 43, 53—Possession of distilling materials.*—Mere possession without a license of utensils for distilling liquor is not an offence punishable under s. 43. It is only in cases

3.—Bombay Acts—continued.

Act V of 1878 (Abkari)—*continued.*

where such possession is not satisfactorily accounted for, that under s. 53, it is to be presumed, until the contrary is proved, that the accused person has committed an offence under s. 43. **9 B. 456.** [*F.*, L.B.R. (1872—1892), 597.]

(52)—*Ss. 43 (f), 53—Possession of mhowra flowers.*—Where the accused, a dealer in *mhowra* flowers was proved to have sold the flowers to a person who made an illegal use of them, *held*, that he was not liable to be punished under s. 43, Bombay Act V of 1878, if there was no proof that he had used those flowers for the purpose of manufacturing liquor. **9 B. 556.** [*F.*, Rat. Un. Cr. C. 510.]

(53)—*Ss. 43 (a), 54—Importation of liquor—Conviction.*—The accused was convicted of importing liquor from Goa into British India without a permit. The bottle and the liquor were ordered to be confiscated but no other sentence was passed. *Held*, that the Magistrate was bound to have passed some sentence, however small, after convicting of the offence. **Rat. Un. Cr. C. 291 = Cr. Rg. 33 of 1886.**

(54)—S. 43—*See* Nos. 7, 9, 10, 12, 16, 17, *supra.*

(55)—S. 44—*See* Nos. 44, 45, *supra.*

(56)—*Ss. 44 (a) and 45 (c)—Hydrometer, failure to keep, if an offence—Quantity of liquor—Accounts.*—The failure to keep a hydrometer is an offence under s. 44 (*a*) of the Bombay Abkari Act. The omission to keep the prescribed quantity of liquor and to keep accounts is not punishable under s. 45 (*c*) of the Act, since these are not acts committed in breach of the terms of a license but mere omissions. **Rat. Un. Cr. C. 617.** (Rat. Un. Cr. C. 284, *R*).

(57)—*S. 45—Delivery of juice by licensee to servant of farmer instead of farmer himself.*—A licensee was convicted of having broken the conditions of his license, which provided that the licensee should deliver the juice of the trees drawn to the farmer, inasmuch as he delivered the juice to a servant of the farmer who came for the juice on behalf of the farmer as his agent. *Held* that the conviction was bad, since, under the terms of the license, a delivery to the farmer in person was not essential, but that the latter could depute a servant or agent to take delivery of the juice drawn. **Rat. Un. Cr. C. 754 = Cr. Rg. 17 of 1895.**

(58)—*S. 45—Omission to open shops and to keep accounts—Penal Code, s. 33*—The accused, a licensee under the Bombay Abkari Act, omitted to open shops at certain places and to keep accounts; he was, thereupon, convicted of a breach of license under s. 45 (*c*) of the Act. *Held* that neither omission was an "act" in breach of any condition of the accused's license, s. 33, I.P.C., having no application to the case. **Rat. Un. Cr. C. 284 = Cr. Rg. 19 of 1886.** [*R.*, Rat. Un. Cr. C. 617].

3.—Bombay Acts—continued.

Act V of 1878 (Abkari)—*continued.*

(59)—*Omission to have minimum quantity of liquor.*—The accused was convicted of not keeping. according to his license, the minimum quantity of certain kinds of liquor. The District Magistrate was of opinion that the negligence of the accused amounted to an omission, and not an act, and that, under s. 45 (*c*) of the Bombay Abkari Act, an act, but not an illegal omission, was punishable. *Held* that the conviction should be upheld, and that an act failing to comply with the terms legally imposed is illegal in the affirmative as well as in the negative sense. **Rat. Un. Cr. C. 323 = Cr. Rg. 9 of 1887.**

(60)—The omission of the accused to keep the minimum quantity of liquor in his shop is not "an act in breach of any of the conditions of his license" within the meaning of s. 45 (*c*) of the Abkari Act. **16 B. 669.** [*Appl.*, 1 Bom. L.R. 164, 1 Bom. L.R. 690.]

(61)—*S. 45 (c), to whom applies.*—S. 45 (*c*) of the Bombay Abkari Act applies only to the "holder of a license" and not to a mere servant of the licensee. **Rat. Un. Cr. C. 214 = Cr. Rg. 6—8—1885.** [*R.*, Rat. Un. Cr. C. 396.]

(62)—*S. 45 (c)—Breaches of license by licensee's servants—Liability of licensee's agent and that of servant.*—An agent of a license-holder cannot be saddled, under s. 45 (*c*) of the Act, with responsibility for the acts of the licensee's servants. Only the license-holder is responsible for such breaches by his servants. **Rat. Un. Cr. C. 668 = Cr. Rg. 26 of 1893.**

(63)—Under s 45 (*c*) of the Bombay Abkari Act, the servants of the holder of a license granted under the Act cannot be made liable for breach of the conditions of the license. **Rat. Un. Cr. C. 416 = Cr. Rg. 83 of 1888.**

(64)—Under s. 45 (*c*), the servant of a license-holder cannot be made liable for breach of the conditions of the license. **Rat. Un. Cr. C. 406 = Cr. Rg. 69 of 1888.**

(65)—Under s. 45 (*c*), the servants of the holder of a license granted under the Act cannot be made liable for breach of the conditions of the license. **Rat. Un. Cr. C. 396 = Cr. Rg. 54 of 1888.**

(66)—*S. 45 (c)—Failure to open toddy shop, etc.*—The accused was convicted of a breach of the license under s. 45 (*c*) of the Bombay Abkari Act, in that he did not establish toddy shops at certain places within a certain time. *Held*, reversing the conviction, that the license, by not specifying any time for opening of shops, left the matter to subsequent adjustment between the Collector and the contractor who finally came to terms. **Rat. Un. Cr. C. 290 = Cr. Rg. 30 of 1886.** [*R.*, Rat. Un. Cr. C. 552.]

(67)—The omission by licensed liquor-contractors to open a shop, to affix a board and to keep accounts, does not come within the meaning of s. 45 (*c*) of the Bombay Abkari Act. **1 Bom. L.R. 164.**

3.—Bombay Acts—continued.

Act V of 1878 (Abkari)—*continued.*

(68)—The omission to keep true accounts is a breach of the conditions of the license. The receiving into the shops of liquor without keeping true accounts is an act in breach of such conditions. **6 Bom. L.R. 253.**

(69)—A licensee holding a license under Bombay Act V of 1878, who omits to pay the sum fixed by the Collector on account of the costs of the Government establishment on the first of the month as required by cl. 15, is not liable to punishment under s. 45 (*e*), as the omission does not amount to an "act in breach of the conditions of the license." **1 Bom. L.R. 690.**

(70)—*Breach of conditions of license—License Rule 20—Sale—Sub-letting of contract—Construction of rule.*—The accused agreed with the complainant to allow his name to be used as a contractor from Government, for two shops for the sale of country liquor. The funds for the contract proceeded from the complainant, and the accused was to be paid a certain sum by the complainant, for allowing his name to be used. The contract was knocked down to the accused; and the licenses were issued in his name. One of the conditions of the licenses was as follows: "The licensee shall not sell, transfer or sublet his right of sale of country spirits under this license, nor enter into any agreement in connection with the exercise of the said right, which, in the opinion of the Collector, is in the nature of sublease." The shops remained in the complainant's possession and were managed by him. On these facts, the accused was proceeded against under s. 45 (*c*) of the Act, for the breach of a condition in the license. It was contended on behalf of the accused that the right of sale conferred by the license had been obtained through him as a benamidar (and not from him as a person who had acquired that right for himself), and that, therefore, the offence charged had not been committed. *Held* negativing the contention, that, though, by supplying the necessary funds, a person, other than the licensee named in the license, might acquire a beneficial interest in the proceeds or profits of sales, he could not, by so supplying funds, acquire the right of sale through the licensee named—such right being conferred by virtue of the Act only upon the person named, and that the person named in the license could not set up as a defence that another person had acquired the right of sale through him as an agent or benamidar—instead of from him as the person who had that right in himself. **8 Bom. L.R. 990 = 5 Cr. L.J. 10.**

(71)—*Ss. 45 (c), 53—Breach of license by servant—Liability of master.*—The holder of a license for the sale of country liquor cannot be convicted of a breach of license, merely because his servant, a liquor shop-keeper, has given short measure to a customer, where it is proved that the licensee has taken all reasonable precautions such as reasonable men would use to

3.—Bombay Acts—continued.

Act V of 1878 (Abkari)—*continued.*

prevent the commission of such offences by his servants. **Rat. Un. Cr. C. 691 = Cr. Rg. 15 of 1894.**

(72)—S. 45—*See* Nos. 44, 45, 46, 47, *supra*, and No. 56, *infra*.

(73)—*S. 46 (a)—Mixing water.*—Mixing water with liquor is not an offence under s. 46 (*a*) of the Bombay Abkari Act. **Rat. Un. Cr. C. 597 = Cr. Rg. 16 of 1892.**

(74)—S. 46—*See* Nos. 44, 45, *supra*.

(75)—*S. 47—Possession of more than one gallon of liquor without permit.*—The accused was convicted of the offence of being in possession of more than a gallon of country liquor without a permit or pass from the Collector, under s. 47 of the Bombay Abkari Act. *Held* that the conviction was, on its face, unsustainable, as the section did not make the possession of more than one gallon of country liquor penal. **Rat. Un. Cr. C. 310 = Cr. Rg. 62 of 1886.**

(76)—*Casual presence in and charge of shop—Possession of more than prescribed quantity.*—Mere casual presence in and charge of a building containing liquor in illegal quantity does not constitute possession within the meaning of s. 47 of the Bombay Abkari Act. **Rat. Un. Cr. C. 436.**

(77)—Under s. 47 of the Bombay Abkari Act, the possession of 2 gallons and 2½ seers of *mhowra* liquor is illegal, in the absence of any license, permit, pass or special order, and the law does not allow the head of a family to exceed that limit, merely because he has a family of ten or twelve members, of whom five are adults. **Rat. Un. Cr. C. 292 = Cr. Rg. 34 of 1886.**

(78)—The offence of possessing more than a particular quantity of liquor within a certain local area or place, except under the authority of some license, permit or special order, obtained under Bombay Act V of 1878, is rendered punishable by that Act; and it is immaterial to consider whether the possession was illegal before the Act came into force. **Rat. Un. Cr. C. 144 = Cr. Rg. 7—8—1879.**

(79)—*Ss. 47, 9 and 11—Kaju liquor—Country liquor—Possession of the liquor—Mere possession of the liquor under the maximum limits is no offence.*—The mere possession of Kaju liquor, on which no duty has been paid, but which is under the quantity fixed by s. 17 of the Abkari Act, is not punishable under s. 47 of the Act. **10 Bom. L.R. 284 = 7 Cr. L.J. 307.**

(80)—S. 47—*See* Nos. 21, 48, 49, 50, *supra*.

(81)—*S. 53—Principle to be applied to cases under the Act*—Mens rea—*Master's liability for servant's defaults.*—The principle with regard to the Abkari Act, 1878, is that licenses to keep shops are only granted to persons of good personal character, and it is obvious that the object of so restricting the grant of licenses

3.—Bombay Acts—continued.

Act V of 1878 (Abkari)—*concluded.*

would be defeated, if the licensed person could, by delegating the control and management of the house to another person who was altogether unfit to keep it, free himself from responsibility for the manner in which the shop was conducted. *Mens rea* is not required where the acts prohibited by a statute are not criminal in any sense, but are prohibited in the public interest, under a penalty. This principle is substantially adopted in s. 53 of the Abkari Act, with the exception, that it is open to the license-holder, according to the section, to prove facts to show that he is not liable for his servant's defaults or acts. **10 Bom. L.R. 171 = 7 Cr. L.J. 191.**

(82)—*See* Nos. 44, 45, 50, 51, 52, 71, *supra.*

(83)—S. 54—*See* No. 53, *supra.*

(84)—*S. 55—Order of confiscation, when and by whom to be made.*—Under the provisions of the Bombay Abkari Act, s. 55, the Collector cannot make a valid order of confiscation before the expiration of one month from the date of seizure of the articles. **17 B. 154.**

(85)—A Magistrate is not competent to order confiscation under the Bombay Abkari Act, the Collector alone being invested with such power by s. 55 of the Act. **Rat. Un. Cr. C. 149 = Cr. Rg. 22—7—1880.**

(86)—*Ss. 56, 60—Land Revenue Code, Bom. Act V of 1879. s. 209—Conviction under s. 60 of former Act—Appellate Court convicting under latter Act—Validity of convictions.*—The accused was convicted by a second class Magistrate of the offence of breach of a license under the Bombay Abkari Act, and fined Rs. 10. In appeal, the first class Magistrate, under s. 60 of the Act and s. 209 of the Bombay Land Revenue Code, enhanced the fine to Rs. 100. *Held* that s. 60 of the Bombay Abkari Act did not apply. The accused was convicted by a Magistrate under s. 56 of the Act, and, in appeal, the first class Magistrate could not make any order under s. 209, Land Revenue Code. **Rat. Un. Cr. C. 254 = Cr. Rg. 14 of 1886.**

(87)—*S. 59—Reward—Apportionment of.*—Under the rule under s. 59 of the Bombay Abkari Act, a Magistrate is bound to name each person to whom a portion of the fine is to be given by way of reward. **Rat. Un. Cr. C. 482 = Cr. Rg. 46 of 1889.**

(88)—S. 60—*See* No. 86, *supra.*

(89)—S. 62—*See* No. 8, *supra.*

(90)—S. 64—*See* No. 19, *supra.*

(91)—S. 65—*See* No. 19, *supra.*

(92)—S. 66—*See* No. 19, *supra.*

(93)—S. 67—*See* No. 19, *supra.*

Act VII of 1878 (Cotton Frauds).

[REP., BOM. ACT I OF 1882].

—Ss. 6 and 14, Act VII of 1878 (Cotton Frauds, Bombay), effect of.—The effect of the new Cotton Frauds Act (Bombay), ss. 6 and 14, is to make possession of adulterated cotton liable to confiscation, punishable with fine, and it is immaterial where the adulteration takes place. **3 B. 384.**

3.—Bombay Acts—continued.

Act VII of 1878 (Cotton Frauds)—*concluded.*

Act V of 1879 (Land Revenue Code).

[REP. IN PART, BOM. ACT III OF 1886. REP. IN PART AND AMENDED—ACT XVI OF 1895; (LOCALLY), BOM. ACT I OF 1880, S. 39; (LOCALLY), BOM. ACT VI OF 1888, SS. 3 AND 33. AMENDED, BOM. ACT VII OF 1879, S. 2; BOM. ACT IV OF 1886. REP. (IN COORG), REG. I OF 1899. S. 85 AND PART OF S. 58 DECLARED NOT TO BE IN FORCE IN THE PANCH MAHALS, ACT VII OF 1885].

(1)—*Possession of liquor in greater quantity than prescribed.*—The Bombay Abkari Act renders a man punishable for the offence of possessing more than a particular quantity of liquor within a certain local area or place, except under the authority of some license, permit or special order, obtained under that Act. It is, therefore, immaterial to consider whether the possession in any case was illegal before the Act came into force. **Rat. Un. Cr. C. 144 = Cr. Rg. 7—8—1879.**

(2)—Ss. 12, 87—Distraint by Karkoon—Resistance—Proceedings of Lower Court—Presumption by High Court on review—*See* PENAL CODE, s. 183, Rat. Un. Cr. C. 325.

(3)—S. 37—*See* CRIMINAL TRESPASS, Rat. Un. Cr. C. 393 = Cr. Rg. 49 of 1888.

(4 and 5)—S. 87—*See* No. 2, *supra.*

(6)—*Ss. 125, 214, 215,—Rules 101 and 111 made under s. 214—Digging earth close to a boundary—Boundaries and boundary marks—Jurisdiction.*—Rule 101 of the Rules made by the Government of Bombay under s. 214, Land Revenue Code, providing that "the digging of earth close around an earthen boundary-mark for the purpose of repairing is prohibited, and a space of two cubits in breadth all round each such mark is to be left untouched, so as to prevent injury to the mark from water lodging in the cavities from which earth is taken for the repairs,"—is not such a rule as can legally be made under s. 214 (*g*) of the Code. It is not a rule "for the administration of survey settlement." Such a settlement is a settlement of the land revenue, and relates only to such matters as are referred to in Chap. VIII of the Code, and not to boundaries and boundary-marks. Boundaries and boundary-marks are dealt with in Chap. IX, and penalties for injuring boundary-marks are specially provided by s. 125 of the Code, which gives no jurisdiction to Magistrates. **13 B. 291.**

(7)—Ss. 141, 142—*See* PENAL CODE, ss. 379, 424, 1 Bom. L.R. 515.

(8)—S. 142—*See* No. 7, *supra.*

3.—Bombay Acts—continued.

Act V of 1879 (Land Revenue Code)—*contd.*

(9)—*S. 189—Inquiry for appointing Police Patel—Mamlatdar—Summons to attend—Penal Code, s. 174.*—S. 189 of the Bombay Land Revenue Code does not empower a Mamlatdar to summon any person to attend before a Deputy Collector who is making certain inquiries about the appointment of a Patel for an *inam* village. A failure to attend in obedience to such a summons is not an offence under s. 174 of the Penal Code. **Rat. Un. Cr. C. 488=Cr. Rg. 52 of 1889.** (5 B. H. C. Cr. 33, *R.*).

(10)—S. 209—*See* BOM. ACT V OF 1878, **ss. 56, 60,** Rat. Un. Cr. C. 254=Cr. Rg. 14 of 1886.

(11)—*S. 214—Removing stones with occupant's permission*—A person who has dug and removed stones from land in the possession of a person having occupancy rights therein under the Land Revenue Code with such person's permission, cannot be convicted under cl. (*d*) of Rule III framed under s. 214 of the Code. **Rat. Un. Cr. C. 531=Cr. Rg. 68 of 1890.**

(12)—*Rule III, cl. 1 (d)—Offences under the Rule—Jurisdiction—Bom. General Clauses Act (1886), s. 3 (13).*—An offence committed in contravention of Rule III, cl. 1, item (*d*) of the Rules framed under s. 214, Land Revenue Code, 1879, is triable, having regard to the provisions of s. 3 (13) of the Bom. General Clauses Act, by any person exercising Magisterial powers under the Code of Criminal Procedure. **Rat. Un. Cr. C. 681=Cr. Rg. 46 of 1893.** (8 B. 591, *overruled*).

(13)—An offence under Rule III, cl. 1, item (*d*) of the Rules under s. 214 of the Land Revenue Code is only triable by a Magistrate of the first class. **8 B. 591.** [*Diss.*, Rat. Un. Cr. C. 681.]

(14)—*S. 214, Rule III (b)—Cutting of trees from assessed occupied survey number.*—A person cutting a tree from an assessed occupied survey number cannot be punished under Rule III (*b*), framed under s. 214, of the Bombay Land Revenue Code. **4 Bom. L. R. 625.**

(15)—*S. 214, R. III, cl. 1—Trees—Question of right.*—There can be no conviction under cl. 1 of R. III made under s. 214 of the Land Revenue Code when there is no direct evidence as to the ownership of the trees being in the Government. The fact that the Government has asserted ownership in other trees in other parts of the village is not such evidence. **Rat. Un. Cr. C. 828=Cr. Rg. 71 of 1895.** (18 B. 670, *R.*)

(16)—S. 214—*See* No. 6, *supra*.

(17)—S. 215—*See* No. 6, *supra*.

(18)—*Rules 48 and 111, clause (2) (a)—Encroachment on public road.*—The accused encroached on part of a public road and enclosed it in his own field with an embankment and cultivated it; he was thereupon convicted of an offence under the Land Revenue Code s. 214, Rule 48, and sentenced to pay a fine of

3.—Bombay Acts—continued.

Act V of 1879 (Land Revenue Code)—*cld.*

Rs. 10 under Rule 111, clause 2 (*a*) framed under the same section. *Held* that, as the land encroached upon by the accused did not fall under the prohibition contained in Rule 48, the conviction was illegal. **1 Bom.L.R. 161.**

(19)—*Rules 103 (1) and 40, Breach of.*—Where a person removed stone from the earth for making lime, without the permission of the Revenue authorities, and was convicted under Rules 103 (1) and 40 of the Land Revenue Code. *Held*, reversing the conviction, that Rule 40 was permissive and merely conferred certain privileges on persons obtaining permission under it, and that failure to apply for such permission did not amount to a breach of the Rule. **9 Cr. L.J. 258=1 S.L.R. 16 Cr.**

(20)—*Rule III, cl. (2) (d)—Excavating foundation and building wall in village site without permission.*—Excavating, without permission, a foundation on the site of a village and building a wall upon it is not an offence under Rule III, cl. (2) (*d*), of the Rules under the Land Revenue Code. The act of unauthorised occupation can be taken notice of by the Revenue authorities and not by a Magistrate's Court. **Rat. Un. Cr. C. 200=Cr. Rg. 8—5—1884.**

Act VII of 1879 (Irrigation).

[REP. IN PART, ACT XVI OF 1895; BOM. ACT III OF 1880; BOM. ACT III OF 1886.]

—S. 61, cl. 10—Conviction—Court's duty to specify the sub-section—Practice.—Under cl. 10 of s. 61 of the Bombay Irrigation Act, a person cannot be convicted, unless it is found that (1) he was responsible for the maintenance of a water course or used of water course and (2) that there were certain proper precautions which should have been taken by him for preventing the waste of water, and that he neglected to take these precautions. *Held*, further, that, in all convictions under a section of an Act which contains several sub-sections, the sub-section under which the accused is convicted must be stated in it, and it must be shown clearly how the act or omission complained of is an offence. **9 Cr.L.J. 271=1 S.L.R. 32 (Cr.).**

***Act XVII of 1879 (Dekkhan Agriculturists' Relief).**

[REP. IN PART, ACT XII OF 1891; ACT XVI OF 1895. REP. IN PART AND AMENDED—ACT XXIII OF 1881; ACT XXII OF 1882; ACT XXIII OF 1886; ACT VI OF 1895.]

—S. 64—Person to grant receipt.—Under s. 64 of the Dekkhan Agriculturists' Relief Act, the person to whom the payment is made is the person who is to tender the receipt. A clerk of a firm, to whom payment is made, is authorised to grant such receipt. **Rat. Un. Cr. C. 903=Cr. Rg. 12 of 1897.**

See ACT III OF 1877, s. 82 (*d*), Rat. Un. Cr. C. 761.

* This local Act was passed by the Imperial Legislature.

***3.—Bombay Acts*—continued.**

Act II of 1884 (District Municipalities Amendment).

[REP., BOM. ACT III OF 1901.]

(1)—S. 33—*See* BOM. ACT VI OF 1873, 3 Bom. L.R. 842, Rat. Un. Cr. C. 797.

(2)—*S. 33 (b)—Act III of 1901, s. 48 (b) (iii)—Scope of section.*—A bye-law framed by a District Municipality provided that "Every place used for drying fish or fins shall be surrounded by a wall not less than six feet in height or with a fence made of bamboo mats or double cadjan leaves." *Held*, that the bye-law was *ultra vires* of the powers conferred by s. 33 (*b*) of Bombay Act, II of 1884, and s. 48 (*b*) (iii) of Bombay Act, III of 1901, as both these sections extended only to the regulation of business within the place used and gave no authority to require external structures. **4 Bom. L.R. 585.**

(3)—S. 36—*See* BOM. ACT VI OF 1873, Rat. Un. Cr. C. 615.

(4)—S. 49—*See* BOM. ACT VI OF 1873, ss. 82, 84, Rat. Un. Cr. C. 420=Cr. Rg. 86 of 1888.

(5)—*S. 61—Appearance of accused by her father-in-law—Crim. Pro. Code (1882), ss. 4 and 205.*—A woman was charged with the offence of fouling water under s. 61 of the Bombay District Municipal Act. She being unwell, her father-in-law appeared in Court on her behalf and the trying Magistrate proceeded with the case and convicted her. *Held*, that the father-in-law of the accused might probably have been received by the trying Magistrate as a person appointed by her to act in the proceedings before him consistently with s. 4 of the Crim. Pro. Code. **Rat. Un. Cr. C. 206=Cr. Rg. 26—8—1884.**

See BOM. ACT VI OF 1873, Rat. Un. Cr. C. 694.

See STREET, 20 B. 83.

Act III of 1886 (General Clauses).

[REP. IN PART, (LOCALLY), BOM. ACT IV OF 1890. REP. IN PART AND AMENDED, ACT XVI OF 1895; BOM. ACT I OF 1891. AMENDED, BOM. ACT I OF 1896.]

(1)—*Ss. 6, 43 (a), (b)—Importing of bhang into British territory—Receipt in a Railway Station in Native State—No cession of territory to Government—Offence.*—The applicant was charged with having imported *bhang* into the Presidency of Bombay, inasmuch as a parcel containing *bhang* and bearing his name and address was received at a Railway Station in a Native State. It appeared that the criminal jurisdiction along the line of the Railway was ceded to the Government, but there had been no cessation of territory. *Held*, that no offence was committed unless the importation was into the Presidency of Bombay, that is, into territories which formed part of British India, and, if the land upon which the offence was alleged to have been committed had not actually been ceded, it could not form part of British India. **6 Bom. L.R. 873.**

***3.—Bombay Acts*—continued.**

Act III of 1886 (General Clauses)—*concluded.*

(2)—S. 8—*See* BOM. ACT VI OF 1873, s. 84, 3 Bom. L.R. 584.

(3)—S. 12—*See* BOM. ACT VIII OF 1867, s. 15, 6 Bom. L.R. 357.

(4)—S. 43 (*a*) (*b*)—*See* No. 1, *supra*.

Act IV of 1887 (Prevention of Gambling).

[REP. IN PART, ACT XVI OF 1895. AMENDED, BOM. ACT I OF 1890.]

(1)—*Amending Act I of 1890—Gaming includes wagering.*—The word 'gaming' in the Act has now, under the provisions of Bombay Act I of 1890, to be read as including wagering. **4 Bom. L.R. 297.**

(2)—*S. 3—Instrument of gaming—Paper for registering wager.*—A single page of paper used for registering wagers is an instrument of gambling within the meaning of s. 3 of Act IV of 1887. **29 B. 264=6 Bom. L.R. 1091.**

(3)—*S. 3—Common gaming house—Evidence.*—In the absence of evidence that a house is used for profit or gain, it cannot be held to be a common gaming house as defined in Bombay Act IV of 1887, s. 3. **Rat. Un. Cr. C. 840=Cr. Rg. 9 of 1896.**

(4)—*Ss. 3 and 4—Rain-betting.*—The accused kept a certain shed. The people frequented the shed to bet on the quantity of rain which may fall in a given time. The instruments kept there and used for such purpose were a rain gauge and a gutter. The rainfall used to be registered by the accused, who, after deducting a commission on each bet, paid over the money to the winner. *Held* that, although the place was used as a common betting house and the instruments were those of betting, there was no gaming, as there was no contest, no players, and no participation by the players, save as onlookers; and the place was not a common gaming house. The accused was not, therefore, guilty of an offence under s. 4 (*b*) and (*c*) of Bombay Act IV of 1887. It would be an undue straining of the word "gaming" to hold that it covered "rain-betting." **13 B. 681.** [*R.*, 16 B. 283; *D.*, 4 Bom. L.R. 297, 31 C. 542=8 C.W.N. 458].

(5)—*Ss. 3, 4, 5—Betting on figures of auction at Calcutta—Books of accounts for registering bets—Telegrams announcing winning number—Instruments of gaming.*—Wagering was carried on the figures which denoted the prices in Calcutta of the auction-sales of opium chests. The wagers were recorded in books, the different pages of which had the various units at the top of each page, and the betters were invited to inscribe their names under the various units, stating the amounts of their wagers. The winning numbers were communicated by means of telegrams from Calcutta. *Held*, that the books and telegrams were "instruments of gaming" within the meaning of s. 3 and that the persons dealing with these were guilty under s. 4. *Held*, also, that this particular wagering was not a

3.—Bombay Acts—continued.

Act IV of 1887 (Prevention of Gambling) —*continued.*

'game' within the meaning of s. 5, and that, therefore, the presumption allowed by s. 7 of the Act was not applicable and that the accused could not be convicted under s. 5 of the Act. **26 B. 533=4 Bom.L. R. 271.** [*R.*, 5 Bom. L.R. 129, 6 Bom. L.R. 249, 6 Bom. L.R. 1091=29 B. 264.]

(6)—*S. 4—Instrument of gaming*—Ank satta *book—Inference.*—During the course of a search instituted under s. 6 of the Prevention of Gambling Act, an *ank satta* book was found in the house of the accused. *Held*, that the book was an "instrument of gaming," and that the book having been found in the house of the accused, his house was a common gaming house. **5 Bom. L. R. 129.** [*F.*, 5 Bom. L.R. 1047; *R.*, 6 Bom. L.R. 249; *R.*, 6 Bom. L.R. 1091=29 B. 264.]

(7)—In execution of a warrant issued under s. 6 of Act IV of 1887, an *ank satta* book was found in the house of the accused. It appeared that there was betting in the house and that the bets were recorded in the book in his handwriting. It was also shown that he got one per cent. on the bets; and he himself admitted that the book was used for betting. *Held*, (1) that these circumstances put together justified the conclusion that the book was an instrument of gaming kept and used in the house for the purpose of profit by the accused, within the meaning of s. 4 (*a*); (2) that direct evidence was not necessary to prove the use of the book in the house; but such use might be inferred from the facts and surrounding circumstances found to exist. **5 Bom. L.R. 1047.**

(8)—*Place where* Jota *business is carried on —Common gaming house.*—A person keeping for his profit a place where brokers and others carry on *Jota* business, *i.e.*, wagering from day to day on the total sale of cotton bales in Liverpool, and where the wagering books are kept or used, is guilty of keeping a common gaming house and is liable to be punished under s. 4 of Act IV of 1887. **6 Bom. L.R. 249.** (26 B. 553=4 Bom. L.R. 287 and 5 Bom. L.R. 129, *R.*). [*R.*, 6 Bom. L.R. 1091=29 B. 264].

(9)—*Ss. 4 and 5—Imprisonment in default of payment of fine.*—In awarding imprisonment in default of payment of fine under ss. 4 and 5 of Bom. Act IV of 1887, the Court should keep in view the provisions of s. 65, I.P.C. **2 Bom. L.R. 1081.**

(10)—*Common gaming house.*—The accused opened a shop wherein he kept a table with a cover on it. The cover had on it numbers 6 to 36. They were not consecutive numbers. On each number was placed an article such as a clock, a watch, etc., of the values ranging from Rs. 1-8-0 to Rs. 15. Any customer who paid Rs. 2 was given by the accused six dice. The dice had six sides, each of which bore marks ranging from one to six. The customer was

3.—Bombay Acts—continued.

Act IV of 1887 (Prevention of Gambling) —*continued.*

allowed one throw of the dice, and the number of points thus obtained was to entitle him to obtain the article placed on the corresponding number on the cloth. *Held* that the shop was a common gaming house, and the persons keeping the house and playing therein were punishable under ss. 4 and 5 of Bom. Act IV of 1887. **4 Bom. L.R. 297.**

(11)—*See* CRIM. PRO. CODE (1898), s. 4 (*h*), 4 Bom. L.R. 271 = 26 B. 533.

(12)—*Ss. 4, 5, 6, 7—Keeping a common gaming house—Gaming in a common gaming-house—Power to order search and arrest—Presumption under s. 7 of the Act—Criminal Procedure Code (Act V of 1898), ss. 65, 105.*—The presumption under s. 7 of the Bombay Prevention of Gambling Act, 1887, only arises where there has been an arrest and a search under s. 6 of the Act. Under s. 6 of the Act, as a first-class Magistrate has power to give authority under a special warrant, to a Police officer of the class designated in the section, to make the arrest and the search, the legislature must be presumed to have intended that the Magistrate, First Class, should have the authority to make the arrest and the search himself, if necessary. For, when the legislature empowers an officer to delegate an authority to do a certain act to another person, it necessarily implies that the original authority to do such act is fully and completely in the officer himself, but that it is necessary for the exigencies of business that it should be done in the majority of cases by persons acting under authority derived from him. Where the Bombay Prevention of Gambling Act has provided for the manner or place of investigating or inquiring into any offence under it, its provisions must prevail, and the Criminal Procedure Code must give way. Accordingly, no provision of the Code as to the authority empowered to issue a warrant for arrest or search, or the persons to whom and the conditions under which such warrant may be issued, can apply for the purposes of s. 7 of the Gambling Act. The authority, the persons and the conditions must be respectively those specifically mentioned in s. 6 of the Act and no other. But the special provision in s. 6 of the Bombay Act would still be subject to the general provisions of ss. 65 and 105 of the Code. When a Magistrate, First Class, or other officer mentioned in s. 6 of the Act, himself acts under its provisions, instead of acting through an officer of the particular class prescribed therein under a special warrant, he must act strictly in compliance with those provisions. The first condition necessary to make an arrest and seizure under the section legal, so as to bring in the operation of s. 7, is that, where the Magistrate is acting on information, there must be a complaint made before him *on oath* to set him in motion. When a Magistrate, First Class, or other officer mentioned in s. 6 himself does the act specified in cl. 3 of the section, instead of issu-

***3.—Bombay Acts*—continued.**

Act IV of 1887 (Prevention of Gambling) —*continued.*

ing a special warrant, he must give evidence, because he supplies the place of the warrant and the warrant is necessary part of the evidence for the prosecution. Where a Magistrate, First Class, himself makes an arrest and seizure under s. 6 of the Act, he must himself "enter" the "house, room or place," with, of course, the assistance of such persons as may be found necessary. S. 6 of the Act must be construed strictly, because s. 7 gives to an arrest and seizure under it an operation different from that of the general presumption of innocence in criminal cases. **9 Bom. L.R. 695=6 Cr. L.J. 60=31 B. 438.**

(13)—*Ss. 4, 5, 7—Common gaming house.*—In order to establish an offence under s. 4 of keeping a "common gaming house," it is necessary to show, in the first place, that the person charged is the owner, or occupier or a person "having the use" of the place in question. It is not sufficient to show that the accused used the place for the purpose of gambling there. **29 B. 226=7 Bom. L.R. 16=2 Cr. L.J. 26.** [*R.*, 167 P.L.R. 1905].

(14)—*Ss. 4, 6—Common gaming house—When Police officer can arrest under the Act—Conviction under section, when sustainable.*—A conviction under s. 4 will be sustained, only if it be shown that the house in which the accused were found was a common gaming house. **4 Bom. L.R. 946.**

(15)—*Ss. 4, 12, object of—Gambling in* Machwa *hired by accused in harbour for the purpose.*—Gambling in a *Machwa*, which was chartered by the accused and was used by them for the purpose in the Bombay Harbour, could not be said to be gambling in a public place, street, or thoroughfare, within the meaning of s. 12, Bombay Gambling Act. In s. 4, Bombay Gambling Act, the mischief aimed at is the practice of individuals making a profit by providing a spot of their own selection, known as a place where gambling is to be carried on, and making a livelihood by attracting people to a place which they would not otherwise frequent. In s. 12 of the Act, however, the offence is, not that the individual members are making a profit at all, but simply that they are carrying on their gambling with such publicity that the ordinary passer-by cannot well avoid seeing it and being enticed—if his inclinations lie that way—to join in or follow the bad example openly placed in his way. In the one case, comparative privacy for profit, in the other, bad public example and accessibility to the public, would seem to constitute the gravamen of the offence. S. 12 aims at gambling in a public place or thoroughfare and ordinarily applies to persons sitting on or near a road or public place with no intervening obstruction to the public view where there is voluntary publicity **7 Bom. L.R. 333=29 B. 386=2 Cr. L.J. 252.** (17 A. 166, *R.*) [*R.*, 30 B. 348=8 Bom. L.R. 22=2 Cr.L.J. 216].

***3.—Bombay Acts*—continued.**

Act IV of 1887 (Prevention of Gambling) —*continued.*

(16)—S. 4—*See* Nos. 4, 5, *supra*.

(17)—*S. 5—Common gaming house.*—S. 5 of Bom. Act IV of 1887 refers to persons found in a common gaming house; it does not refer to persons who are in the habit of assembling in various places for the sole purpose of gambling. **Rat. Un. Cr. C. 763=Cr. Rg. 25 of 1895.**

(17-*a*)—S. 5—*See* Nos. 5, 9, 10, 11, 12, 13, *supra*.

(18)—*S. 6—Arrest by Police officers.*—A Police officer cannot arrest a person, under the Act, unless he holds a warrant under s. 6 of the Act. **4 Bom. L.R. 946.**

(19)—*S. 6—Endorsement of warrant by an officer named therein to another, whether valid —Authority under warrant cannot be delegated.*—Where the officer, to whom a warrant was issued under s. 6 of the Act, endorsed it to another officer, *held*, that the warrant should specify the officer to whom the authority is given and that he alone can execute the warrant. A "special warrant" is a warrant, which specially authorises an officer to do a particular act or acts. **3 S.L.R. 56=2 Ind. Cas. 371.**

(20)—*S. 6—Inquiry by Magistrate—Issue of warrant—whether informant should have knowledge—Money found on person of accused—Confiscation.*—S. 6 of the Bombay Gambling Act does not make it obligatory on a Magistrate, before issuing a warrant, to make inquiry after receiving information. This section only enjoins the Magistrate to make "such enquiry as he may think necessary," and the words do not mean that he is to make an inquiry, even though he may not think it necessary to do so. This section does not require that the informant should have knowledge; it is sufficient if the informant testifies to a reasonable suspicion that any house, room or place is used as a common gaming house. On the conviction of the accused, the Magistrate cannot order the money on their person to be confiscated. **1 S.L.R. 64 Cr.=8 Cr. L.J. 182.**

(21)—*S. 6—Search—Police officer.*—A Police officer of a lower rank than a Chief Constable cannot, under s. 6 of Bombay Act IV of 1887, enter a house with a search warrant. **Rat. Un. Cr. C. 825=Cr. Rg. 68 of 1895.**

(22)—*S. 6—Warrant—When valid.*—Where a warrant, issued by the Commissioner of Police under s. 6 of the Bombay Prevention of Gambling Act, contains a sufficiently accurate description of the house or room to be searched, it is not illegal, merely because it does not correctly specify the locality of the house or room to be searched. **6 Bom. L.R. 52.**

(23)—*Ss. 4, 5, 6, 7—Presumption under s. 7—Warrant under s. 6—Delay in execution of warrant—Previous conviction—Proof of—Crim.*

3.—Bombay Acts—continued.

Act IV of 1887 (Prevention of Gambling) —*continued.*

Pro. Code (Act V of 1898), s. 342—Evidence Act (I of 1872), ss. 10, 54.—Held by Chandavarkar and Aston, JJ., (Jacob, J., *dissenting*) that (1) the presumption created by s. 7 of the Prevention of Gambling Act (Bombay Act IV of 1887) can be applied to cases falling under s. 5 as well as to those falling under s. 4 of the Act. (2) Where a long interval elapses between the issue of a warrant under s. 6 of the Prevention of Gambling Act, 1887, and its execution, the applicability of s. 7 of the Act is not by that alone taken away. (3) In a trial for the offence of keeping a common gaming house under s. 4 of the Prevention of Gambling Act, 1887, evidence that the accused had been previously convicted of the same offence is admissible to show guilty knowledge or intention. *Held*, by Jacob, J., *dissenting*, (1) that the presumption created by s. 7 of the Prevention of Gambling Act, 1887, is sufficient for the purposes of s. 5. It is also sufficient for the purposes of s. 4 (*a*) so far as regards the fact that the house, *etc.*, is so used, but it is not alone sufficient for the purpose of showing that the house was so kept or used by any specified person; (2) that in a trial for an offence under s. 4 (*a*) of the Prevention of Gambling Act, 1887, the evidence that he was previously convicted of a similar offence cannot be let in either under s. 54 or s. 11 of the Evidence Act, 1872. *Per* Aston, J:—"It is open to an accused to ask the Court to treat what the Legislature declares in s. 7 of the Prevention of Gambling Act, 1887, to be incriminating 'evidence' to be reduced in weight by any unreasonable delay which may take place between the issue of a warrant under s. 6 and its execution." "It is not competent to a Magistrate to ask an accused, under s. 342 of the Cr. P.C., 1898, before his conviction, about the previous conviction, either with a view to take it into consideration for the purposes of conviction or with a view to dispense with formal evidence as to the alleged previous conviction and as to identity of the accused, in the event of conviction." **5 Bom. L.R. 805 =28 B. 129.**

(24)—*Ss. 6, 7—Presumption under s. 7, dependent upon proper warrant under s. 6—Defence, duty of.*—Where the conviction was based upon the fact that instruments of gambling were found on the premises, such fact being treated as evidence that the premises were used as a common gaming house under the special provisions of s. 7, but the sworn complaint had not been put in, except that the Police Inspector had stated that the warrant under s. 6 was issued on information given on oath to the Magistrate, *held*, that the mere assertion of the Police Inspector that information was given on oath to the Magistrate granting the warrant, was not sufficient material for the trying Magistrate to come to the conclusion that the warrant was properly issued under s. 6, and to apply the provisions of s. 7 to the case. The

3.—Bombay Acts—continued.

Act IV of 1887 (Prevention of Gambling) —*continued.*

mere finding of instruments of gambling in the house entered under the warrant is not proof that it was used as a common gaming house. **3 S.L.R. 78.**

(25)—*Ss. 6 and 7—Validity of warrant disputed—Proof.—Held*, that before any presumptions of guilt can be drawn against the accused under s. 7 of the Gambling Act, it is incumbent on the trying Magistrate to be satisfied that the warrant issued by the Police Officer under s. 6 of the Act was a valid one. *And* where the Magistrate had merely referred to an uncertified copy of the statement made by the informer, without calling for further proof, *held*, that he had no sufficient materials to hold that the warrant was a valid one. **9 Cr. L.J. 267=1 S.L.R. 27 Cr.**

(26)—*Ss. 6, 7 and 11—Warrant—Further inquiry by Magistrate before issuing one—Presumption under s. 7, when will arise—Duty of Magistrate—Motives of informant, relevancy of.*—S. 6 of the Bombay Gambling Act does not make it obligatory on a Magistrate to make, before issuing a warrant, further inquiry after a complaint was made to him if he thinks it not necessary to do so. The presumption under s. 7 will not arise, unless it is shown that the warrant was issued under the provisions of s. 6, and, therefore, in every case it is necessary that the Magistrate should exhibit and bring on the record the complaint on oath and the warrant. The motives of the informant of an offence under the Bombay Gambling Act are altogether irrelevant, and s. 11 of the Act shows that the Legislature recognised that the informant might be actuated only by the hope of reward. **1 S.L.R. 67 Cr.=8 Cr. L.J. 185.**

(27)—S. 6—*See* Nos. 12, 14, *supra.*

(28)—*S. 7—Onus of proof—Construction of Act.*—Bombay Act IV of 1887 must be strictly construed, as s. 7 departs from the ordinary rules of evidence and places the burden of proof on the accused. **Rat. Un. Cr. C. 325=Cr. Rg. 68 of 1895.**

(29)—*S. 7—Common gaming house—Presumption.*—Where 13 persons were found in a room in the upper story of a house, sitting in a circle gambling with dice, and having a quantity of *cowries* and money before them, *held*, that the above facts would be evidence under s. 7 of Bombay Act IV of 1887, until the contrary was proved, that the room was used as a common gaming house and that the persons found therein were then present for purpose of gaming. **22 B. 745.**

(30)—*S. 7—Documents not formally exhibited, though in possession of Court—Duty of Court.*—Where both the complaint made under s. 6 and the warrant issued thereon are actually on the file of the proceedings, if they are not formally exhibited and put on the record as evidence, the Magistrate should, in the exercise

3.—Bombay Acts—continued.

Act IV of 1887 (Prevention of Gambling) —*continued.*

of a wise discretion, before the close of the prosecution case, draw the attention of the prosecution to the fact that the documents have not been exhibited, and ascertain whether or not they are to be regarded as having been produced as evidence for the prosecution under s. 244, Cr. P.C. **3 S.L.R. 84.**

(31)—*S. 7—Search warrant—Presumption, nature of and when it arises.*—Where a search warrant has been issued under the provisions of s. 7, it is for the accused to prove that the house was not a common gaming house and that the articles found therein were not there for the purpose of gaming. **4 Bom. L.R. 297.**

(32)—Where the conviction was based upon the fact that instruments of gaming were found on the premises, *held*, that the presumption under s. 7 was rebuttable, and was rebutted in this case by the fact that the warrant for search was issued, on the sworn information of an avowed gambler, that the accused all belonged to the same caste, and were, at the time of search, preparing tea, that cricketting things were found, as well as a money box with a little cash, and that the accused alleged that the premises were used by them as a club. **3 S.L.R. 80.**

(33)—A Magistrate issued a warrant under the Act to a *Mukhtiarkar* to arrest the appellant. *Held*, as the warrant was not issued to a Police officer, no presumption under s. 7 of the Gambling Act arises, and that the prosecution must prove that the house in question is a common gaming house. **2 S.L.R. 40 Cr.=10 Cr. L.J. 205.**

(34)—A bagatelle board and billiard balls are capable of being used both for games of skill and games of chance, and no presumption can be drawn under s. 7 of the Prevention of Gambling Act. **Rat. Un. Cr. C. 923=Cr. Rg. 28 of 1897.**

(35)—S. 7—*See* Nos. 12, 13, 23, 24, 25, 26, *supra.*

(36)—*S. 8—Seizure of money found on person in gambling house.*—The power of seizing money, under s. 8 of Bombay Act IV of 1887, does not extend to that found on the persons of those who may be at the time in the gambling house. **26 B. 641=4 Bom. L.R. 427.** [*F.*, 1 S.L.R. 64 Cr.=8 Cr. L.J. 182].

(37)—S. 11—*See* No. 26, *supra.*

(38)—*S. 12—Conviction—Sentence.*—Where a person is convicted of an offence under s. 12, Prevention of Gambling Act, he can be sentenced to pay a fine or to undergo imprisonment, but not to both. **Rat. Un. Cr. C. 686=Cr. Rg. 5 of 1894.**

(39)—*S. 12—Public place, street or thoroughfare—Gambling in a second-class compartment in a special Race Express running through—*

3.—Bombay Acts—continued.

Act IV of 1887 (Prevention of Gambling) —*concluded.*

Accused found gambling at the Reversing Station, where the train stopped for engine purposes—Public place—Interpretation.—The word "place" in s. 12 of the Act is qualified by the word "public" and having regard to its context and its position in that context, it must mean a place of the same general character as a "road or thoroughfare," else it was pointless to use the words "street or thoroughfare" as they are there used. A railway carriage forming part of a through special train is not a public place within the meaning of s. 12 of the Act. *Per* JENKINS, C.J.—"I would be slow to place on the section (s. 12) an interpretation that would curtail its legitimate scope, but I am unable to regard the railway carriage, in which the accused were, as possessing such characteristics of, or bearing such a resemblance to, a street or thoroughfare as to justify us in holding that it was a public place within the meaning of s. 12." *Per* RUSSELL, J.—"I am of opinion that to call or describe either the Railway line at the spot in question (*i.e.*, at the Reversing Station, where the train stopped for engine purposes only and where the public would not have any right, without the permission of the Railway Company, to be on the line at all) or the carriage (in a special train, which took no passengers between the two termini of the journey) in which the accused were playing, as coming within any of the terms 'public street, place or thoroughfare' (in s. 12 of the Act) would be to place a wrong interpretation upon those words." **8 Bom. L.R. 22=3 Cr. L.J. 216=30 B. 348.**

(40)—S. 12—*See* No. 15, *supra.*

See BOM. ACT I OF 1890, s. 12, 16 B. 283, F.B.

Act III of 1888 (City of Bombay Municipality).

[REP. IN PART, ACT II OF 1901; BOM. ACT I OF 1897. REP IN PART AND AMENDED—ACT XVI OF 1895; BOM. ACT IV OF 1888. AMENDED, BOM. ACT I OF 1894, BOM. ACT II OF 1899, SS. 5 AND 6; BOM. ACT. II OF 1900; BOM. ACT II OF 1901. SUPPLEMENTED, ACT XII OF 1888; ACT II OF 1889; BOM. ACT V OF 1890; BOM. ACT I OF 1898; BOM. ACT II OF 1899].

(1)—*S. 3, cl. (w)—Street—Passage kept open having houses on both sides of it.*—The owner of a large piece of land divided it into several small building sites which were sold to different persons. These sites were ranged on either side of two proposed roads, which ran through the land and which touched a high road at the one end and a dead wall on the other. Each of the purchasers entered into a covenant with the owner, whereby he agreed to prepare and keep free, for passage, so much of the road as lay in front of his site. Under these circumstances, the question arose whether the proposed road fell within the meaning of the term "street" as used in the Act. *Held*, that the proposed

3.—Bombay Acts—continued.

Act III of 1888 (City of Bombay Municipality)—*continued.*

road would constitute a "street" within the meaning of the Act. **8 Bom. L.R. 457=4 Cr. L.J. 23=30 B. 558.**

(2)—*Ss. 3 (10), 61 (b)—Public street—Stopping of rat-holes and re-setting of stones.*—The stopping up of rat-holes and putting stones right by the Health Department of the Municipality is no proof of repair within the intent of the definition of "public street" in s. 3 (10) of the City of Bombay Municipal Act, but comes more appropriately under s. 61 (*d*) of the Act, the Corporation having to make many sanitary provisions and generally the abatement of all nuisances. **Rat. Un. Cr. C. 802=Cr. Rg. 58 of 1895.**

(3)—*S. 24—"City," meaning of.*—In this section, "city" is not equivalent to the City of Bombay or the whole area to which the Municipal Act applies. **7 Bom. L.R. 726=30 B. 126=2 Cr. L.J. 604.** [*R.*, 9 Bom. L.R. 1321].

(4)—S. 61 (*d*)—*See* No. 2, *supra.*

(5)—*Ss. 68, 231, 471, 517—Municipal offence—Competency to complain.*—The Municipal Commissioner is the only person empowered under the City of Bombay Municipal Act, 1888, to take proceedings against any person who is charged with any offence against the Act. He has powers under s. 68 to delegate his functions under s. 517 (*a*) to any Municipal Officer by writing in this behalf and then such person can take proceedings, but no one else can. **Rat. Un. Cr. C. 987=Cr. Rg. 45 of 1898.**

(6 and 7)—*Ss. 231, 471—Failure to comply with notice to construct drain—Limitation—Protest against notice and reply thereto—Scope of s. 231.*—The accused was convicted of an offence punishable under s. 471 of Act III of 1888. *i.e.*, of failing to comply with the requisition of the Municipal Commissioner under s. 231, asking the accused to construct an open drain from his premises and connect it with the Municipal drain. The notice directed the accused to construct the drain in a particular part of his house and close to a particular wall thereof. The accused protested against the notice and the Municipal Commissioner replied that he would make enquiries. Finally, the Commissioner, seeing no reason to cancel the notice issued another notice asking the accused to carry out the work mentioned in the first notice; the accused's failure to comply with this notice resulted in the conviction in question. *Held* (1) that the complaint was not barred, the combined effect of the protest on the part of the accused and the reply on the part of the Commissioner, stating that he would make further enquiries, being to keep the first notice in abeyance pending further enquiries, and it being competent to the Commissioner, when the result of the enquiries was adverse to the accused, to start proceedings against him and issue a fresh notice; time, therefore, began to run only from the second notice; (2) that it was not competent to the Commissioner, under s. 231 (*a*), to direct the accused to construct a drain so as to adjoin any particular part or wall of his premises. Cl. (*a*) of s. 231 of the Act merely gives the Commissioner power to require that a drain should be made "of such material, size and description, and laid at such level and with such fall and outlet as may appear to the Commissioner necessary, emptying into such Municipal drain or place aforesaid." There is nothing in the language of the section authorising the Commissioner to direct that a drain should be made so as to adjoin any particular part or wall of the premises. The requisition was so far *ultra vires* of the Commissioner, and the notice was illegal. **29 B. 35=6 Bom. L.R. 667.**

(8)—S. 231—*See* No. 5, *supra.*

(9 and 10)—*S. 248—Liability of fazendar.*—*Per Jardine, J.*:—The word "owner" in s. 3 of Bombay Act, III of 1888, does not primarily include the owner in fee entitled to ground-rent or quit-rent, where there is a lessee or other person in beneficial occupation actually getting the rent or capable of getting it, if he chooses to let the premises. Therefore a *fazendar*, who owns the land on which a house is built, is not the person liable, as the owner of the premises, to provide the privy accommodation, the beneficial owner of the house built on the *fazendar's* land being the owner within the meaning of the statutable provision. *Per Ranade, J.*—The decision of the question depends not so much upon the proper construction of the word "owner" by itself, but on the words "owner of such premises" used in s. 248 of the Municipal Act. If the word "owner" stood by itself, it might, as defined in cl. (*m*) of s. 3, apply equally to the *fazendar* who owns the land as to the owners of the huts built on it, for, he receives the rent of his land just as much as the owners of the huts might receive the rent of the huts, if they let them to others and did not occupy them. Ss. 247, 249, 250, 251, seem to confine and narrow the more general meaning of the word "premises" used in s. 248 to buildings, *i.e.*, the huts on the land in dispute. The words "such premises" must, therefore, be construed to refer to the huts for whose residents privy accommodation is necessary. A *fazendar* is not, therefore, liable under s. 248. **20 B. 617=Cr. Rg. 32 of 1895.**

(11)—*S. 249—Construction.*—The words "are employed" in s. 249 of the Bombay Municipal Act refer to employment of any kind or for any length of time. **23 B. 528=1 Bom. L.R. 12.**

(12)—*S. 249—Theatre—Place of public resort—Latrine accommodation.*—A theatre is a place of public resort within the meaning of s. 249 of the Act. **8 Bom. L.R. 115=3 Cr. L.J. 236=30 B. 392.**

***3.—Bombay Acts*—continued.**

Act III of 1888 (City of Bombay Municipality)—*continued*.

(13)—*S. 249—Notice to construct an urinal—Legality of notice.*—Where a notice issued under s. 249, Bombay Act III of 1888, required a person to construct urinals in a particular place in his market, *held*, that the notice was *ultra vires* of s. 249, inasmuch as it required the accused to construct the urinals in a particular place in his premises, and that the accused could not be convicted for disobeying such notice. **24 B. 75=1 Bom. L.R. 431.** [*R.*, 29 B. 35=6 Bom. L.R. 667].

(14)—*Ss. 308, 315—Scope of sections.*—Ss. 308, 315 of the Act apply to private and public streets, so that the use by the Corporation of its powers to remove projections and obstructions is not evidence that the street is a public street. **Rat. Un. Cr. C 802=Cr. Rg. 58 of 1895**

(15)—*Ss. 308, 309, 342—Crim. Pro. Code (1898), ss. 236, 237, 403 (1)—Acquittal on charge under s. 342.*—The accused was prosecuted by the Bombay Municipality under s. 342 of the Bombay City Municipal Act, for adding two balconies to his house without the permission of the Municipality. He was acquitted. The Municipality then served a notice upon the accused under ss. 308 and 309, asking him to remove the two balconies and also two others which were not new; and on the accused's failing to comply with the notice, the Municipality prosecuted him again. The Magistrate referred to the High Court the question whether the previous acquittal of the accused precluded the Municipality from bringing the second charge against him. *Held*, that there was no bar to the second prosecution, as ss. 403 (1), 236, 237, Crim. Pro. Code, had no application. The second offence could not have been committed until the notice to remove was served on the accused, and this notice was not served on the accused till the year following that in which he was acquitted under the former charge. **4 Bom. L.R. 575.**

(16)—*Ss. 337 (2), 342, 349-C—To erect a building—"To re-erect," "To re-construct"—Frame buildings—Height of—Notice to Municipality.*—The term "re-erection" applies to all buildings which are not included in s. 337 (2) of the Bombay City Municipal Act, 1888. A building with a ground floor, to which, after it has been in existence for some years, the owner wants to add one or more storeys, would fall within "re-erection," provided it is not of the description mentioned in the definition of erection. **9 Bom. L.R. 932=6 Cr. L.J. 236.**

(17)—S. 309—*See* No. 15, *supra*.

(18)—S. 315—*See* No. 14, *supra*.

(19)—S. 342—*See* Nos. 15, 16, *supra*.

(20)—*S. 349-B—Height of buildings with reference to width of streets—Construction of statute*—Casus omissus.—The accused erected a building, which touched, on either side of it, public streets which ran parallel to each other. The height of the house having exceeded the permissible limits, the Municipality required the accused to reduce the height, conformably to the provisions of s. 349-B of the City of Bombay Municipal Act. The accused disobeyed the requisition: and he was convicted and sentenced for the disobedience. *Held*, (1) that the building of the kind in question must, at all events, fulfil the conditions prescribed in cls. 1, 2 and 3 of s. 349-B with reference to both the streets on which it abuts, even if it did not fall within cl. 4 of the section, (2) that the provisions in question of the Act were intended in the interests of public health, and the Court ought to so construe them as to advance that object. It is not permissible to create a *casus omissus* by interpretation save in some case of strong necessity. **9 Bom. L.R. 363=5 Cr. L.J. 338.**

(21)—*S. 349-B—Limit of height of buildings—Reconstructing a house burnt down—Abutting on street.*—Where the owner of a house destroyed by fire pulls down its remaining walls to six feet above the plinth, and the house abuts on a street, the height, to which he can raise his new building, is governed by the provisions of s. 349-B of the City of Bombay Municipal Act, 1888. Where, in reconstructing a house, the owner set it back by five inches from the street on which it originally abutted; *held*, that the house should be taken as abutting on the street notwithstanding the set-back. **9 Bom. L.R. 737=6 Cr. L.J. 80.**

(22)—S. 349-C—*See* No. 16, *supra*.

(23)—*S. 353—Scope.*—The word "completion" in s. 353, Bombay Act III of 1888, must be taken in its ordinary meaning, and the Court must not read into the section "in accordance with sanitary regulations" or "Sanitary Officers' opinions." **19 B. 372.**

(24)—*S. 377—Municipal Commissioner—Neglected premises—Notice to remove nuisance—Magistrate's discretion.*—The accused was served with a notice of requisition under s. 377 of the City of Bombay Municipal Act, 1888, requiring him to remove filth, rubbish, heaps of cutchera and stable refuse from a large piece of vacant land belonging to him. He failed to comply with the requisition, and a prosecution was instituted against him. The Magistrate viewed the premises; and having so viewed them, but without hearing any evidence, acquitted the accused, as the premises did not appear to him to be in a filthy condition. *Held*, that the premises having appeared to the Commissioner to be in a filthy condition, the notice was validly issued under s. 377 of the City of Bombay Municipal Act, 1888; and that, there having been a non-compliance of the notice, the offence was complete. *Held*, further, that the Magistrate was wrong in acquitting the accused on the sole ground that the premises

3.—Bombay Acts—continued.

Act III of 1888 (City of Bombay Municipality)—*continued.*

did not appear to him to be in such a condition as to justify the issue of a notice under s. 377. S. 377 of the City of Bombay Municipal Act, 1888, enacts, that the only condition precedent to the valid issue of a requisition is that it shall appear, not to the Magistrate, but to the Commissioner, that the premises are in the condition specified in the section. **12 Bom. L. R. 126.**

(25)—*S. 381—Commissioner's power to require the owner to fill up low ground.*—S. 381 of Bombay Act III of 1888 empowers the Commissioner to require the owner of a low ground to cleanse and fill up the same; but it does not permit him to issue an order that an indefinite quantity of low-lying ground shall be filled up, much less that it shall be filled to some particular level or filled up with sweet earth, or that it shall be sloped in a particular direction. **24 B. 125=1 Bom. L.R. 518.**

(26)—*S. 390—Factory, establishing of—Municipal Commissioner, permission of.*—The accused obtained the Municipal Commissioners' permission under s. 390 (1) of the City of Bombay Municipal Act, 1888, to establish a hand-loom factory worked by an oil-engine: but by means of this oil-engine he also established a flour mill without any permission. The accused was, therefore, charged with the offence under s. 390 (1) of the Act. *Held*, that the accused was guilty of a technical offence under s. 390 (1) of the City of Bombay Municipal Act, 1888: for, although the accused had leave to establish the hand-loom factory, he had no leave to establish the flour mill factory, which was, not the less, another and a separate factory, because it happened to be worked by the same power which it was proposed to employ in the permitted factory. **12 Bom. L.R. 122.**

(27)—*S. 394—Scope—"Storing"—Intention—Exemptions.*—The wording of the section requires that the premises, in order to attract the operation of the section, should be used for the purpose of storing. The phrase "for the purpose" indicates that it must be the intention of those using the premises to store, that storing must be the object aimed at, the final cause for which the premises are used. The actual use is by itself insufficient, in the absence of proof as to the object aimed at. The purpose to store must be the dominant motive. There is nothing in the exemption, which sub-s. 3 declares in favour of the specified mills, to imply that sub-s. 1 was intended to include any use to which they might be put, which was merely incidental or subsidiary to the paramount purposes to which the premises are devoted. Where articles are kept on the premises, not because of the purpose of storing them, but merely because they have not been consumed as rapidly as anticipated or for other similar reasons, it cannot be reasonably said that the premises are used on purpose for storing. The purpose or intention is the test. Sub-

3.—Bombay Acts—continued.

Act III of 1888 (City of Bombay Municipality)—*continued.*

s. 3 of s. 394 is clearly intended only to give an exemption to mills for spinning or weaving cotton, wool, silk or jute, in respect of those particular articles with which those mills are concerned, and is not intended to touch or in any way affect their liability in respect of any other articles mentioned in Sch. M. **29 B. 193=6 Bom. L.R. 735.** (20 C. 626, *R.*)

(28)—An owner of premises, who, without a license, allowed cartmen to stable their carts and bullocks thereon receiving a fee of one rupee for each cart and a pair of bullocks, should be considered to use his premises for that purpose, and so to contravene the provisions of the section. **4 Bom. L.R. 945, Note.** [*D.*, 4 Bom. L.R. 943.]

(29)—*S. 394 (1) (c)—Scope.*—S. 394 (1) (*c*) of the City of Bombay Municipal Act is not intended to reach the landlord, but it aims at the actual occupier or a tenant of the premises who converts them to the use mentioned in the section without a license. **4 Bom. L.R. 943.**

(30)—*S. 394—Term "premises" explained.*—The meaning of the word "premises" in s. 394 is not restricted to buildings; it must also include open ground. **3 Bom. L.R. 436.**

(31)—*S. 394—Storing wood for bak-ehouses.*—In s. 394 of Bom. Act III of 1888, the word "domestic" means "household" and connotes "dwelling" as opposed to manufacture or bake-house. The section aims at punishing people who, without a license or contrary to its terms, use premises in a way likely to endanger life, health, or property, or to create what the Act defines as a nuisance. When a baker having a bake-house in his dwelling stores so much fire-wood in excess of his domestic requirements as may lead to such danger or nuisance, he may be punished, as the intention of law about licenses is to bring trades-factories and bake-houses under the eyes of the Commissioner in order that he may protect the public. **Rat. Un. Cr. C. 793=Cr. Rg. 51 of 1895.**

(32)—*Ss. 394 (1), 471—Unlicensed use of premises for purposes mentioned in sub-s. 1 of s. 394.*—A Presidency Magistrate may, under s. 471, convict and punish any person contravening any provision of s. 394, sub-s. 1, as, for instance, using any premises for any of the purposes mentioned in that sub-section without a license from the Commissioner. The questions whether the Municipal Commissioner refused the accused a license and whether the refusal was legally justified are irrelevant to the determination of a case under the section. **Rat. Un. Cr. C. 729=Cr. Rg. 57 of 1894.**

(33)—S. 394—*See* ACT IX OF 1890, s. 7, 11 Bom. L.R. 1181.

(34)—*Ss. 398, 410—Selling or exposing for sale fish intended for human food—Sale from a basket placed on the foreshore of* Chowpatti—

***3.—Bombay Acts*—continued.**

Act III of 1888 (City of Bombay Municipality)—*continued.*

Place between high and low water-mark—Private market—Burden of proof—City of Bombay—Bombay General Clauses Act (I of 1904), s. 3 (10).—The accused was charged with selling or exposing for sale, without license from the Municipal Commissioner, fish intended for human food on the *Chowpatti* foreshore, contrary to the provisions of s. 410 (1) of the Bombay Municipal Act, 1888. The sale was from a basket which the accused had placed on the sand at some distance from the water, the place between the high and the low water-mark. The fish sold was fresh fish and it had been recently brought from one of the boats then in the back bay. *Held*, that the accused was liable under s. 410 (1), since it was impossible to say that fresh fish was sold from a vessel, when, as a matter of fact, it had been sold from the basket on the shore, it having been brought from the vessel which was in the water. *Held*, in answer to the contention that the place where the fish was sold was a private market, that it was difficult to see how a place like the whole of the foreshore of *Chowpatti* could be held to be a private market; and, even if this were not so, since the Municipality started their case by showing that the place in question was the foreshore of *Chowpatti*, that was sufficient to throw the *onus* upon the accused to show that the foreshore of *Chowpatti* was a private market within the meaning of s. 398 of the Bombay Municipal Act, 1888. *Held*, also, that the Bombay Municipal Act, 1888, applied to the spot in question. **7 Bom. L.R. 726=30 B. 126=2 Cr. L.J. 604.** [*R.*, 9 Bom. L.R. 1321].

(35)—*Ss. 402, sub-ss. 1 and 2, 471—Punishment.*—The words of s. 471 of Bombay Act III of 1888 provide a punishment for contravening any provision of s. 402, cl. 1. A person, who does what is so distinctly prohibited by cl. 2, does, by usurping the powers vested in the Corporation by cl. (1), contravene the last mentioned clause. The two clauses must be read and interpreted together in order to give effect to the policy and object of the Legislature. **Rat. Un. Cr. C. 733=Cr. Rg. 64 of 1894.**

(36)—S. 410—*See* No. 34, *supra*.

(37)—*Ss. 429, 430—Bombay Public Conveyance Act V of 1863—Penal Code, s. 269—Carrying person suffering from dangerous disease in a public conveyance.*—The driver of a public conveyance in the City of Bombay who carries, in his conveyance, a person suffering from small-pox, offends against the provisions of s. 430 (3) of Bom. Act III of 1888. *Semble*:—There exists an apparent antimony between s. 22 of Bom. Act V of 1863 and ss. 429 and 430 of Bom. Act III of 1888. **7 Bom. L.R. 460=2 Cr. L.J. 439.**

(38)—S. 430—*See* No. 37, *supra*.

(39)—*S. 461 (d)—Bye-law relating to height of building on site previously built upon—Bye-law 30.*—The Municipality of Bombay has the power, under bye-law 30, to restrict the height of a new building on a site which has been previously built upon. **22 B. 980.**

***3.—Bombay Acts*—continued.**

Act III of 1888 (City of Bombay Municipality)—*concluded.*

(40)—S. 471—*See* Nos. 5, 6, 32, *supra*.

(41)—*Ss. 471, 472—Prospective punishment for continuing offence—Legality.*—S. 474 of the City of Bombay Municipal Act requires a separate prosecution for a distinct offence, a prosecution in which a charge must be laid for a specific contravention for a specific number of days, and for which charge, if proved, the Magistrate is to impose a daily fine of an amount which is left to him in his discretion to determine. Where a Presidency Magistrate, having convicted certain accused persons and fined them under s. 471 of the City of Bombay Municipal Act, proceeded in the same order, purporting to act under the provisions of s. 472, to fine them so much a day in case they continued the offence, *held*, that the order was illegal. **22 B. 766.** [*F.*, 22 B. 841; *D.*, 7 C. W.N. 853.]

(42)—S. 472—*See* No. 41, *supra*.

(43)—S. 517—*See* No. 5, *supra*.

(44)—S. 521—*See* PUBLIC SERVANT, 6 Bom. L.R. 54.

Act I of 1890 (Gambling).

(1)—*S. 3—Instruments of gaming—Common gaming house.*—A thing may be an "instrument or means" of gaming or wagering, although not "devised or intended for that purpose," or "primarily used for that purpose," or "destined for that purpose." Any article that is made use of as a subject or means of wagering, no matter of what nature that article may be, comes within the definition of instruments of gaming or wagering. [*R.*, 26 B. 533, 28 B. 129.] To bring a place under a "common gaming house," as defined in s. 3 of the Gambling Act, the instrument of wagering must be in the place itself, either kept there or brought there, and used there for profit or gain. and it is not sufficient that wagers are made in the place upon or by means of some article or other which is outside the place. **17 B. 184.**

(2)—*S. 12—Coins, whether instruments of gaming—Powers of police to arrest without warrant—Construction of Act.*—The provisions of s. 12 of Bombay Act I of 1890 apply only to instruments of gaming "used in playing any game not being a game of mere skill." The interpretation of the expression "instruments of gaming" as qualified by the words which follow it in the section is implements devised or intended for that purpose. A coin is not an instrument of gaming. [*R.*, 17 B. 184, 26 B. 533.] It is not lawful for a police officer to arrest without warrant the persons he finds playing, unless they are playing for money or other valuable thing. The Gambling Act must be construed strictly,

3.—Bombay Acts—continued.

Act I of 1890 (Gambling)—*concluded.*

because it interferes with the liberty of the subject, and because in some of its provisions, it shifts the burden of proof on the accused. Moreover, if the words are ambiguously and obscurely worded, the interpretation is ever in favour of the subject. **16 B. 283, F.B.** [*R.*, 28 B. 129.]

See BOM. ACT IV OF 1887, 4 Bom. L.R. 297.

Act II of 1890 (Salt).

[REP. IN PART, ACT XVI OF 1895. AMENDED, BOM. ACT II OF 1892; BOM. ACT I OF 1901.]

(1)—*Ss. 3, 47—Liability of principal for acts of agent.*—Where it is not established that a principal has knowledge of or connivance in the illegal act done by the agent, on the principal's account, he cannot be held liable under s. 47 of the Bombay Salt Act. **Rat.Un.Cr.C. 576 = Cr. Rg. 40 of 1891.**

(1-*a*)—S. 3 (*m*)—*See* No. 5, *infra.*

(2)—*S. 3 (g)—Manufacture—Evaporation for purification.*—The accused bought some dirty salt in the bazaar, dissolved it in water, removed the dirt and obtained a pure dry salt by evaporating the brine. *Held* that this was manufacturing salt within the meaning of s. 3 (*g*) of the Bombay Salt Act of 1890, but that the offence was of a very light character. **Rat. Un. Cr. C. 528 = Cr. Rg. 60 of 1890.**

(3)—*S. 47 (a)—Possession of salt water.*—The mere possession of salt water with the intention of manufacturing salt therefrom is not made an offence under the Bombay Salt Act. **23 B. 788 = 1 Bom. L. R. 345.**

(4)—*S. 47 (a)—Gist of offence.*—The provisions of s. 47 (*a*) of the Bombay Salt Act, 1890, do not, in express terms or by necessary implication, make intention or knowledge an essential ingredient of the offence; hence, to support a conviction under the section, it is not necessary to prove dishonest intention on the part of the accused. **28 B. 346 = 6 Bom. L.R. 93.**

(5)—*Ss. 47 (c), 3 (m)—Possession of contraband salt.*—It is illegal to possess, as well as to transport contraband salt, however small in quantity. **4 Bom. L.R. 83.**

(6)—S. 47—*See* No. 1, *supra.*

(7)—*S. 52—Order of confiscation—Power of District Magistrate to alter, in appeal.*—It is not competent to a District Magistrate to alter or vary an order of confiscation in confirming a conviction recorded by a Subordinate Magistrate under the Bombay Salt Act, 1890. **4 Bom. L.R. 459.**

Act IV of 1890 (District Police).

[REP. IN PART, ACT XVI OF 1895. AMENDED, BOM. ACT III OF 1898.]

(1)—*Ss. 34, 36—Withdrawal from duty—Meaning.*—A Police officer who, having been transferred from one place to another, remains at the former place doing duty expecting a reply to a petition sent by him to his superiors, does not commit a "withdrawal from duty" within the meaning of s. 34 of the Bombay Police Act. **Rat. Un. Cr. C. 555 = Cr. Rg. 31 of 1891.**

3.—Bombay Acts—continued.

Act IV of 1890 (District Police)—*continued.*

(2)—*S. 36—Absence without leave.*—A Police officer, who absents himself from his duties for a day without leave, commits an offence under s. 36 of the Bombay District Police Act. **Rat. Un. Cr. C. 585 = Cr. Rg. 45 of 1891.**

(3)—*S. 36—Police officer leaving the hospital without permission.*—A police officer leaving the hospital, where he was placed being sick, is not guilty of an offence under s. 36 (*d*) of Bombay Act IV of 1890, because he cannot be considered to be on duty while in a hospital. **1 Bom. L.R. 685.**

(4)—S. 36—*See* No. 1, *supra.*

(5)—*S. 43—Crim. Pro. Code (1882), s. 435—Jurisdiction of High Court*—The High Court has no jurisdiction to interfere with an order duly made by a District Magistrate under s. 43 of the Bombay District Police Act. **Rat. Un. Cr. C. 540 = Cr. Rg. 13 of 1891.**

(6)—*Ss. 44, 68 and 71—Order under s. 44—Valid order, what amounts to—Abetment.*—Where the order of a Magistrate under s. 44 of Act IV of 1890 (Bombay District Police) clearly indicates that it is dealing with an existing dispute, between Hindus and Muhammadans of a certain place, about music in religious processions, likely to cause a disturbance of the public peace, the order is made within the ordinary lawful duty of the Magistrate to prevent a particular disturbance of the peace, and there is no occasion to construe it as an edict usurping the functions of the Legislature. The order does not interfere with the general rights of the subject for an unlimited time. The accused cannot go behind the order or question its expediency. In order to punish a person for an offence under s. 68, Act IV of 1890, it is only necessary to prove the disobedience and not the existence of danger or other occasion for making the order. Although the complaint was only under s. 68 of the Bombay Police Act, *held* that it was not unlawful to convict under s. 71 of the Act. The mere presence of a person at a procession in which music was played in contravention of an order of the District Magistrate under s. 44, Bombay Police Act, does not by itself constitute the abetment of an offence under the Act. **Rat. Un. Cr. C. 708 = Cr. Rg. 41 of 1894.**

(7)—S. 44—*See* PUBLIC NUISANCE, 11 Bom. L.R. 372 = 2 Ind. Cas. 494.

(8)—*S. 46—Order duly made under section—Power of Sessions Judge to call for proceedings under s. 435, Crim. Pro. Code (1882).*—Where an order has been duly made under the jurisdiction conferred by s. 46 of Bom. Act IV of 1890, the Court of Sessions has no power to call

***3.—Bombay Acts*—continued.**

Act IV of 1890 (District Police)—*continued.*

for such proceedings under s. 435, Crim. Pro. Code. As the person aggrieved by the order can petition the Governor-in-Council under whose control the prerogative of keeping the peace is worked by the Magistracy, it is unnecessary to determine the powers of the High Court. **Rat. Un. Cr. C. 692 = Cr. Rg. 18 of 1894.**

(9)—*S. 47—Authority of police officer to be present at a race ground—Resistance—Penal Code, s. 353.*—At a race meeting held at Poona, under the auspices of the Western India Turf Club, on enclosed ground lent for the purpose by the Military authorities, the complainant, an Inspector of Police, who was present there on duty in that capacity, came into the first enclosure over the ropes which were used to fence the enclosure, passing through the pickets of soldiers who were stationed along the ropes to prevent people from entering and leaving the enclosure otherwise than by one of the regular entrances provided. This entrance being reported to the Honorary Secretary of the Club, he directed two soldiers to put the Inspector outside the enclosure. These men took hold of the Inspector, then let him go at his request, and escorted him outside the enclosure. *Held* that the Secretary was liable to be convicted under s. 353, I.P.C., as s. 47 of the Police Act empowered the Police Inspector to be present at the race ground, a place of public amusement and resort, for the purpose of preserving peace and order. **22 B. 746.**

(10)—*S. 48 (a) (1)—"Conduct"—Order as to costume.*—The word " conduct," in s. 48 (*a*) means the act or method of leading, guiding or managing, the guidance or management (of a procession or assemblage), and does not mean the mode of action or behaviour of an assembly. The clause, therefore, does not confer a power to direct what costume shall be worn or not worn by the members of a procession. An order was issued by the District Superintendent of Police to the following effect :—"No member of any sect can be permitted to proceed naked to the *tirth* to bathe, nor while there to bathe naked, nor to pass the streets naked on any account; if any one does this, he will be dealt with according to law." *Held*, that this was not an order or command, but a piece of advice or warning to the people, telling them in what light the authorities would view certain acts. It did not prohibit the act, so as to make the commission of it punishable as a breach of the order; but it only declared that proceedings would be taken against the perpetrator, on the ground that he has committed an offence by reason of the commission of the act itself. **22 B. 715.**

(11)—*S. 48 (b)—Power of Police to regulate the playing of music in private houses.*—The words about music "in the streets of towns on occasion of festivals and ceremonies" in s. 48, cl. (*b*), do not empower a District Superintendent or Assistant Superintendent of Police to regulate the playing of music in private houses.

***3.—Bombay Acts*—continued.**

Act IV of 1890 (District Police)—*concluded.*

The words "near a street" should be construed as meaning open spaces by the sides or at the ends of streets. **19 B. 737.**

(12)—*S. 52—"Respondeat superior"—Duty of police officer to shelter prisoner in custody.*—Nothing but fear of instant death is a defence for a policeman who tortures a man or woman by superior order. The maxim *respondeat superior* has no application to such a case; the law is the only superior. A person legally bound to act in a certain manner by illegally omitting so to act is liable to punishment. Under s. 52, Bombay Police Act IV of 1890, every police officer is bound to shelter every person in custody and to arrest persons committing assaults likely to cause grievous bodily injury and an omission to perform this duty will make him guilty of abetment. **20 B. 394.**

(13)—*Ss. 52 (2) and 65—Refusal to attend to make a panchnama.*—Refusal to attend to make a *panchnama* regarding the obstruction to a public road, caused by a person in keeping his grain bags on the road, is not an offence punishable under s. 53 (2) or s. 65 of the Police Act. **22 B. 970.**

(14)—*S. 61 (d)—"Contrary to Regulation," meaning of.*—The words, "contrary to any Regulation," in cl. (*d*) of s. 61 of the Bombay District Police Act, refer to the words " or by driving," *etc.*, and not to the words "causes obstruction or injury," *etc.*, in the first part of the clause. **Rat. Un. Cr. C. 634 = Cr. Rg. 7 of 1893.**

(15)—*S. 61 (m)—Fishing in tank—Offence.*—The mere act of fishing in a public tank, without proof that the bait is of a defiling character, is not an offence under s. 61 of the Bombay District Police Act. **Rat. Un. Cr. C. 865 = Cr. Rg. 30 of 1896.**

(16)—*S. 62—Conviction under section—Evidence required.*—To support a conviction under s. 62 of the Bombay District Police Act, it should be found as a fact that pain or suffering has been inflicted. **Rat. Un. Cr. C. 738 = Cr. Rg. 6 of 1895.**

(17)—S. 65—*See* No. 13, *supra.*

(18)—S. 68—*See* No. 6, *supra.*

(19)—S. 71—*See* No. 6, *supra.*

(20)—S. 90—*See* CRIM. PRO. CODE (1898), s. 250, 26 B. 150 = 3 Bom. L.R. 586, F.B.

Act I of 1901 (Salt, amending Bom. Act II of 1890).

See BOM. ACT II OF 1890, s. 47 (*c*), 3 (*m*), 4 Bom. L.R. 83.

Act III of 1901 (District Municipalities).

(1)—S. 2 (1) (*a*) (*b*)—*See* BOM. ACT VI OF 1873, s. 84, 3 Bom. L.R. 584.

(2)—S. 48 (*b*) (*iii*)—*See* BOM. ACT II OF 1884, s. 33 (*b*), 4 Bom. L.R. 585.

***3.—Bombay Acts*—continued.**

Act III of 1901 (District Municipalities)—*ctd.*

(3)—Ss. 48 and 96—*See* BOM. ACT VI OF 1873, 3 Bom. L.R. 842.

(4)—*S. 86—Recovery of Municipal claims—Notice of demand—Appeal—Magistrate—High Court—Revision—Crim. Pro. Code (Act V of 1898), s. 435.*—Under s. 86 of the Bombay District Municipal Act, 1901, a Magistrate hearing an appeal of the kind mentioned in the section, is merely an appellate authority having jurisdiction given by the Act to deal with the question of a civil liability. He is, therefore, not an inferior Criminal Court, to which alone the revisional jurisdiction of the High Court applies under s. 435 of the Criminal Procedure Code. **9 Bom. L.R. 1347.**

(5)—*S. 96—Jurisdiction of Municipality to call for information as to ownership—Time for commencing construction.*—The question whether, under s. 96, the Municipality has jurisdiction or right to call for information regarding ownership must be decided on the circumstances of each case. Where a person produces the title-deeds and furnishes the information asked for, he is bound to wait for one month from that date for the orders of that Municipality before he proceeds to begin the intended construction. **6 Bom. L.R. 581.**

(6)—S. 96—*See* No. 3, *supra*.

(7)—*Ss. 107 (2), 155—Cess-pool—Order to remove—Disobedience of the order.*—A District Municipality issued a written notice under s. 107 (2) of the Bombay District Municipal Act, 1901, to the accused, stating that the cesspool of his house was a nuisance, and that, therefore, within seven days from the receipt of the notice, the pipe and the drain of the cesspool should be removed, and that, if no steps were taken as directed within the time fixed, steps would be taken according to law. The accused disobeyed this notice, for which he was prosecuted under s. 155 of the Act. *Held*, that, as there was no power given under s. 107 (2) of the Act to the Municipality to lawfully direct an owner or occupier to demolish or close a cesspool himself, there was no disobedience of any lawful direction on the part of the accused under s. 155 of the District Municipal Act. **11 Bom. L.R. 1349.**

(8)—*S. 122—Projection into public street—Building divided into two portions—Distinct offences.*—A shop-keeper affixed to his shop a board which projected into the public street. The shop was divided into two portions; one of them was occupied by the shop-keeper himself and the other was let by him to a tenant. The shop-keeper was tried separately regarding the two projections and convicted and sentenced separately. *Held*, that the Magistrate was wrong in trying the two cases as two distinct offences; it was one offence, because it related to one board. **4 Bom. L.R. 942.**

(9)—*Ss. 122 and 161—General authority to institute prosecution under Act given to Municipal Secretary—No special direction given to*

***3.—Bombay Acts*—continued.**

Act III of 1901 (District Municipalities)—*ctd.*

institute particular prosecution—Validity of prosecution—Offence falling under two subdivisions of same section—Construction, principle of.—S. 161 of the Bombay District Municipalities Act is merely a section empowering the Municipality to expend Municipal funds on the prosecution of Municipal offences and nuisances generally. The prosecution of such offenders is one of the means by which the Municipality performs its duties in matters of conservancy and the protection of public health and convenience. There are no negative words directing that a prosecution may not be instituted in any other way. The general rule is that any person having knowledge of the commission of an offence may set the law in motion by complaint. In Bombay Act III of 1901 there are no words which either directly or by implication take away the right that any member of the public has to set the law in motion by a complaint. It may be that it is more desirable that the general power to prosecute should not be delegated by the Municipality, but that is merely a matter of Municipal administration. The accused could have appealed to the general Board against the Secretary's action and asked that he be ordered to withdraw the complaint. The Magistrate, therefore, had jurisdiction as soon as the complaint was filed by the Secretary. Though the offence of building a *landhi* on a public road without permission is covered by the more general words of cl. 3 of s. 122, yet as the more specific and particular words of the first-clause do so also, the clause containing the more specific and particular words should, as a principle of construction, be held to govern the case, and the accused should be convicted under s. 122 (1). **1 S.L.R. Cr. 88=8 Cr. L.J. 213.**

(10)—*S. 125—Master's liability for acts of servant.*—Where a person had a permit for the deposit of building materials within a certain area, but the contractor employed by him stored things outside those limits, and he was convicted under s. 125, Bombay Municipal Act. *Held*, that he could not be held responsible for the criminal act of his contractor. **9 Cr. L.J. 257 =1 S.L.R. 15 Cr.**

(11)—*Ss. 131, 135, 155—Notice by Municipality—Alloo plantation — Nuisance.*—S. 131 of the Bombay District Municipal Act renders the owner liable for non-compliance with a notice issued under it, not when the Municipality considers vegetation to be rank or noisome, but only when the vegetation is actually so. To support a conviction under the section for non-compliance with a notice, the prosecution must establish affirmatively the objectionable character of the vegetation. To support a conviction for non-compliance with a notice issued under s. 135 of the Act, it must be shown that there is some pool, ditch, tank, hole, water-channel, receptacle of foul water, etc., of the kind mentioned in the section, the filling, cleansing, drawing or removal of which the Municipality has directed by notice, or with regard to which,

***3.—Bombay Acts*—continued.**

Act III of 1901 (District Municipalities)—*cld.*

the Municipality has directed such measures to be taken, as it considers necessary to abate or remove the nuisance. **9 Bom. L.R. 247=5 Cr. L.J. 252.**

(12)—S. 135—*See* No. 11, *supra.*

(13)—*S. 142—Prosecution by the Secretary having no authority under s. 142—Crim. Pro. Code (1898), s. 537, Explanation—Whether merely irregular or affects jurisdiction—Validity.*—Where the Secretary of a Municipality, who was not authorised for that purpose under s. 142 (2) of the Bombay District Municipal Act (III of 1901), prosecuted certain persons for selling as *ghi* an article which was not *ghi*, and it was objected that the prosecution was illegal, on the ground that the Secretary had no authority to institute the prosecution, *held*, that the objection raised is not an averment of an irregularity to which the Explanation to s. 537, Crim. Pro. Code, applies, but one of jurisdiction, and that, as the Municipal Secretary was acting unauthorisedly, the Magistrate had no jurisdiction to convict the applicants. **3 S.L.R. 13.**

(14)—S. 155—*See* Nos. 7, 11, *supra.*

(15)—*S. 159—Notice under the section containing certain directions—Validity.*—There is nothing in s. 159 of Bombay Act III of 1901 authorising a Municipality issuing a notice under that section to give any direction to the person to whom the notice is given to do anything that they may require. The notice has to be simply an intimation to the occupier of land that the Municipality will enter for the purposes mentioned in the section at a specified hour on a specified day. The power of the Municipality to enter no doubt carries with it, by necessary implication, an obligation on the part of the occupant of the land to whom the notice is given to give every reasonable facility to the Municipality to enter and not to obstruct. But, if the occupant does anything to prevent the entrance, it cannot be said that he disobeys the notice, for, the notice is a mere condition precedent to the right of the Municipality to enter. Once the notice is given, the right arises, and if the occupant does any act to prevent its exercise, his act may amount to wrongful restraint or wilful obstruction, but it has nothing to do with the question of obeying or disobeying the notice. **6 Bom. L.R. 538.**

(16)—S. 161—*See* No. 9, *supra.*

See PENAL CODE, ss. 21, 186, 10 Bom. L.R. 761=33 B. 213=8 Cr. L.J. 269=1 Ind. Cas. 869.

Act IV of 1902 (City Police).

(1)—*Ss. 12, 16—Commissioner of Police—Orders issued by Police Commissioner in relation to discipline and general government of the police force—Construction of statute.*—The order, which the Commissioner of Police is competent to issue under the head of discipline and general government, under s. 12 of the

***3.—Bombay Acts*—continued.**

Act IV of 1902 (City Police)—*continued.*

Bombay City Police Act, 1902, must be one having reference to the conduct of the Police Officers in their capacity as such officers. Over their conduct in other relations of life, his disciplinary power does not extend, so long as no element or question of their police duty enters into those relations. If it does enter, the controlling authority of the Commissioner comes into play and it becomes a matter of police discipline. The meaning of s. 16 of the Act is that, even when a Police officer is not actually at his post discharging the duty assigned to him, he is, for the purposes of the Act, to be regarded as being at that post, with all the rights and obligations of his office attaching to him. In construing an expression of doubtful import occurring in a statute, the Court may well have regard to considerations outside the language of the Act. **9 Bom. L.R. 681=6 Cr. L.J. 47=31 B. 480.**

(2)—S. 16—*See* No. 1, *supra.*

(3)—*Ss. 28, 129—Conditions for issuing notice to prostitutes—Act I of 1877 (Specific Relief), s. 45.*—The Commissioner of Police at Bombay issued, under s. 28, Bombay City Municipal Act, 1902, a notice upon the applicants calling upon them to vacate the premises occupied by them, and notifying that "failure to comply with this notice will render you liable to punishment under s. 129," of the Act. The applicants moved the High Court, under s. 45, Specific Relief Act, 1877, for a rule against the Commissioner of Police to show cause why the notice should not be cancelled and why he should not be restrained from carrying the same into effect. *Held* that the cancellation of the notice or the non-enforcing of it was an act clearly incumbent by law upon the Commissioner of Police, so as to bring it within s. 45 (*b*), Specific Relief Act, 1877. Under s. 28, the Commissioner of Police can only serve the notice upon the person who comes within the scope of s. 28. He is not entitled to serve it upon any person whom he merely *suspects* to be guilty of the conduct therein referred to. The misconduct, or immoral conduct, must be a matter of *fact* and not a mere matter of suspicion. A Magistrate would not be justified in convicting any person under s. 129, unless and until he is satisfied that the notices were not only served and that they were properly and validly served, that is to say, until he is really satisfied that the women had really conducted themselves in the manner imputed to them under s. 28. **7 Bom. L.R. 161.**

(4)—*S. 63—Crim. Pro. Code (1898), s. 162—Evidence Act, ss. 24 and 167—Admissibility in evidence of a statement made by witness to, and taken down in writing by, a Police officer—Confession, admissibility of.*—*Held*, that, having regard to s. 162 of the Code of Criminal Procedure (corresponding to s. 63 of the Bombay City Police Act, IV of 1902), a statement, taken down in writing, of a witness for the

***3.—Bombay Acts*—continued.**

Act IV of 1902 (City Police)—*continued.*

prosecution and recorded by a Police officer, cannot be admitted or used in evidence against the accused. *Per Russel, Ag. C. J.*—Such a document might be used to contradict the witness, not by putting the statement in as evidence, but by putting in the hands of the Police officer who has taken down the statement, to refresh his memory therefrom and thereby to enable him to contradict the statement of the witness. *Per Chandavarkar, J.*—The use of the *writing* as evidence against the accused is opposed to the express terms of the section, but the statement contained in the writing could be used to impeach the credit of such witness in the manner provided by the Indian Evidence Act. *Per Batty, J.*—The writing may be used for the purpose of refreshing the memory of the witness cross-examined, as to the fact of the statement either on behalf of the prosecution or on behalf of the defence, provided that it was treated by the prosecution only for the purpose of impeaching the credit, or in corroboration, of the witness who made it. *Per Beaman, J.*—The statement ought not to have been admitted at all, or its contents to have been allowed to be used by the prosecution, even for the nominal purpose of contradicting the witness. The distinction between the "writing" and the "statement" which is embodied in the writing is a distinction of form rather than of substance. If the "statement" might properly be admitted and used to contradict the prosecution witness who made it, then there is no reason in principle why that statement should not be provable in the usual way and by the best evidence of it, namely, the written record of it. S. 162 plainly constitutes an exception to the ordinary rule of evidence. The proviso engrafts an exception upon the exception. Before the present section was amended, statements made by witnesses to the police and recorded by the Police might not be used as evidence against the accused, but there was nothing to prevent them from being used in favour of the accused. He can only obtain access to written statements made by the prosecution witnesses to the Police, at the discretion of the Court. It is no longer a matter of right. The proviso is clearly limited to the purpose of this single concession, in derogation of the universal prohibition contained in the body of the section, to the accused. He can get a copy of the recorded statements of witnesses for the prosecution, for the only purpose of breaking down the evidence of the prosecution witnesses. The proviso does not cover the case of a witness for the defence, whose statement may have been recorded by a policeman, nor allows the prosecution to impeach the credit of such a witness by examining him upon any written statements he may have made to the police. *A fortiori*, the proviso could never have been intended to allow the prosecution to impeach the credit of its own witnesses for its own purposes, and against the wish of the accused, by reference to the police testimony. **9 Bom. L.R. 789, F.B. = 6 Cr. L.J. 164 = 2 M.L.T. 414 = 32 B. 111.** [*R.*, 36 C. 281=9 C.L.J. 198 = 13 C.W.N. 197 = 5 M.L.T. 97].

***3.—Bombay Acts*—concluded.**

Act IV of 1902 (City Police)—*concluded.*

(5)—*S. 120—"Otherwise"—Interpretation—Soliciting for the purpose of prostitution.*—The words "or otherwise" in s. 120, cl. (*a*) of the Bombay City Police Act, 1902, must be construed as having a limited signification, following as they do words of a limited description. They mean "in a manner similar to that of words or gestures." Therefore, merely sitting at the window without any act done of the nature indicated in the section, is not an offence. **10 Bom. L.R. 92=7 Cr. L.J. 118.**

(6) S. 129—*See* No. 3, *supra*.

Act I of 1904 (General Clauses).

S. 3 (10)—*See* BOM. ACT III OF 1888, ss. 398, 410, 7 Bom. L.R. 726=2 Cr. L.J. 604=30 B. 126.

Act II of 1904 (Motor Vehicles).

(1)—Ss. 9 and 13—*See* ABETMENT, 9 Bom. L.R. 161=5 Cr. L.J. 176.

(2)—S. 12—*See* ABETMENT, 9 Bom. L.R. 159=5 Cr. L.J. 173.

(3)—S. 13—*See* No. 1, *supra*.

See PENAL CODE, ss. 81 and 279, 8 Bom. L.R. 414=3 Cr. L.J. 494.

Act II of 1906 (Mamlatdars' Courts).

—*S. 23—Crim. Pro. Code (1898), s. 195, cl. 7 (3)—Perjury in a possessory suit—Sanction to prosecute not given by Mamlatdar—Appeal to District Judge—Collector has no jurisdiction to hear the appeal.*—An appeal, from an order passed by a Mamlatdar refusing sanction to prosecute for perjury in a possessory suit under the above Act, lies to the District Court. The Collector has only the revisional power granted to him by s. 23 of the Act, for the limited purpose specified in the clause. He does not on that account become the principal Court of jurisdiction within the meaning of the expression as used in sub.-cl. (3) of cl. (7) of s. 195 of the Crim. Pro. Code. **9 Bom. L.R. 896=6 Cr. L.J. 225.**

4.—Burma Acts.

*** Act II of 1873 (Ferries).**

[REP., BUR. ACT II OF 1898].

(1)—*S. 14—Crossing a ferry in a private boat not an offence.*—It is not an offence under the Ferries Act for a man to cross the river at the ferry, or take his cattle across, in his own boat or in that of a relative not plying for hire. **L.B.R. (1872--1892), 600.**

***Act VII of 1875 (Burma Fisheries).**

[REP. IN PART, ACT XII OF 1876; ACT XIII OF 1898, S. 18. AMENDED, ACT XIII OF 1898, s. 16. DECLARED IN FORCE IN THE ARAKAN HILL DISTRICT, REG IX OF 1874, S. 3, AS AMENDED BY ACT XIII OF 1898, S. 16.]

* These local Acts were passed by the Imperial Legislature.

***4.—Burma Acts*—continued.**

Act VII of 1875 (Burma Fisheries)—*concluded.*

—*S. 2—"Fishery"—Burma Fisheries Act, ss. 2 and 7 (a) and (b).*—A temporary collection of water on one's own land, the result of rainfall and overflow, and not shown to be connected by any regular channel with waters of a permanent nature, cannot be said to be a fishery within the meaning of s. 2 of the Fisheries Act. **L.B.R. (1893—1900), 202.**

*** Act XVII of 1875 (Burma Courts).**

[REP., ACT XI OF 1889.]

(1)—*Transfer of case—Local Government, powers of—Crim. Pro. Code (1882), s. 178.*—The local Government has no power under s. 178 of the Crim. Pro. Code to transfer for trial to the Court of the Commissioner a criminal case duly committed for trial by the Court of the Recorder of Rangoon, but the local Government has the power to transfer a case from the District of Rangoon to the Sessions division of Pegu. **10 C. 643.** [*R.*, 10 B. 263].

(2)—S. 8 (1) (*a*) and (*b*)—*See* EUROPEAN BRITISH SUBJECT, 1 L.B.R. 158.

(3)—*S. 35—Special Court of British Burma, appeal to—Crim. Pro. Code (1872), s. 64.*—An appeal lies to the Special Court of British Burma from a conviction and sentence by the Judicial Commissioner, in a case transferred by him to his own Court from that of the Sessions Judge, under s. 64 of the Crim. Pro. Code and s. 35 of the Burma Courts Act. **4 C. 667.** [*R.*, 10 B. 274.]

(4)—S. 80—*See* CHARGE TO JURY, 11 C. 10.

*** Act II of 1876 (Land and Revenue Act).**

[REP. IN PART, ACT II OF 1880; ACT XII OF 1882; ACT XIII OF 1898, S. 18. AMENDED, ACT XIII OF 1898, S. 16; BUR. ACT I OF 1901.]

(1)—S. 39, cl. (*c*) *See* ACT XII OF 1882, s. 9, L.B.R. (1893—1900), 252.

(2)—S. 57, cl. (*c*)—*See* FALSE EVIDENCE, 2 L.B.R. 272.

See BURMA ACT III OF 1889, s. 9 (2), 4 L.B.R. 150=7 Cr. L.J. 450.

*** Act XIII of 1877 (Embankment).**

[REP. IN PART, ACT XI OF 1889. AMENDED, ACT XIII OF 1898, S. 16.]

—*S. 3—Penal Code, s 188.*—The accused were convicted under s. 188, I.P.C., of disobeying the order of a public servant and were sentenced to pay a fine of two rupees each. The order disobeyed was an order, requiring them to execute a work in connection with an embankment, purporting to have been issued under s. 3 of Act XIII of 1877. *Held* that s. 188, I.P.C., did not embrace cases of disobedience of orders issued under the above Act, and that the Embankment Act provided no penalty for refusal of labour. **L.B.R. (1872—1892), 92.**

* These local Acts were passed by the Imperial Legislature.

***4.—Burma Acts*—continued.**

*** Act II of 1880 (District Cesses and Rural Police).**

[REP. IN PART AND AMENEED (LOCALLY), ACT III OF 1889, ss. 1 (*c*) and 4.]

—*Confession to a police officer—Evidence Act, s. 25—Act II of 1880 (Burma Rural Police).*—A confession to a village headman or *gaung* appointed under the Burma Rural Police Act is inadmissible under s. 25 of the Evidence Act. **L.B.R. (1872—1892), 479.**

*** Act V of 1880 (Boundaries).**

[REP. IN PART AND AMENEED, ACT II OF 1895. AMENDED, ACT VI OF 1900, S. 47. DECLARED IN FORCE IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

(1)—*Ss. 2, 17 and 18—Burma Municipal Act, 1898, s. 94 (2)—Boundary Officer's decision—Adverse possession, plea of, to be taken in appeal against Boundary Officer's decision—Legality of want of notice under s. 11 of the Act.*—A Boundary Officer confirmed the Demarcation Officer's marks, which showed the proper limit of the petitioner's land, and declared the extension of the house beyond that limit to be an encroachment. The petitioner's house was in a Municipality. The petitioner did not appeal against the Boundary Officer's order. The petitioner, having encroached beyond the limit fixed by the Boundary Officer, was prosecuted by the Municipality. His answer was that the decision of the Boundary Officer was not binding on him, because the special notice, under s. 11 of the Boundaries Act, was not served on him and because he had obtained a title to the property encroached upon, by adverse possession before the Boundary Officer's decision. *Held*, the Boundaries Act makes the decision of a Boundary Officer conclusive, subject to the appeals provided for under the Act; that no appeal having been preferred against the Boundary Officer's decision, it was conclusive and the petitioner lost his right by adverse possession, even if he had any, by reason of the Boundary Officer's decision. *Held*, further, the objection as to want of special notice under s. 11 was one which ought to have been taken against the decision of the Boundary Officer and could not be taken now. **4 L.B R. 153=7 Cr. L.J. 462.**

(2)—S. 17—*See* No. 1, *supra*.

(3)—S. 18—*See* No. 1, *supra*.

*** Act XIX of 1881 (Forest).**

[REP. IN PART, ACT V OF 1890, S. 21; ACT XII OF 1891. AMENDED, ACT V OF 1890, SS. 15 TO 20, 22; ACT XIII OF 1898, S. 16.]

(1)—*Chapter VI—Rule under the Act—Drift timber and timber in transit.*—Chapter VI of the Act applies to breaches of duties in respect of timber floated down the Salween River,

* These local Acts were passed by the Imperial Legislature.

4.—Burma Acts—continued.

Act XIX of 1881 (Forest)—*concluded.*

which, although treated departmentally as drift timber, is not drift timber within the meaning of Chapter VII of the Act, but actually timber in transit. Whoever makes the report, under Rule No. 17 of the Forest departmental rules, is personally responsible for its correctness. **L.B.R. (1893—1900), 57.**

(2) - *S. 36—Penal Code, ss. 40 and 67—Sentence.*—Imprisonment may be awarded in default of payment of a fine imposed under s. 36, but the imprisonment must be simple and must be governed by the scale laid down in s. 67, I.P.C. **L.B.R. (1872—1892), 410.**

(3)—S. 54 - *See* APPELLATE COURT, L.B.R. (1893—1900), 423.

(4)—S. 55—*See* RESTORATION OF PROPERTY, L.B.R. (1893—1900), 20.

*** Act XVI of 1884 (Gambling).**

[REP., BUR. ACT I OF 1899.]

(1)—S. 5—*See* ACT III OF 1867, ss. 3, 4, 5, 14, L.B.R. (1872—1892), 486.

(2)—S. 6 - *See* ACT III OF 1867, s. 13, L.B.R. (1872—1892), 317.

*** Act XVII of 1884 (Municipality).**

[REP., ACT XIII OF 1898, S. 18.]

(1)—*Ss. 27 and 145—Prosecutions under the Act—Rule 24 of the Rangoon Municipal Rules.*—Having regard to the fact that the Rangoon Municipal Committee have, by rules duly issued under the Act and sanctioned by the Chief Commissioner, delegated to the President of their Committee their executive authority in respect of s. 145 of the Burma Municipal Act, their previous sanction at a meeting is not necessary to prosecutions for offences under that Act or the Rules made under it. **L.B.R. (1872-1892), 468.**

(2)—*S. 75—Delegation of powers by President of Municipality — "Executive authority."*—When the President of a Municipality delegates his powers to the vice-president, the delegation remains in force only so long as such president and vice-president continue in office. The words "executive authority," with reference to s. 75 of the Act, do not include all that a municipal committee may do under that section. The determination of the matters referred to in sub-section (1), including the question of compensation, or deciding, under sub-section (2), that a building should be altered or demolished, is not a matter of executive authority. **L.B.R. (1893—1900), 371.**

(3)—*S. 79—Slaughtering of animals not intended for sale—Slaughtering at other places.*—The Municipal slaughter-house rules ought not to render a person liable to punishment for slaughtering an animal outside the slaughter

* These local Acts were passed by the Imperial Legislature.

4.—Burma Acts—continued.

Act XVII of 1884 (Municipality)—*concluded.*

house premises. Slaughter-houses are established by a Municipality under the provisions of s. 79 and are for the slaughter of animals *for sale.* There is no penalty for slaughtering an animal not intended for sale at a place other than the slaughter-house, and the slaughter of an animal intended for sale at another place only renders the person liable to a fine. **L.B.R. (1893—1900), 383.**

(4)—*S. 84—Interpretation of, "or".*—For the sake of brevity, "*or*" has been used in s. 84 in the sense of "*or*" and also in the sense of "*and.*" **L.B.R. (1893—1900), 348.**

(5)—*S. 104—Sentence—Imposition of daily fine.*—A Magistrate has no power to impose a daily fine by anticipation for an offence which has not been committed when the order is made. The proper course would be to fix a near day for report, and, if it be found that the order has not been carried out, it is open to prosecute the accused, and, on conviction, the daily fine up to the date of the report may be imposed, and so on until the order is complied with. **L.B.R. (1872—1892), 421.**

(6)—S. 145—*See* No. 1, *supra.*

*** Act XX of 1886 (Upper Burma Laws).**

[REP., ACT XIII OF 1898, S. 18.]

(1)—S. 7—*See* PWES, U.B.R. (1897—1901), Vol. I, 368.

See ACT VI OF 1864, s. 2, U.B.R. (1892—1896), Vol. I, 332.

*** Act III of 1889 (Lower Burma Village).**

[AMENDED, ACT XI OF 1894; ACT XVIII OF 1895; ACT XIII OF 1898, S. 16.]

(1)—*Offence not cognizable by* Ywathugyi—*Order directing attendance*—Ultra vires.—Insult not being an offence cognizable by a *Ywathugyi* or headman under the Lower Burma Village Act, the order issued by him compelling the attendance of the accused before him is *ultra vires*, and is, therefore, not legally binding on the accused. **L.B.R. (1872—1892), 535.**

(2)—*Accused previously convicted of theft—Subsequent commission of an offence punishable with 3 years imprisonment—Liability to enhanced sentence under s. 75, Penal Code.*—A person duly convicted of theft under s. 7 of the Lower Burma Village Act in case of a subsequent offence punishable with imprisonment for a term of three years or upwards under Chapter XII or XVII of the Indian Penal Code is liable to be dealt with under s. 75, Penal Code. **L.B.R. (1872—1892), 549.** [*Overruled*, L.B.R. (1893—1900), 378.]

(3)—S. 7—*See* SENTENCE—ENHANCEMENT OF SENTENCE, L.B.R. (1893—1900), 378.

* These local Acts were passed by the Imperial Legislature.

4.—*Burma Acts*—continued.

Act III of 1889 (Lower Burma Village)—*ctd.*

(4)—*S. 8—Powers of Deputy Commissioner.*—Under s. 8 of the Lower Burma Village Act, a Deputy Commissioner can fine, suspend or dismiss a village headman for neglect of duty. Where, therefore, a Magistrate, citing s. 8 of the above Act as his authority, tried, convicted and passed a sentence of fine on a village headman for neglect of duty, though not authorized by any provisions of this Act, *held* that the Magistrate had no jurisdiction to do so. **L.B.R. (1893—1900), 186.**

(5)—*S. 9—Order of the village headman to keep pigs in enclosure—Disobedience to such order.*—The issue of an order by a village headman that the villagers should keep their pigs in enclosures to prevent their trespassing on the fields and destroying the paddy crop does not appear to be one of the public duties of a village headman which every resident of a village must, under s. 9, assist him in executing. **L.B.R. (1893—1900), 480.**

(6)—*S. 9 (2)—Burma Land and Revenue Act, 1876—Failure to pay capitation tax at a certain place on the demand of a Village headman.*—The accused were ordered by a Village headman by repeated notices to come and pay their capitation tax at a certain place. They failed to do so. They were thereupon prosecuted by the circle *thugyi*. The accused were convicted under s. 9 (2) of the Lower Burma Village Act. *Held*, the conviction was bad. The non-payment of a revenue is a matter that can be dealt with under the Land and Revenue Act. The provisions of s. 9 (2) of the Lower Burma Village Act are inapplicable. **4 L.B.R. 150=7 Cr. L.J. 450.**

(7)—*S. 9 (2)—Application of section.*—The mere breach of one of the rules, issued under s. 6 (1) of the Act, cannot amount to an offence and does not justify a conviction under s. 9 (2) of the Act. The essence of an offence, under that section, is refusal or neglect to comply with the requisition of a headman. To support a conviction under that section, it must, therefore, be proved that the headman made a certain requisition to the accused and that the accused refused or neglected to comply with it. **3 L.B.R. 96=3 Cr. L.J. 22.**

(8)—S. 9 (2)—*See* CONTEMPT OF LAWFUL AUTHORITY, L.B.R. (1893—1900), 218.

(9)—*Ss. 9 (2), 20 (2)—Power of Deputy Commissioner to revise* ywathugyi's *order.*—S. 20, cl. 2, empowers the Deputy Commissioner to revise the order given by the Village headman. The High Court will be in a position to deal with the conviction or sentence, under s. 9, cl. (2), only after the order of the Village Headman has been cancelled. **L.B.R. (1893—1900), 147.**

(10)—*S. 13—Imprisonment in default of payment of fine illegal—General Clauses Act (I of 1868), s. 5—Penal Code. ss. 63 to 70.*—A sentence of more than one-fourth of 15 days' imprisonment in default of payment of a fine imposed under s. 13, Lower Burma Village Act, is illegal. S. 5, General Clauses Act (1868), makes ss. 63 to 70 of the Penal Code applicable, where imprisonment is awardable as well as fine. **L.B.R. (1893—1900), 141.**

4.—*Burma Acts*—continued.

Act III of 1889 (Lower Burma Village)—*cld.*

(11)—*S. 13-A*—Pwe, *what constitutes.*—An assembly of villagers, at which there is music, and two of the village girls dance, is not a *pwe* under the Act as amended by Act II of 1904, unless the Local Government declare, by a specific notification under the Act, such an assembly to be a *pwe*. **4 L.B.R. 43=6 Cr. L.J. 280.**

(12)—*S. 13-A—Foot-races not* pwes.—The accused, who were concerned in a foot-race, were prosecuted for holding an unlicensed *pwe*, under s. 13-A of the Act, as amended by Burma Act II of 1904, and convicted and sentenced to fine: *held*, on a reference to the Chief Court, that the general expression "other like race," in cl. 3 of s. 13-A, cannot cover foot-races, and, though it might be open to the executive, under the last portion of that clause, to declare them by notification to be *pwes* in certain local areas, in the absence of such a declaration, it cannot be held that foot-races are *pwes* as defined in the Village Act. **3 L.B.R. 93=3 Cr. L.J. 18.**

(13)—*S. 13-A*—"Pwe," *meaning of—Lower Burma Towns Act, s. 7-A.*—The term "*pwe*" used in s. 13-A of the Lower Burma Village Act, 1889, and s. 7-A of the Lower Burma Towns Act, 1892, does not include such entertainments or gatherings as cart-races or pony-races. It merely refers to entertainments of a theatrical nature, namely, *zat-pwes* and *yok-the-pwes*. **1 L.B.R. 110, F.B.**

(14)—*S. 19—Scope of section.*—S. 19 of the Lower Burma Village Act refers to a complaint of an act which constitutes an offence under the Penal Code or any other law, if such act is also punishable departmentally under s. 8 of the Lower Burma Village Act. **1 L.B.R. 336.** (L.B.R., 1893—1900, 397, *F.*).

See EVIDENCE ACT, s. 25, 1 L B.R. 65, 3 L.B R. 283=5 Cr. L.J. 421.

***Act XI of 1889 (Lower Burma Courts).**

[REP., ACT VI OF 1900, s. 48.]

(1)—*Ss. 50 and 69—Criminal case.*—A petition presented to the Special Court under s. 50, cl. (5), Lower Burma Courts Act, by a person considering himself aggrieved by an order of the Recorder, sitting as Insolvency Commissioner, made under s. 50 of the Insolvent Act, comes before the Special Court as a criminal case, and is, therefore, to be dealt with, in case of difference of opinion between the members of the Special Court, under s. 69, cl. (*c*), of the Lower Burma Courts Act. The punishment, which can be awarded

* This local Act was passed by the Imperial Legislature.

4.—Burma Acts—continued.

Act XI of 1889 (Lower Burma Courts)—*cld.*

under s. 50 of the Insolvent Act, is a punishment for something which the person to be punished has done, and is not inflicted in order to compel him to do something in the future, and the case in which it is inflicted is, therefore, a criminal case. **19 C. 605.**

(2)—S. 69—*See* No. 1, *supra.*

(3)—Ss. 86 and 87—*See* ADVOCATE, L.B.R. (1872—1892), 260.

(4)—S. 87—*See* No. 3, *supra.*

See SANCTION TO PROSECUTE, L.B.R. (1893—1900), 529.

*** Act IX of 1892 (Lower Burma Towns).**

[AMENDED, ACT XVIII OF 1895; BUR. ACT III OF 1901, s. 3.]

(1)—*S. 5, cl. (k)—Assistance by headman of a ward—Limit of assistance.*—The general assistance which the headman of a ward is required by s. 5 (*k*) to give to all officers of the Government and Municipal officers in the execution of their public duties must be limited to assistance within the headman's ward. **L.B.R. (1893—1900), 454.**

(2)—*Ss. 6 (as amended by s. 4, Act XVIII of 1895) and 8—Village Headman refusing to assist—Offence triable by a Magistrate—Crim. Pro. Code (1882), s. 4 (p)*—A village headman, refusing, without good reason, to assist at a search for opium, when required to do so by an Excise Sergeant, and thereby rendering himself liable to fine for an offence punishable under s. 6 of the above Act, commits an offence within the meaning of s. 4 (*p*), Crim. Pro. Code. Such an offence must be enquired into and tried by a Magistrate. S. 8 of the Act has no application to orders passed in criminal proceedings for offences under the Act. **L.B.R. (1893-1900), 329.**

(3)—S. 7-A—*See* BUR. ACT III OF 1889, s. 13-A, 1 L.B.R. 110, F.B.

(4)—S. 8—*See* No. 2, *supra.*

Act II of 1898 (Ferries).

[REP. IN PART, ACT II OF 1901. AMENDED, BUR. ACT II OF 1899.]

(1)—*Ss. 12, 14, 15, 25 and 27.*—Isolated acts of conveying goods or passengers in a boat for hire within the limits of a ferry is not punishable under the Ferries Act. **U.B.R. (1897—1901), Vol. I, 194.**

(2)—S. 14—*See* No. 1, *supra.*

(3)—S. 15—*See* No. 1, *supra.*

(4)—S. 25—*See* No. 1, *supra.*

(5)—*Ss. 25 and 26 (b)—Some of the accused hiring other accused to carry betel leaves from*

* This local Act was passed by the Imperial Legislature.

4.—Burma Acts—continued.

Act II of 1898 (Ferries)—*concluded.*

one place to another—Sampans *of those hired, whether ferry boats—Neither fraudulent crossing of public ferry nor user of landing place, without paying ferry toll, shown—Whether offence under Act committed.*—Where the evidence, at most, showed that the first three accused employed the other three for hire to carry their betel leaves from one place to another within the limits of a ferry. *Held*, that the *sampans* of the accused, who were hired, did not thereby become "ferry boats," *i.e.*, plying for hire between two fixed points for all comers indiscriminately, and that no offence was disclosed under s. 25 of the Burma Ferries Act. None of the accused having been shown to have fraudulently or forcibly crossed the public ferry or used the landing place without paying the ferry toll, *held*, there was no evidence of an offence under s. 26 (*b*). **14 Bur.L.R. 22=7 Cr.L.J. 311.**

(6)—S. 26 (*b*)—*See* No. 5, *supra.*

(7)—S. 27—*See* No. 1, *supra.*

Act III of 1898 (Municipality).

[AMENDED, ACT VI OF 1900, S. 47.]

(1)—*Ss. 92 (1) (2) (3), 180—Notice of intention to build—Direction of Municipal Committee to leave space, disobedience of—Prosecution for disobedience of successive directions—Previous acquittals whether a bar to subsequent prosecution—Crim. Pro. Code (1898), s. 403—Jurisdiction of Court to consider the reasonableness of lawful direction of Committee, Crim. Pro. Code (1898), s. 403—Application of.*—A, just before he began to erect a building, gave notice of his intention to do so to the Municipal Committee under s. 92(1). After he began to build, but within six months from the receipt of his notice, the Municipal Committee issued, under s. 121-A, notice requiring A to leave space about the building for scavenging purposes. A disobeyed the notice. He was prosecuted and acquitted. Again, notice was issued under s. 92 (2) requiring A to leave space within a month. He was prosecuted for disobedience and acquitted again. Then the Committee issued a notice under s. 92 (3) requiring A to alter the building so as to leave space for conservancy and prosecuted him for disobeying such notice. A pleaded, *inter alia*, that (1) the two previous acquittals were a bar to the prosecution and (2) that the order of the Committee was not lawful or reasonable, there being sufficient means of access for scavenging purposes from the back, but he was convicted. *Held*, that, as he has now been convicted of disobeying a notice issued under s. 92 (3), the offence is not the same offence as either of the previous offences, and that he has not been convicted on the same facts for another offence for which a different charge might have been made under s. 236, Crim.Pro. Code, at the previous trial, as some of the facts constituting the present offence were not in existence at the time of the former trials, and so, s. 403, Crim.Pro. Code, does not

4.—Burma Acts—continued.

Act III of 1898 (Municipality)—*continued.*

apply. *Held*, also, the notice given by the Committee was a lawful one, and, when it is lawful, the Court has no jurisdiction under s. 180 to consider whether such order is reasonable or not. *Obiter* :—S. 403, Crim.Pro. Code, does not direct that a person shall be acquitted, but that he shall not be tried. So, an order of acquittal cannot be passed under s. 403, on the ground that the accused had been previously acquitted. **5 L.B.R. 12 = 9 Cr.L.J. 578 = 2 Ind. Cas. 357.**

(2)—S. 94 (2)—*See* BUR. ACT V OF 1880, ss. 12, 17, 18, 4 L.B.R. 153 = 7 Cr.L.J. 462.

(3)—*Ss. 99, 100 and 154—Points to be proved by prosecution.*—In a prosecution under ss. 99, 100 and 154, Burma Municipal Act, for slaughtering an animal within the limits of a Municipality in a place not licensed for that purpose, the prosecution must prove not only that the animal was slaughtered in such a place, but it was slaughtered for the sale of its flesh. **U.B.R. (1904), 2nd Qr., Municipal, 1.**

(4)—S. 100—*See* No. 3, *supra*.

(5)— *S. 121—Scope of section.*—This section empowers the Committee to require an owner to allow the servants of the Committee reasonable access to, or passage over, his land for scavenging purposes, whether these purposes concern the land in question or other land **U.B.R. (1897—1901), 230.**

(6)—*Ss. 130, 147 and 180—Premises unfit for human habitation—Notice by Municipal Committee prohibiting use of premises until further orders—Renting of premises—Prosecution—Legality of order of Municipal Committee—"Called in question"*—Ultra vires—*Magistrate not Municipal Committee to decide if premises fit for habitation.*—An owner of a building was required by the Rangoon Municipal Committee under s. 130 of the Burma Municipal Act to refrain from using it as it was unfit for human habitation in consequence of its insanitary condition, until the Committee should be satisfied that the said premises had been rendered fit for such use. The owner carried out some repairs and reported that the house had been thoroughly cleaned and painted and was open to inspection. The Health Officer replied that something further was required to make the building sanitary but the owner let the house to a tenant. He was prosecuted under s. 180 of the Burma Municipal Act for disobedience of the notice and was convicted, the Magistrate holding that s. 147 enacts that no order made under s. 130 should be liable to be called in question otherwise than by an appeal to the Commissioner under s. 147. *Held*, that the words "no such order shall be liable to be called in question otherwise than by such appeal" in s. 147 of the Act should not be interpreted as preventing an accused person from challenging the order as *ultra vires* by way of defence to a criminal charge; *held*, also, reversing the conviction and sentence

4.—Burma Acts—continued.

Act III of 1898 (Municipality)—*continued.*

that the portion of the Committee's order prohibiting the use of the house "until such time as the said Committee is satisfied &c." was *ultra vires*. S. 130 did not make the Committee the judge of the question whether the house had been made fit for habitation. It was a question of fact to be decided by the Magistrate if the Committee saw fit to prosecute. **4 L.B.R. 144 = 14 Bur. L.R. 125 = 7 Cr. L.J. 441.**

(7)—*Ss. 133 (1) and 160—Construction of term "wood."*—S. 133 (1) of the Act prohibits the storage for trade purposes of wood in an inflammable condition, and it is immaterial whether it is in a manufactured or unmanufactured shape. **2 L.B.R. 70.**

(8)—*Bye-law (2) under s. 142 (e), s. 180—Unlicensed pawn-broker—Definition of pawn-broker—Indian Contract Act, Ch. IX.*—The mere taking of goods as security for money lent would not make the lender a pawn-broker. To show that a person comes within the definition of pawn-broker, it must be proved that he carries on the business of lending money on the security of goods pledged to him, and that he holds himself out to lend money on such security and is in the habit of doing so. Where a person took goods in pawn for two loans of Rs. 20 and Rs. 10 and took also an "on demand note" for the loan of Rs. 20, but not for that of Rs. 10, which was explained by the fact that he was not in the habit of taking such a receipt for loans of less than Rs. 20 when property was kept with him as collateral security, *held*, that the fact that the accused belonged to the Chetty community, who carry on the business of money-lenders and hold themselves out as such, and also the admission of the accused, made the accused a pawn-broker, and, as such, he was guilty of an offence punishable under s. 180 of the Burma Municipal Act, in not having obtained a license from the Municipal authorities. In India, the English Law on the subject of pawning and pawn-brokers is not applicable. But Ch. IX of the Indian Contract Act is the law in force in India. According to Indian Law, there can be a taking in pawn even though no fixed time be agreed on for repayment of the loan, on account of which goods are deposited as security. **4 L.B.R. 8 = 6 Cr.L.J. 118.**

(9)—*Ss. 142 (f), 180—"Market," test of.*—The test to find whether a market has been established without sanction in contravention of the bye-law is whether the use of the place constituted a disturbance of market rights. When a *zayat* is partitioned off into stalls, and the public are allowed to come there, and occupy stalls for daily fees for the purpose of sale of goods, that constitutes a disturbance of the market rights of the Municipality. It does not matter whether the number of sellers is three or thirty. If three can do so without question, there is no reason why thirty should not do the same. The only difference is that

4.—Burma Acts—continued.

Act III of 1898 (Municipalities)—*concluded.*

the disturbance of market rights is more apparent in one case than in the other. **1 U.B.R. (1902—1903), Municipal, 1.** (11 B. 106, *F.*).

(10)—S. 147—*See* No. 6, *supra.*

(11)—S 154—*See* No. 3, *supra.*

(12)—S. 160—*See* No. 7, *supra.*

(13)—*S. 163—Mere letting off a fire-balloon, whether an offence.*—The letting off of a fire-balloon within a municipal town is not of itself an offence, as s. 163 of the Municipal Act merely requires that the consent of certain officers shall be obtained previous to doing so, showing that the act in itself, under permission, is not a dangerous one. The mere letting off of a fire-balloon, therefore, in the absence of proof of rashness or negligence cannot be a ground of conviction. **L B.R. (1893—1900), 628.**

(14)—*S. 180—Disobedience to notice.*—In prosecutions under s. 180, for disobedience to a notice issued under s. 114, legal evidence of the terms of the notice and of the period allowed by the notice for complying with it ought to be given. A Magistrate ordering a person to obey a notice issued by the Municipality under s. 114 acts *ultra vires.* **1 U.B.R. (1902—1903), Municipal, 3.**

(15)—*Ss. 180 (1), 195—Prosecution for not obeying order of Municipality—Conviction—Fine for a contingent offence—Legality.*—In convicting a person under s. 180 (1) of the Act for not obeying an order of the Municipal Committee to vacate his house in forty-eight hours, the Magistrate ordered the accused to vacate the house in five days, failing which to pay a fine of Rs. 5 for every day of non-compliance. *Held*, (1) the Magistrate had no authority to extend the time granted by the Municipality, and to give five days' time for the accused to vacate. (2) He had no authority to inflict a fine contingent on future events. If the disobedience continued, a fresh prosecution might be instituted, and, if convicted in such prosecution, the Magistrate could inflict a fine not exceeding Rs. 5 for every day of disobedience. **4 L.B.R. 44=6 Cr. L.J. 281.**

(16)—S. 180—*See* Nos 1, 6, 8, 9, *supra.*

(17)—*S. 195—Prosecutions when legal.*—No Court can take cognizance of any offence punishable under the Act except on the complaint of a person authorised by the Committee. **2 L.B. R. 124.**

(18)—S. 195—*See* No. 15, *supra.*

Act I of 1899 (Gambling).

(1)—*Abuse to which it may be put—Care required of Magistrates in administering it.*—There is great danger that the gambling law as it stands may be made a means by unscrupulous persons of harassing and oppressing persons on charges of gambling, and Magistrates should be careful to see that precautions are used to avoid unnecessary hardship, and to follow strictly the procedure laid down by law. **1 L. B.R. 49.**

4.—Burma Acts—continued.

Act I of 1899 (Gambling)—*continued.*

(2)—*S. 3—Ti Game—Raffle.*—Though a game of *Ti* is not specifically defined in the Act, a *raffle* game comes within the definition of "*Ti* or other game or pretended game" of a like nature in s. 3, sub-sec. (3), cl. (*b*) of the Act and is, therefore, equally punishable with a game of *Ti*. **U.B.R. (1892—1896), Vol. I, 112.**

(2-*a*)—S. 3 (*a*)—*See* No. 16, *supra.*

(3)—*Ss. 3 (a), 5, 10—Arrest of gamblers by village-headman illegal—Coins not necessarily instruments of gaming.*—A village head-man not being a police officer is not empowered to arrest people whom he finds gambling in a public place, and it is illegal for the police to take cognizance of the offence on the head-man's report. Coins are not necessarily instruments of gaming, but may be so in certain conditions. Coins found in the possession of a person arrested under s. 5 of the Act are not liable to seizure and forfeiture unless there is evidence to show that they were used or intended for the purpose of gaming. The fact that the arrest is illegal does not invalidate a trial. **2 L.B.R. 60.** (L.B.R. 1872—1892, 281, L.B R., 1893—1900, 547, 1 L.B.R. 65, 1 U.B.R., 211, L.B.R., 1893—1900, 369, *R.*).

(4)—*Ss. 4, 10, 11 and 12.—Game of* gonnyin.—The game of *gonnyin* is one of pure skill and does not, therefore, come under the provisions of the law against public gaming. **U. B. R. (1897—1901), Vol. 1, 209.**

(5)—*S 5—Gambling in a public place—Power of police to arrest without warrant.*—The procedure of a police officer in arresting an accused without warrant on the mere report of an *Ayatok* was held to be illegal. Under s. 5 of the Gambling Act, a police officer, who finds people gambling in a public place, may arrest them. He has no power to arrest without warrant people who are reported to him to have so played, when he himself has not come upon them in the act. **1 L.B.R. 267.**

(6)—S. 5—*See* No. 3, *supra.*

(7)—*Ss. 5 and 10—Gambling in licensed toddy-shop—Toddy-shop not a public place.*—A licensed toddy-shop is not a place to which the public have access within the meaning of ss. 5 and 10 of the Burma Gambling Act, 1899. Ss. 5 and 10 of the Gambling Act are aimed at gambling in streets and thoroughfares and other similar places to which the public have access, and gambling in houses is dealt with in other parts of the Act and under different conditions. **2 L. B. R. 195.** (4 B. L. R. 99, L.B.R., 1872—1892, 317, *R*).

(8)—*Ss. 5 and 10—Power of police officer to arrest.*—If a police officer sees a man gambling in a place to which the public have access, he himself may arrest him then and there, or, if he escapes for the time, subsequently. But it would not be legal for a police officer, who should come upon a number of persons gambling, subsequently to arrest persons reported to

4.—Burma Acts—continued.

Act I of 1899 (Gambling)—*continued.*

have been present but whom he himself did not see or recognise. **U.B.R. (1897—1901), Vol. I, 211.**

(9)—*S. 6—Issue of warrant—Further procedure.*—When a warrant is issued under s.6 of this Act, it should be executed in accordance with the provisions of that section. All the persons found in the common gaming-house are not to be indiscriminately taken into custody and brought before a Magistrate for trial. **U.B.R. (1892—1896), Vol. I, 112.**

(10)—*Ss. 6 and 7—Issue of warrant under sections.*—Before the presumption under s. 7 can be drawn, it must be shown that the search was made in strict accordance with the provisions of s. 6. The warrant must be issued after the information has been recorded, and the provisions of s. 103, Crim. Pro. Code, must be observed in the search. *Held, also*, that, as a matter of practice, the information and grounds of belief recorded under s. 6 should always be filed with the record of the trial. **U.B.R. (1897—1901), Vol. I, 213.**

(11)—*Ss. 6 and 7—Lower Burma Towns Act, s. 4—Officer executing search warrant—Necessity for two respectable inhabitants of locality to witness search—Headmen of wards, whether proper witnesses—Crim. Pro. Code (1898), s. 103.*—A house cannot be deemed to be entered under the provisions of s. 6 of the Burma Gambling Act, unless the Police Officer authorised by the warrant be accompanied by two respectable inhabitants of the locality within the meaning of s. 103, Crim. Pro. Code. The intention of the Legislature in framing s. 103, Crim. Pro. Code, should be considered in deciding whether the word "inhabitants" should be taken in its widest and ordinary sense, or whether it should be restricted so as to exclude a certain class of "inhabitants." The intention of the enactment seems to have been beyond doubt to ensure that searches are conducted with decency and in order, and that no wrong-doing, such as the planting of articles by the Police in the house searched, should take place. The regularity and proper conduct of the search was to be secured by two or more witnesses, and, this being so, it seems to be obvious that the intention was that only those should be chosen as witnesses, who can be reasonably relied on to secure the desired result, and whose trustworthiness and ability towards the carrying out of the particular duty required of them, can be felt. The intention, therefore, was to exclude from the category of inhabitants, those in whom confidence could not be felt and those against whom a reasonable suspicion arises that they may not carry out the duty required of them. Headmen of wards in the City of Rangoon are appointed by the Commissioner of Police, and it has become the practice to constantly use them as witnesses of searches. They further have certain police duties to do. They may be good and respectable men, but, under the circumstances, it would be dangerous to hold that they are of the class of those whom the law intended to be called as witnesses of searches. While they have police duties, are constantly called on to attend searches, and are appointed by the police, there cannot be that confidence in their doing the duty required of them which there ought to be, and they belong to that class which the law never intended witnesses to be chosen from. The house, entered in the present case, therefore, was not entered under the provisions of s.6 of the Burma Gambling Act and the presumption under s. 7 of the Act cannot be drawn. **14 Bur. L.R. 81=4 L.B.R. 213=7 Cr. L.J. 479.**

(12)—*Ss. 6 and 7—Crim. Pro. Code (1898), ss. 102 and 103—Presumption from discovery of instruments for gaming—Common gaming-house - List of things seized in search.*—The accused were convicted under the Gambling Act, some under s. 11 for being present in a common gambling house for the purpose of gaming, and others under s. 12 for keeping a common gaming house. When a house, entered under the provisions of s. 6 of the Act, is found to contain any instruments of gaming, the presumption under s. 7 is that such house is a common gaming house and that the persons found therein were then present for the purpose of gaming. Under s. 6, the search must be made in accordance with the provisions of ss. 102 and 103 of the Crim. Pro. Code. Under s. 103 of the Code, unless the list of the things seized is signed by the witnesses mentioned in the section, the search would not be legal. In the present case, a list was made upon three separate sheets of paper, the first of which was signed by the witnesses, while the rest were not signed. The first sheet did not contain any instruments of gaming. The search being thus illegal, the presumption under s. 7 does not arise and the convictions must be set aside. **4 L.B.R. 134=7 Cr. L.J. 411.**

(13)—*Ss. 6 and 7—Search—Presumption—Articles liable to seizure.*—In cases under ss. 11 and 12, Gambling Act, it is only when the provisions of s. 6 are strictly followed that the presumption under s. 7 arises. The record containing the information received and the grounds of belief prepared under s. 6, Gambling Act, must form part of the trial record. Only articles specified in s. 6 can be seized in execution of a warrant under that section. **1 L.B.R. 289.**

(13-*a*)—*Ss. 6 and 7--House irregularly entered.*—The provisions of sub-section 1 of s. 6 of the Burma Gambling Act are all important, and, unless those provisions are strictly carried out, a house or place cannot be said to have been entered under the provisions of that section, and consequently the presumption specified in s. 7 cannot be made. A Magistrate or District Superintendent of Police, before he can issue a search-warrant, is required (1) to himself record in writing the substance of the information he

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4.—Burma Acts—continued.

Act I of 1899 (Gambling)—*continued.*

has received, and (2) to record the grounds of his belief that the information is credible. **1 L. B.R. 120.**

(14)—*Ss. 6 and 8—Gambling—Evidence of accomplice—House not searched—Crim. Pro. Code (1898), s. 337.*—S. 8 of the Gambling Act does not enable a Magistrate to call on an accused person to give evidence in the case of a house not entered under the provisions of s. 6 of that Act, and s. 337, Crim. Pro. Code, does not apply to such cases. **1 L.B.R. 62.**

(15)—*Ss. 6, 8 and 9—Evidence of arrested person when admissible-Certificate of indemnity to be given—Scope of such certificate.*—If the evidence of a person arrested under s. 6 of the Act is to be taken, he should be examined as a witness in accordance with the provisions of s. 8 of this Act, and not otherwise. The person so examined should, under s. 9 of the Act, be given a certificate absolutely freeing him from all prosecutions under the Act for anything done before that time in respect of the game under enquiry. **U.B.R. (1892—1896), Vol. I, 115.**

(16)—*Ss. 6, 16 (a), 15 (2), 3 (a)—Gambling in public streets—Warrant to whom to be directed and in what cases —Coins, whether instruments of gaming—Rewards.*—It is only with regard to common gaming houses that it is now necessary for a Magistrate to direct his warrant to a police officer not below a certain rank. In cases coming under s. 10, he is not so restricted, and the provisions of s. 77, Crim. Pro. Code, will apply. It is not generally advisable to issue warrants to an informer for execution. Coins are now instruments of gaming under s. 3 (*a*) and under s. 15 (2); they can be seized and forfeited, even in prosecutions under s. 10 (*a*). Rewards can now be paid to any person who contributes to a conviction. **L.B.R. (1893—1900), 547.**

(17)—*Ss. 6, 11 and 12—Warrant to be on record—Their provisions to be strictly followed* —The warrant issued under s. 6 of this Act should be on the record as a documentary exhibit (*vide* Circular No. 6, Criminal, 7 (*b*) of 1893). The procedure laid down for the trial of offences under this Act should be strictly followed. The proceedings, as in the trial of summons-cases, should begin with the statements of the particulars of the complaint to the accused and the defence should come in after the evidence for the prosecution. **U.B.R. (1892—1896), Vol, I 114.**

(18)—*Ss. 6, 11, 12 and 15—Seizure of moneys in common gaming house.*—There is no provision in the Burma Gambling Act, empowering any person to seize moneys found in a common gaming house which is not entered under the provisions of s. 6, nor authorising a Magistrate to order that moneys so seized be forfeited. In this case, both the seizure of moneys and the order directing it to be

4.—Burma Acts—continued.

Act I of 1899 (Gambling)—*continued.*

forfeited being illegal, the Chief Court set aside the order and directed the refund of the moneys. **4 L.B R. 227 = 7 Cr. L.J. 488.**

(19)—*Ss. 6 and 14—"Report" meaning of* —The expression "report or information" in s. 14 of the Gambling Act has a very wide significance, and any report of a police officer is included in the term "report," as used in that section. **2 L.B.R. 212.** (2 L.B.R. 146, *R*).

(20)—*Ss. 6 (sub-sections 3 and 4) and 14—Search in common gaming house—Procedure.* —A District Superintendent of Police making a search on his own initiative, under s. 6 (1) of the Act, should comply with the provisions of s. 6 (4), in the same way as if he were making the search under a warrant. He has no authority to release the accused on bail. The presumption under s. 7 does not arise if the provisions of s. 6 (3) are not complied with. **2 L.B.R. 43.**

(21)—S. 7—*See* CRIM. PRO. CODE (1898), ss. 102, 103, 3 L.B.R. 229 = 4 Cr. L.J. 390.

(22)—S. 7—*See* Nos. 10, 11, 12, 13, *supra.*

(23)—*S. 8—Accused found in common gaming house—House not entered without warrant—Accused persons made witnesses—Procedure illegal.*—The procedure of a Magistrate, in a case where the evidence offered was insufficient, in making two of the accused persons witnesses in the trial of an offence under s. 10 of the Act, on the application of the police, was held to be illegal. S. 8 of the Gambling Act applies only to cases in which a house or place has been entered under the provisions of s. 6, that is, under a warrant issued by a duly empowered Magistrate or by the District Superintendent of Police. **1 L.B.R. 59.** [*Overruled*, 2 L.B.R. 146.]

(24)—S. 8—*See* Nos. 14, 15, *supra.*

(25)—*S. 9—Evidence of accomplices absolved under s. 9, not invested with any special value.* —Though s. 9 of the Gambling Act (I of 1899) by inference renders it admissible to examine persons who are accomplices to the accused, it does not invest their testimony with any special value beyond that which ordinarily attaches to the evidence of accomplices. **U.B.R. (1897—1901), Vol. I, 224.**

(26)—S. 9—*See* No. 15, *supra.*

(27)—*S. 10—Scene of offence to be a "public place."*—Setting birds or animals to fight in a *cultivated field* is no offence under this section, as such a place is a *private* and not a *public* one. **U.B.R. (1892—1896), Vol. I, 117.**

(28)—*S. 10—Gambling in a* Zayat—*Zayat is a "place to which the public have access."*—A *zayat* must be regarded as a "place to which the public have access," and persons found gaming in it are liable to a prosecution under the said section. **U.B.R. (1897—1901), Vol. I, 215.** [*F.*, U.B.R. (1897—1901), Vol. I, 216.]

***4.—Burma Acts*—continued.**

Act I of 1899 (Gambling)—*continued.*

(29)—*S. 10—Encouraging by their presence—Whether it is "aiding and abetting"—First conviction—No maximum sentence.*—Sympathetic spectators at a cock-fight, encouraging the same by their presence, shouting and gesticulation, can rightly be convicted of being present, aiding and abetting." On a first conviction under this section, the appropriate punishment is a small fine and not the maximum punishment provided for the offence, unless there is sufficient reason to satisfy that extreme severity. **U B.R. (1892—1896), Vol. I, 119.**

(30)—*S. 10—Abetment—"Aiding and abetting."*—Meaning of the words 'aiding and abetting' in the above section do not include those who are present against their will or accidentally or for a legitimate purpose. **U.B.R. (1892—1896), Vol. I, 117.**

(31)—*S. 10—Sentence of both imprisonment and fine, legality of.*—This Act does not allow a sentence of both fine and imprisonment to be imposed on an accused person. Either the one or the other should be awarded. **U.B.R. (1892-1896), Vol. I, 114, 118.**

(32)—*S. 10—Setting cocks to fight in a street—Proceedings of Legislature not an aid to interpret a statute.*—The mere act of setting birds or animals to fight in a street, thoroughfare. or place to which the public have access, is an offence under s. 10 of the Burma Gambling Act. The section does not require that there should be any wagering on the result of the fight. The proceedings of the Legislature to wit, the statement of objects and reasons, which resulted in the passing of an Act cannot be referred to as an aid to the interpretation of the Act. **1 L.B.R. 231.** (22 C. 788, *F.*).

(33)—S. 10—*See* CRIM. PRO CODE (1898), ss. 190 (1) (*b*) and 4 (1) (*h*), 1 L.B.R. 18.

(34)—S. 10—*See* Nos. 3, 4, 7, 8, *supra*.

(35)—S. 10 (*a*)—*See* No. 16, *supra*.

(36)—*Ss. 10, 11*—Gambling in a *zayat* in the compound of a monastery is an offence punishable under s. 10, as the *zayat* was a place to which the public had access. **U.B.R.(1897-1901), Vol. I, 216.** (U.B.R., 1897-1901, Vol. I, 215, *F.*).

(37)—*Ss. 10, 11, 12—Gambling in a threshing-floor.*—Gambling in a threshing floor is punishable under s. 10, such place being a place to which the public have access. **U.B.R. (1897-1901), Vol. I, 217.**

(38)—*Ss. 10, 11 and 12—Card-gambling and cock-fighting under a tree near a village—Conductors thereof, nature of offence committed by.*—Card-gambling and cock-fighting were carried on by the accused under a tree near a village. Most of them were convicted of gambling and setting animals to fight in a public place, under s. 10 of the Act. The others were convicted, on the same facts, with the additional fact that they acted as *daings* under s. 12. *Held,* that even if the possession of cards could convert the space under the tree into a common gaming-house, the possession of cocks could not, because birds and animals are not mentioned in s. 3 (3). The Legislature could not have intended that the person, who organises offences, under cl. (*a*) of s. 10, for his own profit should be punishable under s. 12, while a person, who organises offences, under the other clauses of s. 10, is not so punishable. Ss. 11 and 12 relate to offences committed in a common gaming-house, and s.10 to offences committed in a public place. It could not be said that the primary object of the Legislature was to make the conductor of gambling in a public place punishable under s. 12. Therefore, the conviction under s. 12 was altered to one under s. 10. **U.B.R. 1905, Gambling. 1=2 Cr.L.J. 471.**

(39)—*Ss. 10, 11 and 12—Gambling in a public place, person conducting*—Daing—*Conviction of.*—If the place of gaming was a common gaming-house, the persons who played cards for money in it ought to have been convicted under s. 11 of the Act, not under s. 10. If it was a place to which the public have access, the *daings* ought to have been convicted under s. 10. **4 L.B.R. 47=6 Cr. L.J. 285.**

(40)—*S. 11—Gambling—Evidence of informer—Necessity for corroboration.*—Convictions for illegal gambling cannot safely be had on the mere word of an informer, corroborated solely by the bald statements of his near relations and by no other evidence, direct or circumstantial. **U.B.R. (1897—1901), Vol. I, 218.**

(41)—*S. 11*—*See* Nos. 4, 17, 18, 36, 37, 38, 39, *supra*.

(42)—*Ss. 11, 12—Common gaming-house, owner of, present for gaming—Double conviction, illegal.*—The owner of a common gaming-house, who was present for the purpose of gaming and who received a small commission, is not liable to a conviction under s. 11, as well as under s. 12 of the Act. Double conviction is illegal in such cases. **1 L.B.R. 178.** (1 L.B.R. 33, *F.*)

(43)—*Ss. 11 and 12—Indian Penal Code, s. 71—House-owner taking part in the gambling—Double conviction—Legality of the sentence.*—The taking part in the game by the house-owner or occupant may be and often is, a part of the method of conducting or of assisting in conducting the business of a common gaming-house, and so it may be a part of the way in which the house is used as a common gaming-house for the profit or the gain of the owner or occupier. Where the Magistrate found that the accused had used her house as a common gaming-house, and, also, that she had herself played cards for money in the house, *held*, that s. 71 of the Penal Code applied to such a case, and that the accused was not liable to be sentenced for an offence under s. 11 of the Gambling Act in addition to being sentenced under s. 12. **4 L.B.R. 104=7 Cr.L.J. 76.**

4.—Burma Acts—continued.

Act I of 1899 (Gambling)—*continued.*

(44)— *Ss. 11 and 12*—A sentence of imprisonment in default of payment of a fine, under s. 11 or 12 of the Act, is limited to one-fourth of the maximum term of imprisonment for the offence. **U.B.R. (1897—1901), Vol. I, 220.** (U.B. R., 1897—1901, Vol. I, 221, *F.*).

(45)—*Ss. 11 and 12—See* CRIM. PRO. CODE (1898), ss. 4 and 190, 1 L.B.R. 58.

(46)—*S. 12, cls. (a) and (d)—Offences under—Punishment.*—Offences under the above two clauses of this section are distinct and may be separately punished. **U.B.R. (1897—1901), Vol. I, 224.**

(47)—*S. 12—Common gaming-house—Magistrate, duty of—Issue of process.*—A Magistrate ought, before issuing process under s. 12, Burma Gambling Act, 1899, to satisfy himself by evidence that a house is used as a common gaming house. **1 L.B.R. 92.**

(48)—*S. 12—Limit of imprisonment in default of payment of fine—Penal Code, s. 65.*—S. 65, I.P.C., is intended to apply to offences punishable with imprisonment *or* fine, and imprisonment in default of the payment of a fine under s. 12 of Act I of 1899 must be limited to one-fourth of the maximum term of imprisonment awarded for the offence. **U.B.R. (1897—1901), Vol. I, 221, 220.** (U.B.R., 1892—1896, Vol. I, 93, L.B.R., 1893—1900, 385, *R.*).

(49)—S. 12—*See* CRIM. PRO. CODE (1898), s. 556, U.B.R. (1897—1901), Vol. I, 125.

(50)—S. 12—*See* SENTENCE, 1 L.B.R. 150.

(51)—S. 12—*See* Nos. 4, 17, 18, 37, 38, 39, 42, 43, 44, 45, *supra.*

(52)—*Ss. 12 and 14—Jurisdiction of Magistrate.*—According to s. 14 of the Gambling Act (I of 1899), a Magistrate is precluded from taking cognizance of any offence under s. 12 of the Act committed more than a month befcre the offence is reported to him. **U.B.R. (1897—1901), Vol. I, 224.**

(53)—*S. 13—Stakeholder in a* Ti *game—Liability.*—A stakeholder in a *Ti* game is liable to be punished under the provisions of s. 13 of this Act. **U.B.R. (1892—1896), Vol. I, 122.**

(54)—*S. 13—Arrest—Irregularity—Proceedings, whether vitiated thereby.*—As the law has prescribed no special mode of arrest as a necessary preliminary to a prosecution under this section, the manner of arrest is not an essential point of procedure, any substantial defect in which would vitiate the proceedings. **U.B.R. (1892—1896), Vol. I, 123.** (4 C. 659, *R.*).

(55)—S. 14—*See* Nos. 19, 20, 52, *supra.*

(56)—S. 15—*See* No. 18, *supra.*

(57)—S. 15 (2)—*See* No. 16, *supra.*

(58)—*S. 16—Burma Judicial Department Notification, No. 286, dated 20th August, 1896, Rule 7.*—The Rules contained in Judicial Department Notification, No. 286, dated 20th August, 1896, do not affect the payment of rewards under the express provision of any Act, Regulation or Rule having the force of law. S. 16 of the Act expressly provides for the payment of such rewards, and the limitation imposed by Rule 7 of the Rules under the former Act does not apply. **L.B.R. (1893—1900), 664.**

4.—Burma Acts—continued.

Act I of 1899 (Gambling)—*concluded.*

(59)—*S. 17—Order requiring security—Appeal, maintainability of—Crim. Pro. Code (1898), ss. 110, 117, 118 and 406.*—S. 17 of the Gambling Act empowers a competent Magistrate, who receives information that any person in his jurisdiction earns his livelihood, wholly or in part, by unlawful gambling, to deal with that person as nearly as may be as if the information were of the description mentioned in s. 110 of the Crim. Pro. Code and to pass an order under s. 118, Crim. Pro. Code. *Held*, that, inasmuch as an order under s. 17 of the Act, requiring security from a person, who has been found to earn his livelihood by unlawful gaming, is an order passed under s. 118, Crim. Pro. Code, an appeal lies against that order under s. 406, Crim. Pro. Code. **3 L.B.R. 21 = 2 Cr.L.J. 378.**

(60)—*S. 17—Procedure in demanding security with reference to s. 17—Appeal.*—In demanding security with reference to s. 17, the Magistrate must be held to act under s. 118, Crim. Pro. Code (1898), and, therefore, an appeal lies to the District Magistrate under s. 406, Crim. Pro. Code, 1898. **U.B.R. (1897—1901), Vol. I, 227.**

(61)—*S. 17—Evidence of general repute as foundation for proceedings under—Order requiring a bond—Acceptance of separate sureties improper.*—The taking of evidence of general repute as a foundation for proceedings under s. 17 of the Act is warranted by the terms of the section. Where a Magistrate requires a bond for Rs. 3,000 under s. 17 of the Act, the acceptance by him of separate sureties for Rs. 3,000 and Rs. 2,000 is improper. It will look as if the sureties were given for Rs. 5,000. All that can properly be demanded is security amounting jointly and severally to Rs. 3,000 or sureties severally bound for such sums as will make up Rs. 3,000. **1 L.B.R. 145.**

(62)—*S. 17—Points to be proved in prosecution under the section.*—In a prosecution under s. 17 of the above Act, what has to be proved is that the applicant partially earned his livelihood by unlawful gaming, or by promoting, or assisting in the promotion, of unlawful gaming, and, under s. 117 (3), Crim. Pro. Code, these facts may be proved "by evidence of general repute or otherwise." But the statements of the witnesses, who heard this or that, are not evidence of general repute. **U.B.R. (1897—1901), Vol. I, 228.** (23 C. 621, *F*).

(63)—S. 17—*See* CRIM. PRO. CODE (1898), s. 55, 3 L.B.R. 94.

(64)—S. 17—*See* CRIM. PRO. CODE (1898), ss. 118 (3) and 562, 2 L.B.R. 168.

(65)—S. 17.—*See* GAMBLING, 1 L.B.R. 71.

4.—Burma Acts—concluded.

Act IV of 1899 (Rangoon Police).

(1)—S. 30—See ACT XI OF 1878, s. 19 (*e*), 3 L.B.R. 218, F.B.

(2)—*Ss. 30, 31-A—Summary trial under s. 30—Order for security for good behaviour under s. 31-A, in addition to sentence of imprisonment, whether it affects the right of appeal—Provisions of ss. 414 and 415, Crim. Pro. Code, whether applicable—Appealable sentence passed on one only of the persons jointly tried—Whether others on whom no such appealable sentence passed, have also the right of appeal.*—Where two persons were jointly tried at a summary trial under s. 30 of the Rangoon Police Act, and one of them was sentenced to three months' rigorous imprisonment and was further ordered under s. 31-A to give security for good behaviour, *held*, the addition of such order to give security for good behaviour did render the sentence appealable; and that the provision in s. 415, Crim. Pro. Code, will not apply to an order under the Rangoon Police Act, s. 31-A, since (1) s. 415 has no reference to security for good behaviour and (2) there is no corresponding provision in the Rangoon Police Act restricting the right of appeal.

Held, also, when more persons than one are convicted at one trial and an appealable sentence is passed on any of them, all the persons convicted at such trial have a right of appeal. **4 L.B.R. 359=9 Cr. L.J. 368.**

(3)—S. 31-A—See No. 2, *supra*.

Act II of 1900 (Vaccination Law Amendment).

See BUR. ACT XIII OF 1880, 2 L.B.R. 279.

Act IV of 1901 (Lower Burma Courts Act, 1900, Amendment Act).

—S. 12—*See* CRIM. PRO. CODE (1898), ss. 299 (*a*), 302, 303, 439, 537 (*d*), 3 L.B.R. 75.

Act II of 1904 (Lower Burma Village Act Amendment Act).

See BUR. ACT III OF 1889, s. 13-A, 3 L.B.R. 93=3 Cr. L.J. 18.

5.—Central Provinces Acts.

*** Act XI of 1873 (Municipal Act).**

(1)—*S. 21—Dividing carcass of animal within Municipal limits for cooking purposes.*—To bring the carcass of an animal into the limits of a Municipality and divide it for the pupose of cooking, is not to dispose of it within Municipal limits, within the meaning of the Municipal bye-laws on that subject. **Col. Dig. (Cr.) 84 of 1877.** (CENTRAL PROVINCES).

(2)—*S. 74—Wells within Municipal limits.*—The Municipal Committee could not, under the above section, require the owner of a well to protect it, unless it was, for want of protection, dangerous to persons passing by or dwelling or working in the neighbourhood. **5 C.P.L.R. 57 Cr.**

* This local Act was passed by the Imperial Legislature.

5.—Central Provinces Acts—continued.

*** Act XVIII of 1889 (C.P. Municipality).**

(1)—*Playing music in a Municipal town, when an offence.*—Where a Municipal Committee has not issued any orders or made any rule against playing music at night, a conviction in such a case under the above Act is untenable. **5 C.P.L.R. 92.**

(2)—*S. 84, prosecution under—Burden of proof—Evidence Act, s. 106.*—Where an accused person is charged with omitting to report the occurrence of death within the prescribed time, a conviction should not be set aside merely on the ground that the prosecution omitted to prove that the occurrence was not reported. **16 C.P. L.R. 63.**

(3)—*S. 97—Nuisance.*—The accused in this case was charged, under s. 97 of the above Act, of keeping swine in insecure enclosures, in disregard of orders given by the Municipal Committee for preventing a nuisance. In addition to passing a sentence of fine, and alternative imprisonment on the accused, the Bench passed the following order:—" that he should take his swine outside the Municipal limits within 5 days and demolish his enclosures, and, in case of failure to comply with the orders, pay a fine of Re. 1 *per diem*." *Held* that the order for the removal of the swine, and the demolition of the enclosures were without jurisdiction and the order that, in case of failure to comply with that order, the accused should pay a daily fine was illegal. **6 C.P.L.R. 32 Cr.**

(4)—*S. 120—Public Nuisance.*—The C.P. Municipal Act, XVIII of 1889, does not empower a Municipal Committee to define public or common nuisances. Rules made under the previous Act of 1873 declaring what acts or omissions within the limits of the town should be declared to be public or common nuisances cannot be deemed to be any longer in force as law. **12 C.P.L.R. 16 Cr.**

(5)—*S. 122—Penalty for disobedience to orders of Committee not punishable under any other section of Act—The continuing breach contemplated by s. 122 is a past breach and not a possible future breach.*—A Magistrate cannot legally, when convicting a person of disobedience to a written notice issued by the Municipal Committee, direct that he shall obey the notice within a certain time and that, in case of non-compliance, he shall pay a certain daily fine. **7 C.P.L.R. 4 Cr.**

Act II of 1891 (Bombay Boiler Inspection Act, as applied to Berar).

—*S. 29 (1) (b)—" In direct and immediate management and charge "—Construction.*—The words " in direct and immediate management and charge " in sub-s. (1) (*b*) of s. 29 of the Bombay Boiler Inspection Act, II of 1891 (as applied to Berar), were not intended to mean that the qualified person or the Engineer should always be in the immediate presence of the

* This local Act was passed by the Imperial Legislature.

5.—*Central Provinces Acts*—concluded.

Act II of 1891 (Bombay Boiler Inspection Act, as applied to Berar)—*concluded.*

boiler and have his eyes fixed on it for the whole day. In every case, it is a question of fact, to be decided from the circumstances, whether the Engineer can be said to be in direct and immediate charge. One may not take into consideration in interpreting an Act the proceedings of the Legislative Council which enacted it. **4 N.L.R. 95=8 Cr. L.J. 31.**

Act II of 1904 (Central Provinces Courts).

—*S. 8, sub-s. 1 (a) and sub-s. 3—Rules framed under Act, when applicable—District Magistrate receiving applications for licenses under Indian Arms Act, 1878, whether a Criminal Court or executive officer.*—When receiving applications for licenses under the Arms Act, 1878, a District Magistrate is not acting as a Criminal Court, that is, judicially, but as an executive officer. Under these circumstances, an order by him, fining a person who writes applications for hire, as though that person had violated a rule made under cl. (*a*), sub-s. 1 of s. 8, Central Provinces Courts Act, 1904, is *ultra vires*, as he is not empowered to fine under sub-s. 3 of s. 8 of the C. P. Courts Act, 1904. The rules framed by the Judicial Commissioner's Court under cl. (*a*), sub-s. 1 of s. 8, C. P. Courts Act. 1904, apply only where the act complained of is done in a Court subordinate to it or in the latter Court itself. **4 N.L.R. 134.**

6.—*Madras Acts.*

*** Act XXIV of 1839 (Ganjam and Vizagapatam).**

[REP. IN PART, ACT XIV OF 1870; ACT XVI OF 1874; ACT XII OF 1891; MAD. ACT I OF 1865.]

—S. 3—*See* ACT XIV OF 1874, 14 M. 121=2 Weir 7.

*** Act XVII of 1840 (Salt Laws, Madras).**

[REP., MAD. ACT IV OF 1889.]

(1)—*Breach of—Imprisonment in default of payment of fine, whether legal.*—The award of imprisonment in default of payment of fine is not allowable under the provisions of Act XVII of 1840. **4 M. 335.**

(2)—*Punishment of imprisonment as substantive sentence, whether allowed by the Act—Madras Regulation I of 1805.*— Act XVII of 1840 allows of either fine or imprisonment being imposed as a substantive punishment. **4 M. 335, note, F.B.** [*R.*, 4 M. 325].

(3)—*Possession of salt-earth.*—Being in possession of salt-earth from which salt may be manufactured is an offence under Act XVII of 1840. **4 M.H.C. App. 53.**

* These local Acts were passed by the Imperial Legislature.

6.—*Madras Acts*—continued.

Act XVII of 1840 (Salt Laws, Madras)—*cld.*

(4)—*Discretion of Magistrate regarding sentence of fine and imprisonment—Order of Government restricting such discretion, effect of.*—An order of the Government prohibiting Magistrates from the exercise of discretion imposed on them by law as to whether they shall, in the case of certain offences, pass a sentence of fine or a sentence of imprisonment, is *ultra vires*, as, in the absence of any provision conferring or reserving to the Executive Government such power, the Government cannot, by an excutive order, release the Magistracy from their obligation to obey the enactments of the Legislature. **1 Weir 894, F.B.**

*** Act IX of 1846 (Boats in Harbours, Madras).**

[REP., MAD. ACT I OF 1893.]

(1)—*Rule VII of Rules made under Act—Liability of owner of boat—Burden of proof.*—Under Rule 7 of the Rules for the better management of boats and canoes, plying for hire at the out-ports of the Madras Presidency, dated 30th September, 1867, the owner of a boat is liable to a fine, on proof of his "allowing" his boat to ply without the requisite complement of men. The word "allow" in the rule creates a liability more extensive than would be implied in such words, as "if the owner neglects to ensure that the boat is fully manned, and thereby contravenes the provisions of the rules, he shall be guilty of an offence under the rules, unless he proves that he has taken all reasonable means to prevent such contravention." The absence of proof by the prosecution that the owner was aware that the boat was plying without its proper crew is no bar to his conviction. **9 M. 431=1 Weir 852.**

(2)—*Power of Local Government to make provision for the hearing of cases cognisable under Rules passed under the Act.*—Act IX of 1846 is an Act authorising the Government of Fort St. George to make, from time to time, in respect of each port or other place of anchorage in the Presidency, such regulations for the management of boats and *catamarans*, etc., and such other matters as are provided for by Act IV of 1842 in respect of the Madras Roads as shall seem to them expedient, "being similar in principle to the provisions contained in the said Act, but varying in detail as local circumstances required such variation." Under the provisions of this Act, it is competent for the Local Government to provide that cases involving questions as to breaches of the regulations or rules shall be cognisable by Magistrates not being Justices of the Peace. **9 M. 431=1 Weir 852.**

*** Act I of 1858 (Compulsory Labour, Madras).**

[REP. IN PART, ACT XVI OF 1874. DECLARED IN FORCE THROUGHOUT THE PRESIDENCY OF MADRAS, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 4].

* These local Acts were passed by the Imperial Legislature.

6.—Madras Acts—continued.

Act I of 1858 (Compulsory Labour, Madras)—*concluded.*

(1)—*Labouring classes.*—By the term "labouring classes" in Act I of 1858, not only persons who let their labour for hire are included, but also persons who habitually engage in manual labour, although they may, at the same time, be employers of labour. **6 M. 199 =1 Weir 784.**

(2)—*S. 1—Village "in the vicinity."*—Villages seven miles away from the place where a breach has occurred are not within such distance as answers to the words "vicinity" or "neighbouring" in s. 1 of the Act. **1 Weir 783=4 M.H.C. App. 20.**

(3)—*Ss. 1 and 2—Right to call labourers to help in stopping or preventing a breach.*—To entitle the authorities to call upon labourers of neighbouring villages to help in stopping or preventing a breach of a channel, it is only necessary to see that there has been or will be a breach. It is not necessary to see that a loss of property has occurred or will occur. **1 Weir 783=4 M.H.C. App. 20.**

(4)—*Ss. 1, 2 and 6—Jurisdiction of Magistrates under the Act.*—The only acts or omissions, over which a Magistrate has jurisdiction under Act I of 1858, are those specified in the first section, namely, where a tank or other irrigation work has been breached or is in imminent danger of being breached. Cases under s. 6 are not cognisable by a Magistrate at all, but the section points out distinctly the only mode in which the value of the labour withheld can be assessed or recovered. **1 Weir 783=4 M.H.C. App. 20.**

(5)—*S. 2—Offence under the section, what constitutes.*—When persons belonging to labouring classes are duly called upon by the head of the village to labour, as provided in s. 1 of the Act, a refusal or neglect to comply with such call, without any lawful excuse, constitutes an offence under s. 2. **1 Weir 783=4 M.H.C. App. 20.**

(6)—S. 2—*See* Nos. 3, 4, *supra.*

(7)—S. 6—*See* No. 4, *supra.*

* **Act XXIV of 1859 (Police, Madras).**

[REP. IN PART, ACT XVII OF 1862; ACT XIV OF 1870; ACT XVI OF 1874; MAD. ACT I OF 1885; MAD. ACT V OF 1896. REP. IN PART AND AMENDED—MAD. ACT III OF 1889 (EXCEPT IN SCHEDULED DISTRICTS), MAD. ACT III OF 1895. AMENDED, MAD. ACT V OF 1865. SUPPLEMENTED, ACT III OF 1888. DECLARED IN FORCE THROUGHOUT THE PRESIDENCY OF MADRAS, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 4]

(1)—S. 1—*See* MAD. ACT III OF 1864, s. 26, 9 M. 97.

* This local Act was passed by the Imperial Legislature.

6.—Madras Acts—continued.

Act XXIV of 1859 (Police, Madras)—*continued.*

(1-*a*) S. 1—*See* MAD. ACT I OF 1886, s. 55, 1 Weir 632; 836.

(1-*b*)—*Ss. 1, 8 and 11—Penal Code, ss. 21 and 353—Village* talayari, *whether a police officer.*—Under the Madras Police Act, a person, though assuming the functions of a police officer, is not a police officer in the execution of his duty so as to affect third parties, unless he has been enrolled and has received the certificate of enrolment. A village *talayari* is not a police officer, unless so enrolled, and, if not a police officer, he is not a public servant acting in the execution of his office, while making an arrest of persons suspected of crime. **1 Weir 342; 1 Weir 837.**

(2)—*Ss. 8, 10, 11 and 44—Village* kavalgars.—S. 44 of Act XXIV of 1859 applies only to police officers enrolled and appointed in the manner prescribed in ss. 8, 10 and 11 of the Act. Village *kavalgars*, not being so appointed, are not punishable under s. 44. **1 Weir 836=7 M.H.C. App. 4.**

(2-*a*)—S. 8—*See* No. 1-*b*, *supra.*

(3)—*Ss. 10 and 44—Departmental punishment, whether a bar to a prosecution under the Act.*—Where the Government has not framed any rules under s. 10 of Act XXIV of 1859, the mere fact of departmental punishment having been awarded is not sufficient to exonerate from liability under s. 44, though the circumstance may be taken into consideration in passing sentence. **17 M. 278=1 Weir 839.**

(4)—*Ss. 10 and 44—Police constable leaving his post, when on duty at the central jail, if liable to punishment.*—Where a police constable, who was on duty at the outer gate of a central jail, quitted his post inside the gateway and, leaving the gate open, slept outside, *held*, that he was properly punished under s. 44, and that s. 10 did not apply to the case. **1 Weir 837=7 M.H.C. App. 7.** [*F.*, 1 Weir 838.]

(5)—Where a constable posted as a sentry over the jail went to sleep, while on guard, *held*, that he was guilty under s. 10 and not under s. 44. **1 Weir 837, note=6 M.H.C. App. 31.** [*Overruled*, 1 Weir 837=7 M.H.C. App. 7].

(6)—A police constable falling asleep, while on guard, is guilty of a grave violation of duty and should, therefore, be dealt with under s. 44. **1 Weir 838.** [*F.*, 1 Weir 839=17 M. 278].

(7)—*Ss. 10, 44—Temporary absence from duty.*—The temporary absence of a constable from duty is not such a cessation of duty as to be covered by the provisions of s. 44. The offence is clearly one punishable under s. 10 of the Act. **1 Weir 840.** [*D.*, 1 Weir 841.]

(8)—*Ss. 10, 44—Wilful disobedience of an express lawful order.*—Where a Police Constable, who was directed by the Station House Officer, to guard a certain place with instructions not to leave his post until a week expired or until

6.—Madras Acts—continued.

Act XXIV of 1859 (Police, Madras)—*continued.*

relieved meanwhile, left his post and was found at the police station, *held*, that the accused was guilty under s. 44, inasmuch as he wilfully disobeyed an express lawful order given to him and that s. 10 did not apply. **1 Weir 841.**

(8-*a*) *S. 10—See* No. 2, *supra.*

(9)—*Ss. 11 and 44—Police officer—Appointment.*—No person, who has not been duly appointed under s. 11 of Act XXIV of 1859, can be held tc be a "Police officer" within the meaning of s. 44 of the Act. The distinction between the general Police and the village Police has been fully recognised in the Act. **1 Weir 836=7 M.H.C. App. 4.**

(10)—S. 11.—*See* Nos. 1-*b*, 2, *supra.*

(11)—*Ss. 21 and 49—Procession likely to cause breach of the peace—Powers of police—Removal of banners from persons in the procession.*—Where a procession of Hindus carrying certain banners made the Superintendent of Police apprehend that a breach of the peace would be occasioned, if these banners continued to be displayed, and, for the purpose of preventing such breach of the peace, he *bona fide* took away the banners from certain persons in the procession, *held*, that the action of the Superintendent of Police was not justified by the Madras Police Act, ss. 21 and 49, and that he was accordingly liable for trespass. **17 M. 37.**

(12)—*Ss 23 and 44—Omission to bring a person in custody without a warrant before a Magistrate.*—The defendant, a deputy constable, was convicted under s. 44, Act XXIV of 1859, for neglect to bring a person in custody without a warrant before a Magistrate. On appeal, the conviction was set aside on the ground that the clause in s. 44 had been virtually repealed by the repeal of s. 23 in which the duty in question was provided. *Held*, that the words "as hereinbefore provided" in s. 44, referring to s. 23, should be treated as mere surplusage and that s. 44 should be read as providing for the punishment of a police officer, "guilty of any wilful neglect of duty in not bringing any person who shall be in his custody without a warrant before a Magistrate." *Held*, therefore, that the accused was guilty under s. 44. **1 Weir 837.**

(13)—*S. 44—Scope of the section.*—The provisions of s. 44 of Act XXIV of 1859, are intended rather for the punishment of departmental offences than of offences which can be properly brought under the Penal Code. **1 Weir 842.**

(14)—*S. 44—Offence under the section—Jurisdiction.*—A Sessions Judge has no jurisdiction to try a person accused of an offence under s. 44 of the Police Act. The trial should be before a Magistrate. **1 Weir 841.**

(15)—*S. 44—Police Constable staying away after expiry of casual leave, guilty of the offence under—Object of section.*—If a police constable is granted casual leave for a limited period and does not. at the end of that period, resume his duties, but stays away without obtaining fresh leave, he withdraws himself from his duties and "ceases to perform the duties of his office without leave" within the meaning of the above s. 44. The intention of the section is to render Police Constables liable to punishment for such neglect or breaches of duty as are not punishable under s. 10 of the Act, such as desertion. *Prima facie*, a Constable, absent without leave is guilty, under the said s. 44, of 'ceasing to perform his duty,' and the fact that he has been permitted to be absent on casual leave for a time immediately anterior to his absenting himself from duty, can make no difference in his offence. **29 M. 192=3 Cr. L.J. 463.**

(16)—*S. 44—Omission to go on beat.*—Where the petitioner neglected to go on beat, when ordered to do so, and produced a false beat ticket alleged to have been attested by a Village Munsif to the effect that he had visited a certain village, whereas, in fact, he had not done so, *held*, that the petitioner's conduct was something more than remissness or negligence in the discharge of duty, punishable departmentally under s. 10 of the Act, and was, properly punishable under s. 44 of the Act. **1 Weir 840.**

(17)—*S. 44—Refusal by constable on sufficient grounds to search a house, if a violation of duty.*—Where a constable is asked to search a house, he has also some discretion in the matter. If there are sufficient grounds for thinking that a search is not justified, he can refuse to search a house, and the refusal will not amount to a violation of duty. **1 Weir 841.**

(18)—*S. 44—Duty imposed on constable without any authority—Violation—Liability.*—Where a constable, apparently without any authority, asked another constable to watch a house, *held*, that the latter who left the place after some time, without having been relieved, was not guilty under s. 44 of the Act. **1 Weir 841.**

(19)—S. 44—*See* Nos. 2, 3, 4, 7, 8, 9, 12, *supra.*

(20)—*S. 46—Section construed—Gist of offence.*—Under s. 46, it is an offence for any police constable to extort, exact, seek or obtain a bribe, etc., by means of any illegal threat or pretence. Further, it is also an offence for any Police officer to extort, exact, seek or obtain a bribe, etc., for doing or omitting to do any act which it may be his duty to do. The gist of the offence is the obtaining a bribe, not the neglect of duty, which last is punishable under s. 44. Under s. 46, it must be shown that the bribe was taken for omitting to do an act which it may be the duty of the officer to do. **1 Weir 842.**

(21)—*S. 46—Conviction under the section, when allowable.*—In order that a conviction under s. 46 of Act XXIV of 1859 can be sup-

6.—*Madras Acts*—continued.

Act XXIV of 1859 (Police, Madras)—*continued.*

ported, it must be shown that the accused obtained a bribe on the pretence that he would omit to do a thing. **1 Weir 844.**

(22)—*Ss 46, 50—Charge of dacoity under s. 389, Penal Code—Acquittal—Conviction under s. 46 of the Act—Validity.*—A police officer was charged under s. 389, Penal Code. He was acquitted of that offence, but was convicted of an offence under s. 46 of the Police Act. The actual charge framed against him under s. 46 of the Police Act was the same as the charge framed against him under s. 389, Penal Code, *i.e.*, extortion, of which he was acquitted. *Held*, that, having regard to s 50 of the Act, the conviction was bad. **1 Weir 844.**

(23)—*S. 47—Sanction whether necessary for lodging a complaint.*—No sanction is necessary for the entertainment of a complaint under s. 47 of the Police Act. **1 Weir 845.**

(24)—*S. 48—"Town," definition of.*—There is no Act of the Legislature which empowers either the Magistrate of the District or the Local Government to define a "town" for the purposes of s. 48, Act XXIV of 1859. In the absence of any provision of law defining a "town," it rests with Magistrates to determine, on a reasonable consideration of the circumstances, whether or not a place is a town. **6 M.H.C. App. 34.**

(25)—*S. 48, offences under—Crim. Pro. Code (1882), s. 261—Jurisdiction of Benches of Magistrates.*—S. 48 of the Police Act, which relates to obstruction and nuisances in roads (within the limits of towns) is a general conservancy clause, and the offences committed thereunder are within the cognisance of a Bench of Magistrate. **13 M. 142=1 Weir 910; 2 Weir 327.**

(26)—*S. 48—Powers of special Magistrate conferred upon Sub-Registrar—Whether the power continues on transfer of Sub-Registrar to another place.*—A Sub-Registrar, who was invested with third-class powers for the trial of offences under s. 48 of Act XXIV of 1859 in a certain place was transferred from that place to another. In the latter place, he took up cases in his file and tried a certain number of them. *Held*, that the Sub-Registrar was competent to exercise, on his transfer to another place, the powers conferred upon him as Sub-Registrar of the place from which he was transferred, unless the Local Government directed him not to exercise them. **15 M. 132=2 Weir 36.**

(27)—*S. 48—Punishment under the Act—Imprisonment in default of payment of fine—Penal Code, ss. 48 and 64—Act V of 1865.*—Persons punished under s. 48 of the Police Act cannot be sentenced to pay a fine with a period of imprisonment in default of payment. The procedure to be followed in enforcing the fine, or in awarding imprisonment in default, is that laid down in Madras Act V of 1865, by which a Magistrate can only order imprisonment, on being satisfied that the accused has not sufficient property whereon the fine can be levied. **3 M.H.C. App. 9.** [*F.*, 7 M. H.C. App. 22; *D.*, 1 Weir 909=18 M. 490.]

6.—*Madras Acts*—continued.

Act XXIV of 1859 (Police, Madras)—*continued.*

(28)—*S. 48—Offence by a European British subject—Trial.*—The Cantonment Magistrate has no jurisdiction to try a European British subject for an offence under s. 48 of Act XXIV of 1859. **5 M.H.C. App. 25.**

(29)—*S. 48—Rigorous imprisonment under, if legal.*—Under s. 48 of the Police Act, the award of rigorous imprisonment is not legal. **5 M.H.C. App. 34.**

(30)—*S. 48—Imprisonment in default of payment of fine.*—Imprisonment in default of payment of fine for an offence under s. 48 of Act XXIV of 1859 is irregular. **7 M.H.C. App. 22.**

(31)—*S. 48—Whipping, sentence of, if legal under the Act.*—The Whipping Act only authorises the punishment of whipping for offences of which the accused is convicted under the Penal Code, and s. 5 of the Whipping Act provides for juveniles convicted under the same. Therefore, a sentence of whipping cannot be passed for an offence under the Police Act. **1 Weir 845.**

(32)—*S. 48 (s. 3 of the Towns Nuisances Act)—Spreading raggi stalks in a pulic street.*—The mere spreading of raggi stalks to dry in the streets of a village is not an offence under s. 48 of Act XXIV of 1859 (s. 3 of the Towns Nuisances Act). **1 Weir 912.**

(33)—*S. 48 (1)—Town Nuisances (Madras Act III of 1889), s. 3 (1)—Riding on untrained bullock in public streets.*—Riding an untrained bullock on a public road, which the rider could not control, is an offence under s. 48 (1) of Act XXIV of 1859, and under s. 3 (1) of Act III of 1889. **1 Weir 845=7 M.H.C. App. 10.**

(34)—*S. 48, cl. 3—Applicability of the section to the causing of obstruction by spreading fishing nets—Penal Code, s. 283.*—Cl. 3, s. 48 of the Police Act refers to obstruction of roads or streets caused by cattle or by conveyances, in certain circumstances therein detailed. The act of spreading fishing nets by the side of the road is clearly not punishable under that clause, nor is it punishable under s. 283, Penal Code, without proof that obstruction is caused to a particular person or persons by such act **4 M. 235=1 Weir 911.** [*F.*, 25 C. 275; *R.*, 1 Weir 232.]

(35)—*S. 48, cl. 5—Heap of dirt kept in town, when amounts to an offence—Act 1 of 1885.*—It is not the intention of the legislature to make it penal to lay down a heap of dirt or materials for building, in convenient places within the limits of a town. The last sentence in cl. 5, which makes it penal to cause any offensive matter to run from a dung heap into the street, contemplates the deposit of a dung heap near a street, or within the limits of a town as otherwise than penal. **9 M. 167.**

6.—Madras Acts—continued.

Act XXIV of 1859 (Police, Madras)—*continued.*

(36)—S. 48—*See* MADRAS ACT III OF 1889, s. 3, 1 Weir 912, 913, 914.

(37)—S. 48—*See* JURISDICTION OF CRIMINAL COURTS, 5 M.H.C. App. 25.

(38)—*S. 49—Processions—Powers of the Police.*—*Per* Collins, C.J.—S. 49 of the Madras Police Act defines the powers of the police. They may direct the conduct of all assemblies and processions in the public streets, prescribe the routes by which and the time at which such processions may pass, keep order in the public streets and prevent obstructions: they may also regulate the use of music in the streets on the occasion of native festivals and may direct crowds of twelve or more persons to disperse, when they have reason to apprehend any breach of the peace. The powers thus given to the police are large and set out with particularity, but the Superintendent of Police has no power to remove from the processionists any banner belonging to them and order those banners to be taken to the Police Station. The Superintendent in taking possession of the banners commits a tortious act. *Per* Shephard, J.—Under the Madras Police Act, although the Superintendent may, as occasion requires, do certain things with regard to processions, yet, the Act does not say that he may take flags or obnoxious devices carried by members of the procession, nor does the Crim. Pro. Code confer any such power. **3 M.L.J. 276.**

(39)—S. 49—*See* No. 11, *supra.*

(40)—*S. 50—Proviso to the section, whether made inoperative by the provisions of Madras Act III of 1865.*—S. 1 of Madras Act, III of 1865, renders inoperative the proviso in s. 50 of Act XXIV of 1859. Therefore, a native Magistrate has jurisdiction to try Police officers above the rank of a private charged with offences under Act XXIV of 1859. **1 Weir 846.** [*F.*, **1 Weir 846**].

(41)—After the passing of the Act III of 1865, native Magistrates have power to try a Police officer above the rank of a private for an offence under Act XXIV of 1859. **1 Weir 846.**

(42)—S. 50—*See* No. 22, *supra.*

(43)—*S. 53—Scope of the section.*—S. 53 has reference only to acts done or intended to be done under colour of the Act, but does not apply to any acts not professedly done in the exercise of any power conferred by the Act. **1 Weir 846.**

(44)—*S. 53—Inspector withholding pay of Head constable—Suit for recovery of the same.*—The plaintiff, a Police Head-constable, sued the defendant, a Police Inspector, for his pay, which he alleged that the latter kept back. It appeared that, before resorting to the Court, the plaintiff complained of this to the Head Assistant Magistrate, who dismissed the complaint because the plaintiff's allegations did not amount to an offence under the Penal Code.

6.—Madras Acts—continued.

Act XXIV of 1859 (Police, Madras)—*concluded.*

After being discharged from the Police, the plaintiff gave notice to the Superintendent of Police, under s. 53 of the Police Act, asking him to direct the defendant to pay the money, but he declined to interfere. Hence, the present suit was instituted. The defendant pleaded limitation under s. 53, Act XXIV of 1859, and that the plaintiff was estopped from denying that the section applied by reason of his admission in his notice to the Superintendent. *Held*, that the suit was maintainable as the act alleged to have been done had nothing whatever to do with police duties and that the plaintiff was not estopped from standing on his legal rights, because he gave a notice under the Act, when it was not necessary. **1 Weir 847 = 5 M.H.C. 466.**

(45)—*S. 53—Conviction under the Act—Limitation.*—A conviction under the Act is illegal if the prosecution is time-barred under s. 53 of the Act. **1 Weir 848.**

See ACT V OF 1865, ss. 6 and 56, 1 Weir 801 = 6 M.H.C. App. 20.

See PENAL CODE, s. 223, 1 Weir 197.

Act I of 1863 (Subordinate Magistrates, second class).

[REP., (IN MADRAS), MAD. ACT IV OF 1867; (IN COORG), REG. I OF 1881.]

(1)—Ss. 1 and 2—*See* CONTEMPT OF COURT, 4 M.H.C. App. 51.

(2)—S. 2—*See* No. 1, *supra.*

Act II of 1864 (Recovery of Arrears of Revenue).

[REP. IN PART, ACT XII OF 1873. AMENDED, MAD. ACT III OF 1884; MAD. ACT I OF 1897.]

See THEFT, 1 Weir 421.

—S. 8—Removal of crops under attachment by the owner—Demand being made upon another person holding the patta*—Charge of theft, whether maintainable.*—Certain standing crop was distrained for arrears of revenue. The accused, the real owners of the land, carried away the crop and was charged with theft. The Deputy Magistrate acquitted the accused on the ground that no demand was served upon them and that no list of distrained property was furnished to them but were given to another person in whose name the *pattas* stood. *Held*, that the Deputy Magistrate was wrong in acquitting the accused on the ground mentioned. The case was directed to be retried on the point whether the accused was in fact aware of the distraint, and with such knowledge dishonestly removed the crop. **16 M. 364 = 1 Weir 422 = 3 M.L.J. 178.**

Act III of 1864 (Abkari).

[REP. IN PART, ACT XII OF 1873; MAD. ACT V OF 1879. REP. (LOCALLY), MAD. ACT I OF 1886.]

6.—*Madras Acts*—continued.

Act III of 1864 (Abkari)—*continued.*

(1)—*Ss. 2, 21, and 22—Exposure of sweet palm juice—Manufacture.*—Sweet palm juice, which, by exposure to the operation of natural causes, ferments and becomes toddy, is as much manufactured by the person who exposes it, as if the same result was produced by the process of distillation. **5 M.H.C. App. 26.**

(2)—*S. 2—Payment of wages by liquor, whether amounts to sale.*—A payment of wages by liquor is not included in the general term "selling," and, is, therefore, not an offence under the Abkari Act. **9 M. 141=1 Weir 645.** [*R.*, 25 B. 696=3 Bom. L.R. 384, 2 P.R. 1903 =53 P.L.R. 1903].

(3)—*S. 8—Selling liquor without license, what amounts to*—Where a person, whose license was cancelled for some breach of the regulations, put forward another person as a proper person to be licensed for the shop in which he himself had been vending, and such person being duly approved and licensed by the Collector, the former licensee under the cover of that license continued his old business, paying a monthly sum to that person, *held*, that the former licensee could not be convicted of selling liquor without license, as the Collector was estopped by his own license and could not enquire into the private arrangements between the licensee and the person conducting the business. **7 M. 432=1 Weir 644.**

(4)—*Ss. 14, 16, 22—Valid permit.*—There is nothing in Madras Act III of 1864 to restrict the validity of a permit to the actual person to whom it is issued, or to prevent it from protecting liquor conveyed by third persons on the licensee's behalf. **5 M.H.C App. 29.**

(5)—*Ss. 15 and 22—Sub-renter's servant conveying toddy without a permit.*—The conveying of toddy by servants of a sub-renter, without a permit, from the sub-renter's trees to his shop would not amount to an offence under s. 22, if the quantity conveyed did not exceed that which a sub-renter's permit would cover. **7 M. 161=1 Weir 633.** [*R.*, 11 M. 472].

(6)—S. 16—*See* No. 4, *supra.*

(7)—*S. 17—Order for confiscation.*—Under s. 17, the Collector alone can confiscate, and not a Magistrate. **4 M. 240.**

(8)—*Ss. 17, 21—Conviction under s. 21—Confiscation.*—A Magistrate is not competent to order the confiscation of arrack found in possession of a person convicted by him under s. 21, when such person is a licensed vendor. **5 M.H.C. App. 41.**

(9)—*Ss. 17, 23-A and 26-B—Power of Magistrate to confiscate animals—Proceeds of property confiscated by Collector, whether available for distribution.*—Although a Magistrate cannot confiscate animals under s. 23-A of the Act, yet, in all magisterial cases falling for disposal under s. 26-B, the proceeds of whatever has been confiscated by the Collector, including animals, would be available for distribution in the manner therein prescribed. **5 M. 137.**

6.—*Madras Acts*—continued.

Act III of 1864 (Abkari)—*continued.*

(10)—*S. 20 (ss. 55, 56 of Act I of 1886)—Selling of liquor by measures of less value than prescribed by the Board of Revenue.—Object of section 20.*—S. 20 of Act III of 1864 provides for the punishment of persons wilfully contravening any rule, regarding the manufacture and sale of liquor, prescribed by the Board of Revenue, under the authority conferred in the Act, or any person duly licensed who shall commit a breach of the provisions of his license. The rules framed by the Board, under the authority mentioned, requires sellers to use a drachm measure, 48 of which make an imperial gallon. The meaning of the rule is that sellers are to sell by the measure prescribed, not that they are to use only a one drachm measure. The seller may use measures containing many drachms or parts of drachm, but he is to sell by the drachm. Therefore, selling by measures of less capacity is not a breach of the rules or of the provisions of the license. **1 Weir 643.**

(11)—*S. 21—Selling toddy without license—Toddy, what is.*—A person selling toddy without license is liable to be convicted under s. 21 of the Abkari Act without any evidence as to fermentation, as toddy *prima facie* is fermented palm juice. **5 M.H.C. App. 36.**

(12)—The High Court in 5 M.H.C.R. App. XXXVI did not intend to define toddy as a matter of law. **6 M.H.C. App. 11.**

(13)—*S. 21—Brother of license-holder, his agent and his wife, whether protected by the license—Death of licensee, how affects the license.*—The license given to a person will protect the brother of the licensee, as also his agent. The license of the husband protects a wife who is selling liquor on his behalf. A license expires on the death of the license-holder and cannot protect a subsequent sale by a member of the deceased's family. **1 Weir 642.**

(14)—*Ss. 21 and 22—Expiry of license—Possession of liquor after period of license, whether an offence.*—S. 21 must be read as an exception to the general provision in s. 22. If so read, the liability of the licensed vendors whose license has expired is limited to the case in which they are found in possession of liquor for the purpose of sale. **5 M. 131.**

(15)—*Ss. 21, 22—Offences under the Act—Fine in default of imprisonment—Penal Code, s. 64.*—Fines under ss. 21 and 22 of Act III of 1864 can be levied only by adopting the procedure prescribed in ss. 30, 31 and 32. S. 64 of the Penal Code has, therefore, no application. **6 M.H.C. App. 40.**

(16)—*Ss. 21, 23-A and 55 (g)—Implement for the purpose of manufacturing liquor.*—Where the accused was found in possession of a mixture of boiled rice, dry ginger and nuts of the marking-nut plant, and admitted that he had prepared the mixture in order to manufacture liquor, *held*, that the accused was not guilty, under Madras Abkari Act, III of 1864,

S. N. DAR, B. A. LL. B.,
Vakil High Court,

6.—Madras Acts—continued.

Act III of 1864 (Abkari)—*concluded.*

inasmuch as the mixture in question was certainly not an "implement" for the manufacture of liquor. **1 Weir 640.** [*D.*, 1 Weir 641=24 M. 417].

(17)—*Ss. 21, 32—Non-realisation of penalty—Sentence of imprisonment.*—Where the penalty, imposed on a person under s. 21 of Madras Act III of 1864, is not fully realized by the distress and sale of his moveable property, s. 32 authorises a sentence of imprisonment on him. **7 M. 185.**

(18)—S. 21—*See* Nos. 1, 8, *supra.*

(19)—*S. 22—Abkari Amendment Act V of 1879, s. 23 (a)—Boat used for carrying liquor without valid permit—Order for confiscation of the boat—Validity.*—Where a second class Magistrate convicted certain persons under s. 22 of Act III of 1864, of conveying liquor without a permit, and ordered the confiscation and sale of the boat in which the liquor was found, *held*, that the Magistrate was not justified in passing such an order either under s. 23 (*a*) of Act V of 1879, or under s. 17 of Act III of 1864. **4 M. 240.**

(20)—S. 22—*See* Nos. 1, 4, 5, 14, 15, *supra.*

(21)—S. 23-A—*See* Nos. 9, 16, *supra.*

(22)—*S. 25—Failure to produce a liquor license being called upon to do so—Order for confiscation of property—Act V of 1879, s. 26 (b).*—The offence, under Madras Act III of 1864, of not having a liquor license ready to be shown to a Police Constable, when called upon to produce it, is not an offence for which a Magistrate could proceed under s. 26 (*b*) of Madras Act V of 1879 to confiscate the property, and to award half of the fine and of the sale-proceeds to the Police. **4 M. 231.**

(23)—*S. 26—"Police Officer"—Village policeman—Police Act (Madras Act XXIV of 1859), s. 1.*—The Abkari Act does not narrow the definition of the word "police" given in the Police Act. The term "Police Officer," as used in s. 26 of the Abkari Act, includes an officer of the village police, *e.g.*, *mohatad.* **9 M. 97=1 Weir 630.**

(24)—S. 26-B—*See* No. 9, *supra.*

(25)—S. 32—*See* No. 17, *supra.*

(26)—S. 55 (*g*)—*See* No. 16, *supra.*

(27)—*S. 65—Order for confiscation of property.*—Where a person is convicted under s. 21, Act III of 1864 (s. 55 of Act I of 1386), a Magistrate is not competent to order the confiscation of the property in the possession of the accused, in respect of which no offence has been committed. **1 Weir 651**

See MAD. ACT I OF 1876, s. 34, 26 M. 124=1 Weir 630.

See MAD. ACT I OF 1886, ss. 29 and 55 (*c*), 11 M. 250=1 Weir 638.

6.—Madras Acts—continued.

Act IV of 1864 (Cess in lieu of Village Fees).

[REP., MAD. ACT IV OF 1893].

S. 7.—*See* CONFESSION, 7 M. 287=2 Weir 735.

Act III of 1865 (Offences against special and local laws).

[REP., ACT XVI OF 1874].

(1)—*Jurisdiction of Magistrates.*—The jurisdiction which Madras Act III of 1865 confers on Magistrates is not repealed by the schedule to the Crim. Pro. Code, as amended by Act VIII of 1869. **7 M.H.C. App. 6.**

(2)—Madras Act III of 1865 is not repealed by the schedule to Act VIII of 1869. **7 M.H.C. App. 8.**

(3)—*Repealing Act, XVI of 1874, s. 1—Effect of the act on jurisdiction of Courts under special or local laws.*—The repeal of Madras Act III of 1865 by Act XVI of 1874 has not deprived Magistrates in the Madras Presidency of their jurisdiction over offences created by special and local laws. **1 Weir 886, F.B.**

(4)—S. 1—*See* ACT XVIII OF 1854, s. 26, 4 M.H.C. App. 9.

See ACT XIII OF 1859, 4 M.H.C. App. 64.

—Effect of repeal of this Act by Act XVI of 1874—*See* ACT XVI OF 1874, 1 M. 223. 2 M. 161=1 Weir 887.

See MAD. ACT XXIV OF 1859, 1 Weir 846.

Act V of 1865 (Police Amending Act XXIV of 1859).

See MAD. ACT XXIV OF 1859, 3 M.H.C. App. 9.

Act X of 1865 (Towns Improvement).

[REP., MAD. ACT III OF 1871].

(1)—*S. 108-A—Keeping a slaughter-house.*—Slaughtering a beast in one's own premises for the owner's private purpose does not amount to using the same as a slaughter-house. **6 M.H.C. App. 18.**

(2)—*S. 144—Scope of the section.*—S. 114 of Madras Act X of 1865 applies only to the fresh dedication of premises to certain offensive trades. The continuing of an offensive trade in premises already used is not within the section. **5 M.H.C. App. 16.**

Act I of 1866 (Cantonment).

[REP., ACT XIII OF 1889].

(1)—*S. 19—Cantonment Act Rules, ch. IV, s. 16—Failure to report to Cantonment Magistrate the appearance of contagious disease.*—No penalty attaches to a failure on the part of a private individual to report to the Cantonment Magistrate the appearance of an epidemic or contagious disease, as directed by Ch. IV of the Cantonment Rules, framed under s. 19, Military Cantonment Act. **8 M. 428=1 Weir 708.**

6.—*Madras Acts*—continued.

Act I of 1866 (Cantonment)—*concluded.*

(2)—*S. 22—Power of Cantonment Magistrate to award rigorous imprisonment in default of payment of fine—General Clauses Act, 1868, s. 5.*—As the Cantonment Act was passed two years prior to the General Clauses Act, the provisions of s. 5 of the latter Act do not apply to the former, and the fact that rules and regulations framed under cls. 4 to 11 of the Cantonment Act did not receive the force of law until after 1868, can make no difference. Therefore, a Cantonment Magistrate cannot award rigorous imprisonment in default of realisation of fine imposed for breach of any rule or regulation made under the provisions of s. 17 of Act I of 1866. **8 M. 350.**

(3)—*S. 26—Adulteration of milk with water.*—The mere addition of water to milk cannot be said to be adulteration, so as to make the milk noxious as drink, within the meaning of Rule XXXI, Chapter III of the Cantonment Rules made under Act I of 1866. **1 Weir 709.**

(4)—*S. 30—Supplying liquor without license—Jurisdiction.*—The offence under s. 30 of the Madras Act I of 1866 of supplying liquor without a license is only punishable by a Magistrate. The words of the section exclude the jurisdiction of the Sessions Court in the Mofussil as well as a prosecution for the offence by indictment before the High Court. **5 M.H.C. 277.** [*R.*, 19 A. 465].

Act VII of 1867 (Madras Port Dues).

[REP., ACT XII OF 1875.]

—Mad. Boat Rules—s. 14—Refusal by licensed owner of boat to hire it.—It is provided by s. 14 of the Boat rules that any owner of a licensed boat or person deputed by him refusing to let on hire his boat without assigning reasonable and satisfactory cause for such refusal should be liable to a penalty not exceeding Rs. 10. Ss. 7 and 8 of the Rules pre-suppose that the person in charge of a licensed boat is able to count the number of passengers taken into the boat and to compare it with the number mentioned in the license and to ascertain the quantity of cargo shipped and compare it with the quantity specified in the license. The refusal by the owner of a boat to take in certain goods on board unless a tally-man were provided, on the ground of his inability to count, was held to be not a refusal for a reasonable and satisfactory cause within the meaning of s. 14 of the Rule. **10 M. 121.**

Act III of 1869 (Empowering Revenue—Officers to summon witnesses).

(1)—*S. 1—Power of Tahsildar to issue summons.*—Madras Act III of 1869 does not authorise a Tahsildar to issue a summons to any person to appear before any other person than himself. **1 Weir 890=7 M.H.C. Ap. 10.**

(2)—*Power of Tahsildar to issue summons to Karnam—Disobedience to such summons—Penal Code, s. 174.*—Summonses issued by Tahsildar to *Karnams* to attend the Taluq Katchari for the purpose of preparing the census, *jamabundi*, *dowle*, and other accounts are not within the purview of Madras Act III of 1869, as they are not summonses to give evidence or produce documents in connection with the investigation of any matter in which the Tahsildar is authorised to hold an enquiry. Disobedience to such summons is not an offence under s. 174, Penal Code. **5 M. 377.** [*Overruled*, 1 Weir 90=7 M. 197, F.B.]

6.—*Madras Acts*—continued.

Act III of 1869 (Empowering Revenue—Officers to summon witnesses)—*contd.*

(3)—Where a Tahsildar issued a notice calling upon a *karnam* to appear before him on a certain day for preparing Permanent Registers, *held*, that the disobedience to the notice was not punishable under the Penal Code, as the Tahsildar was not conducting an enquiry under Act III of 1869. **1 Weir 891.**

(4) Where a Tahsildar, under Act III of 1869, summoned the *shrotriemdars* of a village to appear before him on a certain date to consider whom they proposed to appoint *karnam* of the village, *held* that the Tahsildar had no power to issue summonses for that purpose under Act III of 1869 and that, therefore, a disobedience of the summons was not an offence. **1 Weir 892.**

(5)—There is no other provision of law, except Madras Act III of 1869, which authorises a Tahsildar to issue a legal summons, disobedience to which would constitute an offence. **7 M.H.C. App. 11; 7 M.H.C. App. 10.**

(6)—S. 1—*See* PENAL CODE, s. 174, 1 Weir 95.

(7)—*S. 2—Penal Code, s. 174—Defective summons, disobedience of.*—Where a summons has not been drawn up in conformity with s. 2, Act III of 1869, and the place where a person is required to attend is not stated therein, a conviction for the disobedience of such summons is bad. **1 Weir 100.**

(8)—*Ss. 2 and 3—Proper service of summons—Penal Code, s. 174.*—The summons under Madras Act III of 1869 should be left with the person summoned. It is not sufficient to merely show it to him and to take it back. Therefore, a person disobeying such summons is not liable to be punished under s. 174, Penal Code. **11 M. 137=1 Weir 100.**

(8-*a*)—S. 3—*See* No. 8, *supra*.

(9)—*Power of Revenue Officers to issue summonses to subordinate officers—Disobedience to summons—Penal Code, s. 174.*—Act III of 1869 should be given a liberal construction. A summons may be issued under it by a Revenue Officer for the purpose of any enquiry, however general, which the officer is empowered to make for the purposes of administration. The explanation by a *karnam* of his *dowl* or other accounts or statements might be such a purpose. **7 M. 197, F.B.=1 Weir 90.** [*R.*, 4 P.R. 1907 Cr.=6 Cr. L.J. 107=37 P.L.R. 1907=25 P.W.R. 1907 Cr.]

6.—*Madras Acts*—continued.

Act III of 1869 (Empowering Revenue—Officers to summon witnesses)—*concld.*

(10)—The intention of Act III of 1869 was to create a facility towards the settlement of matters connected with Revenue administration, and the facility created consisted in empowering Revenue officers to summon persons to give evidence, which may appear to be necessary for the investigation of any matter in which they are authorised to hold an inquiry. Having regard to the rule of construction that, when an Act gives a special power, the power must be limited to the purpose for which it is conferred, the power conferred on Revenue officers must be confined to purposes connected with the Revenue or general administration. **12 M. 297=1 Weir 98.** [*R.*, 4 N.L.R. 18].

(11)—*Departmental enquiry into conduct of Tahsildar—Power to issue summons to witnesses.*—Where, on a complaint having been made to the Government against a Tahsildar of extortion from ryots, while engaged in collecting public revenue, the Government called upon the Collector to submit a report, and the Collector deputed a Sub-Collector to hold an enquiry, *held*, that the conduct of the Tahsildar was a matter on which a Collector was authorised to hold an enquiry in virtue of the power conferred on him by Reg. IX of 1822 and the inquiry would come under the terms of Act III of 1869. *Held*, also, that the Collector was authorised to depute the enquiry to the Sub-Collector and the Sub-Collector was competent to issue summonses for the attendance of persons whose evidence may appear to him necessary for investigation. **4 M. 393=1 Weir 76.**

See CONTEMPT OF COURT, 1 Weir 90=5 M.H.C. App. 27; 7 M.H.C. App. 11.

See PENAL CODE, ss. 173, 174, 1 Weir 96.

See PENAL CODE, s. 174, 1 Weir 92, 1 Weir 94, 1 Weir 95, 1 Weir 96, 1 Weir 97, 12 M. 297=1 Weir 98.

See SANCTION TO PROSECUTE, 24 M. 121=2 Weir 170.

Act VIII of 1869 (Inam-deeds).

See MAD. ACT III OF 1865, 7 M.H.C. App. 8.

Act III of 1871 (Towns Improvement).

[REP., MAD. ACT IV OF 1884, s. 6.]

(1)—*Ss. 27, 61 and 62—Power of vice-president to revise profession-tax—Imposition of profession-tax—Insufficiency of notice, whether amounts to an answer to a charge under s. 62.*—Under s. 27 of the Act, the Vice-President, in the absence of the President, can revise the list of tax-payers and act for the Commissioners in an emergency. Where the Vice-President revised the assessment list and included the name of the accused in that list without any emergencey, *held*, that the maxim, *quod fieri non debut factum valet* applied to such a case, and the person charged cannot rely on the insufficiency of the notice of assessment as an answer to a charge under s. 62. **7 M. 65.**

6.—*Madras Acts*—continued.

Act III of 1871 (Towns Improvement)—*ctd.*

(2)—*Ss. 58 and 62—Liability to profession tax—Nature of.*—A person, who commences the practice of a profession or the exercise of a calling in a Municipality, after the commencement of the official year, may be liable to pay the tax for that year. The payment of such tax cannot be enforced, unless the person charged therewith has, for the space of two months in any one official year, exercised his calling in the town, nor is a half-yearly instalment to be recovered in one Municipality from any person who, in another Municipality, has paid the instalment for the same half-year, unless he has exercised the calling in respect of which he is taxed within the same half-year in both Municipalities; nor can the obligation be enforced against a person who has not received a notice of assessment. The duty of paying profession-tax is independent of the obligations of registration and of taking out a certificate of such registration. **3 M. 129.**

(3)—*S. 61—Interpretation of section.*—The section must be given a wider construction and the Municipal Councillors have power to add new names of persons not in the town at the beginning of the year, and assess profession tax on them. **3 M. 129.**

(4)—S. 61—*See* No. 1, *supra.*

(5)—*S. 62—Scope of the section—Trading companies, how taxed.*—The word "person" in s. 62 must be construed to include any company or association or body of persons, whether incorporated or not, where such construction is not repugnant to the context. The schedule contemplates that the incidence of the tax on shop-keepers will be governed by the gross rental of the shop in which the business is carried on; and it was not intended that each person should pay a license-tax on the full gross rental of the shop. Trading companies are liable to pay the tax on trades; but it is not every member of the company, but the partnership, that is taxed. **7 M. 74.**

(6)—*S 62—Washerman, whether an artizan.*—A washerman is not an artizan within the meaning of Madras Act III of 1871, and so the conviction of the accused (a washerman by calling) under s. 62 was annulled. **1 M. 174=1 Weir 726.**

(7)—*Ss. 62, 109—Non-payment of profession-tax—Prosecution, when to be instituted.*—Where a person was charged under s. 62 of Madras Act III of 1871 for having exercised his profession for more than two months in a certain official year without paying the tax, but the Magistrate dismissed the charge on the ground that the prosecution was not instituted till more than 5 months after the last payment on account of the tax which became payable, and was, therefore, barred under s. 169, *held*, that the offence was a continuing offence, and that it was immaterial at what part of the year it was first completed, and that a complaint was within time, if laid within three months after

6.—Madras Acts—continued.

Act III of 1871 (Towns Improvement)—*ctd.*

the close of the official year ; or, when the accused had before the end of the official year ceased to exercise his profession, within three months from the time at which he so ceased to exercise it. **9 M. 38.**

(8)—S. 62—*See* Nos. 1, 2, *supra.*

(9)—*Ss. 63 to 72—License for horses—Transfer of.—Held* by Turner, C.J. and Hutchins, J., (Brandt, J., *dissenting*) :—The Act requires every particular vehicle or animal, used or kept for more than 30 days in the half-year, to be paid for ; a person becoming possessed of an unlicensed horse within the half-year, is not at liberty to transfer to it a license taken out for another which has died or been sold. **8 M. 327.**

(10)—Ss. 64 to 72—*See* No. 9, *supra.*

(11)—S. 109—*See* No. 7, *supra.*

(12)—*Ss. 127, 129—Publication of bye-law with a penal clause by Municipal Commissioners—Bye-laws requiring license.*—A mere publication of a bye-law with a penal clause at the end, which has not been passed by the Municipal Commissioners or approved by the Government as applicable to the bye-law in question, though it was so passed and approved in reference to other bye-laws, cannot avail to legalize the infliction of the penalty. The bye-laws requiring licenses in cases in which the Act, by specifying the cases in which they should be required, has implicitly declared that they shall not be required, are in violation of the Act. **8 M.H.C. App. 3.**

(13)—S. 129—*See* No. 12, *supra.*

(14)—*S. 148 (s. 179, Madras Act IV of 1884) —Re-thatching a shop—Renewal.*—A re-thatching of a shop is a renewal of the shop within the meaning of s. 148, Act III of 1871. **1 Weir 782 (a).**

(15)—*S. 154—Scope of the section—Crim. Pro. Code (1861), ss. 43, 66 and 68.*—S. 154 of Madras Act III of 1871 does not apply to omissions to take out licenses. It applies to the breaches of the Act which in a policeman's view are offences, and regarding which, if committed within his view, one of two courses is open to him, *viz.*, to arrest without warrant, or to lay an information before a Magistrate and apply for a summons or warrant. **6 M.H.C. App. 49.**

(16)—*Cl. (4), Sch. (b)—"Pleader and practising Vakil," whether includes private practitioner in Magistrate's Court.*—The term "pleader and practising Vakil" used in cl. (4) sch. (*b*) of the Town Improvements Act includes also the case of a person who, not having a sannad from a District or High Court, nor coming under the definition of "pleader" as used in s. 186, Crim. Pro. Code, defends prisoners in the Courts of the Magistrate within the Municipal limits. **6 M. 100.**

6.—Madras Acts—continued.

Act III of 1871 (Towns Improvement)—*cld.*

(17)—*Sch. (c)—Term "horse," whether includes ponies.*—The sch. (*c*) of Act III of 1871 is a part of the Act. The word "horse" includes pony, except when the articles of schedule (*c*), by reference to the number of hands, exclude the application of "horse" to pony. A four-wheeled carriage on springs drawn by one pony under 13 hands is not liable to be taxed under the Act. **5 M. 269.**

Act IV of 1871 (Local Funds).

[REP., MAD. ACT V OF 1884, S. 4].

(1)—*Ss. 62, 63, 64 and 68—Tolls where leviable—Carts entering circle by public road, where no tolls are erected—Liability to pay toll.* —A high way toll can only be levied at a toll-gate or toll-station. Where a cart uses a road, whether old or new, available to the public and on which there is no toll-station, and gets to the road within the circle, then, in the absence of a toll-station at or near the point where it enters the road, there is no power to levy the toll and the cart is not liable to be seized. *Quære.*—Whether tolls are not leviable on a cart approaching a toll-station, and making a *detour* to evade the payment of the toll otherwise than by a road available to the public, and entering the road within the circle at a point beyond the station within the sight of the toll-contractor. **6 M. 37 = 1 Weir 797.**

(2)—S. 63—*See* No. 1, *supra.*

(3)—S. 64—*See* No. 1, *supra.*

(4)—S. 68—*See* No. 1, *supra.*

Act VI of 1871 (Salt Excise Act, Madras).

[REP., MAD. ACT IV OF 1889].

See also, MAD. ACT I OF 1882.

„ „ MAD. ACT IV OF 1889.

—*S.15 (s.74 of Act IV of 1889)—Manufacture of inferior substitute for salt.*—The manufacture of an inferior substitute for salt, such as brine, is not an offence within the provisions of s. 15, Act VI of 1871. **1 Weir 895.** [*F.*, 1 Weir 896].

See MAD. REGULATION I OF 1805, 3 M. 17, 1 M. 278.

Act III of 1878 (License).

[REP., ACT II OF 1886].

(1)—*Ss. 14 and 15 (Income-Tax Act, II of 1886, ss. 25 and 28)—Objections to assessment of income-tax—False statements—Penal Code, s. 193.*—In determining objections taken, under s. 14 of Act III of 1878, to the assessment of income-tax, the Collector has the same power as a Civil Court to enforce the attendance of, and to examine, witnesses on oath or affirmation, in order to ascertain the correctness of the fact alleged by the petitioner. If a false statement is made during such enquiry, the maker of it is liable to be prosecuted for an offence under s. 193. **1 Weir 782.**

(2)—S. 15—*See* No. 1, *supra.*

6.—Madras Acts—continued.

Act V of 1878 (City of Madras Municipality).

[REP., MAD. ACT I OF 1884].

See also, MAD. ACT I OF 1884.

(1)—*Sch. A, cl. I—Act I of 1884, Sch. A, cl. I—Profession-tax levied under Act V of 1878—Increase of tax under Act I of 1884 for the second half-year—Validity.*—Where a person assessed at the beginning of the year, under Act V of 1878, under cl. I, sch. A, with the sum of Rs. 150 for the whole year, had paid a moiety thereof, *viz.*, Rs. 75, for the first half of the year, and he was assessed at Rs. 125 for the second half-year under Act I of 1884, which had come into force by that time and by which the tax had been raised from Rs. 150 to Rs. 250 under cl. I, sch. A, *held* that the assessment was authorised by law. **8 M. 429.**

(2)—*S. 71, cls. XI and XV—Performance of music in a private place with the object of collecting crowd—Obstruction of street.*—On construction of cl. XI of s. 71, it cannot have been the intention of the Legislature that the person causing the obstruction should actually be on or in the street at the time of the alleged obstruction. The words of the clause are very wide, *viz.*, "whoever in any way wilfully obstructs or causes obstruction, etc." and it is clear that it was the intention of the Legislature to confer very extensive powers on the City Police for the control and regulation of street traffic. A person or body of persons, although not actually in the street, or on a piece of ground or in a house immediately abutting on or adjoining a street, has as much power of obstructing the traffic by collecting a crowd as if they were actually on the street. Where members of a Salvation Army played music and sang on a spot immediately adjoining a street and thereby collected a large crowd, which obstructed the free passage of the public road, *held*, that the persons were guilty under cl. XI of s. 71, but not under cl. XV of that section. **14 M. 223=1 Weir 848.**

(3)—*S. 103—Act I of 1884, s. 105—Profession-tax, nature of.*—Although the profession-tax, under s 103 of Act V of 1878, and under s. 105 of Act I of 1884, is described as yearly tax, the tax-payer incurs only a half-yearly liability. If he does not carry on his profession during the first half-year, he is liable to pay the tax only for the second half-year. If, having carried on his profession during the first half-year, he ceases to do so, he cannot be charged with the tax for the second half-year. **8 M. 429.**

(4)—*S. 119—Place of public worship.*—A *mattam*, used in part or whole for purposes other than those of public worship, is liable to be taxed under s. 119 of Madras Act V of 1878, and the feeding of Brahmans, although it may be meritorious, is not what the Act contemplates as public worship. **6 M. 287.**

(5)—*Ss. 120 and 123—Annual value for purposes of assessment—Power to impose a fixed annual tax.*—S. 123, defining annual value for

6.—Madras Acts—continued.

Act V of 1878 (City of Madras Municipality).—*concluded.*

the purpose of assessment under the Act, has no reference to the alternative given to the Municipal Commissioners by s. 120, by which the President is allowed a discretion, in lieu of the tax, to levy on lands unappropriated to buildings or occupied by native huts a fixed annual tax not exceeding Rs. 4 per ground, irrespectively of the annual value calculated under s. 123. **7 M. 63.**

(6)—S. 123—*See* No. 5, *supra.*

Act VIII of 1878 (Coffee-stealing Prevention).

[AMENDED, MAD. ACT II OF 1900.]

—*S. 10—Scope of the section.*—S. 10, Act VIII of 1878, does not refer to the owner of coffee removed by him from his own estate, nor his authorised agent. **1 Weir 719.**

Act V of 1879 (Abkari Laws Amendment).

[REP. (LOCALLY), MAD. ACT I OF 1886.]

(1)—S. 23 (*a*)—*See* MAD. ACT III OF 1864, 4 M. 240.

(2)—S. 26 (*b*)—*See* MAD. ACT III OF 1864, 4 M. 231.

Act I of 1882 (Salt Laws Amendment).

[REP., MAD. ACT IV OF 1889.]

See MAD. ACT XVII OF 1840.

„ MAD. ACT VI OF 1871.

„ MAD. ACT IV OF 1889.

(1)—*Ss. 2 and 26—Possession of salt earth.*—The Act distinguishes between natural saline deposits and efflorescence and earth impregnated with salt, and it confines the term "earth salt", which it includes under the term "salt," to the former. Therefore, the possession of earth impregnated with salt, which is not a saline efflorescence, is no offence under s. 26. **7 M. 163.**

(2)—*Ss. 13 and 22 (ss. 59 and 58 of Act IV of 1889)—Scope of s. 13.*—The proviso to s. 13 provides that no Inspector or Assistant Inspector shall summon any person to appear at a greater distance than 20 miles, and no Sub-Inspector at a greater distance than 5 miles, from the usual place of residence of such persons. Having regard to the context of the section, and to the succeeding sections, and also to the terms of s. 22, there can be no doubt that the proviso to s. 13 cannot be imported into s. 22. Therefore, s. 13 applies only to persons required to attend as witnesses, and not to persons accused or suspected of having committed offences under s. 22. **1 Weir 893.**

(3)—S. 22—*See* No. 2, *supra.*

(4)—S. 26—*See* No. 1, *supra.*

(5)—*Ss. 26 and 27—Importation of salt from foreign state in contravention of Salt Laws.*—The Act does not in express terms prohibit the

6.—*Madras Acts* - continued.

Act I of 1882 (Salt Laws Amendment)—*cld.*

importation of salt from Native States by any other than prescribed route, but it declares it to be an offence, under s. 26, cl. 3 to import salt by any route not legally sanctioned for that purpose and so implies a prohibition against such importation generally. The Act, moreover, empowers the Government, *inter alia* to frame rules "for regulating the export and import of salt by sea and land," and so impliedly gives to the Government power to prescribe rules for the import of salt by land from foreign territories. But, in the absence of such rules, the implied prohibition contained in s. 27, cl. (*e*) nevertheless takes effect. **8 M. 342.**

(6)—*S. 74 (d)—Possession of salt water.*—The mere possession of salt water is not an offence under s. 74 (*d*) of the Salt Act. **1 Weir 896.**

Act V of 1882 (Forest).

[CONFIRMED, ACT XXI OF 1882].

(1)—*Ss. 2, 3, 4, 6, 8 and 9—Powers of Forest Settlement Officer to enter upon and demarcate land.*—The power conferred upon a Forest Settlement Officer to enter upon any land to survey, demarcate and make a map of the same, is limited to the purpose of the inquiry directed by s. 8, *i.e.*, as to "claims made under s. 6," namely, claims to "any right referred to in s. 4;" and the rights "referred, to in s. 4" are rights claimed or alleged to exist on, or over, any land comprised within the limits specified in the notification published under that section. **14 M. 247 = 1 Weir 776.**

(2)—*Ss 2, 21 (f)—Stems of trees, if forest produce.*—The stems of trees are forest produce within the meaning of s. 2, Madras Act V of 1882, and, therefore, the act of removing them falls under cl. (*f*), s. 21. **1 Weir 757.**

(3)—*Ss. 2 and 43—Logs of wood permanently fastened to building, whether "timber."*—Logs of wood, when they have become part of a house and permanently fastened to a building attached to the earth, cease to be timber, within the meaning of s. 2 of the Forest Act, and are, therefore, not liable to attachment under s. 43 of that Act. **9 M. 373 = 1 Weir 757.**

(4)—*Ss. 2 and 50 (d)—Applicability to shrotriem lands.*—The acts made punishable under cl. (*d*) of s. 50 are expressly limited to boundary marks of any forest lands, "to which any of the provisions of the Forest Act apply." In the definition of "land at the disposal of Government" in s. 2, Shrotriemdars are expressly mentioned as landlords, whose land is excluded from the definition. **14 M. 247 = 1 Weir 776.**

(5)—S. 3—*See* No. 1, *supra.*

(6)—S. 4—*See* No. 1, *supra.*

(7)—*Ss. 4, 7, 16 and 21—Clearing of reserved forest by claimant during pendency of appeal.*—A person put forward a claim to a portion of a forest notified for reservation, but the claim

6.—*Madras Acts* - continued.

Act V of 1882 (Forest)—*continued.*

was rejected by the Forest Settlement Officer. On appeal, the District Judge reversed the Forest Settlement Officer's decision. The High Court set aside the order, and directed a re-hearing of the appeal. Pending the re-hearing of the appeal, the accused, the lessee of the claimant, trespassed on the forest and felled trees. The Sub-Magistrate acquitted the accused, on the ground that no order in writing was served on the accused by the Forest Department, prohibiting him from felling trees during the pendency of the second hearing of the appeal. *Held*, that the acquittal was wrong, inasmuch as s. 7 renders illegal any fresh clearing between the date of notification under s. 4 and the date of notification under s. 16. **12 M. 338 = 1 Weir 760.**

(8)—*Ss. 4 and 21—Absence of notification as required by s. 4, effect of.*—Where no notification has been duly issued, as required by s. 4 of the Act, notifying that it is intended to constitute certain tracts as reserved forests, a person cutting wood, in such a tract, is not guilty under s. 21 of the Act; but, it is open to prosecute him under the Penal Code, if it is thought desirable. **1 Weir 759.**

(9)—*S. 6—Holder of a tree* patta, *if an occupier of land.*—The holder of a tree *patta* is a known occupier of land within the meaning of s. 6 of the Forest Act. **12 M. 203 = 1 Weir 758, F.B.** [*F.*, 12 M. 226; *R.*, 21 M. 433.]

(10)—*Ss. 6, 10, 16 and 21—Owner of tree* patta—*Charge of trespass into reserved forest, when could be made.*—S. 16, Act V of 1882, lays down that the Governor-in-Council may publish a notification declaring a forest to be reserved when certain events have occurred, and that such forest shall become reserved from the date specified in that notification. One of the events, which must have occurred before the Governor-in-Council can declare that a forest is reserved, is the disposal of all claims made by owners or occupiers of land. Where the holder of a *patta* of certain trees on such lands was convicted of the offence of trespass under s. 21 of that Act, *held*, that the conviction was wrong inasmuch as it was not shown that the claim of the accused, who was an owner or occupier of land, was disposed of prior to the Government notification making the forest reserved, nor was there any proof to show that he had not preferred his claim within the period required by law. **12 M. 226 = 1 Weir 761.**

(11)—S. 6—*See* No. 1, *supra.*

(12)—S. 8—*See* No. 1, *supra.*

(13)—S. 9—*See* No. 1, *supra.*

(14)—S. 10—*See* No. 10, *supra.*

(15)—S. 16—*See* Nos. 7, 10, *supra.*

(16)—*S. 21 (a)—Reserved forest-land—Cultivating such land without removal of trees or shrubs, whether an offence.*—"*Clearing*," *meaning of.*—The word "clearing" in s. 21 (*a*) of the Madras Forest Act means something in the

6.—*Madras Acts*—continued.

Act V of 1882 (Forest)—*continued.*

nature of the removal of trees or shrubs. The provision is a penal one and must be construed strictly. Where the accused admitted that they had cultivated a reserved forest-land, but maintained that it had been cultivated previously, and there was no evidence on the part of the prosecution that the accused had removed any trees or shrubs from the land, *held*, that the accused had not committed any act prohibited within the meaning of s. 21. **26 M. 470 =1 Weir 760.**

(17)—*S. 21 (d)—Offence under the clause, what constitutes.*—The act punishable under s.21 (*d*)is that of a person trespassing, pasturing cattle or permitting cattle to trespass in a reserved forest. A person cannot be said to permit cattle to trespass into a reserved forest, unless he knows that such trespass is likely to be committed, and neglects, with such knowledge, to take measures to prevent it. The essence of the offence consists either in a misfeasance, as in the case of one wilfully pasturing cattle, or in a non-feasance, as in his neglecting to take proper measures to prevent the cattle trespassing in circumstances from which it may be reasonably inferred that such trespass might have been foreseen or known as the probable consequence of his negligence. **1 Weir 762.** [*F.*, 1 Weir 762.]

(18)—To sustain a conviction under s. 21 (*d*) of the Forest Act, there must be some evidence either that the defendant pastured the cattle or permitted them to trespass on the reserved forest. Where the prosecution merely proves that the defendant's cattle were found in the reserve, such cattle may be impounded, but the owner cannot be held liable unless some overt act of his be proved. **15 M. 156=1 Weir 763.**

(19)—*S. 21 (d)—Conviction under the clause, when could be made.*—Unless the circumstances were such that a trespass complained of might have been foreseen, or it might have been known that the trespass complained of would probably be committed, a conviction under s. 21 (*d*) could not take place. Where a trespass could not be committed unless the cattle swam a river, nearly one-fourth of a mile wide, *held*, that the owners of the cattle could not be convicted under s. 21 (*d*) for trespass by the cattle. **1 Weir 762.**

(20)—*S. 21 (d)—Permitting cattle trespass.*—The mere fact that, during the absence of the person in charge of cattle from the locality where the cattle were grazing, the cattle strayed into a reserved forest is not sufficient to support a conviction under s. 21 of the Forest Act. **1 Weir 764.**

(21)—*Ss. 21 (d) and 54—Levy of fines under s. 12. Cattle Trespass Act, whether a bar to prosecution under s. 21 (d).*—The levy of fines, under s. 12 of the Cattle Trespass Act, is not a bar to a prosecution under s. 21 (*d*) of the Madras Act V of 1882, inasmuch as the fines

6.—*Madras Acts*—continued.

Act V of 1882 (Forest)—*continued.*

under the former Act are not imposed by way of punishment for an offence, of which the owner of the cattle that were impounded was convicted. **1 Weir 763.**

(22)—*S. 21 (h)—Preparation for killing game.*—Where the accused entered a reserved forest, and were prepared for killing game therein without holding a license, *held*, that they were punishable, under s. 21 (*h*) for the offence of hunting, inasmuch as they had gone into the forest in pursuit of game. **1 Weir 764.**

(23)—S. 21—*See* Nos. 2, 7, 8, 10, *supra.*

(24)—*S. 26—Rules framed under s. 26—Object of the rules.*—The rules framed under s. 26 of the Act prohibit the sale of the produce to strangers. The term "produce" can hardly mean and include an article manufactured out of timber. A man who cut down a jungle tree within *kumaki* land, and fashioned it into a boat and attempted to sell the same, could not be convicted under the rules framed under s. 26 of the Act. **1 Weir 766.**

(25)—*S. 26—Cutting wood in Government forests—Liability.*—S. 26 is an enabling section and does not in itself make any act mentioned by it penal. It is competent to Government to make a rule prohibiting the cutting of trees on land at the disposal of the Government and to affix a penalty to the breach of such rule. If such a rule is made, it must be shown that the land was at the disposal of the Government, in order to make a person liable under that rule. **1 Weir 768.**

(26)—*S. 26—Bat's dung, if natural—Produce of land and trees.*—Bat's dung is not the natural produce of land or trees. **1 Weir 769.**

(27)—*S. 26—Kindling fire in reserved forests—Penal Code, s. 289.*—Rule 8, framed under s. 26, Act V of 1882, refers to kindling fires within the areas placed under fire protection. Where the kindling of fires occurs at a place beyond that area, the accused cannot be convicted under the Forest Rules, nor under s. 285, Penal Code, as that section refers to fires likely to cause injury to person, not to such as are only dangerous to property. **1 Weir 769.**

(28)—*S. 26—Rule XII of the Forest Rules—Purchase of forest produce from another—Penal Code, s. 411.*—Where the accused received a few seers of wild mace from a Pariah female in payment of a debt, and disposed of the same at the forest depot, *held*, that he was not guilty of collecting or selling or using forest produce in breach of Rule XII of the Rules framed under s. 26 of the Forest Act. *Per Shephard, J.*—The presumption that forest produce is the property of the Government does not import the presumption of knowledge on the part of the person found to be selling or buying it. It must be proved that the person buying knew that he was dealing with the produce of Government forest. **1 Weir 769, 770.**

6.—*Madras Acts*—continued.

Act V of 1882 (Forest)—*continued.*

(29)—*S. 26 - Felling trees without permit.*—Where a person was charged with offences against the rules made under s. 26 of the Madras Forest Act, for having felled trees in Government land without permit, *held*, that the prosecution was bound to prove that the land in question was land at the disposal of the Government. **1 Weir 771.**

(30)—*S. 26—Rules 3 and 9 framed under the section—Land included in patta granted by Government.*—In order to constitute an offence under Rule 9, the alleged unlawful act must have been committed either on "reserved or unreserved" land. Unreserved land is defined, in Rule 3, as land at the disposal of the Government which is not set apart as "reserved land," or otherwise specially assigned by Government. Therefore, land included in the *kumaki* pattah granted to the Moopars (a jungle tribe in Wynad) was held to be neither land at the disposal of the Government, nor land not "specially assigned by Government" within the meaning of Rule 3 of Rules framed under s. 26 of Madras Act, V of 1882. Therefore, a person who cut trees on such land without a permit would not be guilty of having acted in contravention of Rule 9. **1 Weir 772.**

(31)—*S. 26—Forest Rules 7 and 12—Ryot cutting classified trees to be used for purposes of trade.*—It would be illegal for a ryot. without having a permit, to sell wood cut in his *kumaki* land to another person as fuel. But, so long as he converts the wood to his own use, he is protected by Rule 7 (2) of the Forest Rules. Therefore, a ryot, who cuts classified trees in *kumaki* land to be used as firewood for his still is protected by Rule 7. **13 M. 21 = 1 Weir 767.**

(32)—*S. 26—Rules 7 and 12—Removal of leaves from classified trees.*—The mere removal of leaves from classified trees on unreserved land is not alone sufficient to constitute a breach of Rules 7 and 12, when read together. **11 M. 139 = 1 Weir 765.**

(33)—Ss. 26 and 35—*See* PENAL CODE, s. 188, 1 Weir 140.

(34)—*Ss. 26 and 56—Importing forest produce—Burden of proof.*—Where a person is charged with having imported, without permit, forest produce from a certain locality, the prosecution should prove that the produce was imported from that locality. S. 56 of the Act does not provide for any such presumption. **1 Weir 773.**

(35)—*Ss. 35, 36—Rules 2, 3, 6 and 7—Illicit possession of sandalwood.*—Where the accused was charged by the Forest Department with illicit possession and removal of some billets of sandalwood punishable, under Rules 2, 3, 6 and 7 of Rules framed under ss. 35 and 36 of the Act, and the Magistrate acquitted the accused on the ground that he had not obtained possession of the sandalwood by illicit or clandestine means, *held*, that the Magistrate should have considered whether the accused

6.—*Madras Acts*—continued.

Act V of 1882 (Forest)—*concluded.*

had committed a breach of Rule 3, or 7 of the Rules under the Madras Forest Act. **1 Weir 774.**

(36)—*Ss. 35, 36—Rules 2, 7 and 10 of Rules by Local Government—Form 2—Cutting of tree—'Moving,' meaning of—Whether moving in the act of cutting constitutes an offence under the Forest Act.*—S. 35 of the Forest Act, in empowering Government to make rules as regards transit, and Form No. 2, speaking of a transport, do not contemplate the moving which is involved in the cutting of a tree, as comprised within the meaning of the word 'transit' or 'transport.' Under Rule 2 of the Rules framed by the Government under the Forest Act, the word 'moving' has not the sense attached to it in the definition of 'theft' in the Penal Code. **4 Ind. Cas. 405 Cr.**

(37)—S. 35—*See* No. 33, *supra.*

(38)—S. 36—*See* Nos. 35, 36, *supra.*

(39)—S. 43—*See* No. 3, *supra.*

(40)—*Ss. 43 and 44—Confiscation of property by Government and disposal of property in favour of Government, when legal.*—A Magistrate has no power to order the confiscation of certain property, under s. 43, if the person charged is not convicted. But an order disposing of the property in favour of the Government, while the person charged is acquitted, would be valid under the last sentence of s. 44. **1 Weir 775.**

(41)—*Ss. 43, 47—Appeal from orders under s. 43—Crim. Pro. Code (1882), s. 520.*—An appeal from an order under s. 43 of the Forest Act does not lie under s. 520, Crim. Pro. Code (1882), but lies only under s. 47 of the Forest Act. **1 Weir 776.**

(42)—S. 44—*See* No. 40, *supra.*

(43)—*S. 47—Appeal under the section—Duty of Magistrate—Crim. Pro. Code (1898), s. 520.*—Where an appeal is preferred under s. 47 against an order of confiscation under s. 43, the appellate Magistrate should not refer the appellant to a Civil Court for redress. He should deal with the appellant's claim himself, and, following the direction in s. 520, Crim, Pro. Code, pass an order which would meet the justice of the case. **1 Weir 776.**

(44)—S. 47—*See* No. 41, *supra.*

(45)—*S. 50—Acts done in good faith in exercise of a valid right.*—S. 50 is inapplicable to a case in which any of the acts therein specified is done in good faith in the exercise of a valid right. **14 M. 247 = 1 Weir 776.**

(46)—S. 50 (*d*)—*See* No. 4, *supra.*

(47)—S. 54—*See* No. 21, *supra.*

(48)—*S. 56—Scope of the section.*—S. 56 does not require a Magistrate to presume that forest land is the property of the Government. **1 Weir 768.**

(49)—S. 56—*See* No. 34, *supra.*

6.—Madras Acts—continued.

Act I of 1884 (City Municipality).

[REP. IN PART, ACT II OF 1901; ACT III OF 1888. REP. IN PART AND AMENDED—MAD. ACT VII OF 1884, SS. 1 TO 4, 10 TO 20, 22 TO 26; MAD. ACT II OF 1892. AMENDED, MAD. ACT II OF 1899].

(1)—*Ss. 103 and 109—Liability of members of firm to pay Municipal tax, nature of.*—A firm or a partnership is a person within the meaning of s. 103. The tax prescribed by s. 103 is a tax upon a profession or trade or calling and there can be but one tax, when several persons jointly carry on one trade or business. The partner of a firm is liable only to pay the tax payable by the whole firm. Each member of the firm carrying on one business should not be taxed as several distinct persons. Therefore, the assessment of one of the partners of a firm as agent of an absentee partner in his individual capacity as a member of the firm was held to be illegal. **14 M. 140.** [*F.*, 23 M. 529].

(2)—*Ss. 103 and 192—Power of Magistrates to hear appeal from assessment of taxes.*—Presidency Magistrates have jurisdiction under s. 192 to determine as well the question of the liability to be taxed as the question whether the person taxed is placed in the proper class, on appeal against the decision of the President of the Municipality. **14 M. 140.** [*F.*, 23 M. 529].

(3)—*S. 103, Sch. A (1) (A and B)—Benefit Societies, whether liable to be taxed.*—The term "benefit society" distinguishes it from a society of which the object is purely benevolent and charitable or the promotion of social intercourse and convivial enjoyment. Such society has the business of investment for interest resulting in gain and such business is a calling within the meaning of s. 103, and the fact that the gain is not personal, but that it redounds to the benefit of those, in whom the subscribers are interested, does not render it the less a calling or a business. A society established to provide by voluntary subscriptions of the members thereof, with or without the aid of donations, relief or maintenance, for the widows and legitimate children of subscribers is a "benefit society" and is taxable under Sch. A, cl. I (*a*) of the Act. **11 M. 253.**

(4)—S. 109—*See* No. 1, *supra.*

(5)—*Ss. 170, 174, 338 and 341—Liability of Government to pay tax for importing timber.*—Where the Superintendent of the Government Gun Carriage Factory in the City of Madras caused certain timber to be brought into the city without obtaining a license and paying the fees prescribed by s.341 of Madras Act I of 1884, *held*, that the Government was liable to pay duty on the timber imported and that the exemption in favour of the Government under s. 338 from taking out license for storing wood would not apply also to s. 341. Nor would s. 174 exempting Government property from payment of tolls, apply to s. 341, as the fee leviable under the latter section would not amount to "tolls" within the meaning of s.174,

6.—Madras Acts—continued.

Act I of 1884 (City Municipality)—*continued.*

as the tolls referred to in that section were those tolls which were leviable under s. 170 of the Act, such as specified in Sch. D. **25 M. 457 = 12 M.L.J. 208 = 1 Weir 800.**

(6)—S. 174—*See* No. 5, *supra.*

(7)—S. 192—*See* No. 2, *supra.*

(8)—*S. 307—Deposit of stable refuse in a dust-bin, whether an offence under the section.*—*Held*, by Moore and O'Farrell, JJ. (Subrahmania Ayyar, C. J., *dissenting*):—A person, who deposits stable refuse in a Municipal dust-bin erected in a street cannot be convicted of an offence under the latter clause of s. 307 of Madras Act, I of 1884, inasmuch as the person who throws the refuse into a dust-bin cannot be considered to have deposited the refuse in the street within the meaning of s. 307, cl. 2. **23 M. 164.**

(9)—*Ss. 338 and 341—Scope of s. 341—Government whether exempted from paying the tax.*—S. 341 is in no sense ancillary or dependent upon s. 338. It really imposes Octroi duties or Town duties on the importation of timber or firewood, the duty being regulated with reference to its weight. The primary object of s. 341 is the levy of import duty and that is entirely independent of s. 338. It is impossible, therefore, to connect s. 341 and s. 338 in such a way as to justify the engrafting on the former of the exemption in favour of the Government contained in the latter. **25 M. 457 = 12 M.L.J. 208 = 1 Weir 800.**

(10)—S. 338—*See* No. 5, *supra.*

(11)—*S. 341—Crim. Pro. Code (1898), s. 197—Sanction to prosecute a public servant bringing timber without license into the City of Madras.*—The offence of bringing wood into the City of Madras without a license, as required by s. 341 of the City of Madras Municipal Act, is not an offence which could be committed by a public servant only, nor does it involve as one of its elements that it has been committed by a public servant. Therefore, no sanction is necessary for the prosecution of a public servant under s. 341 of the Municipal Act. Where the Superintendent of the Gun Carriage Factory in Madras caused timber to be brought within the City of Madras without a license, as provided by s. 341 of Madras Act I of 1884, *held*, that no sanction, under s. 197, was necessary to prosecute him under s. 341, Act I of 1884. **25 M. 15 = 2 Weir 223.** [*R.*, 7 C.W.N. 750 = 30 C. 927].

(12)—S. 341—*See* Nos. 5, 9, *supra.*

(13)—*Sch. A—Mutual Assurance Company—Liability to pay tax.*—In order to render a company liable to taxation under the Madras Municipality Act, it is not necessary that it must be a company of the character defined in the Madras Joint Stock Companies Act. A Company carrying on business, as a benefit society, if it carries on business for gain, is liable to taxation under the Act. In the case

6.—*Madras Acts*—continued.

Act I of 1884 (City Municipality)—*concluded.*

of such societies, the aggregate of the sum contributed by those associated for the common purpose, *e.g.*, in the case of industrial and provident societies, for the relief and maintenance during sickness and infirmity of members and their families, or in the case of assurance societies, *premia* paid by the insurers and the profits from the investment of such sums, would constitute the "capital" of the company under the Act. **11 M. 238.**

(14)—*Sch. (b)—Bicycle, whether liable to be taxed.*—A bicycle is a vehicle with springs within the meaning of Madras Act I of 1884 and is, as such, liable to be taxed. **19 M. 83.**

See MAD. ACT V OF 1878, 8 M. 429.

Act IV of 1884 (District Municipalities).

[REP. IN PART, ACT IX OF 1888; ACT II OF 1901. REP. IN PART AND AMENDED, MAD. ACT III OF 1897. AMENDED, MAD. ACT I OF 1899].

(1)—*Rules under—Criminal Procedure Code (1898), s. 195—Proceedings of Collector according sanction for prosecution—Appeal.*—The Collector of a District, acting under the rules framed under the Madras District Municipalities Act, 1884, is not a "Court" within the meaning of s. 195, Crim. Pro. Code, and no appeal lies to the District Judge against an order passed by him under that section. **2 Ind. Cas. 426.**

(2)—*Order to vacate a stall in public market, effect of.*—An order to vacate a stall let for purposes of sale in a public market, clearly amounts to a direction not to sell from the date on which the stall is required to be vacated. **2 M.L.J. 206.**

(3)—*Bona fide dispute as to ownership of land.*—Where there is a *bona fide* dispute as to the ownership of the land, the person claiming the land *bona fide* is entitled to put a sun-shade without the sanction of the Municipal Commissioners. **1 Weir 732.**

(4)—*S. 3—"Building"—Addition of wing and tower to a building.*—A wing and a tower added to an existing building come within the definition of the term building in s. 3 of the Act. **1 M.L.J. 37.**

(5)—*Ss. 3 and 60—What are Municipalities—Exemption from payment of profession-tax.*—A certain person claimed exemption under s. 60 from payment of profession-tax to the Bellary Municipality on the ground that, during the half-year, he paid "profession-tax" to the Bellary Cantonment. *Held*, that the Bellary Cantonment, not having been declared a Municipality under cl. (14) of s. 3, was not a Municipality constituted under the Act; and, therefore, the payment made by the defendant to the Bellary Cantonment, not having been made to any other Municipality, does not, under s. 60, exempt the defendant from his liability to pay to the Bellary Municipality. **4 M.L.T. 477=9 Cr. L.J. 91.**

6.—*Madras Acts*—continued.

Act IV of 1884 (District Municipalities)—*ctd.*

(6)—*Ss. 3 (27), 169 and 263—Extent of "public street"—Verandahs, etc., erected within the limits of adjacent property—License.*—Under the definition in s. 3 (27) of the Act, a public street extends only up to the boundaries of the adjacent property. Verandahs and other coverings erected within the limits of the adjacent property do not require the special license under s. 169 of the Act, which is required in the case of projection "over *pyals* and pavements in front of any building or land in a public street." **31 M. 181=8 Cr. L.J. 72.**

(7)—*S. 10-B—Feeding voters.*—The feeding of voters which results in the procuring of votes may amount to an offence under s. 10-B. Therefore, a Magistrate, who dismissed a complaint which charged a candidate for a municipal election with having fed the voters, on the ground that the allegation in the complaint, even if true, did not amount to an offence under s. 10-B, was held to be wrong. **1 Weir 726.**

(8)—*S. 41—Penal Code, s. 353—Municipal Inspector, whether a public servant.*—A Municipal Inspector is a public servant within the meaning of s. 41, Madras Act IV of 1884. If he is assaulted in the execution of a distress, the person assaulting is liable to be punished under s. 353, Penal Code. **13 M. 131=1 Weir 345.**

(9)—*S. 53, sch. A, proviso 4—Tax on money-lenders.*—The effect of the proviso to the Schedule of the Act is not to make taxable, persons who, apart from the proviso, would be in no class at all. A person, who carries on the business of a money-lender and whose income is below Rs. 30 a month, is not chargeable with a tax under s. 53 of the District Municipalities Act. **11 M.L.J. 312=24 M. 644.**

(9-*a*)—*Ss. 53 and 262—Tax on "income"—Meaning of term "income."*—The word "income" which occurs throughout sch. A, of the Act must be taken to mean the "net income" or profits derived from the business and not the gross income or receipts. Where a person is assessed under s. 53 and sch A, on his estimated gross income, the provisions of the Act have not been complied with and the jurisdiction of the Civil Court to question the legality of the assessment is not barred by s. 262, sub-s. 2. **27 M. 547=14 M.L.J. 410.**

(10)—*Ss. 59, 60 and 103—Liability to be separately taxed for business carried on in different capacities.*—The appellant carried on business as a trader in cotton, and also carried on business as a purchaser of cotton on commission, in other words, as a commission agent for an absent principal. In respect of this cotton occupation, he had already been assessed and paid the tax which could be levied under the Act. *Held* that, as the appellant had already been personally charged under one designation, he could not be again charged under any other designation. *Held*, also, a merchant carrying on a business in one town cannot, by reason

6.—Madras Acts—continued.

Act IV of 1884 (District Municipalities)—*ctd.*

that he purchases cotton through a commission agent in another town, be held to be carrying on business within the town in which the purchase is made. **1 Weir 726-A.**

(11)—S. 60—*See* Nos. 5, 10, *supra.*

(12)—*S. 63 (2 and 3)—Tax on land.*—Subject to the conditions mentioned in s. 63, a tax levied under sub-s. 3 of s. 63 on all lands within a Municipality indiscriminately is a legal tax. **24 M. 195 = 1 Weir 726-B.**

(13)—*S. 63, cl. 3—Madras District Municipalities Amendment Act, III of 1897, s. 49—Lands used solely for agricultural purposes—Liability to the tax—Meaning of the expression, "Lands used for agricultural purposes."*—S. 63 of the Madras District Municipalities Act, as amended by the Madras Act, III of 1897, exempts from the enhanced rate of taxation, that may be imposed in certain cases under sub-s. 3, lands used solely for agricultural purposes. Lands, on which potato, grain, vegetables, are grown, are lands used solely for agricultural purposes and are, therefore, exempt from the enhanced rate of taxation. In construing the words "lands used solely for agricultural purposes," the definition of the term "agricultural purposes" given in English Agricultural Rates Act and in Murray's Dictionary may be referred to and followed." **25 M. 627 = 1 Weir 727 = 12 M.L.J. 393.**

(14)—*S. 103—Attachment of doors of houses, validity of.*—The doors of a house are not moveable property and cannot be distrained under the first portion of cl. 1 of s. 103 of the Madras Act (IV of 1884). **13 M. 518 = 1 Weir 730.** [*F.*, 14 M. 467.]

(15)—*S. 103—Prosecution under the section, whether barred by civil suit.*—The fact that a civil suit has been brought does not bar a prosecution under s. 103. **1 Weir 731.**

(16)—*Ss. 103 and 111—Failure to pay tax—Procedure to be adopted before launching prosecution.*—A person cannot be prosecuted under s. 103 for default of payment of tax, unless it appears that the tax cannot be recovered by distress and sale of the moveable property of the defaulter. **9 M. 429.**

(17)—S. 103—*See* No. 10, *supra.*

(18)—S. 111—*See* No. 16, *supra.*

(19)—*S. 167 (2)—Scope of the section.*—The mere fact of a door opening into a public street is not sufficient to bring it within the s. 167 (2). If the door, though it opens in the street, does not open outwards but inwards into the house, the section does not apply. **1 Weir 731.**

(20)—S. 169—*See* No. 6, *supra.*

(21)—*S. 173—Obstruction to high road.*—The depositing, by any one, of any article on the high road except with the license of the Municipality under s. 173, is an obstruction, inasmuch as the public are entitled to the whole width of the road unimpeded by any article deposited thereon. **11 M. 343 = 1 Weir 732.**

6.—Madras Acts—continued.

Act IV of 1884 (District Municipalities)—*ctd.*

(22)—*S. 179—"Renewed" includes also repair.*—The word "renewed" in s. 179 of Madras Act IV of 1884 includes also repairing. **19 M. 241 = 1 Weir 732 (*b*).** [*D.*, U.B.R. 1904. 3rd Quarter, Upper Burma Municipal Regulation, 1].

(23)—*S. 179—External roofs—Construction.*—Where the facts of a case, beyond dispute, established, on the part of the accused, acts contravening the provisions of s. 179, District Municipalities Act, *held*, that the construction that s. 179 operates only when the roofs, etc., are constructed outside the house, *i.e.*, externally, was erroneous. **2 M.L.T. 499 = 7 Cr. L. J. 219.**

(24)—*S. 179—Inflammable material—Mats made of bamboos.*—Bamboo mats used in the erection of a *pandal* are inflammable material within the meaning of s. 179. **1 Weir 733.**

(25)—S. 179—*See* MAD. ACT III OF 1871, s. 148, 1 Weir 732 (*a*).

(26)—*S. 180—Erection of building—License, necessity for.*—Either a license or permission in writing from the Municipal Council is necessary under s. 180 before commencing to erect a building, except in the case of default on the part of the Municipal Council mentioned in cl. 5 of s. 180. **1 M L.J. 37.**

(27)—Constructing a *pyal* without having obtained a license from the Municipal Council and before the expiration of six weeks from the date of sending the application is an offence under s. 180, cl. 5 of the Act. **9 M.L.J. 335.**

(28)—*Ss. 180, 263 and 264—Application for license to build thatched roof—Illegal refusal of sanction—Erection of roof with tiles after six weeks—Object of s. 180.*—A person applied, under s. 180, to erect a building with a thatched roof and the application was refused by the Municipality on the erroneous ground that the land was public land. At the end of six weeks, he erected the building with a roof of tiles and not of thatch. *Held*, that the sanction was illegally refused and the erecting of a roof of tiles, when the application was for erecting a roof of thatch, would not make him liable to be convicted of an offence under s. 180 of Madras Act IV of 1884. **9 M.L.J. 337.**

(29)—It is clear, on a perusal of s. 180, that no power is thereby conferred on the Municipal Council of depriving owners of the legitimate use of their land. The object of the section is no other than to ensure the safety and sanitation of buildings to be newly erected. What the Council has to consider under the section is the plan of the proposed building; and the grounds on which the same can be disapproved are such as are stated in cl. 4. A person intending to build on his land made the necessary application for a license, which the Municipality granted as regards a portion only of the applicant's land, as they required the rest for widening a lane. The building was erected on the whole land, and the builder was convicted of

6.—Madras Acts—continued.

Act IV of 1884 (District Municipalities)—*ctd.*

building contrary to the terms of license. *Held* that, as the order of the Municipality was not legal, no penalty could be enforced on the builder and no notice could be given to him requiring him to pull down the building. **16 M. 230=1 Weir 733.** [*R.*, 2 Bom. L.R. 572, 27 B. 221; *D.*, 21 B. 187.]

(30)—*Ss. 187 and 264-A—Failure to comply with notice issued under s. 187 (1) of the Act—Penalties prescribed by s. 187 (2) and s. 264 of the Act.*—A party failing to comply with a notice issued by a Municipality, under s. 187 (1) of the District Municipalities Act, requiring the removal of a building, renders himself liable to the penalty prescribed in s. 187 (2). The penalty prescribed under the general provisions of s. 264-A is not applicable to such a case **17 M.L.J. 560=7 Cr. L.J. 8=2 M.L.T. 520.**

(31)—*S. 188(j)—License under the Explosives Act, IV of 1884, whether sufficient.*—There is nothing in either the District Municipalities Act or in the Explosives Act to show that a license under the latter Act exempts the licensee from the obligation, imposed by s. 188 (*j*) of the former Act, to take out a license from the Municipal authorities, if the explosives are kept within the limits of the Municipality. **1 Weir 740.**

(32)—*S. 188 (n)—Construction of words "offensive and dangerous trades"—Keeping more than ten head of cattle without license.*—The words "offensive and dangerous trades" in s. 188 (*n*) of the Act are merely words of general description to facilitate reference, and cannot limit or control the plain words of the section, which are, "no place shall be used for any one or more of the purposes specified in the section unless licensed." A person keeps more than ten head of cattle in a private place without license is guilty of an offence under s. 188 (*n*), although the cattle are not kept for purposes of trade. But the High Court did not interfere with the acquittal of a person who kept temporarily more than ten head of cattle without a license. **30 M. 220=2 M.L.T. 54=5 Cr. L.J. 189=17 M.L.J. 371=6 Cr. L.J. 128.**

(33)—*Ss. 188 and 189—Keeping an unlicensed private cart-stand.*—Where, in the prosecution of a person under s. 189 of Madras Act IV of 1884 for keeping an unlicensed private cart-stand, it was proved that some ten or fifteen carts from outside villages daily resorted to the premises of the accused, laden with produce and goods of various kinds intended for sale to the general public, but not specially to the accused, the accused acting as broker between the owners of the produce and the public, and the carts were to stand on the premises until the completion of the sale and removal of the goods, *held*, that the premises were used as a cart-stand under s. 188, Act IV of 1884, and the accused was guilty under s. 189 of the Act. **22 M. 455=1 Weir 739.**

(34)—*Ss. 188 and 189—Separate licenses for each of the modes of user—Hack-stable, if a livery stable—Lime-kiln.*—The District Municipalities Act requires a license for each of the modes of the user of the premises specified in cls. (*a*) to (*g*) of s. 138. The mere fact that a person has taken out a license for a tannery would not entitle him to use a lime-kiln without taking a separate license, although the latter may be merely a subordinate part of the business of tannery. Each separate kiln is a separate "place" and, therefore, requires a separate license. A hack-stable is a livery stable within the meaning of s. 188. **1 Weir 737.**

(35)—*S. 189—Unlicensed private cart-stand—When a place becomes a "cart-stand."*—To constitute the offence of keeping a private cart-stand, without a license, within the limits of a Municipality, under s. 189 of Madras Act IV of 1884, it is not necessary for the prosecution to prove that it is "offensive" or "dangerous" or that fees are levied in it Nor is a place a cart-stand within the meaning of the section, merely because one or more carts stand there. The term must be construed reasonably with due regard to all the circumstances of the case, *e.g.*, how many carts use the place from time to time, whether they belong to one or more persons, whether fees are levied, how long the carts remain there, and the purpose for which they go there, whether for the sale of goods to the owner of the premises or to others, or for the purpose of being engaged for hire. **21 M. 293=1 Weir 738.**

(36)—S. 189—*See* Nos. 33, 34, *supra.*

(37)—*Ss. 190 and 277—Farmer of fees leviable under s. 190.*—A farmer of the fees leviable under s. 190 is not a person employed by the Municipal Council to collect the fees on account of the Municipality. Where a farmer of the fees leviable under s. 190, in respect of carts laden with manganese, demanded fees under s. 277 in respect of carts laden with chillies, *held*, that the cart-drivers, in refusing the payment, were not guilty under s. 277 of the Act. **1 Weir 753.**

(38)—*Ss. 191 and 192—Slaughter of animals in private premises for private consumption.*—The slaughtering of a sheep by a person in his own premises for the purpose of private consumption is punishable under s. 192. **1 Weir 742 (a).**

(39)—*Ss. 191 and 197—Using unlicensed private place as market—Sale of flesh without license.*—Where a person sold mutton at a place, not licensed for use as a market, *held*, that he was punishable under s. 197 of the Act, if his use of the place, which was private property, was as a market, *i.e.*, as a public place for buying and selling. Even if it were otherwise, he was guilty of an offence under s. 191, cl. 2 of the Act, for having sold without license "flesh intended for food." **29 M. 185=3 Cr. L.J. 458.**

(40)—*Ss. 191, 192, 193 and 194—License to keep a butcher's shop—Public market—Scope and nature of s. 194.*—Persons keeping butcher's

6.—*Madras Acts*—continued.

Act IV of 1884 (District Municipalities)—*ctd.*

shops, not used as slaughter-houses, when those shops are not licensed markets at the passing of the Act, and when they have not since been declared by the Municipal Council to be markets, are not bound to take out licenses under s. 191, cl. 2 of the Act. The Municipal Council will not also be justified in refusing to give them license, except on the condition that they should remove to a fixed market. **10 M. 216=1 Weir 741.**

(41)—S. 191 (2) refers to a place other than a public slaughter-house used without a special license for the purpose mentioned therein. The very act of providing a public slaughter-house is a license to the public to use it as such, and there is no obligation to take out a special license under s. 191 (2). If, in providing a place as a public slaughter-house, a portion is set apart also for the sale of flesh, it is a public market within the meaning of s. 194. It is important to bear in mind, in construing s. 194, the fact that the property in the public market, the right of possession as owner, and its regulation and control are, for the purposes of the Act, vested in the Municipal Council. Reading s. 194 in the light of that fact, the clause which enables the Municipal Council to levy rents, fees and tolls appears to be an enabling provision and it does not operate to take away any right which they have as owners of the public market. The view is confirmed by cl. 3 which pre-supposes a valid lease or tenure granted by them and empowers them to determine the lease at once in the event of there being a conviction for a breach of a bye-law. **2 M.L.J. 206.**

(42)—S. 192—*See* Nos. 38, 40, *supra.*

(43)—S. 193—*See* No. 40, *supra.*

(44)—S. 194—*See* No. 40, *supra.*

(45)—*S. 195—Notice by Municipality on a tenant of a stall prohibiting sale—Jurisdiction of Magistrate.*—Where a tenant of the Municipal Council, holding a stall or shop, was prohibited from selling in the stall, *held*, that the tenant could not be prosecuted under s. 195, as the matter of the dispute between him and the Municipal Council was of a civil nature. *Quære*:—Whether a Municipality which has leased out a stall or shop to a person can, by giving a notice under s. 195 of Act IV of 1884, prevent the defendant from selling goods in the shop or stall so let to him by the Council and render him liable to the penalty prescribed by that section. **1 Weir 746.**

(46)—S. 197—*See* No. 39, *supra.*

(47)—*S. 203—Prohibition of a sale in streets.*—A conviction under s. 203 is bad, if the notification prohibiting the sale is not published in the District Gazette, and if such notification does not specify the street or part of the street in which the sale is prohibited. **1 Weir 746.**

(48)—*Ss. 207 and 221—Notice to erect a wall to secure privacy of neighbour's backyard—Prospective sentence.*—A Municipal Council is

6.—*Madras Acts*—continued.

Act IV of 1884 (District Municipalities)—*ctd.*

not empowered by s. 207 or by any other section to require the owner or occupier of land to erect upon his land a wall to secure the privacy of his neighbour's backyard. A conviction and sentence under s. 221 can only relate to the offence actually charged and proved against the offender. He cannot be sentenced prospectively for any repetition of the offence. The latter words of the section merely denote the scale of punishment which may be inflicted on offenders who repeat the offence. There is nothing in them to obviate the necessity for a fresh prosecution. **1 Weir 747.**

(49)—S. 221—*See* No. 48, *supra.*

(50)—*S. 222, Scope of—Its applicability to streets and lanes having no drains.*—The providing of drains by the Municipality is not a condition precedent to the obligation, imposed by s 222 of the Act, upon the owner or occupant of a house, of not letting dirty waters into the street. But the practical hardship in enforcing the obligation in particular cases, where no drains are provided, may be taken into account by the Magistrate in graduating the penalty. The words "except a drain" after "street" are inserted in s. 222 by Act III of 1897, because a street, as defined in the Act, includes a drain where there is such in or on the side of a street, but they do not imply that any street, to be within the purview of the section, must have a drain, in or by the side of it. **30 M. 221=17 M.L.J. 372=6 Cr. L.J. 129 and 235.**

(51)—*S. 222—Allowing sewage water to run into street, if an offence.*—An owner or occupier of a house, who lets sewage water in the street, commits an offence under s. 222, Act IV of 1884, although the Municipality has not provided drains. The section contemplates two classes of cases, in one of which the street is not provided with drains, and in the other such provisions are made. In the latter case, it was intended to secure that the offensive water should actually pass into the drain, and not be allowed to be soaked into the walls or ground at the side of the drain. **15 M. 91=1 Weir 747.** [*F.*, 30 M. 221=17 M.L.J. 372.]

(52)—*S. 228—Order by Municipality to drain off stagnant water and to fill up a pit.*—Where a Municipality gave a notice to the accused, under s. 228, Act IV of 1884, calling upon him to fill up certain pits completely, so that water may not stagnate therein and also to drain off the stagnate water, *held* that the first part of the notice went beyond the powers conferred by sub-s. 1 or sub-s. 2 of s. 228, but that the second part of the order was clearly within the powers of the Municipality. But the notice should be treated as bad in its entirety, for, to hold otherwise would impose upon the accused the obligation of picking out from the notice the requirements which it was within the power of the Municipality to call upon him to carry out. **1 Weir 749.**

6.—*Madras Acts*—continued.

Act IV of 1884 (District Municipalities)—*ctd.*

(53)—S. 262—*See* No. 9, *supra*.

(54)—*Ss. 263 and 264—Encroachment on public street.*—Where a person erects a fence in a lane and, thereby, encroaches on the lane, without obtaining a license from the Municipality, he is liable to be punished under s. 263, District Municipalities Act, although, it may be, he cannot be convicted under s. 264 in the absence of a resolution passed by the Municipal Council. **21 M. 246=2 Weir 17.**

(55)—S. 263—*See* Nos. 6, 28, *supra*.

(56)—*S. 264—Power to impose prospective fine.*—Though s. 264 prescribes a further fine, a Magistrate is not empowered, under that section, to impose a fine prospectively on a person, who is convicted under the section, in respect of the period during which he fails to comply with the order of a Magistrate directing the removal of a building constructed against the order of the Municipality. The proper course in such cases is to institute further prosecution, if there is occasion for it, and allow the accused an opportunity of defending himself before the further fine is imposed. **16 M. 230=1 Weir 733.** [*R.*, 171 P.L.R. 1903=13 P.R. 1903].

(57)—*S. 264—Non-compliance with notice issued by a Municipality.*—Where a prosecution is instituted, under s. 264, cl. (1), (II) of the Act, for not complying with a notice issued by a Municipal Council, requiring the accused to prevent the flow into the street of waste and sewage water from certain houses belonging to him, the accused incurs a penalty for non-compliance with the notice, only if the issue of the notice is authorised by some provision of the Act. **1 Weir 751.**

(58)—S. 264—*See* Nos. 28, 54, *supra*.

(59)—S. 264-A—*See* No. 30, *supra*.

(60)—*S.269—Money due on a toll contract.*—Money due from a contractor under a contract with the Municipality by which he has assigned to him the right to collect tolls, in consideration of a money payment to the Municipality, does not come within any of the provisions of s. 269 and is neither a "rent" nor a "toll." A contractor failing to pay money due under such contract cannot be convicted under that section. **26 M. 475=1 Weir 752.**

(61)—*Ss. 274 and 277—Resistance offered to distraining officer—Penal Code, s. 99 (1)*—The officer entrusted with the work of distraint is, under s. 109, Act IV of 1884, empowered to distrain the defaulter's property wherever the same may be found within the Municipal limits. No previous notice of the officer's intention to enter the house for the purpose of making the distraint is required under s. 274. Even if the section were applicable, the defaulter, in offering resistance to the officer, is not justified under s. 99 (1), Penal Code. **1 Weir 752.**

(62)—S. 277—*See* PENAL CODE, s. 183, 1 Weir 128.

6.—*Madras Acts*—continued.

Act IV of 1884 (District Municipalities)—*cld.*

(63)—S. 277—*See* Nos. 37, 61, *supra*.

(64)—*S. 284—Offence under section, what constitutes.*—The object of the section, generally, is to prevent unauthorised persons collecting monies under colour of the Act. But where a person collects, in his own right, monies due to the Municipality who claim them as owners of the land, and not under any provision of the Act, he is not guilty of an offence under s. 284 of the Act. **1 Weir 754.**

(65)—*S. 284—Penal Code, ss. 44 and 384—Illegal levying of toll.*—Where certain cartmen who had paid toll legally leviable on empty carts on entering the town were prevented by the *gumastha* of a toll-contractor illegally from passing through the toll-gate, unless they paid an extra toll on leaving the town, *held* that such detention amounted to an injury under s. 44, Penal Code and that the accused was properly convicted under s. 384, Penal Code. *Held*, also, that the conviction might also have been sustained under s. 284 of Madras Act IV of 1884. **1 Weir 29 =1 Weir 441**; 1 Weir 754.

(66)—*S. 284—Imprisonment in default of payment of fine.*—There is no provision in the Act for imprisonment being awarded in default of payment of fine, and the procedure for levying fines is laid down in s. 286. **1 Weir 753.**

(67)—*Bye-law No. 48—Covering drains without permission of Municipality.*—Bye-law No. 48 framed under Madras Act IV of 1884 as amended by Madras Act III of 1897 is as follows:—"No public drain shall be covered without the permission of the Municipal Council." The bye-law applies to all drains which existed in a covered state at the time the bye-law came into operation. The word "shall" is used throughout the bye-law in the imperative, and not with reference to time. This is the sense in which it is used in bye-law No. 48. Where a person had, prior to the coming into operation of bye-law No. 48, erected a covered drain without the permission of the Municipality, and there was an earlier bye-law in the same terms as the existing bye-law during the time of erection, *held*, that his conviction under the new bye-law was legal. **23 M. 213 = 1 Weir 750.**

Act V of 1884 (Local Boards).

[REP. IN PART, ACT II OF 1901. REP. IN PART AND AMENDED, MAD. ACT VI OF 1900. AMENDED, MAD. ACT III OF 1890, SS. 1 TO 6.]

(1)—*S. 43—Sanitary Inspector appointed by Local Board, whether a public servant.*—S. 43 of the Local Boards Act runs as follows:—"Every member or servant of a Local Board, or of a *Panchayat*, every contractor or agent, to whom the collection of any tax, etc., is entrusted, etc., shall be deemed to be a public servant." The words "to whom the collection, etc., is entrusted" govern only the words "contractor or agent" immediately preceding them. A Sanitary Inspector appointed by the

6.—Madras Acts—continued.

Act V of 1884 (Local Boards)—*continued.*

Local Board, is, therefore, a public servant within the meaning of s. 43 of the Local Boards Act. **21 M. 428 = 1 Weir 792.**

(1-*a*)—S. 60—*See* No. 18, *supra.*

(2)—*Ss. 77, 78, 81, 94 and 163—Penal Code, ss. 99, 186 and 353—Resistance to distraining officer—Notice of demand of house-tax without filling up completely the house-register—Illegal distraint of tools of artisan.*—The accused, a potter, failed to pay the tax due on his house after service of notice of demand, which was affixed to his house. There was an omission in the notice of demand in that, one column of the house-register was not filled up. The accused not having paid the tax, a warrant or distress was issued and a bucket and a spade belonging to him were attached. The distraint was resisted by the accused who recovered and retained his articles. *Held*, that the omission to fill up one column of the house-register was cured by s. 155, cl. 1 of the Act and that the service of the notice was regular and that the accused, in resisting the distraint, had committed an offence under ss. 186 and 353 of the Penal Code, inasmuch as the accused has no right of self-defence, the act of the officer being an act done in good faith and under colour of his office. **21 M. 296 = 1 Weir 135.** [*R.*, 27 A. 499 = A.W.N. 1905, 74 = 2 A.L.J. 219].

(3)—S. 78—*See* No. 2, *supra.*

(4)—S. 81—*See* No. 2, *supra.*

(5)—*S 87—Government Stores and Equipages—Stores and carts belonging to Government Jail—Liability to tolls.*—Stores and carts belonging to the Government Jails come within the words "Government Stores and Equipages" in s. 87 of Act V of 1884, and are free from tolls under the Act. **20 M. 16 = 1 Weir 793.**

(6)—*Ss. 89, 92—Absence of toll-gates.*—Where a toll-gate has not been constructed under the provisions of s. 89 of Madras Act V of 1884, s. 92 does not apply. **1 Weir 794.**

(7)—*Ss. 89 and 92—Conviction under s. 92—Necessary proof.*—A conviction under s. 92, Madras Act V of 1884, pre-supposes a liability to pay toll and an intention to avoid its payment. It lies on the prosecution to prove everything necessary to support the conviction. Where the prosecution did not prove that a table of the tolls, as provided by s. 89 (2), had been put up at the toll-gate or station, *held* that a conviction under s. 92 was not sustainable. **1 Weir 793.**

(8)—S. 92—*See* Nos. 6, 7, *supra.*

(9)—*S. 94—Tools of artisan, attachment of.*—Spades and buckets belonging to a potter are tools of artisan or implements of husbandry, and are, therefore, exempt under s. 94 of Act V of 1884, from attachment. **21 M. 296 = 1 Weir 135.**

6.—Madras Acts—continued.

Act V of 1884 (Local Boards)—*continued.*

(10)—S. 94—*See* No. 2, *supra.*

(11)—*S. 98—Building erected on poramboke land.*—Where a building is erected on a *poramboke* land, it is not competent to the Magistrate to issue a notice under s. 98 as such land is not a public street. A failure to obey the notice is not punishable. **1 Weir 794.**

(12)—*S. 98—Notice to remove obstruction on public road.*—The Chairman of a Union issued a notice, under s. 98 (2) of Madras Act V of 1884, to the accused to remove an encroachment alleged to have been made upon a public street. The power to issue notice was delegated to him by the President, Taluq Board. The encroachment itself existed prior to the passing of the Act. The accused disobeyed the order, but there was no evidence of obstruction. *Held*, that the accused was not guilty under s. 188, Penal Code. **1 Weir 795.**

(13)—*S. 98—Notice by Chairman of Union to remove a wall—Disobedience—Penal Code, s. 188.*—The accused, who had an open verandah in front of his house, enclosed it by building a wall. Thereupon, a notice was issued by the Chairman of the Union, who was not so authorised, calling on him to remove the new erection. The accused, having failed to comply with the order, was convicted under s. 188, Penal Code. *Held*, that the conviction was illegal as there was nothing to show that the accused erected any obstruction on any public street, his enclosing his own verandah being no such obstruction, and as the Chairman was not competent to issue the notice. **1 Weir 796.**

(14)—*Ss. 98 and 100—Penal Code, s. 188—Disobedience to a notice ordering the removal of obstruction on public street.*—Ss. 98 and 100 of the Local Boards Act must be read together. It is clear that the notice prescribed by s. 98 is a mere preliminary to the action to be taken by the President himself under s. 100. Where the President of a Taluq Board issued a notice to remove encroachments on a public road within a specified time, *held*, that the notice was merely a notice and not an order of the kind contemplated in s. 188, Penal Code, and a person disobeying such notice could not be convicted under that section. **20 M. 1 = 1 Weir 140.** [*F.*, 1 Bom. L.R. 166].

(15)—*Ss. 98 (2) and 98-A (2)—Penal Code, s. 188—Notice issued under the said sections, as amended by Act VI of 1900.*—Neither a notice under s. 98-A, sub-s. 2 of the Madras Local Boards Act, as amended by Act VI of 1900, nor a notice under s. 98 (2) of the amended Act, is an order within the meaning of s. 188, Penal Code. **1 Weir 140.**

(16)—S. 98-A (2)—*See* No. 15, *supra.*

(17)—S. 100—*See* No. 14, *supra.*

6.—*Madras Acts*—continued.

Act V of 1884 (Local Boards)—*concluded.*

(18)—*Ss. 155 and 60—Notice of demand of house-tax—Omission to fill up a column in House Register.*—A notice of demand of house-tax is not irregular merely because there has been an omission to fill up one column of the house-register. Such omission may be cured by s. 155, cl. 1 of Act V of 1884. **21 M. 296=1 Weir 135.**

(19)—*S. 163—Service of notice of demand of house-tax.*—The affixing of a notice of a demand of a house-tax under Act V of 1884 to the house, when the owner is in the village, is not a real departure from the procedure prescribed in s. 163 of Act V of 1884. **21 M. 296=1 Weir 135.**

(20)—S. 163—*See* No. 2, *supra.*

Act I of 1885 (Police, amending Act XXIV of 1859).

[REP,, MAD. ACT III OF 1889.]

See MAD. ACT XXIV OF 1859, s. 45 (5), 9 M. 167.

Act III of 1885 (Out-ports Landing and Shipping Fees).

—*S. 6—Terms "owner" and "property" explained.*—As the word "owner" in s. 6 of Act III of 1885 includes an agent or consignee, the word "property" in bye-law 2 of bye-laws framed under s. 6 includes goods of which any person is in possession as agent or consignee. **1 Weir 851.**

Act I of 1886 (Abkari).

See MAD. ACT III OF 1864.

(1)—*Ss. 9, 11 and 55—License to carry toddy.*—Where persons convey toddy from the licensee's trees to his shop within the limits of his farm, or where the licensee has a general permit and the persons conveying toddy act as his servants or persons employed by him, they are not liable to be convicted under s. 55 of Act I of 1886. **11 M. 472=1 Weir 633.**

(2)—*Ss. 11, 55 (a)—Expired permit, if a permit.*—An expired permit is no permit at all within the meaning of s. 11 of the Act. **1 Weir 633.**

(3)—S. 11—*See* No. 1, *supra.*

(4)—*Ss. 12 and 55, cl. (c)—Delegation of the work of drawing toddy.*—The intention of the Legislature was to prohibit the drawing of toddy, but clearly not to prevent the delegation of the actual work to the servant or agent of the licensee. **1 Weir 637.** [*F.*, 1 Weir 638=11 M. 250].

(5)—*Ss. 13 and 55—Possession of arrack outside the local limits defined in the license.*—Under s. 13 of the Madras Abkari Act, only persons not being licensed manufacturers or vendors of liquors are prohibited from having more than a certain quantity of liquor. Where a limitation in the license had reference to the place of sale and not to the place of keeping, a person may bring the liquor from outside his authorised place of sale. **1 Weir 637, note.** [*D.*, 1 Weir 636].

6.—*Madras Acts*—continued.

Act I of 1886 (Abkari)—*continued.*

(6)—*S. 29 (n)—Rule under, effect of—Magistrate's power over confiscated article.*—By virtue of the rule made under the powers conferred by s. 29 (*n*) of the Abkari Act (I of 1886), the Magistrate who adjudges the confiscation has power to direct that the confiscated article may be sold or destroyed. The rule may reasonably be construed, as not only authorizing the Magistrate to direct the sale of the article, but as also authorizing him to give directions as to the mode of sale. **5 M.L.T. 256=9 Cr.L.J. 149 =1 Ind. Cas. 79=19 M.L.J. 254.**

(7)—*Ss. 29 and 55 (e)—Power of Government to frame rules prohibiting delegation by licensee.*—Under s 29 of the Act, the Governor-in-Council published a rule for the drawing of toddy in the District of South Canara, which prohibited the license-holder from authorising any other person to draw toddy, except in the case of his prolonged illness. *Held*, that the rule was *ultra vires* inasmuch as the intention of the Legislature was to prohibit the drawing of the toddy without a license, and not to prevent the delegation of the actual work to a servant or agent and the power given to the Governor-in-Council to frame rules "to carry out the provisions of the Act" should be exercised within the limit which the Act would recognise. **11 M. 250=1 Weir 638.**

(8)—*S. 30—Spirituous liquor—Beer.*—Country beer is not included in the general term beer. **7 M.H.C. App. 15.**

(9)—*Ss. 31 and 36—Obstruction to a salt officer entering the house in search of property in execution of his duty.*—Although a Sub-Inspector of the Salt and Abkari department may be acting irregularly in making a search for the purpose of finding out the illicit possession of toddy, without a search warrant, persons obstructing such search cannot claim the right of private defence inasmuch as s. 99 of the Penal Code does not allow the exercise of that right when an act is done by a public servant or under the direction of a public servant. **19 M. 349=1 Weir 45.** [*F.*, 21 M. 296=1 Weir 135; *D.*, 17 M.L.J. 323=6 Cr. L.J. 105.]

(10)—*S. 34—Power of Salt officer of one circle to make an arrest in another.*—Where the Salt officer of one circle entered another circle for the purpose of arresting an offender against the Salt Laws and arrested him, the Magistrate, although believing the accused was guilty of an offence under s. 55 of the Abkari Act, acquitted the accused on the ground that the Salt and Abkari officer of one circle had no power to enter a village in another circle and to detect a case there. *Held*, that the question whether the officer who effected the arrest was acting within or beyond his power in making the arrest did not affect the question whether the accused was or was not guilty of the offence with which he was charged, and that, therefore, the order of acquittal was wrong and should be set aside. **26 M. 124=1 Weir 630.** [*F.*, 31 C. 557=7 C.W.N. 661].

6.—*Madras Acts*—continued.

Act I of 1886 (Abkari)—*continued.*

(11)—S. 36—*See* No. 9, *supra*.

(12)—*S. 43—Magistrate enforcing a penalty on the application of an Abkari Inspector—Crim. Pro. Code (1882), ss. 514, 515 and 516—Procedure to be adopted.*—A Magistrate enforcing a penalty on the application of an Abkari Inspector, who forwards, under s. 43 of Act I of 1886, a bail bond by reason of default of appearance of the person bailed to appear before him, must follow the procedure laid down in s. 514, Crim. Pro. Code. The Magistrate should proceed in the same manner as if the default had been made by a person bailed to appear before his own Court. He should call upon the defaulter to show cause why the penalty should not be enforced. **18 M. 48=1 Weir 631.**

(13)—*S. 55—Abkari peon, whether a Police officer—Madras Police Act, XXIV of 1859, s. 1.*—An Abkari peon does not fall within the definition of "Police" in s. 1 of Act XXIV of 1859. **1 Weir 632**; 1 Weir 836.

(14)—*S. 55 (a)—Temporary deposit of spirit in unlicensed place—License for a certain local area—Possession of liquor outside that area—Licensee depositing liquor in out-house.*—Where the accused held a license for a certain taluq, but was found in possession of a quantity of arrack in a place, which was not included in the limits covered by that license, *held*, that the accused was guilty of an offence under s. 55, cl. (*a*). Where a license prohibited the keeping or sale of spirits at any place other than that specified in the license, and where the licensee deposited a few drams of spirit in an unlicensed place for safe custody during night, *held* (*per* Wilkinson, J.), that the act, although a violation of the terms of the license, would not amount to such a violation as was contemplated by s. 55. *Per Shephard*, J.—The act of the accused amounted to a violation of law. **1 Weir 636.**

(15)—Where there is nothing in a toddy-drawer's license prohibiting the licensee and the permit-holder from depositing the liquor in the out-house of his dwelling place while it is in transit, he cannot be punished under s. 55 (*a*) for doing the same. **1 Weir 635.**

(16)—*S. 55(a)—Shop-keepers' licenses—Duration.*—Shop-keepers' licenses are granted by the Collector on the motion of the renter and would inure until cancelled by the Collector or by the lapse of time. It does not cease on the cessation of the renter's lease. **1 Weir 634.**

(17)—*S. 55, cls. (a) and (g)—Possession of skin smelling arrack.*—Where the accused was found in possession of a skin, which smelt of arrack and which was used for the conveyance of the liquor, *held*, that the accused was not guilty of an offence under s. 55 of the Act. **1 Weir 640.**

(18)—*S. 55 (h)—License, nature of.*—There is nothing in the Act which authorises a person licensed to sell spirits to transfer his license to a person who purchases a spirit business, so as to continue the business under the license granted to the vendor. The license is personal. **1 Weir 644.**

(19)—*S. 55 (h)—Transfer of liquor by way of gift.*—Where toddy is given at an unlicensed place as remuneration for watching the trees, the transfer is punishable under s. 55 (*h*). [*D.*, 1 Weir 645]. Where it was found that a boy rendered some service to the accused, who thereupon made a present of some toddy, but there was no evidence to warrant the inference that there was a contract that toddy was to be supplied as remuneration for work to be done for several days, as in the case reported in 1 Weir 645, *held*, that the accused was not guilty under s. 55 (*h*) of the Abkari Act. **1 Weir 645.**

(20)—*S. 55 (h)—Sale of ganja without license.*—The notification of the 12th November, 1888, brought into force in the Madras Presidency so much of Madras Act I of 1886 as relates to intoxicating drugs manufactured from the hemp plant. Ganja being a preparation of the hemp plant, persons selling it without license are liable to be punished under s. 55, unless entitled to the exemption allowed in s. 71. **1 Weir 646.**

(21)—*S. 55 (9)—Material for manufacturing liquor—"Wash."*—A liquid mixture named "wash," consisting of jaggery and babool bark, is "material" for the purpose of manufacturing liquor, as it is fit to be used for distillation. **24 M. 417=1 Weir 641.**

(22)—*Ss 55 and 68—Imprisonment in default of payment of fine—Penal Code, ss. 65 and 67.*—An offence under s. 55, Act I of 1886, is punishable with fine or imprisonment or both. S. 67, Penal Code, does not, therefore, apply to it. There is no express provision, in Act I of 1886, to the effect that s. 65, Penal Code, does not apply, and under that section the imprisonment to be awarded in default of payment of fine cannot exceed 1½ months. **1 Weir 652.**

(23)—*Ss. 55 (a), 69—Rules by Government framed under the Act—Rule directing immediate removal of toddy to shops.*—The rules framed by the Governor-in-Council, under the Abkari Act, have the force of law, and in accordance with them, the holder of a tree-tapping license is bound to convey the pots containing toddy immediately after removal from the trees, that is, within a reasonable time. A person omitting to do so is liable to be punished under s. 55 of the Abkari Acts. **12 M. 450=1 Weir 635.**

(24)—S. 55—*See* Nos. 1, 2, 4, 5, 7, *supra*.

(25)—*S. 56 (b)—License to keep toddy-shop—Omission to keep shop open and to pay kist*—The holder of a license to keep a shop for the sale of toddy was convicted by a Magistrate, for having failed to keep his shop open, in breach of one of the conditions of the license. *Held*,

6.—*Madras Acts*—continued.

Act I of 1886 (Abkari)—*continued.*

that there was nothing to show that the licensee was bound to keep a shop. *Held*, further, that even if he was so bound, an omission to do so did not amount to an act in breach of the conditions of the license. Omission on the part of a licensee to pay kist on the due date is not an act done "on breach of the conditions of his license," and is not, therefore, punishable under s. 56 (*b*). **23 M 220, Foot-note =1 Weir 649.** [*R.*, 1 Weir 649 = 23 M. 220; *D.*, 1 Weir 650.]

(26)—*S. 56 (b)—License whether necessary to be carried on the person of the licensee.*—It is not required by the Act that the person having a license should have it on his person when carrying toddy under his license. **1 Weir 646.**

(27)—*S. 56 (b)—"Holder of license"—Scope of the term.*—The words "being the holder of a license" in s. 56 must be taken to include any person in his employ and acting on his behalf for the time being. **1 Weir 647.** [*F.*, 1 Weir 648 = 21 M. 63.]

(28)—*S. 56 (b)—Terms of license, construction of.*—Where the words of the license required only that the toddy should be taken straight from the tree to the shop, it would not contravene the terms of the license to pour the contents of several pots into one pot in order to take the whole amount drawn to the shop in the evening. **1 Weir 648.**

(29)—*S. 56 (b)—Contravention of the terms of a license.*—Where a license expressly provides that the licensee is bound to see that bottles containing spirits manufactured in India are labelled "spirit manufactured in India," a contravention of the provision is punishable under s. 56 (*b*) of the Act. **1 Weir 650.**

(30)—*Ss. 56 and 64—Applicability of s. 56 to a servant of the holder of a license.*—Ss. 56 and 64 of the Abkari Act must be read together, and the words "being the holder of a license" in s. 56 must be taken to include any person in the employ, or for the time being acting on behalf of the holder of the license, as otherwise the words in s. 64, "for any offence committed by any person in his employ and acting on his behalf under s. 56" would have no meaning or application. **21 M. 53 = 1 Weir 648.**

(31)—*Ss. 56 and 64—Liability of license-holder for offences committed by employee in his absence—Liability of manager of licensee.*—A license-holder, though not present, is liable, under s. 64, for any offence under s. 56, committed by a person in his employ, unless he can show that he has taken all due and reasonable precautions to prevent the commission of any offence under s. 56. A person managing a shop on behalf of the license-holder is not *prima facie* punishable under s. 56 for an offence under s. 56 committed in the shop. Incidentally, however, such a person seems to be made punishable by s. 64 (2), for, he appears to be what is there called the actual offender.

6.—*Madras Acts*—continued.

Act I of 1886 (Abkari)—*concluded.*

The section intends that the person who answers this description as well as the license-holder may be punished. **1 Weir 647.**

(32)—*S. 62—Peon, whether an Abkari Officer*—An Abkari peon is not an Abkari officer within the meaning of s. 62 of the Abkari Act (I of 1886). **4 M.L.T. 107 = 18 M.L.J. 455**; 1 Weir 651.

(33)—*S. 62—Omission to apply for extension of leave.*—The omission to apply for extension of leave by an Akbari peon at the proper time does not constitute an offence. **1 Weir 650.**

(34)—*S. 64—Penal Code, s. 79—Transporting liquor without license—Plea of ignorance.*—The act of carrying liquor over a gallon, without a permit, is rendered penal by statute, and under s. 64 of the Abkari Act, the *onus* of proving that the act was not an offence is thrown upon the accused. To do this, they must show that they acted in good faith, that is, with due care and attention, since s. 40 of the Penal Code renders applicable the provisions of s. 79 to offences punishable under special and local laws. *Held*, that the *onus* was discharged by proving that the accused, who was alleged to have conveyed liquor without a permit, did so by reason of believing, in good faith, that he was not transporting liquor, but was transporting mere casks containing water. **1 Weir 40.**

(35)—*S. 64—Gambling in arrack shop.*—Gambling in an arrack shop is not made an offence under the Act. **1 Weir 647.**

(36)—S. 64—*See* Nos. 30, 31, *supra.*

(37)—*S. 65—"Knife," whether an utensil.—Confiscation of money and liquor and measures.*—A knife cannot be said to be an "utensil" within the meaning of s. 65 of the Act, and should not, therefore, be confiscated. Money is not liable to be confiscated under s. 65 of the Act. Where, on the conviction of a person under s. 55 for possessing liquor without license, the Magistrate ordered the confiscation of the liquor and certain measures, *held*, that the order directing the confiscation of measures must be set aside, (because the provisions of s. 65 do not apply). **1 Weir 652.**

(38)—S. 68—*See* No. 22, *supra.*

(39)—S. 69—*See* No. 23, *supra.*

Act III of 1888 (City Police).

[AMENDED, MAD. ACT III OF 1898.]

(1)—S. 23—*See* No. 6, *infra.*

(2)—*Ss. 42, 45 and 47—Gaming—Seizure of money and securities for money—Forfeiture—Magistrate, whether bound to inquire whether things seized were intended to be used for purpose of gaming.*—The phrase "all or any of the articles seized" in s. 47 is large enough to cover money or securities for money when seized by the Police. S. 47, under which the Magistrate is empowered to order a forfeiture, does not require that he should make an inquiry whether the money and other things seized were

6.—Madras Acts—continued.

Act III of 1888 (City Police)—*concluded.*

used or intended to be used for the purpose of gaming. It is sufficient that the articles have, in fact, been seized by the Commissioner of Police under circumstances of reasonable suspicion entertained by him. The Magistrate has a discretion in the matter, and, while he is entitled to presume that the action of the Police authorities have been regular, he will, no doubt, not order a forfeiture in a case where he has reason to believe that the seizure has been irregularly made. **19 M. 209 = 1 Weir 850.**

(3)—S. 45—*See* No. 2, *supra.*

(4)—S. 47—*See* No. 2, *supra.*

(5)—*S. 71, cl. XV—Music played in a private place.*—The playing of music, where there is no wilful obstruction of a thoroughfare caused thereby, is not in itself punishable under cl. XV, s. 71 of the Act when such playing takes place on private property. **14 M. 223 = 1 Weir 848.**

(6)—*Ss. 75, 23—Arrack-shop whether a place of public resort.*—Where the accused, charged under s. 75 of Madras Act, III of 1888, with being drunk and disorderly in an arrack-shop, were acquitted on the ground that an arrack-shop is not a place of "public resort" within the meaning of s. 75, *held*, that s. 75, read in connection with s. 23 of this Act, and with due advertence to the mischief which the section is intended to prevent, makes it clear that an arrack-shop is a "place of public resort" within the meaning of the section, *held*, also, that the doctrine of *ejusdem generis* should not be applied in considering the scope of s. 75. **6 M.L.T. 16 = 9 Cr. L.J. 496 = 2 Ind. Cas. 84 = 33 M. 83.**

Act III of 1889 (Town Nuisances).

(1)—*S. 3—Spreading raggi stalks in a public street—Act XXIV of 1859 (Police, Madras).*—The mere spreading of a raggi stalk to dry in the streets of a village is not an offence under s. 48 of Act XXIV of 1859 (=s. 3, Towns Nuisance). **1 Weir 912.**

(2)—*S. 3 (5) (6)—Obstruction to thoroughfare—What constitutes offence under the section.*—The overhanging boughs of a hedge cannot be said to cause obstruction to the free passage of a thoroughfare. They may cause inconvenience to passers-by, but inconvenience is not obstruction. Nor can it be said that the obstruction is caused, "wilfully," *i.e.*, by design, or set purpose. To constitute an offence under s. 3, cl. 5 or 6, Act III of 1889, there must be evidence of obstruction. It is not enough to prove that the act complained of must in all probability cause obstruction, but it must be proved that obstruction to the free passage of the thoroughfare was caused. **1 Weir 912.**

(3)—*S. 3, cls. 5 and 9—Spreading cloths to dry in a public street.—Allowing the growth of rank vegetation.*—The spreading of cloths to dry in a public street can neither come under cl. 5 nor under cl. 9 of s. 3 of Madras Act III of 1889.

6.—Madras Acts—continued.

Act III of 1889 (Town Nuisances)—*continued.*

The allowing of the growth of rank vegetation in front of one's house is not an offence. **1 Weir 913.**

(4)—*S. 3 (6)—Selling fish on the roadside—Obstruction—Offence.*—Where the evidence proved conclusively that, owing to the accused's selling fish on the roadside near the market, numbers of people collected there and caused an obstruction, *held*, this was an offence within the section. **3 M.L.T. 400 = 18 M.L.J. 329 = 8 Cr. L.J. 149.**

(5)—*S. 3, cl. 9—Act XXIV of 1859, s. 48 (5)—Drying grain in a street—Nuisance caused by bullock.*—The exposing of grain to dry in a street is not an offence under s. 3, cl. 9 of Act III of 1889, or under s. 48, cl. 5 of Act XXIV of 1859. **1 Weir 913.**

(6)—*Nuisance caused by bullock in street.*—Where the accused's bullocks were alleged to have dirtied a place of public resort, but the accused did not admit that they threw or laid down the dirt or filth, *held*, that the accused could not be convicted under s. 3 (9). **1 Weir 914.**

(7)—*S. 3, cl. 9 (s. 48, cl. 5, Act XXIV of 1859)—Rubbish in front of a house—Allowing pigs to stray.*—The presence of rubbish in front of a man's house cannot be held generally as *prima facie* proof that the owner of the house threw it there. (*Per* Hutchins, J.) It may be presumed that any rubbish thrown in front of a man's door was thrown there by himself or with his consent. This, however, is not a presumption of law, but purely one of fact, which the Magistrates are at liberty to raise, and which they may well consider inconclusive. *Per* Kindersley, J. Asperson cannot be convicted, under s. 3 (9) of Act III of 1889, of leaving pigs at large and causing them to commit nuisance on the public road. **1 Weir 914.**

(8)—*S. 3, cl. (10)—Gambling on* pyal *of private house, whether offence.*—Where the act of gambling was committed, not in any public street, road, thoroughfare or place of public resort, but on the *pyal* of a private house, it was held that no offence under cl. (10) of s. 3 of Act III of 1899, was committed. **3 M.L.T. 137 = 7 Cr. L.J. 130.**

(9)—*S. 3 (10)—Public street—Verandah of a house.*—A verandah of a house is not a public street for the purposes of Act III of 1889. **1 Weir 915.**

(10)—S. 3 (10)—*See* PENAL CODE, ss. 65 and 67, 22 M. 238 = 1 Weir 32.

(11)—*S. 3 (12)—Throwing stones at a religious procession.*—A man, who throws a stone at a religious procession, is guilty of a disorderly act under s. 3 (12) of Act III of 1899. **1 Weir 915.**

(12)—*Ss. 3, 6 and 7—Gaming in a vacant unenclosed site.*—Where "gaming" took place in a vacant site belonging to one of the accused

6.—Madras Acts—continued.

Act III of 1889 (Town Nuisances)—*continued.*

persons, and the owner of the site was convicted under ss. 6 and 7 of the Act and the other accused persons were convicted under s. 7 of the Act, *held*, that the conviction was wrong, inasmuch as the locality, in which gambling took place, could not be called as a "common gaming house" which would mean an "enclosed place." **18 M. 46=1 Weir 919.**

(13)—*Ss. 3 and 11—Penal Code, ss. 40 and 64—Imprisonment in default of payment of fine.*—The effect of the amendment of the Penal Code by Act VIII of 1882 is to make ss. 40 and 64, Penal Code, applicable to offences under the Police Act XXIV of 1859. The incorporation of ss. 3 and 4 of Madras Act III of 1889 in Act XXIV of 1859 does not, therefore, render the provisions of ss. 40 and 64, Penal Code, inapplicable. A Magistrate, convicting a person under s. 3 of Madras Act III of 1889, has the power to impose a fine and to award a sentence of imprisonment in default of the payment of fine. **18 M. 490=1 Weir 909.**

(14)—*S. 4—Letting offensive matter into a 'street'—Definition of 'street'—Discharge into 'drain' or 'ditch' by the side of street.*—The accused was convicted of letting offensive matter from his house into a street, under s. 4 of Madras Act III of 1889 (Towns Nuisances). It was found that the accused allowed the water to flow into a 'drain' or 'ditch' constructed alongside the road-way. *Held*, that the word 'street' not being defined in the Act, it must be taken in its ordinary or popular sense :—'A street is, properly, a paved way or road but, in usage, any way or road in a city having houses on one or both sides,' that such definition excludes what is called a 'drain' or 'ditch' on either side of the road-way and that, therefore, the drain in question did not form part of the street. The conviction was, accordingly, quashed. **28 M. 17.**

(15)—*S. 5—Scope of the section.*—There is nothing in s. 5 of Act III of 1889 to restrict it to a place of public resort, nor is there any reference to nuisance, much less public nuisance. Where the accused used a bullock with sore neck to his oil mill in his private land at a distance from the public street, *held*, that the accused would be guilty of an offence under s. 5, Act III of 1889. **1 Weir 917.**

(16)—*Ss. 6 and 7—Common gaming-house.*—Where there is evidence that gaming took place in a house, that instruments for gaming were found there, and that money was paid to the owner of the house for allowing gaming therein, these facts were held to be sufficient to find that the house is common gaming-house. The mere fact of cards being played in a house is no ground for presuming it to be a common gaming-house. **1 Weir 918.**

(17)—In the absence of any definition of the term "common gaming-house," the term must at least imply that the house was one used as a place of public resort. Where there is no

6.—Madras Acts—continued.

Act III of 1889 (Town Nuisances)—*concluded.*

evidence that a house was either open to the public or kept for the profit of any person as a place of public resort, a conviction under s. 6 or 7 of the Act is not maintainable. **1 Weir 917.**

(18)—*Ss. 6 and 7—Conviction under the sections, when maintainable.*—Where there is no evidence that gaming in a house was carried on for the profit and lucre of the proprietor or that he supplied or charged for the cards, *held*, that the proprietor could not be convicted under s. 6 or s. 7 of Act III of 1889. **1 Weir 918.** [*F.*, 1 Weir 918.]

(19)—S. 6—*See* No. 12, *supra.*

(20)—S. 7—*See* Nos. 12, 16, 18, *supra.*

(21)—S. 11—*See* No. 13, *supra.*

See MAD. ACT XXIV OF 1859, s. 48, 13 M. 142=1 Weir 910=2 Weir 327.

See MAD. ACT XXIV OF 1869, 4 M. 235=1 Weir 911.

See BENCH MAGISTRATES, 18 M. 394=2 Weir 17.

Act IV of 1889 (Salt).

See MAD. ACT I OF 1882.

,, MAD. ACT VI OF 1871.

(1)—*Ss. 3 and 74 (b)—Possession of sea-water.*—Sea-water is not "contraband salt" within the meaning of ss. 3 and 74 of the Madras Salt Act. **1 Weir 896.**

(2)—*Ss. 46 and 47—Penal Code, s. 264—Escape from lawful custody—Arrest by a salt officer without a search warrant.*—S. 47 of the Madras Salt Act empowers an officer of the Salt Department, whenever he "has reason to believe that contraband salt is being kept in any place and that the delay in obtaining a search will prevent the discovery thereof," after certain formalities, to search such place to seize any contraband salt therein, and to arrest any person in the keeping of such salt. The officer has power only within the limits allowed by law, and must exercise his powers strictly in accordance with law. Where there could not have been any delay in obtaining a warrant from a Magistrate so as to prevent the discovery of contraband salt, the salt officer would be bound to take such warrant. In such a case an arrest, without the warrant, would be illegal, and a person escaping from it would not be liable under s. 224, Penal Code. **19 M. 310=1 Weir 206=6 M.L.J. 173.** [*D.*, 21 M. 296.]

(3)—S. 47—*See* No. 2, *supra.*

(4)—*S. 74 (b)—Possession of illicit salt—Proof of intention.*—In order to convict a person under s. 74 (*b*), Act IV of 1889, it must be proved that the accused knew or had reason to believe that the salt in his possession was illicit. **1 Weir 897.**

(5)—S. 74 (*b*)—*See* No. 1, *supra.*

6.—Madras Acts—continued.

Act III of 1897 (District Municipalities Amendment Act).

—S. 49—*See* MAD. ACT IV OF 1884, s. 63 (3), 25 M. 627=1 Weir 727=12 M.L.J. 393.

Act I of 1900 (Malabar Compensation for Tenants' Improvements).

—*S. 3—'Licensee' whether comes within the definition of 'tenant.'*—A licensee does not come within the definition of tenant in s. 3 of the Act, and he is not, therefore, entitled to the benefit of Act I of 1900. **7 M.L.T. 121.**

Act III of 1904 (City Municipality).

(1)—*Ss. 3 (8) and (22), 322 and 323 and Schedule—Conviction under s. 323—Storing iron without license.*—As no license under s. 322 is required to be taken out for storing iron, a conviction under s. 323 is unsustainable. Storing iron is not specified in the Schedule to the Act as a dangerous or offensive trade, and so does not come within the definition of dangerous and offensive trade in ss. 3 (8) and (22). **4 M. L.T. 321.**

(2)—*S. 120—Trader buying goods through servant at Madras—Shop in Tinnevelly—Whether the trader can be said to carry on business at Madras—Profession tax—Liability to be taxed under s. 120.—Held* that a person, who is a trader in piece goods and has a shop in Tinnevelly where he sells the goods and earns his profits, cannot be said to carry on business at Madras, merely because he buys his goods at Madras (where he has no office), through a servant, who, acting under his orders, buys and forwards them to Tinnevelly and that he is not liable to be taxed under s. 120 of the Act. **7 M.L.T. 80=33 M. 82=5 Ind. Cas. 44.**

(3)—S. 322—*See* No. 1, *supra*.

(4)—S. 323—*See* No. 1, *supra*.

(5)—*Sch. V—"Capital," meaning of—Indian Companies Act.*—The Indian Companies Act cannot be properly resorted to for determining the meaning of words in the Municipal Act, as the two Acts are not in *pari materia*. When sch. V of the Municipal Act is read as a whole, the underlying principle seems to be that taxation should be roughly proportionate to the professional incomes of individuals and the profits of companies. The word "Capital" in sch. V means paid-up capital **3 M.L.T. 400=18 M.L.J. 349=31 M. 408=9 Cr. L.J. 68.**

(6)—*Sch. VI, cl. 1—'Trailor Cars'—Vehicles with springs—'Propelled.'*—Trailor cars are vehicles with springs and are 'propelled by electricity,' within the meaning of the words as used in sch. VI. cl. 1 of the Madras City Municipal Act, 1904, and, as such, are liable to pay a tax of Rs. 15 each to the Municipality. **18 M.L.J. 149.**

See MAD. ACT V OF 1878, 8 M. 429.

See MAD. ACT I OF 1884, s. 103, 11 M. 253.

See MAD. ACT I OF 1884, ss. 103 and 192, 14 M. 140.

6.—Madras Acts—concluded.

Act III of 1904 (City Municipality)—*concld.*

See MAD. ACT I OF 1884, ss. 170, 174, 338 and 341, 25 M. 457=12 M.L.J. 208=1 Weir 800.

See MAD. ACT I OF 1884, s. 307, 23 M. 164.

See MAD. ACT I OF 1884, s. 341, 25 M. 15=2 Weir 223.

See MAD. ACT I OF 1884, sch. A, 11 M. 238.

See MAD. ACT I OF 1884, sch. (*b*), 19 M. 83.

Act II of 1907 (Hill Municipalities).

—*Order under s. 23 (3)—Finality—Appeal under s. 23 (4)—Party entitled to show cause—Crim. Pro. Code (Act V of 1898), ss. 435, 439.—Held*, that the finding of the Chairman under s. 23 (3), Act II of 1907, that a certain work was not in accordance with the approved plan is final, subject to a right of appeal to the Council under s. 23 (4) of the same Act. The owner is entitled to show cause against an order under s. 23 (3) of the Act. **7 M.L.T. 183.**

7.—Punjab Acts.

* **Act XIV of 1843 (Inland Customs—Salt—N.W.P.)**

[REP., ACT VIII OF 1875.]

—*And Act XXXVI of 1855—Possession of unlawfully manufactured salt—Rules of Administration Board.*—Rule 32, of the Rules issued by the Punjab Board of Administration, dated 29th May, 1851, for the protection of the salt revenue, makes it an offence to be in possession of more than one seer of unlawfully manufactured salt. **9 P.R. 1872 Cr.**

* **Act XXXVI of 1855 (Contraband Salt).**

[REP., ACT VIII OF 1875.]

See Act XIV of 1843, 9 P.R. 1872 Cr.

* **Act XXI of 1856 (Excise).**

(1)—*Ss. 48 and 51—District in which acreage on poppy cultivation had been introduced—Unlicensed vendors.*—The prohibition of the possession of opium by other than licensed vendors contained in s. 51 was held not to be in force in districts in which an acreage on poppy cultivation had been introduced; *held* also, that s. 48 applied to such cases; but that the provision of the latter section which made it an offence, for a person authorized to supply licensed vendors, to sell opium to any person other than a licensed vendor was applicable to such area. **14 P.R. 1869 Cr.**

(2)—S. 51—*See* No. 1, *supra*.

* **Act XV of 1867 (Municipal Committees, Punjab, Oudh, Central Provinces).**

[REP. (IN PUNJAB), ACT IV OF 1873; (IN CENTRAL PROVINCES), ACT XI OF 1873; (IN OUDH), 15 OF 1873].

*These local Acts were passed by the Imperial Legislature.

7.—Punjab Acts—continued.

Act XV of 1867 (Municipal Committees, Punjab, Oudh, Central Provinces)—*concluded.*

(1)—*Ss. 2, 3—Extension of the provisions of the Act to a Cantonment.*—A notification purporting to have been made under s. 3 of Act XV of 1867, extending so much of the Act, as was not inconsistent with the provisions of Act XXII of 1864, to a cantonment was held not to be *ultra vires*, although no Municipal Committee had previously existed in that cantonment, inasmuch as the objection was not taken before the Original Court, and as, even supposing that the Notification under s. 3 of Act XV of 1867 was *ultra vires*, the Local Government had authority to extend the Act to the cantonment, under s. 2. **43 P.R. 1888 Cr.**

(2)—S. 3—*See* No. 1, *supra.*

*** Act IV of 1872 (Punjab Laws).**

[REP. IN PART, ACT I OF 1878; ACT VI OF 1878; ACT X OF 1879; ACT IV OF 1882 (WHEN EXTENDED TO THE PUNJAB); ACT X OF 1882; ACT XVII OF 1887; ACT VIII OF 1890. REP. IN PART AND AMENDED, ACT XII OF 1878; ACT XII OF 1891; ACT VII OF 1895, SS. 3 AND 4. AMENDED, ACT XV OF 1875; ACT XXIV OF 1881; PUN. ACT IV OF 1900.]

(1)—*S. 25—Discharge not opposed by creditors—Imprisonment of insolvent.*—When no objection is taken by the creditors for the discharge of the insolvent, as prescribed by Rule 25, Chief Court Book Circular, No. IV-1753, the Court has no jurisdiction to award imprisonment under s. 25 of Act IV of 1872. **24 P.R. 1873 Cr.**

(2)—*S. 25—Imprisonment of Insolvent—Power of Court to delegate to another the duty of examining the accounts.*—Where a Court awards imprisonment to an insolvent, under s. 25, Act IV of 1872, the Court itself is bound to make the enquiry and is not competent to delegate its powers to a commissioner to investigate the insolvent's accounts. **24 P.R. 1873 Cr.**

(3)—S. 39.—*See* CRIM. PRO. CODE (1882), s. 512, 26 P.R. 1885 Cr.

(4)—*S. 39-A—Rule 18—Village officers—Duty of reporting movement of bad character.*—Where a person, whose name was on the Police Department Register No. X, was absent from the village in company with the *lambardar* himself, *held* that it was not the movement of a bad character which it was necessary to report under Rule 18. **11 P.R. 1893 Cr.**

(5)—*S. 39-A—Rule 18—Duty of village officers to report the absence of a bad character from the village.*—The rule imposes as an obligation upon the village officers the duty of reporting, from time to time, the absence of a bad character from the village. The rule does not require immediate or prompt report. A decision by a lower Court upon the question whether there

* This local Act was passed by the Imperial Legislature.

7.—Punjab Acts—continued.

Act IV of 1872 (Punjab Laws)—*continued.*

has been a breach of the obligation to report from time to time is not revisable without strong ground, especially in the case of an acquittal. **37 P.R. 1887 Cr.**

(6)—*S. 39-A—Rule 19—Omission by* lambardar *to report absence of bad character—Information already given by village watchman.*—When the prescribed information of the absence of a bad character has been given by the village watchman, the *lambardars* could not be punished for breach of the rule. **20 P.R. 1903 Cr.**

(7)—*S. 39-A—Rule 23—Village officers—Duty of reporting occurrence of an epidemic disease.*—It is not a conclusive proof of a breach of the rule that an epidemic disease had occurred and had not been reported. It must also appear that the accused were aware of it. The word any "epidemic" in Rule 23 means any epidemic disease and not any disease in epidemic form. **8 P.R. 1893 Cr.**

(8)—*S. 39-A—Rule 24—Scope of the Rule.*—Where the *lambardar* had no information that the offence of murder was about to be committed or no opportunity or means of preventing it, *held* that he could not be convicted under Rule 24. The rule prescribes merely a certain mental attitude and a certain line of action as regards cognizable offences and does not make him responsible that none are committed. **4 P.R. 1895 Cr.**

(9)—*S. 39-A—Rules 25, 32, 44—Commission of cognizable offence—Omission by Village Headmen to give information.*—In order to convict a *Chaukidar* for omitting to give information of a cognizable offence, it is necessary to prove that he received information of the commission of the offence, and that certain circumstances existed which rendered it incumbent on him to report to the Police personally. **30 P.R. 1883 Cr.**

(10)—*S. 39-A—Rule 28—Scope.*—Rule 28 does not apply to a case where there has been no refusal to arrest, but, at most, negligence in the pursuit of the offender which may be due as much to error of judgment or cowardice as to corrupt motives. **4 P.R. 1895 Cr.**

(11)—*S. 39-A—Rule 43—Absence of* Chaukidar *from village without leave.*—The mere temporary absence of a *Chaukidar* from the village without leave is not, when taken alone and without proof of further circumstances, an offence punishable under Rule 43, either as being wilful misconduct or as being neglect of duty, or as being a withdrawal from the duties of his office without permission. **23 P.R. 1894 Cr.**

(12)—*S. 39-A—Rules 43, 44—Village Headmen—Illegal omission.*—When the Village Headmen were charged and convicted under Rules 43 and 44 made under s. 39-A, for allowing the body of a person, who had committed suicide by throwing himself into a well, to remain in the well till the arrival of

7.—Punjab Acts—continued.

Act IV of 1872 (Punjab Laws)—*continued.*

the police, without taking any steps to extricate it, *held* that they were not guilty of any offence. **23 P.R. 1882 Cr.**

(13)—*Ss. 41, 42—Track Law—Responsibility of village.*—The Act is intended to make a village responsible to an outsider and not to afford those of the same village a means of redress against one another. The Act applies only to a village to which the tracks lead from without. **11 P.R. 1870 Cr.**

(14)—*S. 42—Fine.*—Under the Act, the Magistrate of the village is empowered to inflict a fine with the previous sanction of the Commissioner. **16 P.R. 1872 Cr.**

(15)—*S. 42—Track Law—Nature of Proceedings.*—Proceedings under the track law are judicial proceedings governed by s. 539, Crim. Pro. Code, 1872. The Deputy Commissioner should not fine a village under the track law, upon evidence taken by the Tahsildar to whom the matter has been sent for enquiry. **28 P.R. 1873 Cr.**

(16)—*S. 42—Jurisdiction to impose a fine.*—A fine under s. 42 can be imposed only by the Magistrate of the District, in which the offending village is situate, with the previous sanction of the Commissioner. **7 P.R. 1876 Cr.**

(17)—*S. 42—Sanction of the Commissioner, when to be obtained.*—The previous sanction of the Commissioner, mentioned in s. 42 of Act IV of 1872, means sanction given after the proceedings under that section have been completed, when the Commissioner will have sufficient material for deciding whether sanction should be given or refused. **5 P.R. 1884 Cr.**

(18)—S. 42—*See* No. 13, *supra.*

(19)—*Ss. 43, 50, 50-A, 50-B—Slaughter of kine.*—A conviction, under s. 43 of Act IV of 1872, by the District Magistrate, Pohtak, was set aside on the ground that no rules had been prescribed as applicable by the Local Government to Pohtak since Act IV of 1872 was passed and before Act XII of 1878 came into force, or have been made and published since the Act of 1872 was amended by Act XII of 1878. No penalty was attached to the slaughter of kine and sale of beef prohibited by s. 43. **20 P.R. 1888 Cr.**

(20)—*S. 45—Order under—Executive order not judicial—Power of revision by the Chief Court.*—An order by the District Magistrate under s. 45 of the Act, which required certain foreign vagrants to leave his district, is made in an executive, not in a judicial, capacity. The Chief Court has no power to interfere with such an order by way of revision, even if such order be illegal. The proper remedy is by way of appeal to the Local Government. **9 P.R. 1907 Cr.=36 P.W.R 1907=6 Cr. L.J. 379=42 P.L.R. 1908.**

7.—Punjab Acts—continued.

Act IV of 1872 (Punjab Laws)—*concluded.*

(21)—*Ss. 47 and 50—Possession of Sarani.*—The possession of a *sarani* or skin for crossing a river without a license was a punishable offence. **20 P.R. 1874 Cr.**

(22)—*Ss. 48 and 50—Tirni or Rakh Rules for Jhang District.*—The Tirni Rules for the Rakhs in Jhang District were held not to have the force of law, as they were not published in the Gazette. Breach of those rules would not, therefore, be punished under s. 50. **3 P.R. 1878 Cr.**

(23)—S. 49—*See* ACT X OF 1871, ss. 78 and 79, 6 P.R. 1877 Cr. and 23 P.R. 1879 Cr.

(24)—*Ss. 49 and 50—Cultivator consuming his own opium.*—The consumption by a cultivator of his own opium is punishable under the rules framed under s. 49, Act IV of 1872. **7 P.R. 1875 Cr.** [*Overruled*, 12 P.R. 1884 Cr.]

(25)—*S. 50, cls. 1 and 2—Penalty for breach of opium rules.*—As Act XV of 1875 had repealed cl. 2 of s. 50, Act IV of 1872, a breach of the rules framed under the first clause of the section could not be punished with the penalty provided by the second clause. **4 P.R. 1878 Cr.**

(26)—S. 50—*See* Nos. 19, 21, 22 and 24, *supra.*

(27)—S. 50-A—*See* No. 19, *supra.*

(28)—S. 50-B—*See* No. 19, *supra.*

(29)—*Track law—Appeal.*—A Commissioner's order refusing to impose a fine under s. 42, Act IV of 1872, is not appealable. **16 P R. 1872 Cr.**

(30)—*Rules under—Rules 19 and 44—Lambardar—Chowkidar—Duty to give intimation of absence of bad characters from village.*—The headmen of a village were convicted under Rule 44 of the Rules framed under the Punjab Laws Act for not giving intimation, as required by Rule 19, of the absence at night of a notorious bad character from his village. It appeared that the *Chowkidar* of the village had given timely intimation. *Held*, that the conviction was illegal, for, when information was duly given, the duty imposed by law, which was a collective duty and not an individual duty imposed on each headman and watchman, was discharged. **23 P.L.R. 1904.**

(31)—*Sch. I - Rules for conservancy of forests and jungles.*—No. 9 of the Rules for the conservancy of forests and jungles in the Hill Districts of the Punjab Territories is not a penal Rule. **7 P.R. 1893 Cr.**

*** Act IV of 1873 (Municipal Act).**

[REP., ACT XII OF 1891.]

(1)—*Ss. 8, 14, 21—Bye-law providing against evasion of Octroi duty.*—S. 8, Act IV of 1873, does not affect the competency of a Municipal

* This local Act was passed by the Imperial Legislature.

***7.—Punjab Acts*—continued.**

Act IV of 1873 (Municipal Act)—*concluded.*

Committee to frame a bye-law providing against evasion of payment of *Octroi*. The section merely authorizes the Local Government to make rules for collection and application of rates. Further, when a tax has been lawfully imposed, s. 14 authorizes the Committee to frame a bye-law with a view of checking the evasion of such tax and such a bye-law is not *ultra vires*. **43 P.R. 1888 Cr.**

(2)—*S.14—Public or common nuisance—Rule 20—Penal Code, s. 268—Police Act V of 1861.*—Where a person was charged for breach of the 20th bye-law, in having proceeded to build a balcony after receiving a notice from the Municipal Committee not to proceed with the building, *held*, that he was rightly convicted of a breach of that bye-law and that the act of the accused was not punishable, under s. 268, I.P.C. or under s. 34 of Act V of 1861. **6 P.R. 1874 Cr.**

(3)—S. 14— *See* No. 1, *supra*.

(4)—*S. 21—Octroi duty, evasion of.*—Evasion of *Octroi* duty is only an offence under Municipal rules. Where there is no rule or bye-law providing for the tax, evasion of such tax is not punishable under the ordinary criminal law. **18 P.R. 1874 Cr.**

(5)—S. 21—*See* PUN. ACT XIII OF 1884, s. 12, 10 P.R. 1887 Cr.

(6)—*Ss. 21, 22—Object of sections.*—The sole object of s. 22 was to enable a Committee to institute a prosecution, and was not intended to give an exclusive right to them and the persons authorized by them. On receipt of a petition from an informer that the accused had been persistently evading payment of *Octroi* on grain, the Deputy Commissioner, who was also the President of the Municipality, directed the petition to be sent to the Tahsildar Magistrate for enquiry. Eventually the latter convicted the accused. *Held*, that, in the absence of proof that the President had authority from the Committee to institute a prosecution for the breach of the bye-law, it could not be taken that the prosecution was instituted by the Municipal Committee or by a person authorized by the Committee to institute it. **10 P.R. 1884 Cr.**

(7)—S. 21—*See* No. 1, *supra*.

(8)—S. 22—*See* No. 6, *supra*.

(9)—*Bye-law No. 23—Notice issued by the President on his own individual authority—Validity.*—A person cannot be made liable to be convicted for a breach of the municipal bye-law, on a notice issued by the President of the Municipal Committee on his own individual authority, and not by the Committee as required by law. There is no provision in the Municipal Act, or in the bye-laws framed under the Act, which would justify the Committee in delegating its powers, conferred upon them as Committee, to any person. **32 P.R. 1881 Cr.**

See PUN. ACT XIII OF 1884, ss. 117, 118 and 119, 4 P.R. 1887 Cr.

***7.—Punjab Acts*—continued.**

*** Act XIII of 1884 (Municipal Act).**

[REP., ACT XX OF 1891.]

(1)—*Removal of projections and obstructions—Penalty for disobedience to orders of Committee*—The accused, with the permission of the Municipal Committee accorded since the passing of Act XIII of 1884, built certain steps in front of his house. After the permission had been given, the Deputy Commissioner discovered that the Committee was not competent, without the sanction of the Commissioner, to grant permission to build anything encroaching upon public land; consequently, the permission given was considered unlawful by the Committee and they desired in supersession of their previous order to revoke that permission, and accordingly issued notice to the accused to remove the steps, with a tender of compensation. The accused paid no regard to the notice, and this prosecution was instituted. *Held*, that a prosecution would not lie on these facts. Assuming that the structure was of the kind described in s. 89 of the Act, it was built with the permission in writing of the Committee, and was, therefore, expressly excluded from the provisions of s. 89, cl. 1, and was a lawful structure. Clause 2 of the section cannot properly be construed as relating to structures lawfully erected under cl. 1, so as to entitle the Committee by a summary notice to require their removal or alteration; and the proviso to cl. 2 is clearly inapplicable to a structure erected since the passing of the Act. **6 P.R. 1891 Cr.**

(1-*a*)—*Offences under the Act—Summary procedure.*—Offences under Punjab Act XIII of 1884 should be tried under the procedure prescribed for summons cases, under ss 242, 243, 244, Crim.Pro.Code, 1882. **2 P.R. 1890 Cr.**

(2)—*S. 8—Defamation by member of Municipal Committee—Sanction to prosecute—Crim. Pro. Code (1882), s. 197.*—Where a member of the Municipal Committee which passed a resolution, considered by the accused to be defamatory of himself, was charged for defamation without obtaining the sanction of the Government, *held*, that, as the accused was a public servant not removable from his office without the sanction of the Government, and as the act imputed to the accused was committed by him in the character of a member of the Committee, he was not liable to be prosecuted without the previous sanction of the Government. **14 P.R. 1890 Cr.** (8 P.R. 1879 Cr., 3 C. 758, *D.*; 8 M. 439, *R.*).

(3)—*S. 12—Bye-law framed under Punjab Act IV of 1873, s. 21.*—A bye-law framed under Punjab Act IV of 1873, prohibiting conveyance of goods liable to any authorized Municipal tax within the Municipal limits, without first paying or tendering such duty, was held to be consistent with the powers conferred by Punjab Act XIII of 1884. Under ACT IV of 1873, no

* This local Act was passed by the Imperial Legislature.

7.—Punjab Acts—continued.

Act XIII of 1884 (Municipal Act) —*continued.*

penalty was attached in the Rule itself nor was it necessary to attach any such penalty, as, by s. 21 of Act IV of 1873, a penalty was attached to each of the bye-laws as soon as it was promulgated. But Act XIII of 1884 requires that every bye-law should have a penalty attached to it, with the confirmation of Government. A breach of the bye-law mentioned above had no such penalty attached to it under Act XIII of 1884. **10 P.R. 1887 Cr.**

(4)—S. 39—*See* CHEATING, P.L.R. 1900, p. 38 Cr.

(5)—*Ss. 49, 172—Prosecution for recovery of taxes—Duty of Magistrates.*—Where a prosecution is launched for recovering taxes, the Magistrate is bound to act, his power being limited to finding whether the amount is claimable or not. The Magistrate should satisfy himself that the Committee applying to him is legally constituted and that the amount claimed is claimed under a tax or assessment legally imposed. But it is not competent to the Magistrate to go into the merits and investigate the details of the sum claimed; the remedy in such cases is by appeal under s 49 of the Act. **1 P.R. 1891 Cr.**

(6)—*Ss. 88, 144—Order prohibiting a proposed erection.*—It is not a condition precedent, for an order under s. 88, prohibiting a proposed erection, that compensation should be paid. The Committee is not bound to set forth its reasons for refusal. The Courts cannot interfere with the discretion of the Committee, if exercised *bona fide*. **24 P.R. 1890 Cr.**

(7)—*S. 89—Steps constructed with Committee's sanction—Commissioner's sanction found necessary—Subsequent order for removal—Disobedience—Prosecution.*—Since the passing of Punjab Act XIII of 1884, the accused applied for and obtained permission to build a certain step in front of his house. Subsequent to the granting of the sanction, it was found that the Municipal Committee had no authority to allow an encroachment, without the sanction of the Commissioner. The Committee thereupon revoked the sanction and issued a notice to the owner of the house to remove the steps with a tender of compensation. *Held*, that the accused could not be prosecuted for disobedience to the notice. **6 P.R. 1891 Cr.**

(8)—*Ss. 89 and 162—Notice not signed by the President or Secretary.*—A notice issued under s. 89 is materially defective, if it is not signed by the President or Secretary. The defect is not cured by the provisions of the last clause of s. 162. **8 P.R. 1886 Cr.**

(9)—*S. 92 (3)—Notice to remove a slaughter-house.*—Disobedience to a notice issued by the Municipal Committee calling upon the accused to close his slaughter-house at its present position and remove it to another specified place, without fixing the latter place as the only place for slaughter of animals was held not to be punishable under s. 92. **22 P.R. 1889 Cr.**

7.—Punjab Acts—continued.

Act XIII of 1884 (Municipal Act)—*concluded.*

(10)—*Ss. 117, 118, 119—Bye-law—Validity.*—A bye-law made under Act IV of 1873, prohibiting the use of certain localities or permitting any special locality for any of the purposes mentioned in the bye-law, was held to be inconsistent with, and beyond the powers conferred by, ss. 117, 118 and 119 of Act XIII of 1884. **4 P.R. 1887 Cr.**

(11)—S. 118—*See* No. 10, *supra*.

(12)—S. 119—*See* No. 10, *supra*.

(13)—S. 144—*See* No. 6, *supra*.

(14)—S. 162—*See* No. 8, *supra*.

(15)—S. 172—*See* No. 5, *supra*.

(16)—*Bye-law No. 22—Evasion of Octroi duty.*—A bye-law to the effect that "any evasion or attempt at evasion of payment of *Octroi* dues shall render the offender liable to a fine of not exceeding Rs. 50" was held to be invalid, on the ground that it made no distinction between lawful and unlawful, honest and dishonest evasion. *Quære*:—Whether any bye-law heretofore framed regarding evasion of *Octroi* dues has any validity in places where the Municipal Act of 1884 is in force. **27 P.R. 1889 Cr.**

*** Act XVIII of 1884 (Punjab Courts).**

[REP. IN PART, ACT VII OF 1887, S. 10; ACT XVI OF 1887; ACT XVII OF 1887; ACT VII OF 1889; ACT VIII OF 1890; ACT XII OF 1891; ACT I OF 1894. REP. IN PART AND AMENDED, ACT XIII OF 1888; ACT XXV OF 1899. AMENDED, ACT XIX OF 1895; ACT IX OF 1900].

(1)—*S. 10 (2) (A)—Equal division in opinion among Judges—Competency of senior Judge to re-consider his opinion.*—When the Judges constituting a Full Bench are equally divided in their opinion, it is competent for the senior Judge, without affirming the judgment already recorded by him, to reconsider his opinion and write a fresh judgment if he finds reason for so doing. **15 P.R. 1897, F.B., Cr.**

(2)—S. 13—*See* ACT XVIII OF 1879, s. 13, 41 P.R. 1888 Cr.

(3)—S. 13—*See* ACT XVIII OF 1879, s. 36, 3 P.R. 1900 Cr.

(4)—S. 13—*See* REVISION, P.L.R. 1900, p. 17 Cr.

(5)—S. 13—*See* TOUT, 27 P.W.R. 1909 Cr.

(6)—Ss. 13 and 70—*See* ACT XVIII OF 1879, s. 36, 115 P.L.R. 1909=11 P.R. 1909 Cr.

(7)—*S. 14—Petition-writers—Rules 20, 21, 22, 29.*—Under the Rules regarding petition-writers, the District Judge alone has jurisdiction. As a petition-writer, who dictates a petition to a third person, does not write the petition, he is not guilty of any offence under the rules. **28 P.R. 1889 Cr.**

* This local Act was passed by the Imperial Legislature.

***7.—Punjab Acts*—continued.**

Act XVIII of 1884 (Punjab Courts)—*concld.*

(8)—S. 23—*See* ACT XVIII OF 1879, s. 36, 108 P.L.R. 1904.

(9)—*Ss. 33, 34, 36—Powers of Chief Court—Exercise by Division Bench of powers under s. 36.*—The Chief Court cannot, under the general powers of superintendence conferred upon it by s. 13, Punjab Courts Act, revise orders passed by the Divisional Court in exercise of the powers conferred upon it under s. 36. **31 P.R. 1888 Cr.**

(10)—S. 34—*See* No. 9, *supra.*

(11)—S. 36—*See* No. 9, *supra.*

(12 and 13)—S. 70—*See* No. 6, *supra.*

*** Act XVII of 1887 (Punjab Land Revenue).**

[REP. IN PART, ACT XII OF 1891. REP. IN PART AND AMENDED, ACT XVII OF 1896. AMENDED, PUN. ACT I OF 1899, SS. 2 AND 3].

—*S. 28—Zaildar, whether bound to give information of commission of a heinous offence.*—Though a *Zaildar* is required by virtue of Rule 25 of the Rules framed under s. 28 of the Punjab Land Revenue Act, to report heinous crimes to the Police and Magistrate, such Rule does not cast upon him a legal duty to report, such as is imposed by a direct and express enactment of the Legislature, so that he can be held merely as a *Zaildar* to be "legally bound to give information" of the commission of a heinous offence. **25 P.R. 1894 Cr.**; 19 P.R. 1886 Cr.

*** Act XX of 1891 (Punjab Municipalities).**

[REP. IN PART AND AMENDED, ACT XVIII OF 1896; PUN. ACT III OF 1900].

(1)—*Ss. 15, 28, 169—Order of Committee—Validity.*—A meeting presided over by a President, neither elected nor appointed as a member of the Committee, nor its President as required by s. 15, Punjab Act XX of 1891, is not a valid meeting. Disobedience to an order passed at that meeting is not, therefore, punishable under s. 169. **46 P.R. 1905 Cr.**

(2)—*Ss. 26, 122 and 169—Issuing notice by President of the Municipality without any emergency, validity of—Order* ultra vires—*Conviction for disobedience of order cannot stand.*—Purporting to act under s. 26 of the Act, the President of the Simla Municipal Committee issued a notice, without any urgency, to the petitioner, under s. 122 of the Act, to make certain drainage improvements in a house belonging to the petitioner. The petitioner was fined for disobedience of the order. But the record did not show that the notice was issued in pursuance of any resolution of the Committee or was even reported to the Committee as required by proviso (*b*) to s. 26, or that the Committee had, in any way, delegated its powers to the President, even if it had power to do so. *Held*, that, in the absence of any proof that

* These local Acts were passed by the Imperial Legislature.

***7.—Punjab Acts*—continued.**

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the matter was urgent, the notice was invalid and the petitioner could not be convicted for disobedience thereto. **92 P.L.R. 1905 = 2 Cr.L.J. 371 = 26 P.R. 1905 Cr.**

(3)—S. 28—*See* No. 1, *supra.*

(4)—*Ss. 42 (1) (f), 201—Municipality—Boundaries, extension of*—Octroi *on goods stored at a place outside original, but within extended boundaries at the date of extension—Attachment by order of Magistrate to recover* octroi—*Revision—Criminal cases—Criminal Procedure Code (Act V of 1898), s. 439.*—When a Municipality moves a Magistrate to take action under s. 201 of the Punjab Municipal Act, it is his duty to see that, on the facts as stated by the Municipality, the amount would be "claimable," *i.e.*, whether the claim is *intra vires* or *ultra vires.* If the Municipality is properly constituted and competent to levy the tax in the area in which it is sought to levy it, the Magistrate is not competent to enquire whether the amount claimed under a tax duly and legally imposed and said to be in arrears is due or not; the remedy as to that lies under s. 52. But if he finds that the sum claimed could not be legally claimed from any one and is beyond the power, *ultra vires* of the Committee, then he is bound to refuse to act. **109 P.L.R. 1909 = 23 P.W.R. 1909 = 2 P.R. 1910 Cr.**

(5)—S. 70—*See* REVISION, P.L.R. 1900, p. 32 Cr.

(6)—*Ss. 87, 95, 164, 165—Encroachment on public street—Order for its removal—Disobedience.*—When a plot of land alleged to be a part of a public street was not in the possession of the Municipal Committee for a long time, but was in the occupation of the petitioner for more than 20 years, *held*, that no criminal proceedings regarding that plot could be instituted, without first establishing the Committee's right of ownership. S. 87 does not apply to a structure built on a public street with the permission of the Municipality, although it may be on a site on a part of the public thoroughfare. The Committee cannot, therefore, proceed for its removal after a summary notice under s. 95. **11 P.R. 1904 Cr. = 66 P.L.R. 1904.**

(7)—*S. 92—Building house without sanction after six weeks of petition.*—Building a house, six weeks after the receipt of a petition by, but before receiving an order from, the Municipal Committee, is not an offence under the Municipal Act. **9 P.R. 1901 Cr.**

(8)—*S. 92, cl. 6—Sanction for building—Obligation to begin work within the period fixed by the clause—Completion within such period not necessary.*—Where a person obtains, from a Municipal Committee, the necessary sanction for a building, under s. 92 of the Act, the section does not make it obligatory on him to complete the building within a year of his obtaining the sanction nor even to have commenced each separate part of the building

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within that time. He is bound only to commence some portion of the building within the period of one year from the date of sanction as is provided for by cl. 6, s. 92, and there cannot be any rule or provision of law requiring that the building must be completed within any particular, or a reasonable, time. **61 P.R. 1905 Cr. = 41 P.L.R. 1906 = 3 Cr. L.J. 344.**

(9)—*S. 92—Rule V of Rules of the Municipal Committee of Murree—Scope.*—Rule V of the Rules of the Municipal Committee of Murree has no application to subsequent additions to a house built on a site subject to the Rules. **12 P.R. 1893 Cr.**

(10)—*Ss. 92 and 94—Erecting a partition wall over a* tharra—"*Erection of a building*"—*Sanction of the Municipal Committee necessary.*—The erection of a new partition wall over a *tharra*, if it affects the interests of the public and the Municipality, is, in so far as it affects such interests, an act which causes a material alteration in the house, and so amounts to "the erection of a building" within the meaning of s. 94 of the Act; and requires the sanction of the Municipal Committee under s. 92 of the Act. **13 P.R. 1907 Cr. = 39 P.W.R. 1907 = 6 Cr. L.J. 342 = 36 P.L.R. 1908.**

(11)—*Ss. 92 and 95 - Encroachment on public street.*—It is not lawful for the owner of a building to add to or place against or in front of his building any projection or encroachment without the written permission of the Committee. **27 P.R. 1904 Cr.**

(12)—*S. 92, sub-s. 4 and s. 145, Infringement of bye-law framed under—Whether such infringement entails criminal liability—Bye-law by Kasur Municipality—Whether affects s. 92.*—*Held*, that non-compliance with the provisions of the first part of sub-s. (4), s. 92 of Act XX of 1891, does not make the defaulter *criminally* liable. It only enables the Committee to issue a notice to him, calling upon him to alter or demolish the wall. *Held*, also, that the bye-law framed by the Kasur Municipal Committee does not at all make it obligatory on the person, giving to the Committee a notice of his intention to erect or re-erect a building, to refrain from so erecting or re-erecting it within six weeks from the date of the notice, and that, therefore, a breach of the bye-law will not entail upon the notice-giver any penalty. The provisions of s. 92, sub-s. 4, cannot be read into the bye-law as framed by the Municipal Committee of Kasur. **13 P.R. 1909 Cr.**

(13)—*Ss. 92, 150, 164 and 169.*—The Municipal Committee of Peshawar, holding that the accused had constructed a new platform in front of his building contrary to the order sanctioning the erection of the building subject to the condition that no new *sufa* or *thalla*, that is, platform, should be constructed in front of the building, served him with a notice to remove it, and warned him that, if he did not comply, he would be prosecuted. The accused neither

7.—Punjab Acts—continued.

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complied with the notice, nor appealed against it under s. 150 of the Municipal Act. The Municipal Committee prosecuted him under ss. 164 and 169 of the Act, but the Magistrate acquitted him on the ground, that the accused had, on receipt of the notice, written to the Municipal Committee that the land on which the platform was constructed was his own property, that the platform had existed for years, and that the Committee had failed to serve the accused with a fresh notice in reply to his objections.—*Held*, setting aside the order of acquittal, that the Committee were not legally bound to serve the accused with a fresh notice. **3 P.L.R. 1900 Cr. = 12 P.R. 1899 Cr.**

(13-*a*)—S. 92—*See* No. 20, *infra*.

(14)—S. 94—*See* No. 10, *supra*.

(15)—*S. 95—Encroachment upon Municipal land—Evidence—Blyth's map of Amritsar Municipality.*—*Held*, that, in the absence of any direct evidence of encroachment upon the land of a Municipal Committee, a conviction under s. 95 of Act XX of 1891, is illegal. The evidence of an official, who has got no personal knowledge, based upon a comparison of some old Municipal maps is, after all, a mere opinion. **31 P.W.R. 1908 Cr.**

(16)—*Ss. 95 and 169.*—For failure to comply with a notice issued under s. 95 of the Punjab Municipalities Act, requiring the accused to remove a building erected without the permission of the Municipality, he was convicted, under s. 169 of the Act, and fined Rs. 5, and, in the event of failure to remove the building within a week, he was further ordered to pay an additional fine of two annas a day till the building was removed. *Held*, that fine could not be imposed prospectively, and that, in such a case, the proper course was to institute further prosecution if there be occasion for it, and allow the accused an opportunity of defending himself before the further fine should be imposed. **171 P.L.R. 1903.**

(17)—S. 95—*See* Nos. 6, 11, *supra*.

(18)—S. 122—*See* No. 2, *supra*.

(19)—*S. 128—Power of Municipality to issue notice directing owner to demolish and rebuild a new wall, in place of the old.*—The renewal of a wall built against a hill side, as a support to it, which was bulging out and had become dangerous was held to be nothing but repairs, within the meaning of s. 128, Punjab Municipal Act, 1891, to the bank or hill side, though it might necessitate the removal of the wall previously built. Therefore, a Municipal Committee can, under that section, issue notice to a person directing the re-building of such a wall of specified dimensions and character, after pulling it down, as the object of the Committee is to protect the bank or hill side from slipping down. **13 P.R. 1908 Cr. = 28 P.W.R. 1908 = 8 Cr. L.J. 258.**

***7.—Punjab Acts*—continued.**

Act XX of 1891 (Punjab Municipalities)—*ctd.*

(20)—*Ss. 128, 169 and 92—Notice requiring removal of ruinous shed without option of repair—Legality—Non-compliance with notice—No offence.*—A notice issued under s. 128 of the Act, requiring the owner to remove a ruinous shed, without the option to repair the shed, is defective and illegal, and non-compliance with it is no offence under s. 169 of the Act. **18 P. R. 1908 Cr.**

(21)—*Ss. 135, 136, 169—Scope of the sections.*—S. 135, Punjab Act XX of 1891, deals with unregistered and unlicensed places. S. 136 deals with places registered or licensed. Therefore, there can be no conviction with reference to one and the same place under both sections. S. 169 punishes disobedience to written notices lawfully issued by a Municipal Committee only when such disobedience is not an offence punishable under any other section of the Act. A person convicted under s. 135 or s. 136 should be punished under those sections and not under s. 169. **4 P.R. 1894 Cr.**

(22)—S. 136—*See* No. 21, *supra*.

(23)—S. 145—*See* No. 12, *supra*.

(24)—S. 150—*See* No. 13, *supra*.

(25)—*S. 164*—Moras *put up in front of a shop in a street—Right of the public to use of the entire breadth of the street—Obstruction to the public.*—The accused, a shop-keeper, placed *moras* in front of his shop so as to prevent officials from getting at a sewer or drain. He was convicted of an offence under s. 164 of the Punjab Municipal Act and the conviction was confirmed on appeal. *Held*, on revision, agreeing with the lower Courts, that, since the public was entitled to the whole breadth of the street to the last inch, the act of the accused in having placed the *moras* did amount to an obstruction under s. 164 of the Act. **45 P. R. 1905 Cr. = 189 P.L.R. 1905 = 3 Cr. L.J. 130.**

(26)—*S. 164—Street, obstruction of—Crim. Pro. Code (1898), s. 403—Acquittal—Bar to future prosecution.*—The petitioners were summarily convicted of an offence under s. 164 of the Punjab Municipal Act for obstructing or encroaching upon a street. They were some years previously tried for and acquitted of the same offence. There was no evidence in the present case to show that the encroachment on the street for which the accused were convicted was in excess of the encroachment then effected. *Held* that, in the absence of evidence distinguishing the facts before the Court in this case from those dealt with in the previous case, the conviction was illegal. **63 P.L.R. 1904.**

(27)—S. 164—*See* Nos. 6, 13, *supra*.

(28)—S. 165—*See* No. 6, *supra*.

(29)—*S. 169—Continuing breach—Prospective fine.*—Where a Magistrate passed an order for payment of fine for not complying with a notice to remove a building, and, in the event

***7.—Punjab Acts*—continued.**

Act XX of 1891 (Punjab Municipalities)—*ctd.*

of failure to remove the building within a week, to pay an additional fine of two annas a day for every day after the week's time, *held*, that the order sentencing the accused to a daily fine prospectively was not valid. **13 P.R. 1903 Cr.** (16 M. 230, *R.*).

(30)—S. 169—*See* COMPLAINT, 20 P.R 1894 Cr.

(31)—S. 169—*See* Nos. 1, 2, 13, 16, 20, 21, *supra*.

(32)—*S. 186—Authority for prosecution—Crim. Pro. Code (1882), ss. 4 and 191.*—Where a prosecution was started under the Municipal Act against the accused on an informal letter addressed by the Secretary of the Municipal Committee, and the verbal authorization of the Deputy Commissioner, the President of the Committee, was afterwards relied on, the Secretary not being examined on oath with reference to the contents of the letter, *held*, that there was no complaint as required by s. 186, Municipal Act, 1891, and by ss. 4 (*a*) and 191, Crim. Pro. Code. **2 P.R. 1892 Cr.**

(33)—*S. 186—Authority for prosecution—Crim. Pro. Code (1882), ss. 4 and 191.*—The complainant in a Municipal case was the Inspector of Sanitation. The petition contained at the foot, written in Urudu, the following "Petition of Mr. Webb, Inspector of Sanitation, Civil Station, Lahore." Below this was an English signature "D. Jhonston," which appeared to be the signature of the Secretary of the Committee. *Held*, that this was not a complaint as required by s. 186, Municipal Act XX of 1891 and ss. 4 (*a*), 191, Crim. Pro. Code. **3 P.R. 1892 Cr.**

(34)—S. 186—*See* COMPLAINT, 1 P.R. 1892 Cr.

(35)—*S. 188—Magistrate—Jurisdiction to try a case—Crim. Pro. Code (1882), s. 555.*—A member of the Municipal Committee, who has taken an active part in issuing an order under Punjab Act XX of 1891, is disqualified within the meaning of s. 555, Crim. Pro. Code, from trying a case of disobedience to that order. **3 P.R. 1895 Cr.**

(36)—*S. 188—Municipal offence—Magistrate Vice-President of Committee—Jurisdiction—Crim. Pro. Code (1882), s. 555.*—A Magistrate, who, as the Vice-President of a Municipal Committee, has made a preliminary inquiry into a Municipal offence, and has recommended the prosecution, is not competent to try the case himself. **5 P.R. 1896 Cr.** (3 P.R. 1895, *F.*).

(37)—*S. 201—Recovery of money due on a simple contract.*—Arrears claimable under a simple contract, *e.g.*, arrears of a contract of Municipal sewage, do not come within the provisions of s. 201, Punjab Act XX of 1891, and are not recoverable by the procedure prescribed by the section. The Chief Court has power, under s. 439, Crim. Pro. Code, 1898, to revise an order passed granting or refusing an

7.—Punjab Acts—concluded.

Act XX of 1891 (Punjab Municipalities)—*cld.*

application of the Committee under s. 201, Punjab Act XX of 1891. **23 P.R. 1903 Cr. = 130 P.L.R. 1903.** (23 A. 111, 1 P.R. 1891 Cr., 26 C. 852, 2 P.R. 1899 Cr., 18 P.R. 1902 Cr., 22 B. 709, *R.*)

(38)—*S. 201—Arrears of rent not recoverable through a Magistrate--Termination of* Sapurddar's *liability.*—Claims for arrears of rent, which are not for any arrears of tax, fee or money claimable under the Punjab Municipal Act (XX of 1891), cannot be realized through the agency of a Magistrate under s. 201 of the Act. *Held*, also that the liability of the custodian (*Sapurddar*) of attached property necessarily terminates, if the attachment falls through. **3 Ind. Cas. 638 = 9 P.W.R. 1909 Cr.**

(39)—S. 201—*See* No. 4, *supra.*

Act XXV of 1899 (Punjab Courts).

[S. 6 AMENDED, ACT IX OF 1900].

—S. 40—*See* PUN. ACT XVIII OF 1884, 100 P.L.R. 1904.

Act I of 1903 (Punjab Military Transport of Animals).

—*Ss. 29 and 30—Failure to produce animals of a particular description—Conditions essential for criminal liability for failure.*—Before owners of animals can be made criminally liable, under s. 29 (*b*) of the Punjab Military Transports Animals Act, 1903, for failure to produce animals of a certain description, the prosecution must show clearly that the sanction required to be previously obtained by s. 30 of the Act has been obtained, that the inspection held by the Transport Registration officer was one at which owners were legally bound to produce their animals, and that a legal notice was issued for the production of the animals and legally served upon the accused. **12 P.R. 1908 Cr. = 25 P.W.R. 1908 = 8 Cr. L.J. 243.**

8.—United Provinces Acts.

*** Act VI of 1868 (Municipal Improvements).**

[REP., ACT XV OF 1873].

(1)—S. 12—*See* U.P. ACT XV OF 1883, ss. 69 and 71, 8 A. 677.

(2)—*S. 33,—Act XV of 1873, s. 45—Evasion of* octroi *duties.*—The accused, the consignee of goods sent by Railway, submitted the Railway receipt to a Municipal *octroi* office and paid duty on the weight specified therein. It was subsequently found by the Railway authorities that the weighment was wrong and less than the real weight and the accused offered to pay the excess duty. *Held*, in a prosecution by the Municipality for an offence under s. 45 of Act XV of 1873 (evasion of *octroi* duty), that the under-payment was an evasion that the accused

* This local Act was passed by the Imperial Legislature.

8.—United Provinces Acts—continued.

Act VI of 1868 (Municipal Improvements) —*concluded.*

would be liable for, only if he knew the weighment in the Railway receipt to be wrong, but that, in the absence of proof of such knowledge, no evasion or abetment of evasion was committed. **A.W.N. 1882, 231.**

*** Act XV of 1873 (N.W.P. and Oudh Municipalities).**

[REP. IN PART, ACT XVI OF 1874. REP. (IN AJMERE), REG. V OF 1886, S. 17; (IN N. W.P. AND OUDH), N. AND O. ACT I OF 1900].

See U.P. ACT XV OF 1883.

„ „ „ I OF 1900.

(1)—*S. 22—Act XV of 1883, s. 55 (2)—Notification of Local Government approving bye-law—Construction of bye-law.*—Sanction was given by the Local Government to a rule to be passed by the several Municipalities in the N.W. Provinces to the following effect:—"Every act or omission declared to be a public nuisance, or otherwise made punishable, under Act XV of 1873, by, or by virtue of, any rule in force in the Municipality under s. 22 of that Act immediately before the Act ceased to apply to the Municipality, is hereby made punishable with fine to the full extent that may be directed by a Municipal Board, under s. 55 (2), Act XV of 1883." *Held*, on a construction of this rule, that it was intended thereby to make all the offences therein alluded to punishable with fine which may extend to Rs. 50, the maximum fine, under s. 55 (2), Act XV of 1883, imposable for a Municipal offence, and that it was not necessary for the Municipal Board in question to go on and direct with what particular amount of fine each offence specified in their rules was punishable. **A.W.N. 1901, 1.**

(2)—*S. 45—Municipal rule framed about public markets.*—To support a conviction under s. 45 of Act XV of 1873 for the breach of a rule prohibiting the establishment of a public market without the sanction of the Municipal Committee, it is not enough to show that some shops were leased by the accused to people who sold grain therein, but also that a public market was established and that its establishment operated as a public nuisance. **A.W.N. 1882, 241.**

(3)—*S. 45—Evasion of* octroi--*Intention.*—Certain traders of Ludhiana consigned 333 bags of grain to the accused, traders residing in Meerut. The bags were weighed by the Railway authorities and entered in the Railway receipt as weighing 527 maunds. The consignees submitted this receipt to the *Octroi* office at Meerut and paid duty on 527 maunds as mentioned in the receipt. Almost immediately after this despatch, it was discovered that the bags had been underweighed at Ludhiana. The accused were upon this discovery required

* This local Act was passed by the Imperial Legislature.

***8.—United Provinces Acts*—continued.**

Act XV of 1873 (N.W.P. and Oudh Municipalities)—*concluded*.

to make good the balance of freight which they did. The next day the accused petitioned the Municipality offering to pay up the balance of the *Octroi* duty. But the Municipality had already on the same date brought a charge against the accused for evasion of payment of *Octroi* duty under s. 45 of Act XV of 1873. Subsequently, the Railway authorities preferred a criminal charge against a clerk at Ludhiana in respect of the underweighment. *Held*, on a reference by the District Magistrate, that the Joint Magistrate was perfectly justified in discharging the accused on the finding that the prosecution had failed to prove that the conduct of the consignees (accused) was the result of a conspiracy with the Ludhiana consignees or that they had any fraudulent intention. **A.W.N. 1882, 231.**

(4 and 5)—S. 71—*See* U.P. ACT XV OF 1883, ss. 69, 71, 8 A. 677.

(6)—*S. 72—Municipal rules—Public nuisance* —The letting of 5 shops in an enclosure or sarai to persons who opened there the business of buying and selling grain was not establishing a public market, &c., within the meaning of the section, and, further, as it was not shown how the public order or convenience was affected it was held that the conviction must be quashed as bad. **A.W.N. 1882, 241.**

*** Act XVI of 1873 (N.W.P. Village and Road Police).**

[REP. IN PART, ACT XVI OF 1874; ACT XII OF 1876; ACT XII OF 1891.]

(1)—S. 8—*See* PENAL CODE, s. 221, 3 A. 60.

(2)—*S. 11—Village* Chaukidar—*Not bound to give immediate information of an offence—No neglect of duty.*—The village *chaukidars* did not give information of the occurrence of a dacoity committed in the village till the next day. They were charged and convicted of an offence under s. 11 of the Act. *Held* that under the Act the village *chaukidars* were not bound to give immediate information of an offence not committed within their village. **A.W.N. 1886, 65.**

(3)—*S. 11—Wilful neglect of duty.*—Where the *chaukidar* of a village was convicted under s. 11 of Act XVI of 1873 for having been present outside the house of the *chaukidar* of another village, while illicit distilling was going on therein, *held* that the village being one beyond the scope of his duties, the accused had not committed any misconduct in respect of his duties, and that mere presence outside cannot be regarded as an abetment of an offence committed inside. **A.W.N. 1882, 160.**

See ACT VIII OF 1870, 6 A. 380.

* This local Act was passed by the Imperial Legislature.

***8.—United Provinces Acts*—continued.**

*** Act XVIII of 1873 (N.W.P. Rent).**

[REP., ACT XII OF 1891].

See ARREST, 4 A. 27.

*** Act XIX of 1873 (N.W.P. Land Revenue).**

[REP. IN PART, ACT I OF 1879; ACT XIII OF 1882; ACT VIII OF 1890; ACT XII OF 1891; N and O. ACT III OF 1899. AMENDED, ACT VIII OF 1879, SS. 1 TO 3, 6 TO 17, 25 TO 27; ACT XV OF 1886; ACT XX OF 1890, SS. 3, 4 AND 64].

(1)—*Crim. Pro. Code, Act X of 1882, s. 195—Jurisdiction of Sessions Judge and High Court.*—The Collector and Assistant Collector exercising jurisdiction under the North-West Provinces Land Revenue Act XIX of 1873 are not subordinate to the High Court or the Sessions Court for the purposes of s. 195 of the Crim. Pro. Code. **A.W.N. 1891, 82.**

(2)—Chapter IV—Proceedings under, not judicial proceedings—Statements made therein not being declarations, not false evidence.—*See* PENAL CODE, ss. 193 and 199, A.W.N. 1885, 29.

(3)—S. 153—*See* PENAL CODE, s. 206, A.W.N. 1888, 237.

*** Act XII of 1881 (N.W.P. Rent).**

[REP. IN PART, ACT IX OF 1887. REP. IN PART AND AMENDED, ACT XIV OF 1886. AMENDED, ACT VI OF 1888, S. 10 (2); ACT XII OF 1891].

See SANCTION TO PROSECUTE, 10 A. 582.

*** Act XV of 1883 (N.W.P. and Oudh Municipalities).**

[REP., N. AND O. ACT I OF 1900.]

See U.P. ACT I OF 1900.

(1)—*S. 46—Recovery of arrears of tax by distress and sale of moveable property belonging to defaulter—Duty of Magistrate.*—S. 46 provides for the distress and sale of moveable property of the defaulter for the purpose of realising arrears of tax by an application to a Magistrate having jurisdiction within the Municipality. The duty imposed by that section is purely ministerial and provides the means whereby the recovery of taxes could be enforced by a legal authority. He has no power to judicially hear and determine the question whether any such arrears are due at all. **22 A. 111.** [*D.*, 130 P.L.R. 1903].

(2)—*S. 55—Rules—Order for demolition of wall—Crim. Pro. Code, Act V of 1898, s. 517.*—An order for demolition of a wall on a conviction for building in contravention of Municipal rules, is *ultra vires*, and s. 517 of the Crim. Pro. Code has no application to a case of the kind. **A.W.N. 1900, 81.**

(3)—*S. 55—Bye-laws of Municipality, validity of—Presumption.*—The presumption is that the bye-laws of a Municipality have been

* These local Acts were passed by the Imperial Legislatnre.

8.--United Provinces Acts—continued.

Act XV of 1883 (N.W.P. and Oudh Municipalities)—*continued.*

passed according to the regular and lawful procedure, and that the common course of business has been followed in that procedure. It is for the person raising the objection to give some evidence to show that it would not be safe to make such a presumption. It is no part of the duty of a Court exercising appellate or revisional jurisdiction, to take, of its own motion, the question whether the bye-laws have been properly and legally framed. **19 A. 493.** (20 B. 732, *R.*)

(4)—*S. 55—Rules—Power to interfere with internal alterations of house.*—A Municipality having given permission to raise the roof of a kitchen, has no power to prevent the owner of the house from converting part of the building covered by the roof into living rooms. **22 A. 123 = A.W.N. 1900, 41.**

(5)—*S. 55—Rules—Order for demolition of building.*—On a conviction for building in contravention of the rules framed under Act XV of 1883, the Court has no power to order the demolition of the building so erected or to impose a recurring fine in default of compliance with such order. **A.W.N. 1900, 8.** [*R.*, A.W.N. 1900, 81].

(6)—*S. 55—Rules—Continuing breach.*—The maintenance of a *chabutra*, which has been directed to be removed under s. 42 of the Rules framed under s. 55 of Act XV of 1883, is not a "continuing breach" within the meaning of para 2 of s. 55 of the Act which could be punished as such. **A.W.N. 1895, 226.**

(7)—S. 55 (2)—*See* U.P. ACT XV OF 1873, s. 22, A.W.N. 1901, 1.

(8)—*S. 69—Power of Municipal Board to delegate generally the authority to institute prosecutions.*—S. 69 of Act XV of 1883 authorises the conferring of a general authority upon a person by a Municipal Board to make complaints in respect of Municipal offences; such an authority need not be specifically given for each and every particular offence for which a complaint is to be made. Such general authority will include not merely the formal or mechanical act of putting a complaint before the Magistrate, but, also, the power to determine whether there should be a complaint at all. **22 A. 123, F.B.** [*R.*, 26 A. 482].

(9)—*S. 69—Power of general delegation includes power to present a complaint and power to exercise discretion to make a complaint.*—S. 69 of the Act confers upon Municipal Boards in N.W.P. and Oudh the power to delegate generally their authority to make complaints in respect of Municipal offences. This delegation includes the authority to do the formal acts of presenting a complaint to the Court, and also the exercise of discretion as to whether in any given case a complaint shall or shall not be made. **A.W.N. 1900, 18.**

(10)—*Ss. 69, 71—Rules framed under s. 12 of Act VI of 1868—Act XV of 1873.*—Rule 6 of

8.—United Provinces Acts—continued.

Act XV of 1883 (N.W.P. and Oudh Municipalities)—*concluded.*

the Rules framed under s. 12 of Act VI of 1868 runs as follows:—"Any person evading or abetting the evasion of the *Octroi* duties imposed in the schedule, shall be deemed to have committed an infringement of a bye-law." Assuming that the rule to have been legally made under that section, which is far from clear, and that it was saved by Act XV of 1873, it would, as declared in s. 71 of Act XV of 1883, continue in force until repealed by new rules made under such last mentioned Act, and be deemed to have been made under that Act. Its operation is, therefore, subject to the provisions of Act XV of 1883, and among them, to that contained in s. 69, which makes it a condition precedent to the institution of a prosecution, that there should be a complaint of the Municipal Board or by some person authorised by the Board in that behalf. **8 A. 677.**

(11)—*S. 69—Position of a District Magistrate.*—The position of the Magistrate of the District, in connection with the terms of the s. 69, is neither better nor worse than that of any other member of the Board; and unless he has been duly authorised by the Board as a Board, he has no more "*locus standi*" to cause a prosecution to be instituted personally than any other individual member. **8 A. 677.**

(12)—S. 71—*See* No. 10, *supra.*

(13)—S. 167—*See* PENAL CODE, ss. 425, 426, 29 A. 565 = A.W.N. 1907, 170 = 6 Cr. L.J. 13.

Act I of 1891 (N.W.P. and Oudh Water-Works).

[REP. IN PART AND AMENDED, N. AND O. ACT I OF 1901. AMENDED, N. AND O. ACT II OF 1895].

(1)—*Ss. 34, 40, 41—Unoccupied house—Payment of water-rate, no evasion of.*—When a person omits to give notice of re-occupation of a house previously reported to be vacant, but pays water-rate for the period during which the house remained unoccupied, he is not guilty of an offence under s. 41 of the Water-Works Act (I of 1891). S. 41 refers to a house, which has been exempt from liability to the payment of water-rate, and the penalty imposed by it is not incurred, where the rate has been paid and there has been no evasion of payment. The object of the section is to ensure payment of water-rate, by reason of non-occupation for three months. **4 A.L.J. 235 = A.W.N. 1907, 92 = 5 Cr. L.J. 283 = 29 A. 375.**

(2)—S. 40—*See* No. 1, *supra.*

(3)—S. 41—*See* No. 1, *supra.*

Act I of 1892 (N.W.P. and Oudh Lodging House).

(1)—*S. 5 (2)—Houses used by* pragwal *for accommodating pilgrims—License.*—Where it was found that the accused, a *pragwal*, kept certain houses where he lodged pilgrims

8.—United Provinces Acts—continued.

Act I of 1892 (N.W.P. and Oudh Lodging House)—*concluded.*

and received presents from them, though no part of the presents was expressly given as consideration for the accommodation afforded to them by the accused, *held*, that he was bound to take out a license under N.W.P. Act I of 1892, as a portion of the value of those presents should be ascribed to the accommodation which was given and received. **20 A. 534.**

Act III of 1892 (Village Courts).

[AMENDED, N. AND O. ACT II OF 1894].

—S. 73—*See* SANCTION TO PROSECUTE, 6 A.L.J. 796=6 M.L.T. 98.

Act I of 1895 (Municipalities, amending Acts XV of 1873 and XV of 1883).

[REP., N. AND O. ACT I OF 1900].

—*Offence under special Act.*—Where the offence charged is one under a special Act, the guilt of the accused should be strictly proved. **2 A.L.J. 411=2 Cr. L.J. 352.**

Act I of 1900 (N.W.P. and Oudh Municipalities).

(1)—*Punitive enactment, construction of.*—A punitive enactment must always be strictly construed. **2 A.L.J. 26=A.W.N. 1905, 19=2 Cr. L.J. 19.**

(2)—*Right of accused to challenge validity of order under s. 88—Notice—Retrial.*—An accused person is not prohibited from challenging the validity of a notice issued under s. 88 of the Act, where the Board's order is wholly *ultra vires*. **9 O.C. 29=3 Cr. L.J. 205.**

(3)—*Ss. 3, 87—Rules forbidding 'erection or re-erection of any building' without sanction, scope of—Bye-laws, interpretation of.*—An occupier of a house in the Civil Station of Allahabad, who got inclosed, by means of *kanauts*, or canvas screens, a small piece of ground adjoining his house, without obtaining permission to do so from the Municipal Board, was charged and convicted of an offence under a rule made by the Municipal Board, with reference to s. 87 of the Act, which required that its previous sanction must be obtained to the erection or re-erection of any building in the Civil Station. *Held*, on revision, reversing the above conviction, the mere inclosing of a space by canvas screens cannot be considered as 'erecting or re-erecting any building' which words necessarily convey with them an idea of permanence with utility. If such a mere inclosing as the above is an offence, the person inclosing would have, every time he puts up a shelter (*e.g.*, for his pankha cooly or gardener), to go through the difficulty of applying to the Municipal Board and awaiting their sanction or refusal for a long time before he could venture to make the enclosure in time. If the legislature intended to restrict the rights of Municipal citizens to such an extent, its intention should have been plainly manifested and put beyond reasonable doubt. It cannot,

8.—United Provinces Acts—continued.

Act I of 1900 (N.W.P. and Oudh Municipalities)—*continued.*

therefore, be that the said s. 87 has been intended to bring temporary enclosures of the above description within its purview and that of the rules framed under it. The recognised rule of interpretation in the case of such bye-laws is that any words contained in it should, as far as possible, be so interpreted as not to militate against and curtail the general rights of the subject as regards property. **28 A. 199 =A.W.N. 1905, 252=2 A.L.J. 676.**

(4)—*Ss. 55 (c), 168—Acts on private drain not punishable, construction of Act.*—The Municipalities Act is a local Act of a highly technical nature and one which touches the private rights of individuals. It has, therefore, to be most carefully construed, and if the intention of the framers of the Act was to include an act done upon private property, which might result in some obstruction of public property at some distance from the place where the physical obstruction took place, it should have been provided for in a more particular language than has been done in s. 168. Where, therefore, certain persons were convicted of having, without permission from the Municipality, obstructed a drain found to be their private property, *held*, that the conviction was bad. **6 A.L.J. 544=2 Ind. Cas. 408.**

(5)—*S. 69 (2)—Offence under Special Act—Evidence for the prosecution meagre.*—Where a person is accused of an offence under a Special Act, the guilt of the accused ought to be distinctly proved. The Court should base its conviction not on the weakness of the defence, but on the strength of the prosecution. **2 A.L.J. 411=2 Cr.L.J. 352.**

(6 and 7)—*Ss. 82 and 87 (3)—Application for permission to build—Implied permission—Power to erect necessary scaffolding.*—Where application for permission to build has been made to a Municipal Board, and the period mentioned in s. 87 (3) of the Municipalities Act, 1900, has expired, the applicant is in the same position as if the erection of the building specified in his application had been formally sanctioned by the Board. A sanction, express or implied, to the erection of a specified building, necessarily carries with it a right to put up such ordinary scaffolding as would be necessary under ordinary circumstances for the execution of the work. **A.W.N. 1907, 251=7 Cr. L.J. 233=29 A. 737.**

(8)—*S. 87 (1)—"Public place" defined.*—The term "public place" as used in s. 87 (1) of Act I of 1900, means a public place to which the public have a right of access by permission, usage or otherwise, not merely a place which any member of the public is physically able to walk upon, or any place which lies open to public view. **A.W.N. 1901, 56.**

(9)—*Ss. (87) (1) (a) and 132—"Abutting on a public street" meaning of.*—The words "*abutting on or adjoining a public street*" as used in

8.—United Provinces Acts—continued.

Act I of 1900 (N.W.P. and Oudh Municipalities)—*continued.*

s. 87 (1) (*a*), N.W.P. and Oudh Municipalities Act, 1900, could not be construed as applicable to an erection which was distant at its nearest point some 20 or 25 feet away from a public street. **A.W.N. 1901, 203.**

(10)—*Ss. 87, 132—Order under s. 82—Appeal.*—No prohibition, notice, or order under s. 87 of Act I of 1900, is liable to be called in question otherwise than by an appeal under s. 152. **26 A. 386.**

(11)—*Ss. 87 and 132—Blocking up archways of verandah abutting on public street.*—A person converted an open verandah abutting on a public street into rooms by filling up the arches with bricks; *held* that this was clearly re-erecting his building and that, as he did not obtain the sanction of the Municipal Board to such re-erection, he committed a breach of s. 87, and was liable to punishment under s. 132, but not to the extreme penalty provided by the section. **A.W.N. 1904, 233.**

(12)—S. 87—*See* Nos. 3, 6 and 7, *supra.*

(13)—*Ss. 88, 147 and 152—Removal of building—Right of accused to challenge validity of order under s. 88—Notice—Retrial.—Held*, that, by s. 152 of the Act, an accused person is not prohibited from challenging the validity of a notice issued under s. 88 of the Act, where the Board's order is wholly *ultra vires.* **9 O.C. 29=3 Cr. L.J. 205.**

(14)—*Ss. 88 and 147—"Public place," construction of—Condition to be legally enforceable for a conviction for an omission under s. 147.*—The term "Public place" means a place to which the public have a right of access by permission, mortgage or otherwise, not merely a place which any member of the public is physically able to walk upon, or any place which has been open to public view. In order to convict and sentence a person under s. 147 for an omission to comply with a condition subject to which permission was given to him by the Board, it must be shown that the permission was required by law or the condition was one which could be legally enforced. **A.W.N. 1901, 56.** (17 A. 616, *R.*).

(15)—*Ss. 128 (c), 132—Bye-laws framed under the Act—Their reasonableness.*—All bye-laws and rules of the same nature have to be very carefully construed, and the invariable rule of law is that they are to be construed in favour of the subject. The rule of law prevailing in England, that a bye-law may be examined in order to discover whether it is reasonable in itself, is a very sound rule, and is also applicable to bye-laws framed in the exercise of their statutory powers by Municipal Boards in India. *Held*, that a bye-law framed under s. 128 (*c*) of N.W.P. and Oudh Municipalities Act (I of 1900), prohibiting servants, except those in attendance upon their master, from using a particular road, is not a reasonable bye-law and should not be given effect to. **24 A. 439.**

8.—United Provinces Acts—continued.

Act I of 1900 (N.W.P. and Oudh Municipalities)—*continued.*

(16)—*Ss. 128 (c), 132—Bye-law held to be unreasonable and its enforcement refused.*—The English law as to the necessity of bye-laws being reasonable is applicable to bye-laws framed in the exercise of their statutory powers by Municipal Boards in India. The Municipal Board of Naini Tal passed a bye-law under the powers conferred upon it by s. 128 (*c*) of U.P. Act I of 1900 to the following effect:—"No coolie, whether bearing loads or not, no servant, except in attendance on his master, and no prostitute shall use the upper North Mall (one of two parallel roads running along the north side of the Naini Tal lake) at any time." *Held* that, as regards the word "no servant, except in attendance on his master,"—this was under the circumstances an unreasonable bye-law, and the Court declined to give effect to it. **A.W.N. 1902, 117.**

(17)—*Ss. 132 and 147—Conviction for failure to remove certain building—Sentence of daily fine on second conviction for failure to remove the structure—Prospective fine—Rule (2) of ss. 128 and 132.—Held*, that the imposition of a prospective fine is illegal. *Held, further*, that the words "first conviction" in ss. 132 and 147 of the N.W.P. and Oudh Municipalities Act make it clear that the Legislature contemplated a conviction for an original offence or disobedience of a lawful order and subsequent convictions for a continuation of, or persistence in, an original offence or disobedience. **11 O.C. 122 =7 Cr. L.J. 454.**

(18)—S. 132—*See* Nos. 9, 10, 11, 15, 16, *supra.*

(19)—*S. 147—Fine in advance for a continuing breach, validity of.*—The order for payment of so much fine per day as long as a building, not built in accordance with the plan submitted to the Municipality, continues to stand; passed in advance, whilst sentencing the offender in respect of the original breach, is not a valid order. There must be proof of a continuing nuisance before the jurisdiction of the Magistrate to make such an order arises. **24 A. 309 =A.W.N. 1902, 70.** [*R.*, 11 O.C. 122=7 Cr. L.J. 454].

(20)—*S. 147—Building erected without sanction—Second prosecution.*—One B.D. built a wall without the permission of the Municipality where the house was situate. B.D. was, therefore, prosecuted under s. 87 of the Act and convicted. He was sentenced to pay a fine of Rs. 20, but the Magistrate trying the case did not impose a recurring fine. During the pendency of these proceedings, the house was transferred by B.D. to a minor, of whom S.D., the applicant, was the guardian. After a termination of the above proceedings, the Municipal Board again lodged a fresh notice and ordered the applicant to pull down the wall. On a disobedience to the notice, the guardian was prosecuted and convicted. *Held* that, in face of

***8.—United Provinces Acts*—continued.**

Act I of 1900 (N.W.P. and Oudh Municipalities)—*concluded.*

the previous conviction, no subsequent conviction of the applicant was permissible. The maxim of "*nemo debet bis vexari*" was applied. **8 O.C. 249=2 Cr. L.J. 511.**

(21)—S. 147—*See* Nos. 13, 14, 17, *supra*.

(22)—S. 152—*See* No. 13, *supra*.

(23 and 24)—*S. 167—Cattle-trespass—Legality of conviction—Construction of Acts.*—The accused got a buffalo released from the pound, at the instance of his master. Sometime after, the buffalo was found to have trespassed upon the land of a private person. The accused was, on these facts, convicted of an offence under s. 167 of this Act. *Held* that, trespass upon land not being within the contemplation of the section in question, the scope of which is to prevent danger, alarm or annoyance to any person, the conviction was illegal. Punitive enactments must be strictly construed. **A.W.N. 1905, 19=2 A.L.J. 26=2 Cr. L.J. 19.** [*F.*, 29 A. 565=A.W.N. 1907, 170=6 Cr. L.J. 313.]

(25)—*S. 167—Penal Code, ss. 425 and 426—Definition—Mischief.*—Certain cattle belonging to one M. H., upon various occasions when in charge of a servant of M. H., strayed, or were driven, into the Government gardens at Saharanpur and there caused damage. *Held* that M. H., could not, on these facts, be convicted of the offence of mischief. *Held*, also, that s. 167 of the Municipalities Act, 1900, did not apply, that section being one dealing with offences against the person. **A.W.N. 1907, 170 =6 Cr. L.J. 13=29 A. 565.**

(26)—*S. 168—Order to vacate land, conviction on failure to comply with—Daily fine, legality of.*—*Held*, that s. 168 of the North-West Provinces and Oudh Municipalities Act (I of 1900) does not authorize the imposition of a daily fine. **11 O.C. 121 B=8 Cr. L.J. 226.**

(27)—S. 168—*See* No. 4, *supra*.

(28)—*S. 183—Jurisdiction of Civil Courts.*—A Municipal Board granted permission to B for building a temple. The District Magistrate, acting under s 183 of the Municipalities Act, made an order cancelling the permission given by the Municipal Board, and the Local Government confirmed this order of the District Magistrate. B brought a suit for a declaration that he had a right to build the temple. *Held*, that the suit was not maintainable; *held*, further, that the Civil Court had no power to disturb the order of the District Magistrate, who acted within his jurisdiction, and whose order had been duly confirmed by the Local Government. **6 A.L.J. 458=31 A. 371=1 Ind. Cas. 896.**

Act II of 1901 (Water-works amending N. and O. Act I of 1891).

—S. 134—Power of amin to adjourn sale—Obstruction at adjourned sale—Penal Code, s. 184, offence under.—An amin, deputed to

***8.—United Provinces Acts*—concluded.**

Act II of 1901 (Water-works amending N. and O. Act I of 1891)—*concluded.*

hold a sale under Chapter IX of the Act, adjourned it to another date for paucity of bidders; the conditions laid down in s. 134 of the Act for an adjournment of sale did not exist in the case. On the adjourned date of sale, the Amin was obstructed. The obstructors were convicted of an offence under s. 184 of the Penal Code. *Held*, the Amin not having the power to adjourn the sale, under the circumstances, the obstruction did not constitute an offence under s. 184 of the Penal Code. **A.W.N. 1905, 65.**

Act III of 1901 (U.P. Land Revenue).

(1)—Ss. 32, 46, 234—*See* PENAL CODE, s. 176, 10 O.C. 238=6 Cr. L.J. 301.

(2)—*S. 46—Penal Code, s. 176—Facts to be proved for justifying conviction.*—The accused, certain Zamindars, were convicted of an offence under s. 176, Penal Code, read with s. 46 of the above Act, for not having given information to *Putwaris*, preparing the *Jamabandis*, regarding enhancement of rent of certain tenants. It was found that enhancement had been made. There was nothing, however, to show that the *Putwaris* or *Kanangoes* made any requisition of the accused for any particulars. *Held*, the convictions were wrong. To sustain a conviction, there must be evidence to show that a particular *Putwari* or *Kanango* called for a particular informatton from a particular Zamindar and that the latter either refused to give the information or gave information which was false. In the absence of such a requisition or compliance therewith or a compliance therewith truly, the Zamindar ought not to be convicted. Mere abstinence, on the part of a Zamindar, to go to a *Putwari* or *Kanango* and give him information as to the rent of a certain tenant or tenants having been enhanced is no offence. **8 O.C. 128=2 Cr. L.J. 207.**

(3)—S. 46—*See* No. 1, *supra*.

(4)—Ss. 142, 143 and 149—*See* ESCAPE FROM LAWFUL CUSTODY, 7 A.L.J. 21.

(5)—S. 143—*See* No. 4, *supra*.

(6)—Ss. 147, 195, 196—*See* PENAL CODE, s. 173, 6 A.L.J. 777.

(7)—Ss. 147, 227, 228—*See* PENAL CODE, s. 352, 29 A. 272=A.W.N. 1907, 42=4 A.L.J. 132=5 Cr. L.J. 110.

(8)—S. 149—*See* No. 4, *supra*.

(9)—S. 195—*See* No. 6, *supra*.

(10)—S. 196—*See* No. 6, *supra*.

(11)—S. 227—*See* No. 7, *supra*.

(12)—S. 228—*See* No. 7, *supra*.

(13)—S. 234—*See* No. 1, *supra*.

Acts, construction of.

See STATUTES, CONSTRUCTION OF.

Act of State.

—*Arrest and detention of a Mahomedan subject of the Crown under Reg. III of 1818, if act of State.*—Where a Mahomedan subject of the Crown was arrested in Calcutta, taken into the Mofussil, and there detained in jail, under a warrant of the Governor-General in Council in the form prescribed by Reg. III of 1818, it was *held* that such arrest and detainer were not acts of State, but matters cognizable by a Municipal Court. **6 B.L.R. 392.**

Additional District Magistrate.

(1)—*Crim. Pro. Code (1898), ss. 10 (2) and 435 (1)—Relation between Additional District Magistrate and District Magistrate—Additional District Magistrate inferior to District Magistrate—Revision.*—The Court of a Magistrate of the First Class, appointed under s. 10 (2), Crim. Pro. Code, to be an Additional District Magistrate, is an inferior Criminal Court, situate within the local limits of the jurisdiction of the District Magistrate, for the purposes of s. 435 (1) of the Code. The Code of 1898 did not except Additional District Magistrates from supervision by the District Magistrate and Additional District Magistrates are obviously not inferior to Sub-Divisional Magistrates. **25 P.R. 1908 Cr. = 9 Cr.L.J. 104.**

See CRIM. PRO. CODE (1898), ss. 10 (2), 12, 528, 34 C. 918.

Additional Sessions Judge.

—*Crim. Pro. Code, 1882 and 1898—Joint Judge—Additional Judge.—Held* that a Joint Sessions Judge was invested with the powers of an Additional Sessions Judge under the Code of 1898, in virtue of the Government Notification dated 28th May, 1898. **Rat. Un. Cr. C. 972.**

See CRIM. PRO. CODE (1898), ss. 435, 438 (1), 1 L.B.R. 119.

Aden.

See BOM. ACT II OF 1864.

(1)—*Appeal from sentence of Political Resident at Aden to the High Court of Bombay in criminal case arising at Perim.*—The prisoner was charged with having committed murder in the island of Perim. He was committed by the Magistrate at Perim to be tried before the Political Resident at Aden. He was found guilty and sentenced to death. He then appealed to the High Court of Bombay. By the Aden Act II of 1864, s. 29, it is provided that "no appeal shall lie from an order or sentence passed by the Resident in any criminal case." The High Court, however, admitted the appeal, being doubtful as to whether the above provision applied to cases arising in the island of Perim. **10 B. 258.**

(2)—*Perim, if part of Aden.*—The island of Perim, although under the control of the Political Resident at Aden, cannot be regarded as a part of Aden, and the provisions of the Aden Act II of 1864 are not in force at Perim. **10 B. 263.**

Aden—concluded.

(3)—*Village of Shaikh Othman.*—The village of Shaikh Othman is made, for the purposes of Act II of 1864, part of the Settlement of Aden by Reg. II of 1891 and is placed under the jurisdiction of the Court of the Resident at Aden. **Cr. Rg. 67 of 1895.**

(4)—*Resident at Aden—Transfer of case—Resident's power of sentencing European British subject—Bom. Act (II of 1864).*—The Resident at Aden, who has a case committed to his Court under s. 447, Criminal Procedure Code, 1898, is not competent to transfer the case to the High Court of Bombay under s. 449 of the Code, when he feels that the accused being a European British subject cannot be adequately punished by him. The powers of the Court of Session conferred upon the Resident by the Aden Courts Act, 1864, are not merely such as are defined in the Criminal Procedure Code, but such as are provided expressly in the Act itself; and s. 449, Crim. Pro. Code, cannot affect those provisions. **7 Bom. L.R. 104 = 29 B. 575.**

(5)—Political Resident at Aden—*See* ACT XIV OF 1874, 10 B. 274.

See BOM. ACT II OF 1864, 31 B. 335 = 5 Cr. L.J. 309 = 9 Bom.L.R. 331.

Aden Courts Act.

See BOM. ACT II OF 1864.

Adjournment.

(1)—*Crim. Pro. Code (1898), s. 344—Costs of.*—S. 344, Crim. Pro. Code, entitles the Court to award costs to a party who has been put to unnecessary expenses by an adjournment granted on the application of the other party. **28 A. 207 = 2 A.L.J. 831 = A.W.N. 1905, 256.** (9 C.W.N. 18, *F.*)

(2)—*Costs of adjournment—Discretion of Magistrate.*—A Magistrate has a discretion to require from the accused the costs of an adjournment, when he is not entitled to the adjournment asked for. **9 C.W.N. 18.** [*F.*, 28 A. 207 = 2 A.L.J. 831 = A.W.N. 1905, 256, 28 A. 209 (N) = A.W.N. 1905, 257 (N).]

(3)—*Crim. Pro. Code (1898), s. 526 (8)—Application for adjournment for moving the High Court for transfer*—Bona fides *of application, whether to be considered—Refusal, when does not vitiate the trial.*—Where an application for adjournment under s. 526 (8), Crim. Pro. Code, was refused and the trial was proceeded with, *held*, that the trial was a good and valid trial inasmuch as it was found that the accused still got reasonable time for applying to the High Court for transfer before they were required to enter upon their defence. Unreasonable delay or total abstention from moving the High Court might well be taken into account in considering the *bona fides* of the accused in notifying the intention to the trying Court. **31 C. 715 = 8 C.W.N. 910.** [*F.*, 33 C. 1183 = 10 C.W.N. 793 = 3 C.L.J. 637].

(4)—*Crim. Pro. Code (1898), s. 526 (8)—Application for adjournment to apply for a transfer.*—S. 526 (8) does not make it obligatory

Adjournment—continued.

to grant a special adjournment irrespective of whether the party has reasonable time to make his application to the High Court without such adjournment; but makes it obligatory only, if it is necessary to enable the petitioner under s. 526 to make his application, before the accused is called on for his defence. It is, therefore, competent to the Magistrate, before granting an adjournment, to proceed with the case up to the point at which the accused would be called on for their defence. **6 C.W.N. 717.** [*Appr.*, 8 C.W.N. 910=31 C. 715].

(5)—*Omission to file list of witnesses for the defence—Witnesses actully present in attendance—Application for adjournment.*—Where there were many witnesses present on behalf of the accused, and at midday, when the Court, which apparently was holding a morning sitting, should have closed, the counsel for the accused wished to have an adjournment, so as to examine those witnesses, who were in attendance; and the Deputy Magistrate did not grant the adjournment and did not allow the examination of the witnesses, on the ground that the list of witnesses for the defence had not been given in; *held* that the refusal to grant an adjournment was wrong and that the conviction of the accused should be set aside. **7 C.W.N. 714.**

(6)—*Application for postponement of case for obtaining its transfer—Refusal of application—Effect.*—The duty of a Magistrate under s. 526. Crim. Pro. Code, where a case falls within it, being to grant a postponement, and he having no power to proceed with the hearing of the case until a reasonable postponement had been granted, the effect of his refusal to grant an adjournment is that the subsequent proceedings are unwarranted by law and must be set aside. **8 C.W.N. 77.** (29 C. 211, *F.*) [*R.*, 8 C.W.N. 910=31 C. 715].

(7)—*Refusal to grant time for filing written statement.*—A Magistrate has a discretion to refuse an application for time to file a written statement. **8 C.W.N. 642.**

(8 and 9)—*Adjournment of trial by public proclamation.*—The adjournment of a trial by public proclamation is irregular and objectionable. Magistrate should give special notice to the parties of the date to which a case is adjourned. **6 M.H.C. App. 29=1 Weir 83.**

(10)—*Of trial—Reasonable cause—Crim. Pro. Code (1898), s. 344.*—There is no authority for adjourning a case till all the absconders are found. An accused is entitled to have the evidence against him recorded as early as possible. The absence of some of the men suspected of gambling is not a "reasonable cause" for adjourning the enquiry into the guilt of the accused who are present. **1 L.B.R. 60.**

(11)—*Power of Magistrate to postpone the commencement of a trial—Crim. Pro. Code (1898), s. 344.*—Under s. 344, Crim. Pro. Code, a Magistrate has power to postpone the commencement of a trial "from the absence of a witness or other reasonable cause," but giving time to prepare the defence is not specifically mentioned

Adjournment—concluded.

as a reasonable cause. It may sometimes be right, in complicated and difficult cases, to postpone a trial in order to enable the accused to engage an advocate, if he applies for such postponement, but, in ordinary cases and as a general rule, this should not be done. The object of the trial is to ascertain the truth; examining the witnesses as early as possible is a far more likely way of attaining that end than postponing the trial to engage an advocate. **1 L.B.R. 270.**

See COSTS, A.W.N. 1902, 59.

See CRIM. PRO. CODE (1898), s. 257, 28 C. 594.

See CRIM. PRO. CODE (1898), s. 344. 2 A.L.J. 747=A.W.N. 1905, 254, 6 P.R. 1906 Cr.=4 Cr. L.J. 78.

See CRIM. PRO. CODE (1898), s. 526 (8), 15 C. 455, 19 M. 375, 29 C. 211=6 C.W.N. 251.

See MAGISTRATE, DUTY OF, Rat. Un. Cr. C. 594=Cr. Rg. 14 of 1892.

See SUMMARY TRIAL, 5 L.B.R. 20=9 Cr. L.J. 583=2 Ind. Cas. 365.

See TRANSFER OF CRIMINAL CASES, 2 Weir 685, 19 M. 375=2 Weir 680=6 M.L.J. 195, 2 Weir 686, 9 Cr.L.J. 274=1 Sind L.R. 35 Cr.

Administrator-General.

See CRIM. PRO. CODE (1898), ss. 197 and 423, 30 C. 927=7 C.W.N. 750.

Admission.

See ACCUSED.

,, CONFESSION.

,, EVIDENCE ACT, ss. 17 to 30.

(1)—*Admissions of prisoners before Magistrate.*—The admissions of prisoners in their own statements before the Magistrate ought to be given in evidence at the trial. **4 W.R Cr. 18.**

(2)—*Admissions made by a prisoner's vakil.*—Admissions made by a prisoner's vakil cannot be used against him. **17 W.R. Cr. 49.**

(3)—The admissions made by a pleader who is appointed by the Court to help the accused in his defence are not binding on the accused. **2 Bom. L.R. 251.**

(4)—*Evidence Act, s. 58—Admission by accused—Crim. Pro. Code (1882), s. 342.*—An accused person is bound by an unqualified admission made at the trial by his solicitor. In England, a formal admission by the Counsel at a trial has been allowed in order to dispense with mere formal proofs. In India there is nothing to prevent a prisoner, on being questioned under s. 342, to make an admission; and it is obvious that some admissions on formal matters of law can be better trusted to his legal adviser, and there seems to be no reason in principle why, when the admission has been so made in his presence at the trial so as to dispense with the attendance of witnesses for the prosecution, it should not be held to bind him. **Rat. Un. Cr. C. 769=Cr. Rg. 34 of 1895.**

Admission—continued.

(5)—*Admission to police officer before arrest—Admissibility.*—An admission to a Police officer made by an accused person before arrest is admissible in evidence. **6 C. 530=7 C.L.R. 541.** [*R.*, L.B.R. (1893—1900), 42, 3 N.L.R. 51].

(6)—*Applicability of the term to civil and criminal proceedings.*—It is impossible to hold that admissions only mean statements made by parties to civil proceedings, and that they do not include statements of accused persons in criminal proceedings. **16 P.R. 1886 Cr.**

(7)—*Confession, definition and scope of.*—A confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed the crime. **51 P.L.R. 1905=2 Cr. L.J. 230**; 6 A. 509, F.B.

(8)—*All admissions by accused whether confessions.*—All admissions of an accused person are not, in the eye of the law, confessions. **16 P.R. 1886 Cr.**

(9)—*Test whether statement is admission or confession.*—To ascertain whether a certain statement, made by an accused person is an admission only, or, amounts to a confession, a reference must always be made to the terms of that statement. **16 P.R. 1886 Cr.**

(10)—*What are admissions and what are confessions.*—Every statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, made by an accused person, is an admission under ss. 17 and 18, Evidence Act, which is provable against the person making it, unless some provision of the Evidence Act, or other law renders it inadmissible. Under s. 24 to s. 26, statements of accused persons are irrelevant subject to the provisions of ss. 27 to 29, when such statements are confessions. **16 P.R. 1886 Cr.**

(11)—A confession is also an admission of fact as well as an admission of guilt. **4 Cr. L. J. 471.**

(12)—*Confessions must be considered as a whole.*—A confession must be looked at as a whole, and it would not be right to take isolated portions of it, and to consider whether any of them, regarded separately, amounts to an admission of guilt or not, though it is clear that taken together they do not. **7 A. 646.**

(13)—A prisoner's confession must be taken in its entirety. **8 W.R. Cr. 38.**

(14)—Where there was no reliable evidence of the prisoner's guilt beyond his confessions, *held* his confessions must be taken in their entirety. **1 W.R. Cr. 17**; 3 W.R. Cr. 55, 5 W. R. Cr. 70, 25 W.R. Cr. 15.

(15)—*Statements of accused construed as not being admissions of guilt.*—Where a prisoner pleaded guilty, but went on to say that he did not commit the offence with which he stood charged, the plea was held to be really one of not guilty. **11 W.R. 53 Cr.**

Admission—concluded.

(16)—In cases where an accused person, called on to plead to a charge before a Court of Session, instead of pleading guilty, makes a long rambling statement, more or less, admitting guilt, it would be much safer if the Judge recorded a formal plea of "not guilty" and proceeded to try the case in the ordinary way recording the evidence. **A.W.N. 1908, 54.** (19 A. 119, *R.*).

(17)—*Trial—Magistrate--Admission by accused of some fact alleged by prosecution—Plea of not guilty.*—An accused person may admit some or even all of the facts alleged by the prosecution, but if he pleads not guilty, the Court trying him is bound to proceed according to law by examining the witnesses and giving an opportunity to the accused to cross-examine the witnesses for the prosecution and adduce his own evidence. **9 Bom. L.R. 1346.**

(18)—*Confession of culpable homicide not amounting to murder.*—Where a prisoner confessed that he did not suspect his wife's fidelity, that he left home on business, that on his return he saw what convinced him of his wife's infidelity, and that, maddened at the sight, he killed both her and her paramour, *held* that he was guilty of culpable homicide not amounting to murder, and that the case was one in which he ought to be treated with lenity **8 W.R. Cr. 38.**

(19)—*Admission by person required to furnish security.*—An admission by a person required to furnish security expressing willingness to give security should be duly recorded under s. 243 of the Code of Criminal Procedure, 1898. **17 M.L.J. 438.**

See ACCUSED, 5 C.P.L.R. 11 Cr.

—by Vakil—*See* CRIM. PRO. CODE (1898), s. 145, 7 C.W.N. 351.

—Admission in evidence of certain statements recorded by police officer regarding the commission of a cognizable offence.—*See* CRIM. PRO. CODE (1898), s. 154, U.B.R. (1892—1896), Vol. I, 24.

See CRIM. PRO. CODE (1898), ss. 221 (7), 342, 412 and 511, 4 N.L.R. 163=9 Cr L.J. 56.

See EVIDENCE, L.B.R. (1872—1892), 350.

See PENAL CODE, s. 318, 1 C.P.L.R. 163.

Adultery.

See PENAL CODE, s. 497.

(1)—*Crim. Pro. Code (1872), s. 478—Charge of adultery—Complaint by husband.*—If a criminal charge of adultery is to be preferred, a formal complaint of that offence must be instituted in the manner provided by law, and, if it is not, s. 478 will not have been satisfied. When the husband preferred against the accused a complaint of rape on his wife, but not of adultery, *held* that the mere circumstance of the husband appearing as a witness in the prosecution for that offence could not be regarded as amounting to the institution of a

Adultery—continued.

complaint for adultery in the sense of s. 478. **5 A. 233.** [*F.*, 29 C. 415, 27 M. 61=2 Weir 236, 10 A. 39=7 A.W.N. 264, 30 C. 910=8 C.W.N. 17].

(2)—*Quære.*—Is the formal assent of a husband to a charge of adultery, added at the end of his deposition, a proper compliance with s. 478, Act X of 1872. **24 W.R. Cr. 18.**

(3)—*Condonation of adultery—Penal Code, s. 497.*—The Appellate Court will not uphold a conviction for adultery when the husband has shown that he has condoned the offence. **1 Ind. Jur. N.S. 8;** 4 W.R. Cr. 31.

(4)—*Proof of marriage—Charge of adultery.*—Before a person charged with adultery can be convicted, strict proof of the marriage is necessary. **1 Ind. Jur. N.S. 8;** 4 W.R. Cr. 31.

(5)—*Penal Code, s. 497—Proof of marriage—Evidence Act, s. 50.*—Where the accused was convicted of adultery with the complainant's wife, the evidence as to the marriage between the complainant and his wife consisted of statements by them that they were married to each other, and a statement by the accused, when examined by the committing Magistrate, that the woman was the wife of the complainant, *held*, that the evidence, having regard to s. 50 of the Evidence Act, and also to the principle that strict proof should be required in all criminal cases, was altogether insufficient to prove the marriage, and the admission of the prisoner would not strengthen the position, because if, as a matter of fact, there had been no marriage, no conviction would stand against him under s. 497. **5 A. 233.** [*F.*, Rat. Un. Cr. C. 190; *Appr.*, 18 A.W.N. 7; *R.*, 18 A.W.N. 186, 3 O.C. 342, 31 B. 218=9 Bom. L.R. 148=5 Cr. L.J. 164; *Discussed*, 9 M. 9=1 Weir 572; *Not F.*, 5 P.R. 1894 Cr.].

(6)—*Penal Code, s. 497—Adultery—Proof of marriage.*—In a prosecution for adultery, the marriage of the complainant with his alleged wife must be strictly proved. **Rat. Un. Cr. C. 539=Cr. Rg. 12 of 1891.**

(7)—*Proof of marriage—Evidence Act, s. 50.*—Where marriage is an ingredient in any offence, *e.g.*, adultery, bigamy and the like, there must be, according to s. 50 of the Evidence Act, strict proof, in the regular way, of the fact of the marriage **5 C. 566=5 C.L.R. 597, F.B.** (8 B.L.R. App. 63, *overruled.*) [*F.*, 5 A. 233, Rat. Un. Cr. C. 190, 3 O.C. 342; *Not F.*, 5 P.R. 1894 Cr.; *Discussed*, 9 M. 9=1 Weir 572; *R.*, 18 A.W.N. 186, 31 B. 218=9 Bom. L.R. 148=5 Cr. L.J. 164, 20 A. 166=18 A.W.N. 7].

(8)—*Penal Code, s. 498—Conviction under the section—Proof of valid marriage—Evidence Act, s. 60.*—In order to convict a person under s. 498, I.P.C., mere statements of witnesses that the complainant and his wife lived as husband and wife are not sufficient; it is necessary that the facts constituting a valid marriage should be proved in accordance with s. 60 of the Evidence Act. **13 C.L.R. 125.**

Adultery—continued.

(9)—*Proof of adultery—Sexual intercourse—Presumption of knowledge that woman is married.*—In a case of adultery, sexual intercourse must be proved: the sexual intercourse required for adultery being the same identical thing as the sexual intercourse required for rape. The difference lies in the mode of proof: in rape, no presumption of sexual intercourse can be made; in adultery, it can be from evidence pointing strongly to an inference of guilt. It is not necessary, therefore, that there should be direct evidence of an act of adultery, nor that the adulterer should know whose wife the woman is, provided he knew she was a married woman. **21 W.R. Cr. 13.**

(10)—*Co-habitation if necessary for complete marriage—Penal Code, s. 497.*—It is not necessary to make a marriage complete, that there should be co-habitation. **4 P.R. 1874 Cr.** (48 P.R. 1867 Cr., *overruled*)

(11)—Sagai *wives, whether legal wives.*—*Sagai* marriages, that is, the custom of re-marriage of widows, prevails among certain low castes of Behar, and is legal and valid. Persons committing adultery with a *sagai* wife are punishable. **3 C.L.R. 410.** [*Appl.*, 10 C. 138; *R.*, 5 C. 692.]

(12)—*Marriage illegal by Hindu Law-Custom of caste—Penal Code, s. 497—Dissolution of marriage at will and marriage (natra) with another man—Custom.*—A custom of the *Talapada Hali* caste that a woman should be permitted to leave the husband to whom she has been first married and to contract a second marriage (*natra*) with another man during the lifetime of her first husband and without his consent is invalid, as being entirely opposed to the spirit of Hindu law; and the man with whom the woman so married, having had sexual intercourse with her, and it being found that he did not honestly believe that she had become his wife, was held to be guilty of adultery under s. 497, Penal Code. **2 B.H.C. 124; 2nd Ed., 117.**

(13)—*Marriage contrary to Hindu Law—Custom of caste—Penal Code, s. 497.*—Where a prisoner accused of adultery sets up in defence a *natra* marriage contracted with the woman with whom he is alleged to have committed adultery, in accordance with the custom of his caste, the question the Court has to determine is whether or not the accused honestly believed at the time of contracting the *natra* marriage that the woman was the wife of another man. **5 B.H.C. Cr. 17.**

(14)—*Adultery with Mahomedan's sixth wife, if offence—Penal Code, s. 497.*—Where, in a case of adultery with the complainant's wife, the complainant, a Mahomedan, alleged that, in order to legalise his marriage with his 5th and 6th wives and to keep within the law, which only permitted him to have four wives, he kept two of the first four of his six wives partially divorced by uttering the words of divorce only once or twice, *held* that the woman in question was not the complainant's wife. **1 P.R. 1875 Cr.**

Adultery—continued.

(15)—*Penal Code, s. 498—Offence, when complete.*—The offence contemplated by s. 498, I.P.C., is complete if it appears that the accused went away with the woman in such a manner as to deprive her husband of his control over her ; the fact that the woman accompanied the accused of her own free will does not diminish the criminality of the act. **4 Bom. L.R. 435.**

(16)—*Adultery and re-marriage—Joinder of charge.*—The offences of adultery and marrying again during the life-time of the husband should not be tried together. **Rat. Un. Cr. C. 4.**

(17)—*Penal Code, ss. 497, 498—Previous conviction for adultery—Subsequent adultery—Second punishment.*—If a man, who has been convicted of adultery with another man's wife, continues his adulterous intercourse, he will be liable to a second conviction and punishment for the fresh act, notwithstanding that the woman had not returned to her husband's protection after the conviction of her paramour. **Rat. Un. Cr. C. 150=Cr. Rg. 28—10—1880.**

(18)—*Suit for dissolution of marriage—Delay—Divorce Act (IV of 1869), s. 14.*—Though there is no absolute limitation in the case of a petition for dissolution of marriage, yet the Courts will always look whether there has been such delay in preferring the charge of adultery as to lead to the conclusion that the petitioner had either connived at the adultery or was wholly indifferent to it. But, any presumption, arising from apparent delay, may be rebutted by an explanation of the circumstances. **3 C. 688.** [*R.*, 17 B. 624, F.B.]

(19)—*Enticing away woman—Penal Code, ss. 497, 498—Form of conviction.*—A prisoner need not be convicted both of adultery and enticing away the woman ; the former would include the latter, if there be an enticing away. **2 W.R. Cr. 35.**

(20)—*Charges of adultery, enticing away and theft—Acquittal on the first two—Trial of theft.*—Where a person was charged with adultery and enticing away a married woman and of theft of the husband's property with the connivance of the latter, *held*, that the acquittal of the accused on the first two charges would not entitle him to a discharge without trial on the charge of theft. It would still be open to the Jury to find that the accused was present and dishonestly removed or took part in the removal of the property of the husband. **5 M.H.C. App. 22.**

(21)—*Partnership, dissolution of.*—Adultery of one partner with the wife of his co-partner is a sufficient ground for dissolution of the partnership. **5 B.L.R. 109.**

(22)—*Penal Code, s. 497—Attempt to commit adultery.*—Adultery being an act which requires the consent of both the parties, it is not sufficient, in order to convict a man of an attempt to commit adultery, that he was found in a place in which adultery might have been committed and he was minded to commit it.

Adultery—concluded.

Because he was so minded and had entered the woman's room, it does not necessarily follow that, but for some interruption, the offence would have been consummated. **1 Weir 569.**

(23)—*S. 199, Crim. Pro. Code (1861), Prosecution for adultery—Death of husband, effect of.*—The law only requires that the prosecution on a charge of adultery should be instituted by the husband. Although it is desirable that such charges should be withdrawn by the prosecution on the death of the aggrieved party, it cannot be said that the death necessarily puts an end to the prosecution. **2 Weir 235=4 M.H.C. App. 55.**

(24)—*Crim. Pro. Code (1861), s. 199—Prosecution for adultery—Minor husband.*—A minor husband cannot be represented by another in a prosecution for adultery. **2 Weir 235.**

(25)—*Proof of—Penal Code, s. 497.*—In a criminal case, adultery must be proved in the same degree as in a divorce suit. If the woman and the alleged adulterer are not caught in the act, criminal intention and opportunity must be proved, and all absence of consent or connivance must be shown on the husband's part. **1 P.R. 1874 Cr.**

See ABATEMENT OF PROSECUTION, 4 M.H.C. App. 55=2 Weir 235.

See ATTEMPT, 13 P.R. 1879 Cr., 25 P.R. 1902 Cr.

See COMMITMENT TO SESSIONS COURT, 4 A. 150.

--Charge of adultery—Withdrawal of charge by husband—Revisional powers of High Court. —*See* COMPOUNDING OFFENCE, 5 B.H.C. Cr. 27 ; also, 2 N.W.P. 234.

See CRIM. PRO. CODE (1898), ss. 4 and 488, 17 M. 260=2 Weir 641=4 M.L.J. 83.

—Mother of a minor husband, if aggrieved party—*See* CRIM. PRO. CODE (1898), s. 198, 2 Weir 231.

See CRIM. PRO. CODE (1882), s. 488, 20 M. 470=2 Weir 643=7 M L J. 303, F.B.

See EVIDENCE, 40 P.R. 1882 Cr.

See MAINTENANCE, 30 M. 332=2 M.L.T. 166=17 M.L.J. 279=5 Cr. L.J. 359.

See MAHOMEDAN LAW, L.B.R. (1872—1892), 596.

See PENAL CODE, s. 451, 19 A. 74.

See PENAL CODE, s. 498, 1 C.W.N. 498.

See RAPE, 29 C. 415=6 C.W.N. 677.

Advocacy.

See WITNESS, 5 M.L.T. 58, P.C.=9 Cr. L.J. 172=13 C.W.N. 370=11 Bom. L.R. 196=31 A. 116=19 M.L J. 186=1 Ind. Cas. 128.

Advocate.

See 1. ACT XVIII OF 1879.
2. ADVOCATE-GENERAL.
3. ATTORNEY.
4. BARRISTER.
5. COUNSEL.
6. LEGAL PRACTITIONER.
7. MUKHTEAR.
8. PLEADER.
9. PLEADER AND CLIENT.
10. VAKIL.

(1)—*Right to appear for prosecution in Sessions Court.*—An advocate of the High Court may appear on behalf of the prosecution in the Court of Sessions and conduct the prosecution without being specially empowered by the Magistrate of the district for the purpose. **23 W.R. Cr. 14.**

(2)—*Right to appear—Criminal Courts—Prosecution.*—A counsel or pleader is entitled to appear and act on behalf of the prosecution in the Criminal Courts. **5 B.L.R. App. 70 ; 14 W.R. Cr. 23.**

(3)—*Prosecution by advocate or attorney before Presidency Magistrate--Presidency Magistrate's Act (IV of 1877), s. 129.*—With the exception of certain officers, such as the Advocate-General, Standing Counsel, Government Solicitor, &c., no counsel or attorney can claim the right of conduct of a prosecution before the Presidency Magistrate without his permission. **6 C. 59=6 C.L.R. 374.**

(4)—*Act XI of 1889 (Lower Burma Courts), ss. 86 and 87—Crim. Pro. Code (1861), s. 340.*—Sessions Judges are permitted to allow third class Advocates to appear, plead and act before them in criminal appeals. **L.B.R. (1872—1892), 260.**

(5)—*Attorney—Advocate—Competent witness.*—An attorney who has acted as advocate for one of the parties, and pleaded his case in Court, can be examined as a witness in the case. **5 B.L.R. App. 28.**

(6)—*Defamation—Privilege of an advocate.*—An advocate speaking in a Court of Justice in England is not liable either civilly or criminally for defamatory words spoken in his office if they are pertinent to the inquiry. Similarly, an advocate in this country has and should have the same privileges in respect of liberty of speech which he has so long enjoyed in England. An advocate in this country cannot, therefore, be proceeded against either civilly or criminally for words uttered in his office as advocate. **10 M. 28, F.B.** [*R.*, 17 M. 87=3 M. L.J. 94, 19 B. 340, 2 Bom. L.R. 3, 3 L.B.R. 265, 9 Bom. L.R. 1287].

(7)—*Privilege of speech.*—Question of the extent of the privilege of speech accorded to advocates and counsel considered. **8 B.H.C. Cr. 126.**

(8)—*Crim. Pro. Code (1872), s. 186 (s. 340 of the Code of 1898)—Accused defended by*

Advocate—concluded.

authorised pleader -- Vakalatnamah.—An advocate or attorney of the High Court or an authorised pleader, appearing in defence of an accused person, under s. 186, Crim. Pro. Code, 1872, is not required to file a vakalatnamah. **2 Weir 402=7 M.H.C. App. 40.**

(9)—*Unprofessional conduct of—Special leave to appeal to the Privy Council.*--Case in which the Privy Council granted special leave to an Advocate to appeal against his dismissal on the ground of unprofessional conduct. **4 Cr. L.J. 236 P.C.**

(10)—*Suspension of advocate—Burma Courts Act, VII of 1872, s. 58—Entering into contract contrary to public policy.*—In a case in which an advocate of the Recorder's Court at Rangoon was suspended by the Recorder under Act VII of 1872, s. 58, for having entered into a contract, which was contrary to public policy, the High Court, though reprobating such a practice as improper and mischievous, yet considered that a serious warning was all that was called for under the circumstances, inasmuch as it appeared that the advocate in this instance did that which was done by other advocates, even by persons to whom he might fairly look for an example. **21 W.R. 297.**

(11)—*Conduct of—Endeavouring by irregular means to influence evidence of witness—Credibility of.*—A jailor and an advocate clandestinely got into communication with some witnesses and offered them money as a reward to speak the truth after they admitted having been paid money to speak falsely. *Held* there is much to condemn in the conduct of any person, who endeavours to influence, by irregular means, the evidence of a witness, in a case pending before a Court of Justice, and, especially so, when this is done by an advocate professionally engaged in the case, in which such witness is produced ; there is no real reason why the conduct of such advocate and jailor, though it might bear the complexion of tampering with witnesses, should be treated as rendering their evidence entirely unworthy of credit. **L.B.R. (1893—1900), 263.**

(12)—*Difference between advocate's ordinary and back fees--Whether receipt for ordinary fees requires to be stamped.*—*Held*, (*per* Roe, C.J., Frizelle and Reid, JJ.,) that no stamp is necessary for the receipt given by a barrister in respect of his ordinary fees ; and (*per* Frizelle, Stogden and Reid, JJ., Roe, C.J., *dissenting*) that no difference in principle exists between an ordinary fee and a "back fee." (*Per* Stogden J.):—A barrister cannot enter into a contract of hiring, as an advocate ; he can enter into a contract to serve any one as an advocate in consideration of the money paid or to be paid to him, and a fee so paid or to be paid to him is for consideration and needs a stamp, whether it is an ordinary or a back-fee. **15 P.R. 1897 Cr., F.B.**

See DEFAMATION, 19 B. 340.

„ LETTERS PATENT, s. 10, 10 M. 28, F.B.

Advocate-General.

(1)—The Advocate-General and Officiating Advocate-General for the time being are entitled to similar pre-audience as the Attorney-General in England. **Bourke O.C. 224.**

See LETTERS PATENT, ss. 25 and 26, 9 Bom. L.R. 789.

—*Certificate by Advocate-General, when grantable.*—*See* LETTERS PATENT, s. 26, 4 C.W.N. 433, F.B.

Advocate-Generals' Powers Act.

See ACT X OF 1875.

Affidavit.

(1)—*Affidavits, use to be made of.*—Though affidavits may be used to show a want of jurisdiction, even though such affidavits contradict for this purpose the finding of the Court, it is quite clear that they cannot be used as affording materials for reviewing the Magistrate's decision. Where the charge is such that, if true, it would give the Magistrate jurisdiction, his decision is final. **10 B.H.C. 102.**

(2)—*Crim. Pro. Code (1882), s. 342—False statement in an affidavit attached to an application for revision.*—Where, in an affidavit attached to an application for revision from an order convicting him, the convict makes a false allegation, he could not be prosecuted for perjury, as it was not competent to put him upon oath at all. **19 A. 200.** [*F.*, A.W.N. 1906, 42=3 A.L.J. 98=28 A. 331=3 Cr. L.J. 225; *R.*, 3 L.B.R. 265].

(3)—*Penal Code, ss. 193 and 199—Affidavit before a Deputy Magistrate—Power to administer oath—Perjury.*—A Deputy Magistrate has no power to administer an oath to a person making a declaration in the shape of an affidavit. Such person cannot, therefore, be prosecuted for perjury under s. 199 or s. 193. **14 C. 653.**

See DEFAMATION, 8 C.W.N. 292.

—False statement in affidavit supporting the application for transfer—*See* PENAL CODE, ss. 193 and 199, 1 Weir 176.

—of accused, if admissible in High Court to show that he had not pleaded guilty. *See* PRACTICE AND PROCEDURE, 19 M. 209=1 Weir 850.

See SANCTION TO PROSECUTE, 11 Bom. L.R. 1164.

See TRANSFER OF CRIMINAL CASES, 8 C. 63.

Affray.

See PENAL CODE, ss. 159, 160.

(1)—*Penal Code, s. 159—Affray defined.*—If two or more persons, by fighting in a public street, disturb the public peace, they may be guilty of an affray, though it is not clear which particular person struck which particular person. It is sufficient to prove that they fought together in a public place and thereby disturbed the public peace. **1 Weir 71.**

Affray—concluded.

(2)—*Penal Code, ss. 159 and 160—Affray, what constitutes.*—To constitute an affray under s. 160, Penal Code, there must be a "fighting in a public place" and consequent disturbance of the public peace. Mere exchange of words without fighting, in consequence of an obstruction in the public way, caused to some of the accused, would not amount to an affray. **1 Weir 71.**

(3)—*Evidence as to, nature of.*—In an affray, specific evidence as to the acts of each fighter cannot be expected, but only general evidence as to the accused taking part in it. and persons who, as in this case, punted the boats on which the fight took place, were held to be just as blameworthy as the men who struck blows. **21 C. 392.**

(4)—*Penal Code, ss. 159, 160—Affray in a public place.*—Where it appeared from the evidence that a *chabutra* was not accessible to the public, by right or by possession, or by usage or otherwise, *held*, that it was not a public place under s. 159, I.PC., although any member of the public walking along the street could walk on to it as it adjoined the public street. **17 A. 166.** [*R.*, A.W.N. 1904, 92, 31 C. 542=8 C.W.N. 458, 29 B. 386=7 Bom. L.R. 333=2 Cr. L.J. 252].

See CRIM. PRO. CODE (1898), ss. 244. 250, Rat. Un. Cr. C. 403.

See HURT, 4 L.B.R. 237=7 Cr.L.J. 498.

See RIOTING, 1 N.W.P. 293, 1 Weir 68.

Affrays (Bengal) Act.

See BEN. ACT IV OF 1840.

Africa Order in Council, 1889, 1892, 1893.

(1)—*Spheres of influence—Significance—African orders in Council.*—The Consular Court, by various Articles of the orders in Council of 1889 and subsequent years, is given some jurisdiction over spheres of influence under its command. But this is not the same as the jurisdiction which the Consul has as Commander and does not extend over foreigners. Occupation for purposes of war is not annexation, and has no significance nor does it affect the law of the state so occupied. Thus, the Consular Court of Uganda had no jurisdiction over offences by foreigners committed within its sphere of influence but beyond the Protectorate. **Rat. Un. Cr. C. 880=Cr. Rg. 3 of 1897.**

See JURISDICTION OF CRIMINAL COURTS, 22 B. 54.

Agent.

(1)—*Dewan.*—A *dewan* may be an agent during the absence of his master; but not a *dewan* who acts only under the orders of his resident master. **4 C. 603=3 C.L.R. 87.**

(2)—*Khazanchi.*—A *khazanchi* of the zemindar of a village is not an agent under s. 90, Crim. Pro. Code, 1872. *Per* Markby, J. **4 C. 603=3 C.L.R. 87.**

Agreement.

—Not to prosecute for giving false evidence —*See* FALSE EVIDENCE, 3 N.W.P. 166.

Akbar's Coin.

See COUNTERFEITING COIN, 11 B.H.C. 172.

Alibi.

(1)—*Failure to prove, whether evidence supporting prosecution.*—Failure to prove an *alibi*, or even proof that an *alibi* is false, can rarely be regarded as evidence supporting the case for the prosecution. **L.B.R. (1893—1900), 349.**

See CHARGE TO JURY, 4 M.L.T. 194.

Alteration.

(1)—*Entry, alteration of.*—With reference to entry No. 1 of the list of crimes in Circular Order No. 5, dated 6th July, 1865, ss. 325 and 326 may be substituted for ss. 323 to 326, as it was never intended to include ss. 323 and 324, Penal Code, in the list in question. **11 W.R.Cr. Cir. 3.**

(2)—*Alteration of columns 14 to 16 of statements No. 1, Part I and No. 2, Part I—Withdrawals, Discharges and Acquittals.*—Nos. 9 and 25 of the Rules for the preparation of Magistrates' Statements and Nos. 93 and 134 relative to the preparation of memo A. **1 W.R.Cr. Cir. 3.**

Alteration of Judgment.

See JUDGMENT, 2 A. 177.

Alteration of Sentence.

See SENTENCE.

(1)—*When Magistrate may alter sentence.*—A Magistrate is at liberty to alter his sentence at any time before the despatch of the Calendar to the appellate authority. **5 M.H.C. App. 19.**

Alternative Charges.

See CHARGE.

See CRIM. PRO. CODE (1898), s. 477, S.C. Oudh, 206.

See FALSE EVIDENCE, Rat. Un. Cr. C. 336 =Cr. Rg. 26 of 1887.

See PENAL CODE, ss. 182, 193, 5 A. 17.

See PENAL CODE, s. 193, 17 A. 436.

See PENAL CODE, ss. 201, 202, and 314, S. C. 138, Oudh.

Alternative finding.

(1)—*Alternative findings, when not to be made.*—When there is no reason to doubt which of two offences specified in an alternative charge the accused has committed, there should not be an alternative finding. **L.B.R. (1872—1892), 436.**

(2)—*Crim. Pro. Code (1861), s. 382—Alternative findings under same offence—Legality.*—The Code of Criminal Procedure only contemplates an alternative finding when the facts are ascertained and it would follow beyond a doubt that the facts proved constitute one of two offences under one section of the Indian Penal Code; or when

Alternative finding—concluded.

the evidence proves the commission of an offence falling within one of two sections of the Code and it is doubtful which of such sections is applicable. So, an alternative finding that the accused committed dacoity in A's house or B's house is illegal. where it cannot be determined which house was entered, since the not committing dacoity in one house would not be conclusive of the commission of the offence in the other. **Rat. Un. Cr. C. 20=Cr. Rg. 6—9—1869.**

See CHARGE, L.B.R. (1872-1892), 436.

See FALSE EVIDENCE, Rat. Un. Cr. C. 26.

Alternative sentence.

See SENTECE.

See IMPRISONMENT.

See PENAL CODE, s. 294, L.B.R. (1872—1892), 309.

Ameen.

(1)—*Misconduct of Ameen.*—The Court is bound to enquire into charges against the Civil Court Ameen (such as can be readily enquired into and their truth either disapproved or proved). **8 W.R. 172.**

See BEN. ACT VIII OF 1876, ss. 112 and 116, 22 C. 286.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 4 C. 378.

See PENAL CODE, s. 167, 1 Weir 74.

See PENAL CODE, s. 193, 17 A. 436.

Amending Act XXI of 1867.

See ACT XXIX OF 1867.

Amending Act II of 1890.

See BOM. ACT I OF 1901.

Amending the Code of Criminal Procedure Act.

See ACT XV of 1862.

Americans.

—*Penal Code, s. 56—Penal servitude.*—The punishment of penal servitude is only applicable to Europeans and Americans. **19 M. 483=1 Weir 298.**

Angling.

—in a tank, whether an offence—*See* PENAL CODE, s. 277, 1 Weir 231.

Animals.

(1)—*What are animals.*—The word "animal" ordinarily means an organised or living being having sensation and power of voluntary motion, an inferior or irrational being as distinguished from man, and crabs are "animals" within the definition of s. 2 of Act XI of 1890 (Prevention of Cruelty to Animals). **24 C. 381.**

See PENAL CODE, s. 273, 3 P.R. 1908 Cr.= 5 P.W.R. 1908 Cr.=7 Cr. L.J. 278=139 P.L.R. 1908.

See PENAL CODE, s. 289, 1 A.L.J. 605.

S. N. DAR, B. A. LL. B.,
Vakil High Court,
SRINAGAR (Kashmir)

Animals—concluded.

—Wounding—*See* PENAL CODE, ss. 426 and 429, 3 Bom. L.R. 503.

—"Bull" and "Cow" and "any other animal," meaning of—*See* PENAL CODE, s. 429, 22 C. 457.

Anonymous communication.

See COMPLAINT, 3 C.W.N. 65.

Appeal.

1.—GENERAL.

2.—CASES WHERE APPEAL LIES.

3.—CASES WHERE APPEAL DOES NOT LIE.

4.—APPEAL—ACTS.

5.—APPEAL FROM ACQUITTAL.

6.—APPEAL—PRACTICE AND PROCEDURE.

7.—APPEAL TO PRIVY COUNCIL.

See 1.—APPELLATE COURT.

2.—CRIM. PRO. CODE, 1898, ss. 404 TO 431.

3.—REFERENCE.

4.—REVISION.

——**1.—(General).**

(1)—*Crim. Pro. Code (1898), ss. 421, 423—Appeal from conviction—Duty of appellant.*—An appellant is not precisely in the same position before an appellate Court as he is before the Court trying him, but must satisfy the Court that there is sufficient ground for interfering with the order of conviction. If no sufficient ground is shown, it is the duty of the appellate Court not to interfere. **5 A. 386.**

(2)—*Crim. Pro. Code (1898), s. 421—Summary rejection of appeal, without opportunity given to pleader.*—On the presentation by a pleader of a criminal appeal, the Magistrate, who received the appeal, called upon him to argue it at once and, on the latter praying for an adjournment to enable him to acquaint himself with the evidence in the case and then argue, rejected, the appeal summarily. *Held*, that the order rejecting the appeal without affording an opportunity to the pleader of being heard in support of the appeal, was illegal. **7 Bom. L.R. 89=2 Cr. L.J. 58.**

(3)—*Disposal of appeal without hearing pleader—Practice.*—Where a Sessions Judge, not knowing the fact that the appellant was represented by a pleader, disposed of the appeal in chambers, the High Court directed the rehearing of the appeal. **Rat. Un. Cr. C. 914.**

(4)—*Crim. Pro. Code (1882), s. 421—Dismissal of appeal without hearing appellant.*—The dismissal of an appeal without giving the appellant an opportunity of being heard is a material irregularity. The Magistrate in such cases should re-hear the appeal and follow the procedure prescribed by s. 421, Crim. Pro. Code. **Rat. Un. Cr. C. 703=Cr. Rg. 34 of 1894.**

(5)—*Crim. Pro. Code (1898), s. 421 (proviso)—"Reasonable opportunity of being heard in support of the same," what amounts to.*—Where the pleader presenting a criminal appeal informed the Magistrate that he was not prepared to argue it, but that some other pleader would do so, and the Magistrate did not question the pleader's good faith, it cannot be said that the Magistrate, when he required the pleader to argue the appeal, at once gave him a reasonable opportunity of being heard in support of it and his order rejecting the appeal after calling upon that pleader to argue is illegal. **6 M.L.T 309.**

(6)—*Crim. Pro. Code (1882), s. 421—Dismissal of appeal without perusing record, for non-appearance of appellant.*—It is not competent to a Sessions Judge to reject an appeal under s. 421 without perusing the record, on the ground that there is no appearance for the appellant either by counsel or in person, because if the appellant is content to leave the question of admission or rejection to be determined by the Sessions Judge on the papers, the Sessions Judge is bound to peruse them, and the appellant is not bound to appear a second time, either by counsel or in person. **Rat. Un. Cr. C. 739=Cr. Rg. 7 of 1895.**

(7)—*Crim. Pro. Code (1882), ss. 367, 424—Failure of Court of appeal to deal fully with evidence.*—In a case where the appellant was placed in jeopardy by the failure of the Court of appeal to deal fully with the evidence by the light of the established rules applying to criminal cases in a proper judgment, in the form which ss. 367 and 424, Crim. Pro. Code, require, the High Court set aside the order confirming the conviction and sentence and directed the Sessions Judge to re-hear the appeal. **Rat. Un. Cr. C. 772=Cr. Rg. 36 of 1895.**

(8)—*Appellant, right of, to be heard by* mukhtear—*Crim. Pro. Code (1872), s. 278.*—The appellant in a criminal case has a right to be heard by a *mukhtear*. **6 B. 14.**

(9)—*Crim. Pro. Code (1898), ss. 421, 423—Right of applicant's pleader to be heard a second time after records are sent for.*—Where a District Magistrate heard the applicant's pleader in support of the appeal, and then sent for the records of the case, but disposed of the case without hearing the applicant's pleader a second time: *held*, that, as the case was never fixed for hearing under s. 423, the Magistrate was not under any obligation to give the pleader a second hearing. **2 Sind L.R. Cr. 39=10 Cr. L.J. 204.**

(10)—*Right of complainant or of person interested in prosecution to be heard by counsel.*—The appellate Court, in an appeal from conviction, is only bound to hear the appellant or his pleader, and the Public prosecutor if he appears. The complainant or a person interested in the prosecution, or a pleader or other person appointed on his behalf, is not entitled to be heard as of right, as there is no provision in the Code which confers this privilege. **29 P.R.-1886 Cr.**

Appeal—continued.

——**1.—(General)**—*continued.*

(11)—*Appeal—Crim. Pro. Code (1898), s. 123 (1)—Right of accused to be heard through counsel—Amount of security.*—When a reference has been made to the Sessions Judge under s. 123 (1), Crim Pro. Code, and disposed of, no appeal lies to the District Magistrate. (9 C. 878, *F*).—When such a reference is made to a Sessions Judge, he is bound to hear the accused's Counsel (16 B. 661, 23 C. 493, *F.*). *Held*, also, that the object of requiring security for good behaviour is to place habitual criminals under the *surveillance* of persons who may, more or less, be able to control them, and who become their guarantors. If possible, imprisonment should be avoided and the security demanded should be as low as possible, provided that the object of the law can be attained. **P.L.R. 1900, 59 Cr.**

(12)—*Crim. Pro. Code, Act X of 1882, ss. 412, 418, 424—Admission of appeal for limited purpose.*—Except when there are express words as in ss. 412, 418, the Crim Pro. Code does not provide for an appeal for the limited purpose of reviewing only a part of the sentence. The appellant has a right to be heard fully on the merits and the Judge is bound by s. 424 to record a complete judgment. An omission to do so is a material irregularity. **Rat. Un. Cr. C. 826 = Cr. Rg. 69 of 1895.**

(13)—*Summary rejection of appeal—Practice.*—Where important questions of fact and law are involved, the Sessions Judge should not summarily reject the appeal but it should be heard fully and decided. **Rat. Un. Cr. C. 916.**

(14)—*Crim. Pro. Code (1898), s. 421—Summary dismissal of the appeal of one of the accused—Admission of the appeal of the other accused, validity of.*—The law gives to the appellate Court the power of summarily dismissing an appeal upon going through the judgment, if the Court is satisfied that there is no sufficient reason shown for its interference. The fact that the Court admitted an appellant's appeal does not affect his order dismissing summarily a co-appellant's appeal. **5 C.W.N. 332.**

(15)—*Accused sentenced to four years' rigorous imprisonment—Co-accused sentenced to imprisonment for a term exceeding four years*—Forum *of appeal—Crim. Pro. Code (1898), s. 408 (b).*—Where an accused is sentenced, by a Magistrate specially empowered under s. 30, Crim. Pro. Code, to rigorous imprisonment for a term of four years and in the same proceeding another accused is also sentenced to imprisonment for a term exceeding four years, the appeal lies to the High Court and not to the Court of Session, under s. 408, proviso (*b*), Crim. Pro. Code, 1898. **L.B.R. (1898—1900), 516.**

(16)—*Crim. Pro. Code (1892), s. 412—Appeal—Rejection of appeal on ground of accused pleading guilty.*—The fact that an accused person has pleaded guilty before the Magistrate may be a ground for rejecting an appeal where the conviction has been by a Court of Session or a Presidency Magistrate, though even then the extent and the legality of the sentence would have to be considered. But where the conviction is by any other Magistrate, an appeal lies on fact as well as on law, and, when made, should be disposed of in a legal manner. **Rat. Un. Cr. C. 954 = Cr. Rg. 5 of 1898.**

(17)—*Appeal—Rejection—Duty of Appellate Court.*—An appellate Court, on receiving an appeal, is bound, although the appellant's agent does not appear, to peruse the petition of appeal and the judgment of the lower Court, in order to see whether there is any ground for interfering with the conviction and sentence. **21 P.R. 1895 Cr.**

(18)—*Crim. Pro. Code (1898), s. 480—Appeal—Duty of Sessions Judge.*—A Sessions Judge cannot decline to interfere on appeal merely because in his opinion "the matter is a mere trifle." He is bound to hear the appeal and come to a finding whether the conviction is legal or illegal. **Rat. Un. Cr. C. 978 = Cr. Rg. 35 of 1898.**

(19)—*Rejection of appeal—Stating of points for determination and finding thereupon, not necessary.*—Where an appeal is rejected under s. 278, Crim. Pro. Code, it is not necessary to state the points for determination or the finding thereupon, or the reasons for such finding, as s. 464, Crim. Pro. Code, 1882, does not apply to judgments in appeal. **31 P.R. 1881 Cr.**

(20)—*Summary dismissal of appeal—Writing judgment unnecessary.*—A Sessions Judge or Magistrate, dismissing an appeal summarily, need not write a judgment or give any reasons. **1 L.B.R. 270.**

(21)—*Crim. Pro. Code (1882), s. 421—Rejection of appeal—Judgment.*—In rejecting an appeal under s. 421, Crim. Pro. Code, the appellate Court is not bound to write a judgment. **20 B. 540.** [*F.*, 2 Weir 473 = 25 M. 534 ; *R.*, U.B.R. (1906), 2nd Qr., Crim. Pro. Code, p. 49 = 4 Cr. L.J 284].

(22)—*Appeal—Duty of Appellate Court—Crim. Pro. Code, s. 537.*—Where the law allows an appeal, the appellant is entitled to have an explicit opinion of the Court of appeal on the questions of fact involved in the case. An omission to do so cannot be cured by s. 537 of the Code. **22 C. 241.**

(23)—*Appeal—Power of Appellate Court to remand a case.*—On an appeal from a conviction under ss. 147 and 349, Penal Code, the Sessions Judge, without disposing of the appeal on the merits of the case, merely remarked that the Magistrate was wrong in having convicted the accused under the above sections without arriving at any finding as regards the common object of the unlawful assembly and remanded the case to the Magistrate with instructions to

Appeal—continued.

——**1.—(General)**—*continued.*

write out a proper judgment. *Held*, on revision, that the Sessions Judge had no authority under any section of the Crim. Pro. Code, to pass the order, which he did. If the Deputy Magistrate's decision was not as satisfactory as he thought it should have been, it was his duty as Sessions Judge to go into the whole facts fully and dispose of the case; he could not devolve his **duty** on the Deputy Magistrate who tried the case in the first instance. **32 C. 1069.**

(24)—*Presentation to Superintendent of jail sufficient—Limitation--Time for obtaining copies to be excluded.*—A petition of appeal presented to the Superintendent of the jail is equivalent, for purposes of limitation, to presentation in Court. In computing the period of limitation, the time required to procure a copy of the sentence or order appealed against should be deducted. **U.B.R. (1892—1896), Vol. I, 130.**

(25)—The presentation of a petition of appeal by a prisoner in jail to the officer in charge of the jail is, for the purposes of limitation, equivalent to presentation in Court, whatever delay there may be in forwarding it. **29 P.R. 1890 Cr.**

(26)—The time requisite for obtaining a copy of the sentence appealed against must be excluded under s. 12 of the Limitation Act in computing the prescribed period of limitation. The presentation of a petition of appeal to the officer in charge of the jail, in which a convict-appellant is confined, is, for the purposes of limitation, equivalent to a presentation in Court. (*Vide* Burma Circular, No. 13 Crl. of 1890). **U.B.R. (1892—1896), Vol. I, 129.**

(27)—*Prisoner in jail—Appeal—Delay in furnishing copy of judgment—Limitation—Magistrate's duty—Superintendent of jail may send an appeal without copy of judgment.*—When a prisoner in jail applies through the Superintendent for a copy of the judgment in order to prefer an appeal, it is the Magistrate's business to procure and forward the copy applied for or to arrange that this should be done. It is not proper for a Magistrate to return any such application for keeping it for nearly two months and a half, with an endorsement that a copy had been already supplied to the accused's daughters. Any delay, thereby caused, will be excluded in the computation of the period of limitation for the appeal. **U.B.R. (1892—1896), Vol. I, 5.**

(28)—*Transmission of, by prisoners against sentences or orders of Sessions Judge.*—The petitions of appeal against the sentences or orders of Sessions Judges, presented to officers in charge of jails, should be forwarded by such officers direct to the High Court, intimation of the fact being at once given, in each instance, and in the form prescribed, to the Judge whose sentence or order is appealed against. **8 W.R. Cr. Cir. 5.**

(29)—*Transmission of—by prisoners.*—The petitions of appeals against the sentences or orders of Sessions Judges presented to officers

Appeal—continued.

——**1.—(General)**—*continued.*

in charge of jails should be forwarded by such officers direct to the Registrar of the High Court, intimation of the fact being at once given, in each instance and in the form prescribed, to the Judge whose sentence or order is appealed against. Petitions of appeals must be presented within the period allowed for appeal, as provided by s. 413, Crim. Pro. Code, 1861, and must be accompanied by a copy of the sentence or order appealed against as provided by s. 416. Petitions not presented in time or not accompanied as above are to be returned to the petitioner with an endorsement by the officer in charge of the jail showing the date of presentation. **8 W.R. Cr. Cir. 7.**

(30)—*of prisoners— Order of Appellate Courts thereon.*—Communications from the officer in charge of the jail to the Sessions Judge, relative to the appeals of prisoners to him, should be made to the Judge direct, and not through the Magistrate of the District, who has no concern with the decision of the Court of Session made on appeal, unless when the appeal happens to be from his own Court. The appellate Court should certify its decision to the Court or Magistrate from whose decision the appeal has been preferred, and the Court or Magistrate should inform the appellant in *writing*, through the officer in charge of the jail, of the result of his appeal. **12 W.R. Cr. Cir. 2.**

(31)—*Forwarding of petitions of, from prisoners in unappealable cases.*—Officers in charge of jails should not forward petitions of appeal from prisoners to the High Court in cases in which sentences or orders have already been passed by an appellate Court on appeal, such sentences or orders being final under s. 428, Crim. Pro. Code, 1861. In such cases parties should apply to the High Court by motion made by a pleader in open Court. **12 W.R. Cr. Cir. 5.**

(32)—*Delay in furnishing copies—Duty of Magistrate to prevent—Special arrangements.*—In order to prevent delays in furnishing a copy of a judgment due to remoteness of the Court from the jail in which the appellant may be imprisoned, the Magistrates of Courts so situated should ascertain from convicted prisoners whether they desire to appeal or not, and, if they do, should transmit a copy of the judgment along with them to the jail. **U.B.R. (1892—1896). Vol. I, 129.**

(33)—*Limitation—Deduction of time occupied in obtaining copies.*—Where an accused, convicted on the 6th June, applied for a copy of the judgment through the Superintendent of the Jail on the 27th June and the copy was sent to the jail on the 4th July and was delivered to the accused's *Mukhtear* on the 11th July, the accused giving his *Mukhtarnama* on the 7th, *held*, that the accused was fairly entitled to deduct the period from the 27th June, the date of his application, to 11th July, the date of the delivery of the copy to his *Mukhtear*, in computing the period of limitation. **5 P.R. 1888 Cr.**

Appeal—continued.

——**1.—(General)**—*continued.*

(34)—*Limitation—Sufficient cause for presenting an appeal out of time.*—The fact that one of several persons convicted together was acquitted on appeal was held to be a sufficient cause for admitting the appeal of the others presented out of time. **7 P.R. 1871 Cr.**

(35)—*Crim. Pro. Code (1882), ss. 419, 420, 421—Appellant in jail—Notice—Right to be heard.*—S. 419 is a general section embracing the case of all appellants whether in or out of jail, and there is nothing in s. 420 to indicate that s. 419 was intended to deprive the appellants who are in jail of the opportunity of being heard on their appeal Therefore, even when an appellant is in jail, reasonable notice should be given either to him or to his pleader, so that he may have a reasonable opportunity of being heard in support of the appeal. In cases where an appellant is in jail, if the jail is at the same station as the appellate Court, there is nothing to prevent the prisoner applying to be heard in person, and, in all cases, a person so situated may require that he shall be heard by a pleader. **2 Weir 472.**

(36)—*Crim. Pro. Code, s. 419—Appeal by accused in jail and by those not in jail—Stamp.*—Where certain persons, who were undergoing imprisonment, presented an appeal with an unstamped copy of the judgment of the lower Court, *held*, that those appellants, who were not in custody, were not entitled to take advantage of that unstamped copy. They should be required to put in a stamp of 8 annas (*vide* Notification in G.O. of the 6th June, 1873). **2 Weir 467.**

(37)—*Crim. Pro. Code (1882), s. 419—Appeals sent by post.*—The trasmission of an appeal by post is not a sufficient compliance with s. 419. The practice of accepting appeals transmitted by post, otherwise than under s. 420, is irregular. But there is nothing in the Code which renders it illegal for a Magistrate to take cognisance of compiaints of offences reported by post. **2 Weir 467.** [*F.*, 2 Weir 468=15 M. 137].

(38)—An appeal transmitted by post by a convict in jail cannot be considered as an appeal properly presented under the Crim. Pro. Code, But, where the Court has proceeded to deal with it as duly presented, it cannot dismiss it without hearing the complainant. **Rat. Un. Cr. C. 464.**

(39)—*Crim. Pro. Code (1861), s. 412—Magistrate—Proclamation.*—There is no reason why the Government should in every case specially empower a Magistrate to hear appeals under s. 412 of the Code The Government can by a proclamation declare that an Assistant Collector shall be the officer charged with the executive administration of the District in criminal matters. **3 B.H.C. Cr. 18.**

(40)—*Trial by jury—Illegal evidence admitted—Procedure—Crim. Pro. Code, Act XXV of 1861, s. 426.*—In a trial by jury, where the appellate Court finds that evidence not properly admissible has been admitted, the Court should consider the appeal on the same principles as apply to cases of misdirection to the jury. If it finds that the accused has been prejudiced by the error committed in admitting improper evidence, and that the evidence on record is of such a character that its value can be appreciated only by the Court which heard the evidence, the proper course is to direct a retrial by a different jury. If there is clear evidence on record to sustain a verdict, the case is to be treated as one tried with the aid of assesors and the conviction may be confirmed (*Warden, J.* was for confirming the conviction in this case, but a retrial was ordered). **6 B.H.C. Cr. 47.** [*R.*, 9 B.H.C. 358, 10 B.H.C. 497, Rat. Un. Cr. C. 245, 19 B. 749, 27 B. 626].

(41)—*Crim. Pro. Code (1898), s. 419—Appeal by several accused persons—Separate copies of judgment not tendered—Rejection of appeal, validity of.*—Two accused persons made together with another co-accused a joint appeal to the District Magistrate with which a copy of the judgment appealed against was filed. The two accused subsequently tendered the stamps requisite for the separate copies of the judgment appealed against, conditionally necessary under Criminal Circular No. 74; but the District Magistrate refused to dispense with the separate copies of the judgment appealed against. *Held*, that the District Magistrate would have exercised a sounder discretion if he had, in virtue of the power given by s. 419, and cited in Criminal Circular No. 74, dispensed with separate copies of the judgment appealed against. **5 Bom. L. R. 704.**

(42)—*Crim. Pro. Code (1882), s. 422—Absence of appellant—Service of notice.*—Where the appellant in a criminal appeal cannot be found at the address given by him, the notice of hearing of the appeal should be left at such address. **Rat. Un. Cr. C. 869=Cr. Rg. 40 of 1896.**

(43)—*Crim. Pro. Code (1872), s. 278—Limitation Act, IX of 1871, s. 5, art. 152—Appeal presented out of time—Hearing.*—An appeal presented out of time, without sufficient reason for the delay, may be rejected as time-barred without hearing the appellant. S. 278 of the Crim. Pro. Code does not apply to such appeals. **Rat. Un. Cr. C. 90=Cr. Rg. 28—1—1875.**

(44)—*Crim. Pro. Code (1882), ss. 514, 515—Appeal from second class Magistrate.*—A first class Magistrate, not being a District Magistrate, has no jurisdiction under s. 515, Crim. Pro. Code, to hear an appeal against an order of a second class Magistrate under s. 514 of the Code. **Rat. Un. Cr. C. 384=Cr. Rg. 35 of 1888.**

(45)—*Crim. Pro. Code (1872), s. 278—Criminal appeals—Duty of Court to fix a date for admission of appeals.*—A general notice posted in a Sessions Court that appeals will be heard for admission only on the first Court day next after presentation is not in compliance

Appeal—continued.

——**1.- (General)**—*continued.*

with the provisions of s. 278, Crim. Pro. Code. The Sessions Judge should fix a time as directed by that section in each case so as to enable the appellant or his agent to appear and to be heard. **5 M. 11=2 Weir 472.**

(46)—Where the appellate Court failed to fix a reasonable time for the appearance of the appellant or his counsel as required by s. 278, Act X of 1872, it was held that the error was one that would invalidate the proceedings. **24 W.R. Cr. 60.**

(47)—Under s. 279 of the Code of 1872, notice of the date fixed for the hearing of an appeal should be given to the appellant himself, notwithstanding that the pleader engaged by the appellant has been verbally informed of the date. **7 P.R. 1883 Cr.**

(48)—*Change of place of hearing of appeal—Notice to accused or his pleader.*—An appeal posted for hearing at one place cannot be heard and dismissed in another, without giving notice either to the accused or his pleader of such change of place. **7 P.R. 1891 Cr.**

(49)—*Dismissal of appeal for appellant's default—Criminal appeal not to be dismissed for default of appellant.*—When notice is issued to an appellant, in a criminal case, to appear at head-quarters on a date fixed and when, on that date, the Magistrate moves out into camp, it is not competent for him to dismiss the case for default, even though there may be a general order to him to the effect that parties ought to go to him in camp. **11 P.R. 1905 Cr.=117 P.L.R. 1905 Cr.=2 Cr. L.J. 66.** (21 P. R. 1895 Cr., *F.*).

(50)—*Transmission of appeal records.*—In cases of appeal to the High Court from the sentence or order of a Sessions Judge, the record should be forwarded to the High Court by the Sessions Judge immediately on receipt of the notice of appeal. If public inconvenience would arise from the transmission of the original record, the Judge should forward a certified copy of his reasons for making or passing such sentence or order, stating at the same time why the original record has not been immediately sent. **9 W.R. Cr. Cir. 13.**

(51)—*Transmission of appeal.*—Cases under s. 434, Crim. Pro. Code, 1861, referred by Magistrates should be sent up through the Sessions Judge and should not appear in his statements 1 and 2. **11 W.R. Cr. Cir. 5.**

(52)—*Opinion of senior Judge to prevail.*—When two Judges, sitting as a Division Court, hear a criminal appeal, and they differ in opinion, the opinion of the senior Judge must prevail. **2 B.L.R. F.B. 25=10 W.R. Cr. 45.**

(53)—*Evidence before Magistrate—Appeal.*—Evidence taken before a Magistrate, but used at the trial, cannot be referred to on appeal. **8 B.L.R. Ap. 63=17 W.R. 5 Cr.**

Appeal—continued.

——**1.--(General)**—*continued.*

(54)—*Crim. Pro. Code, s. 419—Appeal petition, presentation of, by Vakil's gumasta.*—Where a vakil had signed an appeal petition, having been duly authorised by a *vakalutnamah*, *held*, that the presentation of the petition by the vakil's *gumasta* was sufficient. **2 Weir 469.** [*F.*, 2 Weir 470 (Cr. Rev. Case No. 50 of 1895), 2 Weir 470 (Cr. Rev. Case No. 652 of 1895), 2 Weir 470=20 M. 87].

(55)—*Crim. Pro. Code, s. 419—Presentation of appeal memorandum by vakil for one of the accused.*—Where an appeal memorandum was prepared on behalf of three accused and signed under a *vakalut* by their pleader, *held*, that its presentation by another pleader, who held a vakalut only from one of the accused, was a proper presentation. **2 Weir 470.**

(56)—*Appeal under s. 421, Crim. Pro. Code, right of counsel to refer to certified copies of evidence at the hearing of—Evidence, certified copies of.*—At the hearing of an appeal under s. 421 of the Code, counsel for the appellants proposed to refer to certified copies of the evidence in order to show that the conviction was erroneous. The Judge declined to allow this to be done and dismissed the appeal. The appellants applied for revision of the order of the Sessions Judge. *Held* that, at the hearing of an appeal under s. 421, counsel for the appellant was entitled to refer to certified copies of the evidence. **11 O.C. 360=9 Cr. L.J. 55.**

(57)—*Appeal heard by a Judge in a case tried by him as a Magistrate—Validity.*—The Crim. Pro. Code of 1872 did not prevent a Judge, sitting as an appellate Court, from hearing an appeal from an order passed by him when presiding over an inferior Court. **22 P.R. 1873 Cr.**

(58)—*Crim. Pro. Code (1898), s. 407—Trial begun by Magistrate holding second class powers—Magistrate getting first class powers before conclusion of trial—Appeal.*—Where a trial was held by a Magistrate holding second class powers, the fact that he was appointed a Magistrate of the first class, before the conclusion of the trial, was held to make no difference, with reference to the question of appeal, which, therefore, was held to lie to the District Magistrate. **4 L.B.R. 239=8 Cr. L.J. 48.**

(59)—*Magistrate of Full Power—Jurisdiction to hear appeals—Jurisdiction of District Magistrate not excluded.*—The power conferred upon a Magistrate of Full Power at Broach to hear appeals does not exclude the jurisdiction which the Magistrate of the District has by law. The proceedings in any case in which the appeal is made to the Magistrate of the District from the decision of a Magistrate subordinate to him must be forwarded to him. **5 B.H.C. Cr. 8.**

(60)—*Disqualification of Judge to hear appeal in cases where prosecution has been ordered by him.*—A Sessions Judge is not disqualified from hearing an appeal from the conviction of an

Appeal—continued.

——**1.—(General)**—*continued.*

accused, merely because he has himself directed the prosecution of the accused for the offence, though it is not desirable that the Judge should, under such circumstances, hear the appeal. **39 P.R. 1884 Cr.**

(61)—*Hearing of an appeal by a Judge personally interested—Crim. Pro. Code (1898), s. 556.*—A Judge, who has directed a prosecution, should not take upon himself to determine the appeal of the accused when convicted, even though the appeal is only against the severity of the sentence. His duty is to report the case to the High Court for orders. **2 L.B.R. 302.**

(62)—*Power of High Court to interfere.*—Where the High Court on appeal found the evidence against the prisoner insufficient to support the conviction, and would, if the case had been before them on the facts, have reversed the conviction if the case had been tried without a jury, they ordered the verdict to be set aside, and the prisoner to be discharged, though, where a verdict is set aside on appeal, they can order a new trial. **6 B.L.R. Ap. 108 = 15 W.R. Cr. 37 Cr.**

(63)—A High Court Judge sitting alone on the Appellate side has power to hear and dispose of appeals in criminal cases. **9 B.L.R. 6=17 W.R. Cr. 47.**

(64)—When a Civil Court directs that criminal proceedings be taken against a party to a suit before it for perjury or forgery, it is open to the High Court, on an appeal being preferred against the decision of that Court, to direct that such proceedings be stayed until the appeal shall have been heard and determined. **B.L.R. Sup. Vol. 426.**

(65)—*Crim. Pro. Code (1861), ss. 404 and 405—Error as to probative force and effect of evidence—High Court's power of interference.*—When there is evidence to be considered and weighed by the Court, which is called upon to determine whether a person charged with an offence is guilty or not guilty, an error as to the probative force and effect of the evidence is one of fact and not open to correction except upon appeal in the case of a conviction. **5 M. H.C. App. 10.** [*Appl.*, 2 M. 38, 31 M. 33=3 M.L.T. 230=18 M.L.J. 57=7 Cr. L.J. 267].

(66)—*Acquittal by Sessions Judge where he might have convicted under a different section of Penal Code—Crim. Pro. Code (1872), s. 272.*—The High Court refused to interfere with a case where the Sessions Judge might, upon appeal, have convicted the defendants under a section of the Penal Code different from that under which they were convicted by the Magistrate, but where instead of doing so he acquitted them. **7 M.H.C. 339=2 Weir 476.** [*F.*, 7 N.W.P. 196; *R.*, 3 C.W.N. 653, 17 C.P.L.R. 75].

(67)—*Sentence, when can be enhanced by Appellate Court.*—An appellate Court is not empowered to enhance, under s. 280, Crim. Pro. Code, 1872, any punishment awarded to the accused whose appeal is rejected under s. 278, Crim. Pro. Code. Such enhancement can only be awarded when the appellate Court, having decided to hear the appeal, issues notice to the appellant under s. 279, Crim. Pro. Code, 1872. **14 P.R. 1877 Cr.**

(68)—When the appellate Court rejects an appeal under Act X of 1872, s. 278, it cannot, under Act XI of 1874, s. 26, enhance the sentence. **24 W.R. Cr. 29.**

(69)—*Crim. Pro. Code (1882), s. 423 (b), sub-s. 3—Enhancement of sentence—Power of Appellate Court—Penal Code, ss. 147 and 379.*—A person was convicted by a Deputy Magistrate of rioting and theft and was sentenced for the first offence to four months' and for the latter offence to two months' rigorous imprisonment. The District Magistrate, on appeal, acquitted the accused of rioting, but upheld the conviction for theft and the sentence of six months' rigorous imprisonment. *Held*, that the effect of the order was to enhance the sentence under s. 379, Penal Code (theft), which he had no authority to do under s. 423, cl. (*b*), sub-s. 3 of the Code of Criminal Procedure. **24 C. 316.** [*F.*, 1 M.L.T. 403; *R.*, 3 N.L.R. 67].

(70)—*Enhancement of sentence—Power to add imprisonment to fine.*—The power of an appellate Court to "enhance any punishment awarded" under s. 280 of the Crim. Pro. Code of 1872, enables the appellate Court to add a sentence of imprisonment to one of fine. **8 P.R. 1875 Cr.**

(71)—*Enhancement of sentence—Appeal.*—No appeal was held to lie, under the Code of 1872, from an order of the appellate Court enhancing the sentence of the Court of the first instance. **6 P.R. 1873 Cr.**

(72)—*Conviction by Honorary Magistrate—Enhancement of sentence by Chief Court on the case being reported by the District Magistrate—Appeal.*—Where a sentence of fine by the Board of Honorary Magistrates at Amritsar was enhanced by six months' imprisonment by the Chief Court, to which, in the absence of any appeal by the accused, the case was reported by the Magistrate of the District; *held*, that the appeal from the enhanced conviction lay, under s. 266 of the Code, to the Magistrate of the District. **24 P.R. 1878 Cr.**

(73)—*Crim. Pro. Code (1898), s. 423—Alteration of finding on appeal—Notice to appellant.*—The Magistrate charged the accused with offences under s. 406, I.P.C. He found all of them not guilty of an offence under that section, but without framing any charge against them of having committed any other offences, he convicted some of them of offences under s. 417. On appeal, the Sessions Judge held that the Magistrate was irregular in convicting the accused of offences under s. 417, but he found that the evidence recorded disclosed that the appellants had committed offences under s. 406,

Appeal—continued.

——**1.—(General)**—*continued.*

and he accordingly altered the findings, without giving, however, any opportunity to the accused of showing cause against being convicted by him of offences, of which they had been acquitted by the Magistrate. *Held*, that the Sessions Judge's order must be set aside and the appeal re-heard. **3 L.B.R. 283=5 Cr. L.J. 420.**

See ABATEMENT OF APPEAL, 2 B. 564, 19 B. 714, 16 P.R. 1878 Cr.

—Against acquittal—*See* ACQUITTAL, L.B.R. (1893—1900), 42.

—Acquittal on appeal to Sessions Court reversed—Proper tribunal for retrying appeal—*See* ACQUITTAL, 9 A. 134, F.B.

See ACT V OF 1861, 5 W.R. Cr. Cir. 1, 5 W. R. Cr. 22.

See ACT XIV OF 1868, s. 11, 17 W.R. Cr. 11.

See ACT IX OF 1869, ss. 24 and 25, 2 N.W. P. 113, 14 W.R. Cr. 71.

See ACT I OF 1871, s. 22, 3 N.W.P. 200, 15 C. 712, 11 M. 359=1 Weir 712, 19 M. 238 =2 Weir 461, 4 L.B.R. 10=6 Cr. L.J. 121.

See ACT I OF 1871, s. 23, 22 P.R. 1886 Cr.

See ACT IX OF 1872, 3 C. 379.

—Appeal to High Court on conviction by Agent to Governor of Bombay in Khandesh—*See* ACT XIV OF 1874, s. 70, 15 B. 505.

See ACT III OF 1877, s. 82, 12 C.W.N. 47.

See ACT IV OF 1877, s. 41, 2 C. 466.

See ACT IV OF 1877, s. 167, 2 M. 30=1 Weir 325, 5 B. 85.

—Exclusion of time in obtaining copy of judgment--*See* ACT XV OF 1877, s. 12, 10 C. 642.

—Appeal by persons in jail—Time taken in obtaining copies of judgment—*See* ACT XV OF 1877, s. 12, Sch. II, Art. 154, 9 M. 258=1 Weir 789.

—Limitation for—from Resident's Court, Bangalore—*See* ACT XV OF 1877, Art. 155, 15 M. 414.

See ACT I OF 1878, s. 11, 1 Weir 835.

See ACT III OF 1880, 1 P.R. 1897 Cr., 40 P.R. 1884 Cr.

—Conviction for escape from lawful custody —Appeal—*See* ACT XIV OF 1882, ss. 588 (29) and 651, 5 A. 318.

See ACT XIII OF 1889, ss. 94, 104, 23 P.R. 1905 Cr.=168 P.L.R. 1905=3 Cr. L.J. 301.

—Jurisdiction to interfere with orders under s. 16, Reformatory Schools Act, 1897—*See* ACT VIII OF 1897, s. 16, 21 A. 391, F.B., 18 P.R. 1907 Cr.=43 P.W.R. 1907=55 P.L.R. 1908.

Appeal—continued.

——**1.—(General)**—*continued.*

See BEN. ACT XXXVII OF 1855, s. 4, cl. 1, 12 C. 536, 17 W.R. Cr. 11.

See BOM. ACT XI OF 1846, 15 B. 505.

See BOM. ACT XXXV OF 1850, s. 16, 6 B. H.C. Cr. 45.

See BOM. ACT IX OF 1863, s. 2, 3 B.H.C. Cr. 12.

See BOM. ACT II OF 1864, 10 B. 258.

See BOM. ACT VI OF 1873, ss. 51, 74, Rat. Un. Cr. C. 363.

See BOM. ACT III OF 1901, s. 86, 9 Bom. L.R. 1347.

See BOM. ACT II OF 1906, s. 23, 9 Bom. L.R. 896=6 Cr. L.J. 225.

See BUR. ACT XVII OF 1875, s. 35, 4 C. 667.

See BUR. ACT I OF 1899, s. 17, U.B.R. (1897—1901), Vol. 1, 227.

See MAD. ACT II OF 1907, s. 23 (3), 7 M.L. T. 183.

See PUNJ. ACT IV OF 1872, s. 45, 9 P.R. 1907 Cr.=36 P.W.R. 1907=6 Cr. L.J. 379 =42 P.L.R. 1908.

See U.P. ACT I OF 1900, ss. 87 and 132, 26 A. 386.

—Case triable with assessors tried by jury—Appeal on facts—*See* ASSESSORS, 3 C. 765.

See BENCH OF MAGISTRATES, 9 C. 96=11 C.L.R. 423.

See COMPENSATION, 29 M. 187=3 Cr. L.J. 452, 5 M.L.T. 262=17 M.L.J. 130=1 Ind. Cas. 79=19 M.L.J. 130.

—Confession—Plea of torture urged in appeal —Record—Procedure—*See* CONFESSION, 8 B. H.C.Cr. 126.

See CRIMINAL PROCEEDINGS, 16 B. 729; 4 C. 18=3 C.L.R. 44.

See CRIM. PRO. CODE (1898), ss. 7 (3), 408, 435, 16 M.L.J. 444=4 Cr. L.J. 443=30 M. 136=1 M.L.T. 402.

See CRIM. PRO. CODE (1898), ss 30, 34, 408, 410, 423, 2 A. 63.

See CRIM. PRO. CODE (1898), ss. 30, 349, 408, 4 L.B.R. 53=6 Cr. L.J. 289.

See CRIM. PRO. CODE (1898), s. 35, U.B.R. (1897—1901), Vol. I, 13.

—Against order under s. 106, Crim. Pro. Code—*See* CRIM. PRO. CODE (1898), ss. 106 and 423, 30 C. 101=6 C.W.N. 422.

—From orders to keep the peace—*See* CRIM. PRO. CODE (1898), ss. 107, 406 and 438, 32 C. 948=9 C.W.N. 860=2 Cr. L.J. 550.

—From orders requiring security for good behaviour—*See* CRIM. PRO. CODE (1898), ss. 118, 123, 406, 439, 2 O.C. 307.

Appeal—continued.

——**1.—(General)**—*continued.*

See CRIM. PRO. CODE (1898), s. 123, 9 C. 878.

See CRIM. PRO. CODE (1898), ss. 190 (1) (*c*) and 191, 12 C.W.N. 438=7 Cr. L.J. 224.

See CRIM PRO. CODE (1898), ss. 195, 404, 439, 15 A. 61.

See CRIM. PRO. CODE (1898), ss. 198, 195, 6 N.W.P. 124.

See CRIM. PRO. CODE (1898), ss. 227 and 537, 20 P.W.R. 1909 Cr.

See CRIM. PRO. CODE (1898), ss. 238, 418, 536, 26 M. 243=2 Weir 463.

See CRIM. PRO. CODE (1898), ss. 247, 404, 2 Weir 308.

See CRIM. PRO. CODE (1898), ss. 253, 437, 2 Ind. Cas. 825.

See CRIM. PRO. CODE (1898), ss. 264, 407, 9 M. 36=2 Weir 460.

See CRIM. PRO. CODE (1898), ss. 367, 369, 421, 422, 423, 5 N.L.R. 76=9 Cr. L.J. 553=2 Ind. Cas. 247.

See CRIM. PRO. CODE (1898), ss. 404, 406, 2 Weir 460.

See CRIM. PRO. CODE (1898), ss. 404, 408 (*b*), 423 (*b*), 439, 518, 519, and 520, 17 C.P. L.R. 107.

See CRIM. PRO. CODE (1898), ss. 404, 522, 25 C. 630=2 C.W.N. 225.

—Acquittal in appeal by Court without jurisdiction—Re-arrest—*See* CRIM. PRO. CODE (1898), s. 407, Rat. Un. Cr. C. 17.

See CRIM. PRO. CODE (1898), s. 407, 18 M. L.J. 89=31 M. 277=7 Cr. L.J. 329.

See CRIM. PRO. CODE (1898), s. 408, cl. (*b*), proviso, 1 L.B.R. 57.

See CRIM. PRO. CODE (1898), ss. 408 and 413, 4 L.B.R. 354=9 Cr. L.J. 356.

See CRIM. PRO. CODE (1898), ss. 408, 562, U.B.R. 1904, 1st Qr., Crim. Pro. 7.

See CRIM. PRO. CODE (1898), ss. 410, 486, 4 M.H.C. 146.

See CRIM. PRO. CODE (1898), s. 412, 3 C. L.R. 511.

—Where prisoner convicted on her own plea —*See* CRIM. PRO. CODE (1898), ss. 412, 413, Colm. Dig. Cr. 31 of 1876.

See CRIM. PRO. CODE (1898), s. 413, 1 N.W.P. 302.

See CRIM. PRO. CODE (1898), s. 417, 16 B. 414.

See CRIM. PRO. CODE (1898), s. 417, 2 L.B.R. 303.

See CRIM. PRO. CODE (1898), s. 418, 17 C.P.L.R. 75.

Appeal—continued.

——**1.—(General)**—*continued.*

—Trial by jury instead of with the aid of assessors—*See* CRIM. PRO. CODE (1898), ss. 418, 439, 536, 25 B. 680=3 Bom. L.R. 279, F.B.

—Presentation of petition of, by appellant in jail to officer in charge of jail—*See* CRIM. PRO. CODE (1898), ss. 419 and 420, 9 M. 258=1 Weir 789.

—by prisoner in jail—*See* CRIM. PRO. CODE (1898), ss. 420, 421, 422, 423, 13 A. 171.

See CRIM. PRO. CODE (1898), s. 421, 32 C. 178, 9 C.W.N. 623=2 Cr. L.J. 344. 2 Weir 475.

See CRIM. PRO. CODE (1898), ss. 421, 422. Rat. Un. Cr. C. 384.

See CRIM. PRO. CODE (1898), ss. 421, 423, excep. 1 (*d*), Rat. Un. Cr. C. 304=Cr. Rg. 53 of 1886.

—Difference between its rejection and dismissal—Grounds of rejection—*See* CRIM. PRO. CODE (1898), ss. 421, 423 and 424, 6 C.P.L.R. 24 Cr.

—Disposal of appeal before the date fixed for hearing—*See* CRIM. PRO. CODE (1898), s. 422, 2 Weir 475.

See CRIM. PRO. CODE (1898), ss. 422 and 423, excep. 1 (*d*), 2 Weir 475.

See CRIM. PRO. CODE (1898), s. 423, 13 B. 506.

See CRIM. PRO. CODE (1898), s. 423, 2 Weir 486, 2 Weir 487.

—Whether superior Court could alter finding of Lower Court, on appeal or revision—*See* CRIM. PRO. CODE (1898), ss. 423, 439, 3 L.B.R. 232.

—Powers of High Court to act under s. 562 on—*See* CRIM. PRO. CODE (1898), ss. 423 (*d*) and 562, 24 A. 306=A.W.N. 1902, 69.

See CRIM. PRO. CODE (1898), s. 428, 27 C. 372=4 C.W.N. 497.

See CRIM. PRO. CODE (1898), ss. 435, 107 (1), 2 M. 169.

—from acquittal not preferred by Government —Revision—*See* CRIM. PRO. CODE (1898), ss. 435, 438, 439, 24 A. 346.

See CRIM. PRO. CODE (1898), ss. 435, 439, 7 M.L.T. 182.

—From acquittal—*See* CRIM. PRO. CODE (1898), s. 438, 25 A. 128=A.W.N. 1902, 200.

See CRIM. PRO. CODE (1898), s. 438, 121 P.L.R. 1903.

See CRIM. PRO. CODE (1898), ss. 452, 403, 404, 14 B. 160.

—Hearing an appeal presented within jurisdiction of a Sessions Court at a place outside the jurisdiction—*See* CRIM. PRO. CODE (1898), s. 531, 17 A. 36.

Appeal—continued.

——**1.—(General)**—*continued.*

See CRIM. PRO. CODE (1898), s. 550, 14 P.W.R. 1909 Cr.

See CRIM. PRO. CODE (1898), s. 556, 36 C. 869.

See CRIM. PRO. CODE (1898), s. 560. 8 C.P.L.R. 13 Cr.

See EVIDENCE, 21 W.R. Cr. 13.

See HIGH COURT, JURISDICTION OF, 1 L.B.R. 68.

See JUDGMENT, 13 C. 110, 17 A. 241, F.B.

See JURISDICTION OF CRIMINAL COURTS, 32 C. 1069=3 Cr. L.J. 119.

See LETTERS PATENT (BOM.), 1865, cl. 15, 14 B. 555.

See LETTERS PATENT (BOM.), 1865, s. 29, Rat. Un. Cr. C. 110.

See LETTERS PATENT (MAD.), 1865, s. 15, 30 M. 311=2 M.L.T. 84=17 M.L.J. 123 =5 Cr. L.J. 288.

See LIMITATION ACT, s. 5, Art. 157, 9 Bom. L.R. 893=6 Cr. L.J. 221.

See MAGISTRATE, JURISDICTION OF, 29 C. 724=6 C.W.N. 713.

See MAGISTRATE, JURISDICTION OF, 6 C. 476.

See PLEA OF GUILTY, L.B.R. (1893—1900), 328.

See PRACTICE AND PROCEDURE, 13 C.W.N. 684=36 C. 385=9 Cr. L.J. 401=1 Ind. Cas. 868, 15 B. 488.

—Rejection of appeal by Sessions Judge—Reference by District Magistrate to High Court—Proper procedure—*See* REFERENCE, 18 C. 186.

See RESTORATION OF PROPERTY, 10 B. 197, Rat. Un. Cr. C. 957.

—Summary rejection of criminal appeal—*See* REVISION, 8 A. 514, 4 A.L.J. 805=6 Cr.L.J. 454=A.W.N. 1908, 28=3 M.L.T. 115=30 A. 109, 4 B. 101, Rat. Un. Cr. C. 977, 9 C. 513= 12 C.L.R. 500, 1 P.R. 1909 Cr=6 P.W.R. 1909 Cr.=1 Ind. Cas. 506.

See SANCTION TO PROSECUTE, A.W.N. 1908, 290=31 A. 48=6 A.L.J. 1=5 M.L.T. 55 =9 Cr.L.J. 63=1 Ind. Cas. 5, 19 A. 121, 10 Bom. L.R. 28=32 B. 184=3 M.L.T. 116=7 Cr. L.J. 35, 10 Bom. L.R. 95=32 B. 203=3 M.L.T. 170=7 Cr.L.J. 120, Rat. Un. Cr. C. 805, 32 C. 379=9 C.W.N. 321, 12 C.W.N. 248 =9 Cr. L.J. 189, 13 M. 144, 12 M.L.J. 408, 2 M.L.T. 84=17 M.L.J. 123=5 Cr. L.J. 288, 2 Weir 201, 3 N.L.R. 50=5 Cr.L.J. 432, 30 P.R. 1901 Cr., 34 P.R. 1886 Cr., 24 P.W.R. 1908 Cr., 26 A. 244, F.B.=A.W N. 1904, 10, 30 M. 311=2 M.L.T. 84=17 M.L.J. 123=5 Cr. L. J. 288, 30 M. 382=17 M.L.J. 266=2 M.L.T. 239=6 Cr. L.J. 102, F.B.

Appeal—continued.

——**1.—(General)**—*concluded.*

See SECURITY FOR GOOD BEHAVIOUR, L.B.R. (1893—1900), 381, 15 P.R. 1905 Cr., 1 Sind L.R. Cr. 98.

See SECURITY TO KEEP THE PEACE, 16 C. 779. 1 M.L.T. 343=4 Cr. L.J. 493=30 M. 182, 21 P.R. 1908 Cr.

See SENTENCE, 30 M. 103=1 M L.T. 375 =5 Cr. L.J. 36=16 M.L.J. 560, F.B., Rat. Un. Cr. C. 545=Cr. Rg. 19 of 1891, 8 M.H.C. App. 8, 1 B. 223, L.B.R. (1893—1900), 310.

See SESSIONS JUDGE, JURISDICTION OF, 22 B. 759, 1 M.H.C. 4.

—Record in appeal—*See* SUMMARY TRIAL, 4 L.B.R. 338=9 Cr. L.J. 23, 6 M. 396=2 Weir 328.

See TRANSFER OF CRIMINAL CASES, Rat. Un. Cr. C. 973.

See TRIAL BY JURY. 3 S.L.R. 102.

——**2.—(Cases where appeal lies).**

(1)—*Order under s. 562, Crim. Pro. Code.*—An appeal lies from an order under s. 562, Crim. Pro. Code. **24 P.R. 1904 Cr.**

(2)—*Crim. Pro. Code (1898), s. 517—Appeal to Sessions Judge.*—An appeal lies to the Sessions Judge from an order under s. 517 of the Code. **14 C.P.L.R. 60.** (9 M. 448, 3 C. 379, 2 A. 276, *R.*)

(3)—*Crim. Pro. Code (1898), ss. 307, 383. 491 and 456—Refusal to issue writ of* Habeas Corpus—*Order by single Judge of High Court in exercise of ordinary original criminal jurisdiction—Appeal—Letters Patent, s. 15—"Judgment."*—An application by a person for release from alleged illegal custody under a sentence of imprisonment passed by a Division Bench, under s. 307, Crim. Pro. Code, may, in accordance with the practice of the High Court, be made to a single Judge exercising the ordinary original criminal jurisdiction of the High Court. An order refusing such an application, not being a sentence or order made in any criminal trial, is a "judgment" within the meaning of cl. 15, Letters Patent, and is, as such, appealable. Appeals provided for under cl. 15 of the Letters Patent, are not limited to civil matters, but cover criminal matters as well. **29 C. 286=6 C.W.N. 254, F.B.** [*D.*, 1 Weir 788-A.]

(4)—*Crim. Pro. Code (1861), s. 48—Accused sentenced while another sentence in force—Appeal—Practice.* It appears to be contrary to the provisions of s. 48 of the Crim. Pro. Code, 1861, to make a sentence passed on a person already undergoing another sentence concurrent with the latter. But, in such cases, though one of the sentences may be inoperative, the accused has a right to appeal from either conviction. **Rat. Un. Cr. C. 18=Cr. Rg. 3—8—1869.**

Appeal—continued.

——2.—(Cases where appeal lies)—*continued.*

(5)—*Order of Mamlatdar--Appeal.*—An appeal from an order passed by a Mamlatdar refusing sanction to prosecute for perjury, committed in a possessory suit under the Mamlatdar's Courts Act, lies to the District Court. **9 Bom L.R. 896 =6 Cr. L.J. 225.** (5 Bom. L.R. 206, *F*).

(6)—*Conviction by Munsiff in contempt cases —Appeal.*—For the purposes of s. 486, Crim. Pro. Code, the Court to which decrees or orders made in a Munsiff's Court are ordinarily appealable is, in the Punjab, the Divisional Court. **16 P.R. 1887 Cr.**

(7)—*Sentence by officer in Non-regulation District—Crim. Pro. Code (1861), ss. 445-A, 445-C.*—Under s. 445-C of Act VIII of 1869, an appeal lay only to the High Court from a sentence passed by an officer in a Non-regulation district invested with the powers mentioned in s. 445-A. **14 W.R. Cr. 18.**

(8)—*Two concurrent sentences for four years' imprisonment by Magistrate empowered under s. 30, Crim. Pro. Code (1882)—Court of appeal.*—In cases of two sentences of four years each ordered to run concurrently by a Magistrate specially empowered under s. 30, Crim. Pro. Code, the appeal lies to the Sessions Court and not to the Chief Court, as, in such cases, there can be no aggregation of sentences. **25 P.R. 1901 Cr.**

(9)—*Sentences aggregating for more than four years by a Magistrate empowered under s. 30, Crim. Pro. Code—Sentences not confirmed by Sessions Judge—Appeal to whom lies.*—Where persons charged with three separate offences of dacoity and tried at one trial were each convicted and sentenced on the aggregate for more than four years' rigorous imprisonment, by a District Magistrate with enhanced powers under s. 30, Crim. Pro. Code, *held*, that such sentences were, under s. 35, Crim. Pro. Code, single sentences requiring confirmation by the Sessions Judge. *Held*, also, that the omission of the District Magistrate to submit them for confirmation would not give appellate jurisdiction to the Sessions Judge. *Held*, further, that the Sessions Judge, when the matter came before him as an appeal, should have exercised his confirmatory jurisdiction under s. 380 of the Crim. Pro. Code, 1862. The appeals then would lie to the Chief Court. **3 P.R. 1898 Cr.**

(10)—*Conviction by District Magistrate with enhanced powers.*—In cases where the imprisonment awarded does not exceed two years or where the offence is not exclusively triable by a Court of Session, an appeal lies from the District Magistrate to the Sessions Court and not to the Chief Court, even when the Magistrate acts under s. 36, Crim. Pro. Code, 1872. **10 P.R. 1875 Cr.**

(11)—An appeal under s. 270, Crim. Pro. Code, 1872, lies to the Chief Court only when it appears, from the sentence awarded, that the Magistrate of the District has, in trying the particular

Appeal—continued.

——2.—(Cases where appeal lies)—*concluded.*

case, exercised his enhanced powers under s. 36, Crim. Pro. Code, 1872. In all other cases the appeal lies to the Court of Session under s. 269. **8 P.R. 1877 Cr., F.B.**

(12)—Where it did not appear from the sentences passed for two offences jointly tried (one year's rigorous imprisonment on the first charge, and two years' rigorous imprisonment on the second) that the Magistrate was not acting within his ordinary powers, but within his special powers under s. 36, Crim. Pro. Code, 1872, *held*, that the appeal would lie to the Court of Session. **23 P.R. 1881 Cr.**

(13)—Where a Magistrate invested with powers under s. 30, Crim. Pro. Code, convicted two accused tried jointly on their admission of the commission of the offence to persons who assisted the police in the investigation, and submitted the case to the Sessions Judge for confirmation of the sentence against one of them only, the other also filing an appeal before the latter Court and where the Sessions Judge confirmed the sentence of the one and acquitted the other, *held*, that the appeal of both the accused lay to the High Court and not to the Sessions Judge. **12 P.R. 1900 Cr.**

(14)—*Crim. Pro. Code (1898), s. 408—Sentence by Assistant Judge—Concurrent sentences under four years—Appeal to Sessions Court.*—When an Assistant Sessions Judge passes sentences upon an accused, each of which is four years or under, and they are ordered to run concurrently, the appeal from the conviction and sentence lies to the Sessions Court and not to the High Court. **11 Bom. L.R. 544=10 Cr. L.J. 250=3 Ind. Cas. 171.**

(15)—*Crim. Pro. Code (1898), s. 408, cl. (b) —Appeal against sentence of Assistant Sessions Judge.*—Under s. 408 (*b*), when any sentence of over four years' imprisonment is passed by an Assistant Sessions Judge, in any case, the appeal lies to the High Court. The words of the section seem to require that an appeal by any person convicted in a case, in which an Assistant Sessions Judge has passed a sentence of imprisonment of four years or upwards on any one of the accused, whether he be the appellant or any other person tried with him in the same case, shall lie only to the High Court; and the Sessions Judge has no jurisdiction to hear an appeal from the persons sentenced to less than four years' imprisonment in the same case. **17 M.L.J. 248=5 Cr. L.J. 496.**

——3.—(Cases where appeal does not lie).

(1)—*Crim. Pro. Code (1882), s. 560—Appeal against order of.*—An order awarding compensation to the accused, passed by a Magistrate of the 1st class, is not appealable. **9 C.P.L.R. Cr. 27.**

(2)—*Crim. Pro. Code, Act X of 1882, s. 250—Appeal.*—There is no provision in the Crim. Pro. Code for an appeal from an order under s. 250. **Rat. Un. Cr. C. 409=Cr. Rg. 75 of 1888.**

Appeal—continued.

——3.—(Cases where appeal does not lie) —*continued.*

(3)—*Order of Magistrate dismissing ministerial officer.*—The order of the Commissioner passed in an appeal from the order of a Magistrate dismissing a ministerial officer from his post is final and no appeal lies to the High Court. **3 B.L.R.A.C. 370 = 12 W.R. 320.**

(4)—*Order to furnish security under s. 118, Crim. Pro. Code—Confirmation by Sessions Judge under s. 128.*—Where an order to furnish security under s. 118, Crim. Pro. Code, has been affirmed by the Sessions Judge, no appeal lies to the Magistrate of the District. **23 P.R. 1886 Cr.**

(5)—There was no appeal to the High Court, under ss. 267 and 286, illus. (*d*) of Act X of 1872, from an order passed by a Magistrate of the district requiring a person to give security for good behaviour. **22 W.R. 68 Cr.**

(6)—No appeal lies to the High Court from an order by a District Magistrate under s. 123 of the Crim. Pro. Code, confirmed by the Sessions Judge on reference, detaining a person in prison till he should provide security for good behaviour. **9 C. 878.** [*Compared*, L.B.R. (1893-1901), 381; *F.*, P.L.R. 1900, p. 59, Cr. = 15 P.R. 1900 Cr.].

(7)—*Letters Patent, s. 15—Appeal from order to furnish security—"Judgment."*—Petitioner was ordered by the Head Assistant Magistrate to furnish security for keeping the peace under s. 107, Crim. Pro. Code. The District Magistrate confirmed the order. An application to the High Court for revision of the order was also rejected by a single Judge. Thereupon, the petitioner appealed to two Judges of the High Court. *Held*, that no appeal lay under s. 15, Letters Patent. *Per Boddam, J.*—There is no "judgment" in this case, and, therefore, there is no appeal, under s. 15, Letters Patent. **27 M. 510 = 1 Weir 787.**

(8)—*Crim. Pro. Code, Act XXV of 1861, ss. 280, 409, 434—Order for penal recognisance—Appeal to Sessions Court.*—There is no appeal under s. 409 of the Crim. Pro. Code to the Sessions Court from an order of a Magistrate, under s. 280, requiring a person to furnish a penal recognisance to keep the peace for a certain period. The Court of Session may call for the records under s. 434 and refer the matter to the High Court. Where in an appeal from a conviction by a first-class Magistrate for trespass, the District Magistrate reversed the conviction and sentence but passed an order requiring the accused person to enter into a recognisance bond undertaking not to enter a certain house for a year, *held* that the order was illegal under s. 280 of the Crim. Pro. Code, since the conviction was not for an offence mentioned in the section. *Heid*, also, that such an order should not be passed in the absence of the party affected by it, and by way of a postscript after the order reversing the conviction was passed. **3 B.H.C. Cr. 1.**

Appeal—continued.

——3.—(Cases where appeal does not lie) —*continued.*

(9)—*Order refusing to recall witness for cross-examination.*—There is no appeal to the Sessions Judge from the order of the Deputy Magistrate refusing to recall the witnesses for the prosecution for the purpose of cross-examination. **19 W.R. Cr. 53.**

(10)—*Decision of Jury as to nuisance.*—No appeal lay from the decision of a jury appointed to try whether the order of a Magistrate for the removal of a nuisance under s. 308 of the Crim. Pro. Code. 1861, was reasonable and proper. **16 W.R. Cr. 66.**

(11)—*Order of Sessions Judge fining assessor under Crim. Pro. Code (1861), s. 354.*—No appeal lay from the order of a Sessions Judge under s. 354, Crim. Pro. Code, fining an assessor. **8 W.R. Cr. 83.**

(12)—*Illegal conviction—Appeal on the merits.*—There cannot be entertained an appeal upon the merits from a conviction which was based on no legal evidence, and which was absolutely bad in law. **8 W.R. Cr. 59.** (2 W. R. Cr. 13, *D.*)

(13)—*Order directing prosecution for forgery.*—There is no appeal from an order of a Civil Court directing a prosecution for forgery committed before it. **5 W.R. Mis. 18.** (1 Marsh, 270 = 2 Hay 236, *F.*).

(14)—*Crim. Pro. Code (1898), ss. 517 and 520—Restoration of property in respect of which no offence has been committed—Appeal.*—An order directing the restoration of property, in respect of which no offence has been committed, to the person in whose possession the property was found, is not an order under s. 517, and is, therefore, not appealable. **30 C. 690 = 7 C.W. N. 634.** [*Diss.*, 5 C.L.J. 44 = 5 Cr. L.J. 48 = 34 C. 347].

(15)—*Order for maintenance.*—There is no right of appeal from the order of a Magistrate under s. 316 of Act XXV of 1861, directing a man to pay a monthly allowance for the support of his illegitimate child. **2 Ind. Jur. N.S. 88 = 7 W.R. Cr. 10.**

(16)—*Crim. Pro. Code (1882), s. 307—Judgment of High Court—Appeal.*—No appeal lies to the High Court from its own judgment passed under s. 307. **Rat. Un. Cr. C. 691 = Cr. Rg. 14 of 1894.**

(17)—*Crim. Pro. Code, Act XXV of 1861, s. 422 (amended by Act VIII of 1869)—Appeal.*—Where an Appellate Court, under s. 422 of the Crim. Pro. Code, directs the first Court to take additional evidence, and passes a judgment on such evidence, no appeal lies to the High Court on the merits from such judgment after the amendment of the section by Act VIII of 1869. **6 B.H.C. Cr. 64.**

(18)—*Crim. Pro. Code, Act XXV of 1861, s. 411—Appeal from sentence of imprisonment and fine.*—In an appeal from a sentence, for

Appeal—continued.

——3.—(Cases where appeal does not lie) —*continued.*

rioting of fifteen days' imprisonment and an additional term of fifteen days in default of payment of fine, *held*, there was no appeal under s. 411 of the Crim. Pro. Code, since the aggregate term did not exceed a month. **3 B.H.C. Cr. 15.**

(19)—*Crim. Pro. Code, Act XXV of 1861, s. 411—Sentence against some accused appealable and not against others—Appeal.*—In a case where, among several persons jointly tried and convicted of rioting, some were sentenced to a fine of Rs. 50 or in default to one month's rigorous imprisonment, and others to a severer punishment; *held* that the whole case was not appealable under s. 411 by reason of an appealable sentence having been imposed on some of the accused. **7 B.H.C. Cr. 35.** [*Diss.*, 4 L.B.R. 354].

(20)—*Dismissal of complaint—Procedure.*—In a case where the complaint was dismissed by the Deputy Magistrate, *held* that the prosecutor had no right to appeal, but that the proper course for him would be to have moved the Magistrate to procure, under s. 434 of the Code of Criminal Procedure, a reversal by the High Court of the order of dismissal. **W.R. 1864, Cr. 23.**

(21)—*Crim. Pro. Code, s. 411—Conviction by Presidency Magistrate.*—No appeal is allowed from a conviction by a Presidency Magistrate, where the sentence is six months' rigorous imprisonment and a fine of Rs. 125, or, in default, a further period of three months' rigorous imprisonment. **20 B. 145.** [*R.*, 3 Ind. Cases, 285].

(22)—*Crim. Pro. Code (1898), s. 411—Appeal not entertainable—Point of law involved—Appeal heard as a revision—Penal Code, ss. 405 and 408—Breach of trust by servant—Failure to give correct account—Dishonest intention not shown.*—No appeal lies against a conviction by a Presidency Magistrate, where the sentence awarded is only one day's simple imprisonment and a fine of Rs. 150. A non-appealable case may be entertained as a revision, if a point of law arises upon the findings. Where the master was in debt to the servant for a sum exceeding Rs. 300, *held*, that the mere failure of the servant to give a correct and true account of the manner in which the servant had spent a sum of Rs. 32 in numerous Court proceedings did not necessarily imply a dishonet intention. Unless dishonest intention is shown, an offence under s. 405, Penal Code, cannot be made out. **3 Ind. Cas. 285.** (20 B. 145, *R*).

(23)—*Dismissal of—without giving an opportunity to the appellant to be heard—Review.*—An order dismissing an appeal under s. 421, Crim. Pro. Code, 1882, without giving the appellant an opportunity to be heard, owing to a mistake as to the date of the hearing, is a final order in accordance with the provisions of s. 430, and is not liable to be reviewed by the same Court. **24 P.R. 1887 Cr.**

Appeal—continued.

——3.—(Cases where appeal does not lie) —*concluded.*

(24)—*Consolidation of separate sentences—Penal Code, ss. 143, 447, 211—Crim. Pro. Code (1861), s. 411.*—Where a person was convicted of offences under ss. 143, 447 and 211, Penal Code, and sentenced to one month's imprisonment for each offence, it was held that the separate sentences could not be taken together and combined into one sentence so as to give a right of appeal. **1 B.L.R.A. Cr. 3=10 W.R. Cr. 3.** (6 W.R. Cr. 51, *R.*)

(25)—There is no right of appeal because the united sentences in three separate cases amount to more than a month's imprisonment. **6 W. R. Cr. 51.**

(26)—*Crim. Pro. Code, 1872, s. 272—Amendment by Act XI of 1874, s. 23—Six months expiring on date of operation—Effect.*—Where the six months provided for an appeal against acquittal by the Government expired on the day when the Amending Act XI of 1874 came into operation, *held* that a law of limitation being one of procedure, an appeal presented after that day was barred. **11 B.H.C. A.C.J. 117.** [*R.*, 2 C. 436, 6 B. 26].

——4.—(Acts).

(1)—*Award of compensation under the Cattle Trespass Act (I of 1871), s. 22.*—There is no appeal from an order of compensation passed under s. 22 of Act I of 1871. **3 N.W.P. 200.**

(2)—There is no appeal from an order passed under s. 22, Act I of 1871, awarding compensation for illegal seizure of cattle. **10 B. 230.**

(3)—*Convictions under Police Act.*—Convictions under the Police Act (V of 1861) are appealable like other convictions. **5 W.R. Cr. 22.**

(4)—*Act XI of 1846, Rules framed under the Act—Act XIV of 1874 (Scheduled Districts), Conviction by Agent to Governor of Bombay in Khandesh—Appeal to High Court.*—(1) The accused were convicted by the Agent to the Governor of Bombay in Khandesh, under s. 201, I.P.C., and sentenced to five years' rigorous imprisonment. The offence was alleged to have been committed in the village of Gulamba, in the Mehwas Estate of Nal in the District of Khandesh. The agent tried the case under the Rules framed under Act XI of 1846, by which the estate of Nal was excluded from the ordinary criminal jurisdiction. The accused appealed to the High Court under Rule 44 of the Rules framed under s. 3 of Act XI of 1846. *Held* that no appeal would lie to the High Court, as the sentence passed by the Political Agent was within the limits of the absolute jurisdiction of that officer. *Per Birdwood. J.*—There is no provision of the Act (XI of 1846) which constitutes the *Sadar Faujdari* a Court of appeal from the decisions of the Agent in criminal trials. That Court is only contemplated by s. 4, as a Court of reference in criminal trials. No power is given to the Government to confer appellate

Appeal—continued.

——**4.**—**(Acts)**—*continued.*

powers on it, as is practically done by Rule 44 of the Rules of the 31st July, 1895. That rule is, therefore, *ultra vires* of the Government, and cannot be regarded as a valid rule under the Act. *Jardine, J.* agreed with *Birdwood, J.*, in his view that Rule 44 was *ultra vires*, and expressed an opinion to the effect that after the enactment of Act XIV of 1874, which repealed Act XI of 1846, these rules under the old Act ceased to be in force, so far as they had reference to the powers of the High Court. S. 7 of Act XIV of 1874 did not continue these rules except so far as they related to the Political Agent and his officers, as they could not be regarded as being in force at the time when Act XIV of 1874 was passed, and they were in conflict with the Letters Patent of the High Court. **15 B. 505.** [*Diss.*, 25 B. 667; *R.*, Rat. Un. Cr. C. 939].

(5)—*Transfer of North Canara District to the Presidency of Bombay—Crim. Pro. Code. ss. 19, 408—Reg. II of 1827, s. 16 (2)—16 and 17 Vic., C. 95—21 and 22 Vic., C. 106—24 and 25 Vic., C. 67, 104.*—A proclamation was issued by the Governor-General in Council, on the 15th April, 1862, in pursuance of an order made by the Secretary of State for India in Council under 16 and 17 Vic., C. 95, s. 18 and 21 and 22 Vic., C. 106, declaring that the District of North Canara, with the exception of the taluq of Candapur, should be detached from the Presidency of Madras from the 16th day of April, 1862. Subsequent to this, the Legislative Council of Bombay passed an Act, No. III of 1863, which received the assent of the Governor of Bombay on the 4th January, 1863 and of the Governor-General on the 25th March, 1863. By s. 6 of that Act: "The district of North Canara, with the exception of the taluqa of Candapur, as transferred from the Presidency of Fort St. George, shall, from and after the 16th day of April, 1862, be subject to the Regulations and Acts which are, or shall at any time hereafter be, in force within the territories subject to the Presidency of Bombay." S. 7 provided that nothing in the Act is to affect any acts done, or proceedings held, or order made, in the District previously to the passing of the Act. The accused who was convicted by the Sessions Judge of North Canara on the 18th day of September, 1862, appealed to the High Court of Bombay, and the question whether that Court or the High Court of Madras had jurisdiction being raised. *held*, per *Forbes, J*:—S. 7 of Act III of 1863 must be so read as to be not incompatible with s. 6 of the same Act. *Held* that apart from that Act, the High Court of Madras could have no jurisdiction within the Presidency of Bombay, of which North Canara had become a part on the 16th day of April, 1862. *Held*, further, that the order of the Secretary of State, detaching North Canara from the Presidency of Fort St. George and annexing it to the Presidency of Bombay, was complete in every respect except as to the time from which the annexation was to take effect. All that was left to the Governor-General in Council was the authority to declare that time by proclamation. The annexation was the Act of Her Majesty's Government, not that of the Government of India; and regarded in that light, should be considered as having itself changed the law of the annexed district from the date of annexation, and introduced therein the law of the Bombay Presidency. *Per Couch, J*:—The proviso to s. 47 of the Indian Councils Act, 24 and 25 Vic., Chap. 67, applies to laws and regulations made by the Governor, or Lieutenant-Governor in Council of the Presidency, Division or Province. The case in question being governed by the Crim. Pro. Code, an Act of the Legislative Council of India in force in both the Presidencies, the right of appeal in this case was transferred to the High Court of Bombay, with the transfer of the district to the Bombay Presidency. In this view of the matter, Act III of 1863, could be immaterial. *Per Newton, J.*—The District of North Canara having been severed from the Presidency of Madras, before the trial of the case under consideration, and having passed from one Presidency to the other with the Code of Criminal Procedure in uninterrupted operation within its limits, the provision of s. 408 of the Code should be interpreted as making the decision in such cases appealable to the High Court of Bombay. **2 B.H.C. 106.** [*R.*, 12 B.H.C. App. 1, 10 B. 274.]

(6)—*Public Conveyance Act (Bom. Act VI of 1873), ss. 23, 35—Conviction of owner of public conveyance—Appeal.*—Where an accused person, the owner of a public conveyance, was convicted by a first class Magistrate, under s. 22 of the Public Conveyances Act, on the ground that he was responsible for the act of his servant, who had refused to let the conveyance for hire, the High Court *held*, that it was not precluded by s. 35 of the Act from interfering in revision, for the person punishable under s. 22 was the driver or other attendant, and the accused was, therefore, not a person punishable under s. 35; and that the conviction must be reversed. The words of s. 35, "no conviction under this Act ...shall be open to appeal or reversal by any other Court" must be taken to mean "no conviction of any person punishable under the Act." **Rat. Un. Cr. C. 672=Cr. Rg. 37 of 1893.**

See ACT IX OF 1869, 14 W.R. Cr. 71.

See ACT VII OF 1870, s. 31, 20 C. 687, 26 M. 421.

See ACT I OF 1871, 22 P.R. 1886 Cr.

See ACT IV OF 1877, s. 167, 5 B. 85.

See ACT III OF 1880, 40 P.R. 1884 Cr.

See ACT IV OF 1887, s. 41, 2 C. 466.

See ACT XIII OF 1889, ss. 2, 5 and 7, 1 P.R. 1897 Cr.

***Appeal*—continued.**

——4.—(Acts)—*concluded.*

See PUNJ. ACT IV OF 1872, 16 P.R. 1872 Cr.

See CRIM. PRO. CODE (1898), ss. 403, 423 (*b*), 22 C. 377.

—Magistrate's order declaring road public— *See* JURISDICTION OF CIVIL COURTS, 7 W.R. 95.

——5.—(Appeal from acquittal).

(1)—*Right of appeal from acquittal—Object of limiting it to the Local Government.*—The law, by limiting the right of appeal against judgments of acquittal to the Local Government, prevents personal vindictiveness from seeking to call in question judgments of acquittal by way of appeal, and evidently intends that such interference shall take place only in cases where there has been a miscarriage of justice so grave as would induce the Local Government to move in the matter. **22 C. 164.** [*R.*, 110 P.L.R. 1904=12 P.R. 1904 Cr., 17 C.P.L.R. 75].

(2)—The exercise of the discretion to prefer an appeal under s. 417 of the Crim. Pro. Code, against any order of acquittal made by a Court other than a High Court, rests with the Local Government concerned, and cannot be questioned by the High Court in dealing with such appeal. **17 C.P.L.R. 75.**

(3)—*Crim. Pro. Code (1898), s. 417—Difference between appeal from acquittal and from conviction.*—There is no difference between an appeal from an acquittal and from a conviction. **7 P.R. 1904 Cr.**

(4)—There is no distinction in the Crim. Pro. Code between the right of appeal against an acquittal and a right of appeal against a conviction. **20 A. 459.** [*R.*, 97 P.L.R. 1904=7 P.R. 1904 Cr., 2 L.B.R. 303=1 Cr. L.J. 1022].

(5)—There is nothing in s. 417, Crim. Pro. Code, which indicates that an appeal from an acquittal, allowed in the interests of public safety, peace and order, by the statute-law of the country, should receive any different treatment from any other appeal or class of appeals. But when an accused person has been acquitted by a Magistrate after hearing all the evidence against him, the presumption is that there was at least reasonable doubt, and the Appellate Court must be positively convinced that there was no such reasonable doubt, the benefit of all doubt shown to exist being against the appellant, whereas, in an appeal from a conviction, the benefit of all reasonable doubt has to be given in favour of the appellant. This appears to constitute the only distinction between an appeal from an acquittal, and one from a conviction. **15 P.R. 1902 Cr.**

(6)—The Government has the same right of appeal against an acquittal as a convicted person has against his conviction. The Code makes no distinction as to the procedure to be adopted, or as to the principles upon which such appeals are to be decided. **2 Weir 462.**

***Appeal*—continued.**

——5.—(Appeal from acquittal)—*continued.*

(7)—In an appeal from an acquittal, the Government is placed in a position neither better nor worse than a private person appealing from his conviction; and to require the Government to show that the lower Court "obstinately blundered" or has so "gone wrong as to produce a result mischievous at once to the administration of justice and the interests of the public" is to legislate and not to interpret the law, as contained in s. 417, Crim. Pro. Code. **29 P.R. 1885 Cr.** (4 A. 148, *Diss.*).

(8)—*Appeal—Appeal against order of acquittal—Appellate Court, duty of.*—The Code of Criminal Procedure makes no distinction between an appeal from an acquittal and one from a conviction. Any rule of Court which differentiates their position would be tantamount to an usurpation of legislative functions by the Court. If there is any difference in the respective positions of Government as appellant under s. 417 of the Code of Criminal Procedure and a convict appealing from the judgment convicting and sentencing him, it takes its rise from the principles of judicial construction and adjudication in Criminal cases, with which the Statute Law has no concern. The Indian Penal Code provides the substantive Criminal Law administered by the Indian Courts while the Code of Criminal Procedure regulates their procedure in the trial of criminal cases. But apart from these, there are certain rules of adjudication and conduct which Criminal Judges in India invariably follow and which are mainly derived from the Criminal Law of England. They are founded on natural justice and sound sense and are not inconsistent with, but expressly or tacitly recognised by, the Indian Law. One of these is, that every man is to be presumed innocent until his guilt is established; another, that if there is a reasonable doubt, the accused must have the benefit of that doubt. These are principles of the English Criminal Law of evidence which are clearly in accord with the provisions of the Indian Evidence Act under the heads of Proof and Burden of Proof, and their value lies in their being clear statements of the law of evidence applicable in Criminal judicature which are very convenient for the practical guidance of the Courts. An appellant from a judgment of conviction can always invoke the support of these principles, if he can show that the facts of his case come within their purview. If he makes out that the essential evidence against him is not sufficiently reliable, as the Lower Court thought, or that all reasonable doubt as to his guilt is not removed thereby, he is bound to succeed on the strength of these principles. An appellant from a judgment of acquittal has, on the contrary, to work in the face of these principles and to satisfy the Court that the accused can derive no benefit from them on the facts of the case under appeal. His task thus is naturally more difficult than that of the convict appellant. In all questions of fact, the Court of first instance, which has the witnesses before itself, has a great advantage over the Court of appeal, which deals

Appeal—continued.

5.—(Appeal from acquittal)—*continued.*

with the evidence second-hand ; great regard is, therefore, as a rule, paid to the opinion of the first Court on the oral evidence, and a Court of appeal is ordinarily reluctant to differ from its opinion, unless for cogent grounds. In an appeal from a conviction, this regard is tempered somewhat by considerations of fairness to the accused in deciding the question of his guilt, which the highest principles of Criminal Law enjoin on the Courts. But such considerations have no application in an appeal from an acquittal where, naturally, the Court is chary of disturbing a finding of the first Court rejecting the evidence against the accused as unreliable and declaring his innocence. The cumulative effects of these considerations create a considerable difference between an appeal from a conviction and one from an order of acquittal as regards the decision of their subject-matter, though both appeals are placed on the same footing in the statute law of procedure. In order to justify interference with a judgment of acquittal on a question of fact, it is sufficient, if the finding is clearly wrong on the evidence and unreasonable in the opinion of the appellate Court, whether or not the unreasonableness amounts to perversity, stupidity or incompetence, or the Court below can be said to have obstinately blundered in coming to it ; but upon sound principles of Criminal Jurisprudence the indications of error in the judgment of acquittal ought to be clearer and more palpable and the evidence more cogent and convincing in order to justify its being set aside than would be necessary in the case of a judgment of conviction. An appeal from an acquittal is not substantially different from an appeal from a conviction. Full weight must be given to the advantages possessed by the first Court in hearing the evidence and having the trial slowly developed before itself, but if due weight is given to this, and the appellate Court is still satisfied that the first Court was wrong, and that the accused is guilty, the appellate Court is bound by law to convict the accused. **97 P.L.R. 1904.**

(9)—*Crim. Pro. Code (1898), s. 417—Acquittal, appeal against.*—Following 4 All. 148, the Chief Court would decline to interfere with orders of acquittal passed by a subordinate Court after careful consideration of questions of fact and without any display of incompetence or perversity, although sitting as a Court of original jurisdiction, it might arrive at a different conclusion. **142 P.L.R. 1903.** (4 A. 148, *F.*).

(10)—*Crim. Pro. Code (1882), s. 417—Right of appeal in criminal cases by Government from judgment of acquittal—Acquittal by assessors.*—Under the Code, the Government have the same right of appeal against an acquittal, as a person convicted has to appeal against his conviction and sentence. No distinction is made in the Code as to the mode of procedure which governs the two kinds of appeals or as to the principles on which they are to be decided.

Appeal—continued.

5.—(Appeal from acquittal)—*continued.*

Both appeals are governed by the same rules and are subject to the same limitations. [*F.*, 2 Weir 462, Rat. Un. Cr. C. 756 ; *R.*, 17 C.P. L.R. 75, 97 P.L.R. 1904]. In all cases of appeals, the Judges of a Court of appeal are naturally very cautious in interfering with the judgment of a Judge and assessors before whom the witnesses were examined both on the ground that a Court before whom witnesses are examined has superior advantages in estimating the value of their testimony, and also, in case of an acquittal, on the additional ground, that, in all criminal cases, the accused is entitled to have the advantage of any doubt which may arise in the case; but, after giving the accused every benefit which he can derive from such a decision in his favour, if the High Court is still of opinion, that he is guilty of the offence with which he has been charged, there is no discretion left to the Court as to whether to find him guilty or not. **17 C. 486.** [*R.*, L.B.R. (1893-1900), 42, 19 B. 51].

(11)—*High Court—Acquittal—Appeal—Crim. Pro. Code (1872), s. 272.*—In a case tried by assessors, in which the accused was charged with culpable homicide not amounting to murder, he was acquitted by the Sessions Judge and one of the assessors, while the other assessor was for a conviction. The Government of Bengal having appealed under s. 272, Crim. Pro. Code, 1872, the High Court on a consideration of the evidence, set aside the order of acquittal, and convicted the accused of the offence charged. **23 W.R. Cr. 50.**

(12)—*By the Local Government.*—It is not because a Judge or a Magistrate has taken a view of a case in which the Local Government does not agree, and has acquitted the accused persons, that an appeal by the Local Government must necessarily prevail or that the High Court should be called upon to disturb the ordinary course of justice by putting in force the arbitrary powers conferred on it by s. 272, Crim. Pro. Code. The doing so should be limited to those instances in which the lower Court has so obstinately blundered and gone wrong, as to produce a result mischievous at once to the administration of justice and the interests of the public **A.W.N. 1892, 64.**

(13)—*Appeal in what cases to be made—Crim. Pro.Code (1882), s. 417.—Held* that the Government should prefer an appeal from an acquittal only in cases of some importance. **15 P.R. 1898 Cr.**

(14)—*Condition for acceptance of appeal from acquittal.*—In an appeal against an order of acquittal, the Chief Court must be satisfied not merely that the correctness of the judgment appealed against is open to doubt, but that it is so clearly wrong as to amount to a miscarriage of justice. **10 P.R. 1897 Cr.** [*Diss.*, 7 P.R. 1904 Cr.].

(15)—*Condition of interference with acquittals—Crim. Pro. Code (1898), s. 417.*—An

Appeal—continued.

——5.—(Appeal from acquittal)—*continued.*

order of acquittal, made after a careful consideration of the facts without any manifest incompetence or perversion, will not be disturbed by the Chief Court, though it might consider that a different conclusion would have been drawn by it if it sat as a Court of original jurisdiction. **11 P.R. 1903 Cr.** (4 A. 148, *F.*).

(16)—An acquittal on a question of fact will be disturbed if the finding is clearly wrong on the evidence and unreasonable in the opinion of the appellale Court, whether or not the unreasonableness amounts to perversity, stupidity or incompetence, or the Court below has obstinately blundered in arriving at it. The indications of error in the judgment of acquittal ought to be clearer and more palpable and the evidence more cogent and convincing before the acquittal can be set aside than would be necessary in the case of a conviction. **7 P.R. 1904 Cr.** (11 P.R. 1903 Cr., 10 P.R. 1897 Cr., 4 A. 148, 9 A. 528, 16 A. 212, *Diss.* and 29 P.R. 1885 Cr., 17 C. 485, 19 B. 52, 20 A. 459, 11 C.L.R. 25, 23 C. 347, *F.*).

(17)—*Crim. Pro. Code (1882), ss. 417, 427—Appeal from acquittal in capital case—Arrest of the accused.—Per Edge, C.J.*—In capital cases, in which the Government is appealing under s. 417, it is generally speaking, and without laying down any inflexible rule, undesirable that the prisoner's fate should be discussed, while he remains at large. In such cases, the Government should apply for the arrest of the accused, under s. 427 of the Code. **9 A. 528.**

(18)—*Crim. Pro. Code (1882), ss. 417, 421—Appeal by Government from acquittal, conditions of.*—In considering an appeal by the Government against an order of acquittal, it is not for the High Court to say whether, if it had been trying the case, it might not have taken a view opposed to that of the lower Court. In respect of pure questions of fact, the power of Government to appeal from an acquittal should be limited to those cases where, through the incompetence, stupidity or perversity of a subordinate tribunal, such unreasonable and distorted conclusions have been drawn from evidence as to produce a positive miscarriage of justice. Where the decision of the Subordinate Court is an honest and not an unreasonable one, of which the facts were susceptible, the High Court will not interfere. **16 A. 212.** (4 A. 148, *R.*) [*R.*, 21 A. 122, 7 P.R. 1904 Cr. = 97 P.L.R. 1904, 2 L.B.R. 303 = 1 Cr. L.J. 1022; *Diss.*, 17 C.P.L.R. 75].

(19)—The High Court, exercising its jurisdiction in the matter of appeals against acquittals, should confine its exercise to the particular acquittal complained of by the Government. At the same time it would not be proper for the High Court to consider the appeal on grounds not contained in the objection urged on behalf of the Government. **19 B. 51.** [*F.*, 17 C.P.L.R. 75; *R.*, 7 P.R. 1904 Cr. = 97 P. L.R. 1904].

Appeal—continued.

——5.—(Appeal from acquittal)—*continued.*

(20)—*Per Straight, J.*—Where the Sessions Judge has overlooked the main and crucial circumstances which go to corroborate the evidence of an accomplice and has acquitted the accused, the High Court will not be departing from, or doing violence to, the principle laid down in 4 A. 148, by entertaining the appeal by the Government, and determining one way or the other the guilt of the accused. **9 A. 528.** [*R.*, 20 A. 459 = 18 A.W.N. 117, 97 P.L.R. 1904 = 7 P.R. 1904 Cr.]

(21)—It is not because a Judge or Magistrate has taken a view of a case in which the Government does not coincide, and has acquitted the accused persons, that an appeal from his decision must necessarily prevail, or that the High Court should be called upon to disturb the ordinary course of justice, by putting in force the arbitrary powers conferred on it by s. 272. The doing so should be limited to those instances, in which the Lower Court has so obstinately blundered and gone wrong as to produce a result mischievous at once to the administration of justice and the interests of the public. **4 A. 148.** [*F.*, 16 A. 212 = 14 A. W.N. 49, 142 P.L.R. 1903 = 11 P.R. 1903 Cr.; *R.*, 9 A. 52, 19 B. 51, 20 A. 459, 7 P.R. 1904 Cr = 97 P.L.R. 1904; *D.*, 9 A. 528, F.B., 21 A. 122; *Diss.*, 29 P.R. 1885 Cr., 17 C. 485, 2 Weir 462, 2 L.B.R. 303 = 1 Cr. L.J. 1022, 17 C.P. L.R. 75].

(22)—*Crim. Pro. Code (1872), s. 272—Appeals from acquittals by Government.*—Where a person was convicted of criminal breach of trust by a public servant under s. 409, I.P.C., but the Sessions Court acquitted him on the ground that the breach oft rust was not committed by him in his capacity as public servant, the High Court, on appeal by the Government, directed a new trial under s 406, I.P.C., under the provisions of s. 272, Crim. Pro. Code. **7 N.W.P. 196.** [*R.*, 17 C.P.L.R. 75].

(23)—*Crim Pro. Code (1882), ss. 247, 404, 417 and 423—Appeals from acquittals—Powers of District Magistrate.*—S. 417, providing for appeals against orders of acquittal, requires that such appeals shall be (1) directed by Government and (2) presented to the High Court. Therefore, cl. (*a*) of s. 423 can only apply to the High Court. A second class Magistrate trying a case of mischief, having held that there was a *prima facie* case against the accused, adjourned the trial, to enable the accused to adduce evidence. On that day the Magistrate acquitted the accused under s. 247, as the complainant was not present. The District Magistrate on appeal reversed the order of the Subordinate Magistrate and directed a re-hearing. *Held*, that the District Magistrate had no power to make such an order. **7 M. 213 = 2 Weir 477.**

(24)—*Powers of Government—How to be exercised.*—The right of appeal vested in the Local Government is a right which should be advanced with care and caution. Where a Sessions

Appeal—continued.

——5.—(Appeal from acquittal)—*continued.*

Judge, sitting as a Court of Appeal, erred upon a question of law, and his error of law led him to set aside the conclusion of the Magistrate convicting the accused upon facts that he himself would probably have accepted, but for the error of law into which he had fallen, *held*, that the High Court could exercise the powers vested in it. **21 A. 122.**

(25)—"*Appellate judgment of acquittal,*" *meaning—Crim. Pro. Code (1872), s. 272.*—The words 'appellate judgment of acquittal' in Act X of 1872, s. 272, were meant to include all judgments of an appellate Court by which a conviction is set aside. **24 W.R. Cr. 41.**

(26)—*Crim. Pro. Code (1861), s. 277—Acquittal by appellate Court without any appeal before it against Subordinate Magistrate's order.*—Where, on two persons being convicted, the case of one was submitted to the District Magistrate for enhanced punishment, and the latter enhanced the sentence, and at the same time acquitted the other, *held* that the District Magistrate had no jurisdiction to acquit in the absence of any appeal before him. **5 P.R. 1869, Cr.**

(27)—*Crim. Pro. Code (1872), ss. 272, 297—Arrest pending appeal.*—After the admission of an appeal from an acquittal by the High Court, the Court can order the arrest of the accused pending the appeal. **2 A. 340, F.B.**

(28)—In a criminal appeal by Government to the High Court, the arrest of the accused may be ordered pending the appeal. **1 C. 281.** [*F.*, 2 A. 340, F.B.; *Appr*, 2 A. 386].

(29)—*Crim. Pro. Code (1872), ss. 149, 272—Person under arrest pending appeal—Admissibility of evidence against persons concerned in the same offence.*—Where a person accused of an offence was discharged by the Sessions Judge and he was re-arrested by the Magistrate pending an appeal from the acquittal to the High Court, and before the appeal was admitted, *held* that the re-arrest was lawful and absolutely necessary in the interests of justice, and his statement, after his re-arrest and pending his appeal, was admissible in the trial of another person who was arrested subsequently to the arrest of the former as being concerned in the same offence. (*Per* Stuart, C.J.) Assuming that the re-apprehension after an acquittal and on the same charge was unlawful, his statement and evidence although admissible, was not such evidence, as the Court would place much reliance upon. If his re-arrest was lawful, he was in the position of an accused person and Magistrate should not have examined him as a witness in the trial of the other accused. *Per* Spankie, J. **2 A. 386.**

(30)—*Acquittal—Appeal—Crim. Pro. Code (1872), s. 297—Retrial.*—The High Court has no power to disturb an acquittal save on appeal by the Government. The provisions of s. 297 only permit the High Court to interfere and order a

Appeal—continued.

——5.—(Appeal from acquittal)—*continued.*

new trial where an accused person has been discharged without being put on his trial. **6 N. W.P. 357.** [*D.*, 1 A. 139, F.B.]

(31)—*Crim. Pro. Code (1882), s. 404—Acquittal, appeal from.*—A third class Magistrate in trying a case under ss. 426 and 352, Penal Code, took the evidence of the complainant and adjourned the case for the examination of witnesses. On the day fixed, the witnesses on both sides appeared, but the complainant did not. The Magistrate, thereupon acquitted the accused under ss. 247 and 250, Crim. Pro. Code, and ordered the complainant to pay a compensation of Rs. 5. On appeal the District Magistrate cancelled the order of acquittal and directed that the case should be tried *de novo*. *Held* that the order of the District Magistrate was *ultra vires*; also *held* that the third class Magistrate was not justified in acquitting the accused. **A.W.N. 1891, 120.**

(32)—*Crim. Pro. Code, Act X of 1872, ss. 297, 460—Improper acquittal—Retrial—Proper course.*—When the accused person has been improperly acquitted by a Magistrate having jurisdiction, the High Court will not interfere in revision and order a retrial on a fresh charge. The proper remedy in such a case appears to be for the Local Government to direct an appeal under s. 272 of the Crim. Pro. Code. **Rat. Un. Cr. C. 73.**

(33)—*Crim. Pro. Code (1872), s. 272 (=s. 417 of the present Code)—Limitation Act IX of 1871, Art. 153 (=Art. 155, Act XV of 1877)—Appeal by Government—Acquittal.*—An appeal by a Local Government, against an acquittal, will be in time if presented within six months from the date of the acquittal, though more than 60 days from that date. **2 C. 436, F.B.**

(34)—*Trial by Jury—Accused charged with murder acquitted of that charge but convicted of culpable homicide not amounting to murder—Appeal by Government.*—Where, in a case tried by a Jury, an accused charged with murder, is acquitted of that charge but is convicted of culpable homicide not amounting to murder and an appeal is preferred by the Government Pleader at the instance of the Legal Remembrancer, *held*, an appeal did lie by Government so far as the charge of murder was concerned. **2 C. 273.**

(35)—*Crim. Pro. Code, ss. 417, 418 and 423—Order of acquittal passed in a trial by jury—Appeal on questions of fact.*—The provisions of s. 423 clearly show that an appeal against an order of acquittal in a case tried by jury must be supported upon a ground, which is covered by s. 418 of the Code, which provides, in cases of trial by jury, for an appeal on a matter of law only. Where the Local Government applied to the High Court, under s. 417 of the Code, against an order of acquittal, the grounds upon which the appeal was sought to be preferred being all questions of fact, the High Court rejected the application. **10 C. 1029.** [*R.*, 17 C.P.L.R. 75].

Appeal—continued.

——5.—(Appeal from acquittal)—*concluded.*

(36)—*Appeal from acquittal—Conviction—Commencement of sentence.*—Where on the appeal of the Government, an order of acquittal is set aside and sentence passed, the sentence will commence to run from the date of the committal of the accused to the jail, and not from the date of their arrest or of the sentence on the appeal. **6 C.L.R. 349.**

(37)—*Crim. Pro. Code (1898), ss. 423, cl. 3 and 537—Appeal by Government from an acquittal by a verdict of jury—Power of High Court to go into the evidence of the case.*—In an appeal by Government from an acquittal by a verdict of jury, the High Court cannot alter the verdict of the jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge or to a misunderstanding on the part of the jury as to the law laid down by him. If, on that ground, the High Court is to alter or reverse the verdict of the acquittal by the jury, its powers, under s. 423, cl. (*a*), are to reverse such order and direct that further inquiry be made or the accused be re-tried or committed for trial as the case may be, or, finding guilty, to pass sentence on him according to law. In order to determine if the verdict is erroneous, and, if so, which of these powers the High Court should exercise, it is absolutely necessary for it to go into the facts and to consider the evidence in the case before passing orders in it. (*Per Davies, J.*) As soon as the verdict of the jury is reversed, the Court has the same power to deal with the case that it has to deal with a case triable by assessors as soon as the order of acquittal by the Judge is set aside; that is, the Court may order a retrial or may find the accused guilty and pass sentence on him according to law. The High Court ought not to order a retrial on the ground of misdirection unless it is satisfied that the misdirection has, in fact, occasioned a failure of justice. (*Per Benson, J.*) **26 M. 1=2 Weir 521.**

See ACT XV OF 1877, s. 5, Art. 157, 1 Weir 791.

See CRIM. PRO. CODE (1898), ss. 404 to 417, 22 C. 377.

See CRIM. PRO. CODE (1898), ss. 417, 428, 3 L.B.R. 114.

See CRIM PRO. CODE (1898), s. 439, 1 P.L.R. 1904.

See PENAL CODE, s. 193, 9 C.L.J. 378.

See PENAL CODE, s. 223, P.L.R. 1900, p. 12, Cr.

See PENAL CODE, ss. 425, 430, 14 P.R. 1909 Cr.

See REVISION, 14 M. 363=2 Weir 571, 157 P.L.R. 1908=22 P.W.R. 1908, 13 P.W.R. 1907 Cr.=5 Cr. L.J. 438=72 P.L.R. 1908.

——6.—(Appeal—Practice and Procedure).

See PRACTICE AND PROCEDURE.

(1)—*Criminal appeal--Procedure.*—The sound rule to apply in trying a criminal appeal, where questions of disputed fact are in issue,

Appeal—continued.

——6.—(Appeal—Practice and Procedure):
—*continued.*

is to consider whether the conviction is right, and in this respect, a criminal appeal differs from a civil one. There the Court must be convinced, before reversing a finding of fact by a lower Court, that the finding is wrong. **11 C.L.R. 25.** [*F.*, 23 C. 347; *R.*, 20 C 353, 7 P.R. 1904 Cr.=97 P.L.R. 1904].

(2)—*Crim. Pro. Code (1872), ss. 279 and 280 (=ss. 422 and 423 of the Code of 1898)—Right of complainant to be heard on appeal.*—Under ss. 279 and 280 of the Code of 1872, a complainant cannot claim as of right to be heard in the appeal. The matter was one which was left in each case to the discretion of the Court. **2 Weir 476=7 M.H.C. App. 42.**

(3)—*Crim. Pro. Code (1898), s. 419—Presentation of petition of appeal.*—The word "presented" in s. 419 of the Code, evidently means that such petition shall be delivered to the proper officer of the Court either by the appellant or by his pleader. In order to secure this, it is necessary that the presentation be made in person. *Held*, that a petition of appeal found in a petition box was rightly returned for legal presentation, inasmuch as the petition might have been deposited there by a third person who could not legally present it. **19 M. 354=2 Weir 468.**

(4)—*Crim. Pro. Code (1898), s. 419—Presentation of appeal, by post, validity of.*—A petition of appeal sent by post is not presented to the Court within the meaning of s. 419, Crim. Pro. Code. The word "presented" in that section means that such petition shall be delivered to the proper officer of the Court either by the appellant or by his pleader. **15 M. 137 =2 Weir 468.** [*F.*, 2 Weir 469=19 M. 354; *Appl.*, 8 C.P.L.R. 93].

(5)—*Crim. Pro. Code (1898), s. 419—Presentation of appeal by pleader's clerk.*—Presentation of an appeal petition by the appellant's pleader's clerk is equivalent to a presentation by the pleader himself, when the petition of appeal is signed by the pleader and he is duly authorised. **20 M. 87=2 Weir 470.**

(6)—An authorised pleader may present a petition of appeal by the hand of his clerk, and such presentation is equivalent to a presentation by a pleader himself. But a pleader is not competent to present an appeal by a person who is not his clerk and over whose conduct and action he has no control. **21 M. 114= 2 Weir 470.**

(7)—*Rule to show cause—Discretion of Court hearing the rule—Duty of appellate Court.*—Although rules to "show cause, why the conviction of a person should not be set aside" are frequently granted on particular grounds, it is very unusual to tie the hands of the Court which is to hear the rule as to the action it should take if the conviction is set aside. This is a matter which should be left to the discretion of the Court which hears the rule. Rule was

Appeal—continued.

——6.—(Appeal—Practice and Procedure).
—*continued.*

granted by a Division Bench of the High Court calling upon a Magistrate "to show cause why the conviction of the petitioner should not be set aside and the case sent back for retrial" *Held*, that the Judges who granted the rule did not intend to say that the Court hearing the rule should have no power to discharge the accused person. An appellate Court is to come to a conclusion for itself upon the evidence on the record, assisted so far as it might be by such reasons or arguments as it might elicit from the conclusions and reasons contained in the judgment of the original Court. If the Judge of the appellate Court entertain any doubt about the correctness of the conviction or the commission of the offence, he should discharge the accused. It is not necessary in criminal cases that the appellant should clearly establish that the order of the Lower Court was wrong, and in this respect a criminal appeal differs from a civil appeal. **23 C. 347.** [*R.*, 97 P.L.R. 1904=7 P.R. 1904 Cr. 21, 17 C.P.L.R. 75, 17 C.P.L.R. 97].

(8)—*Crim. Pro. Code (1872), s. 476-Conviction for graver offence on appeal—Withdrawal of petition of appeal.*—The appellate Court should not alter a conviction so as to find the appellants guilty of a graver offence than that with which they had been charged on their trial, unless they are allowed an opportunity of defending themselves against the charge so altered. [*R.*, 26 C. 863=8 C.W.N. 653, 3 L.B.R. 232. Although a petition of appeal can be withdrawn, at the option of the appellant, before the appellate Court has decided to hear it, a petition for withdrawal, presented at the last moment does not debar the appellate Court, which has perused or had heard the evidence read, from dealing with the appeal on the merits. **6 C.L.R. 427.**

(9)—*Crim. Pro. Code, s. 423—High Court's power on appeal to alter the finding of the Lower Court.*—It is doubtful, whether the High Court has power, under s. 423, Crim. Pro. Code, on holding that the conviction of a person for an offence charged in the sessions trial was not sustainable, to alter the finding to a conviction for some other offence, *e.g.*, under s. 161, for which the accused had not been charged or tried. **8 A. 120.** [*R.*, 3 L.B.R. 232; *D.*, U.B.R. 1903, Third Quarter, Penal Code, 9].

(10)—*Appellate Court's power to alter a sentence of fine into one of imprisonment.*—A Sessions Judge has no power to enhance a sentence in appeal, by altering a sentence of fine into one of imprisonment. **18 B. 751.**

(11)—*Crim. Pro. Code (1882), s. 423 (b) (3)—Enhancement of sentence.*—The alteration by an Appellate Court of a sentence of fine of Rs. 50, or in default two months' simple imprisonment, to one of six months' rigorous imprisonment is an enhancement of the sentence. **18 A. 301.**

Appeal—continued.

——6.—(Appeal—Practice and Procedure).
—*continued.*

(12)—*Petition of appeal, withdrawal of—Enhancement of sentence.*—A petition of appeal presented for admission may be withdrawn. A Judge who disallowed such withdrawal and enhanced the sentence was held to have acted wrongly, and the enhancement order was set aside. **5 C.L.R. 372.** [*D.*, 6 C.L.R. 427].

(13)—*Crim. Pro. Code (1882), s. 423 (b), sub-s. 3—Enhancement of sentence by appellate Court—Power of High Court—Penal Code, ss. 323 and 392.*—The accused was convicted of robbery (s. 392, Penal Code) and hurt and sentenced for the former offence to ten months' rigorous imprisonment, and for the latter to one day's rigorous imprisonment. On appeal, the Sessions Judge set aside the conviction on the charge of robbery, but, confirming the conviction for hurt, sentenced the accused to six months' rigorous imprisonment. *Held*, that the Sessions Judge had no power to pass such sentence, but the High Court could confirm such sentence if it would meet the ends of justice. **24 C. 317, note.** [*F.*, 3 N.L.R. 67; *R.*, 24 C. 316].

(14)—*Acquittal—Competency of appellate Court to convict accused of offences not charged.*—Where, on an appeal from a conviction under s. 302, I.P.C., the appellate Court came to the conclusion that the offence under s. 302 was not proved against the appellants, but it was brought to the notice of the Court that there was evidence on the record which might support, as against some of the appellants, a conviction under s. 404 or s. 414, I.P.C., the appellate Court acquitted the accused, but declined to enter into the question whether they were liable to be convicted under s. 404 or s. 414, I.P.C. **20 A. 107.**

(15)—*Crim. Pro. Code, ss. 280, 297—Death of appellant—Abatement of appeal.*—The Code has not made any provision for the continuance of the appeal either by the heir, devisee, or executor of the deceased convict or by any other person. The appeal abates upon the appellant's death. But the High Court has the right to call for the record, and make such order thereon as it may deem just. **2 B. 564.**

(16)—*Crim. Pro. Code (1898), s. 423—Power of appellate Court to order re-trial.*—There is nothing in the terms of s. 423 (1) (*b*) to limit the powers of an appellate Court to order a re-trial, the only restriction imposed being that it cannot enhance the sentence on an appeal from a conviction. Therefore, the power of an appellate Court to order a new trial is not confined to a case where the conviction and sentence are set aside for want of jurisdiction in the Court that tried the case. **27 C. 172=4 C. W.N. 166.** (15 A. 205, 23 C. 975, *F.*; 8 A. 14, *Diss.*) [*R.*, 7 C.W.N. 301, 17 C.P.L.R. 97].

(17)—*Crim. Pro. Code (1872), s. 278 (=s. 421 of the Code of 1898)—Re-admission of appeal rejected for default of appearance.*—When an

Appeal—continued.

——6.—(Appeal—Practice and Procedure).

—concluded.

appeal has been rejected without hearing the appellant's pleader, because of his default, and it is afterwards proved to the satisfaction of the appellate Court that an adequate excuse has been made out for the pleader's non-appearance, it is open to that Court to re-hear the appeal on its merits. **2 Weir 471=7 M.H.C. App. 29.**

(18)—*Crim. Pro. Code (1872), ss. 278, 279—Notice to appellant of day of hearing of appeal.*—The fact that the appellant's pleader is present in Court, when an order admitting an appeal is passed, will not save the necessity of giving separate notice to the appellant. Since s. 279 lays down that the notice is to be given to the appellant, a substituted notice to the appellant's pleader or mukhtear is not sufficient. **10 C.L. R. 57.**

(19)—*Crim. Pro. Code, ss. 517 and 520—Order for disposal of property regarding which offence is committed—Sessions Judge, jurisdiction of.*—An appeal lies against an order passed under s. 517 of the Code, though there be no appeal against the finding in the case in which the order was passed, inasmuch as the words "Court of Appeal" in s. 520 are not to be read as restricted to "a Court of Appeal before which an appeal is pending." [*R.*, 14 C.P.L.R. 60, 17 C.P.L.R. 107.]

(20)—The wording of s. 520 is sufficient to show that the Sessions Court, as the Court to which appeals ordinarily lie from the decisions of the first-class Magistrate, has power to modify, alter or annul an order under s. 517, made by the Magistrate. **9 M. 448=2 Weir 672.**

(21)—*Criminal appeal—Presentation by person authorised by appellant—Limitation Act (IX of 1871), Art. 152.*—A petition of Criminal appeal may be presented by any person authorised by the appellant to present it. Such presentation is sufficient for the purposes of Sch. II, Art. 152, Limitation Act (IX of 1871). **1 M. 304.** [*R.*, 6 B. 14.]

(22)—*Presentation of appeal—Limitation—Delay in obtaining copies.*—In order to compute the period of limitation for the presentation of an appeal, every day of delay in obtaining copies not attributable to the party should be deducted. **6 M.H.C. 349.**

(23)—*Appeal presented out of time—Rejection.*—Under s. 415 of the Crim. Pro. Code, 1861, an appeal preferred out of time and without any explanation of the delay may be rejected at once. **5 W.R. Cr. 80.**

See CRIM. PRO. CODE (1898), ss. 418, 423, 21 C. 955.

——7.—(Appeal to Privy Council).

(1)—*Leave to appeal to Privy Council in criminal cases.*—In criminal cases, the High Court will not, in general, grant leave to

Appeal—continued.

——7.—(Appeal to Privy Council)—*continued:*

appeal to the Privy Council, unless some important question of law or practice, or jurisdiction, is involved. Considerations that guide the Court in granting leave to appeal in such cases stated, and instances in which such leave has been granted, mentioned. **10 B.H.C. 75.**

(2)—On an application for leave to appeal from the sentence of the Sudder Nizamut Adawlut (the chief native criminal Court of appeal in Bengal), the Judicial Committee, though of opinion that justice had not been done in the Court below, declined to determine the question of the prerogative of the Crown to admit an appeal in criminal matters and to advise such admission, on the ground that such course might be detrimental to the general administration of criminal justice in Her Majesty's colonial and foreign possessions; but suggested an application by the petitioner to the executive authorities for relief, with an intimation of their Lordships' opinion of the hardship and injustice of the particular case. **1 W.R. 13, P.C.=9 M.I.A. 168.**

(3)—Where leave to appeal to the Privy Council from a conviction under s. 124-A, was applied for before the Privy Council, their Lordships refused to accord permission, holding that no case had been made out consistently with the rules by which their advice to Her Majesty had been hitherto guided in giving leave to appeal in criminal cases. **22 B. 528, P.C.** [*R.*, 34 C. 991].

(4)—*Leave to appeal to the Privy Council in criminal cases—Grave and substantial injustice to be shown—Crim. Pro. Code (Act V of 1898), ss. 233, 234, 235, 236, 237 and 239—Joinder of charges.*—Before granting leave to appeal, in criminal cases, to the Judicial Committee of the Privy Council, the High Court must be satisfied that, by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been done. Ss. 234, 235, 236 and 239 of the Crim. Pro. Code, referred to as exceptions in s. 233, are not mutually exclusive; otherwise, the provisions of s. 236 or s. 237 can never be invoked to prevent a miscarriage of justice arising from a failure to make good all the details of a charge joined with two other charges under s. 234. The Legislature hardly intended that a joint trial of three offences under s. 234 should prevent the prosecution from establishing at the same trial the minor or alternative degrees of criminality involved in the acts complained of. Ss. 235 and 236 may be resorted to in framing additional charges where the trial is, under s. 234, of three offences of the same kind committed within a year. **10 Bom L.R. 973=4 M.L.T. 450.**

(5)—*Right of appeal.*—No right of appeal exists in any matter of criminal jurisdiction to the Privy Council, and the High Court has not got the power to grant leave to appeal in such a case. **18 W.R. 407**; 18 W.R. 407, *note*.

Appeal—continued.

——7.—(Appeal to Privy Council)—*continued.*

(6)—An order of the High Court at Calcutta, under s. 26, cl. 2 of Bengal Regulation V of 1831, dismissing a Munsiff for corruption in the exercise of his functions as Judge, is final, and there is no jurisdiction in the Judicial Committee to admit a special appeal therefrom. **13 M.I.A. 343.**

(7)—Upon a petition, praying for leave to appeal from a conviction for felony, held by the Judicial Committee of the Privy Council, that there was no power reserved to the Crown by the Charter of the Supreme Court, Bombay, to allow appeals in criminal cases, such appeal being confined to civil cases only. **3 M.I.A. 468.**

(8)—*Leave to appeal to Privy Council on the ground of misdirection of jury.*—Although there are very special and exceptional circumstances in which the Privy Council grants leave to appeal in criminal cases, yet it would be contrary to its practice and very mischievous, if any countenance were given to the view that an appeal will be allowed in every case in which it is shown that the Judge has misdirected the jury. **15 A. 310, P.C.** [*R.*, 2 L.B.R. 237, 2 A.L.J. 718].

(9)—*Conviction for murder—Application for special leave to appeal—Misdirection.*—An application was made to the Privy Council for special leave to appeal from a judgment of the Supreme Court of Ceylon, in its criminal jurisdiction, upholding the conviction and sentence, in a trial for murder at the Colombo Criminal Sessions, on the ground, *inter alia*, that the Judge, instead of directing the jury as to the absence of corroboration, made the general remark that if juries were to throw up a case on account of contradiction and falsehoods, there would be an end to the criminal law of the island; an application was also made for the mitigation of punishment pending the appeal, and for the admission of the accused to bail. Special leave to appeal was granted, directing the petitioners to address the Ceylon Government or the Supreme Court as to the mitigation of punishment or bail. **14 Bur. L.R. 148, P.C.**

(10)—*Leave to appeal to Privy Council—Crim. Pro. Code, s. 404—Letters Patent, 1865, cl. 41.*—The High Court has no power, under cl. 41 of the Letters Patent, to grant leave to appeal to Her Majesty in Council from an order made or decision given by it in a case decided by a Full Power Magistrate and referred to it by the District Magistrate, under s. 404 of the Crim. Pro. Code. (**N.B.**—This was an application by the Government for leave to appeal from 7 B.H.C. Cr. 6). **7 B.H.C. Cr. 77.**

See ADVOCATE, 4 Cr. L.J. 236, P.C.

See BAIL, 24 M. 161=2 Weir 657, 19 P.W.R. 1908 Cr.=15 P.R. 1908 Cr.=9 Cr. L.J. 89.

Appeal—concluded.

——7.—(Appeal to Privy Council)—*concluded.*

See PENAL CODE, ss. 188, 290. **7 M.L.J. 33, P.C.**

See PRACTICE AND PROCEDURE, **10 Bom. L.R. 973=4 M.L.T. 450=9 Cr. L.J. 226.**

Appellant.

See APPEAL.

See CRIM. PRO. CODE, 1898, ss. 420, **421**, 422, 423, 13 A. 171.

See REVISION, 19 B. 714.

Appellate Court.

(1)—*Crim. Pro. Code, Act X of 1882, s. 106—Appellate Court—Power to order security to be given.*—An appellate Court cannot, in an appeal from a conviction, order security to be furnished under s. 106 of the Crim. Pro. Code. **A.W.N. 1890, 170.**

(2)—*Court of Appeal—Competency to alter the finding of the Lower Court.—Per Brodhurst, J.*—A Court of appeal is not competent to alter the finding of a Magistrate, so as to convict an accused person of an offence which the Lower Court is not competent to try. **7 A. 414.** [*Commented upon*, 8 A. 576, F.B.]

(3)—*Crim. Pro Code (1882), s. 423—Powers of appellate Court—Whether competent to alter conviction by adding conviction for another offence.*—The accused were convicted by a second class Magistrate under s. 323, I.P.C. On appeal, the appellate Court confirmed the conviction under s. 323, I.P.C., and also convicted the accused under s. 147, for which they were not tried by the second class Magistrate: *held* that, as the accused were not tried for an offence under s. 147, the appellate Court could not legally convict them of it. **Rat. Un. Cr. C. 353=Cr. Rg. 41 of 1887.**

(4)—*Power of—to alter finding limited by provisions of s. 233, Crim. Pro. Code.*—The power of altering the finding, while maintaining the sentence, conferred on appellate Courts by s. 423 (1) (*b*), Crim. Pro. Code, does not *empower those* Courts to act in contravention of the provisions of s. 233, Crim. Pro. Code. **38 P.R. 1905 Cr.=115 P.L.R. 1905.**

(5)—*Crim. Pro. Code (1882), ss. 238, 423 (b) (2)—Charge of offence under s. 457, I.P.C.—Conviction by appellate Court under s. 414, I.P.C.*—The accused was convicted, by a second class Magistrate of house-breaking by night, under s. 457, I.P.C. In appeal, the first class Magistrate altered the conviction to one under s. 414 of the Code. *Held*, (1) that s. 457, I.P.C., applied to a composite offence, and, under s. 238, Crim. Pro. Code, an accused may be convicted of any element of the composite offence; (2) that under s. 423 (*b*) (2) of the Crim. Pro. Code, it was competent to a Court of appeal to record a new finding and sentence. **Rat. Un. Cr. C. 293=Cr. Rg. 37 of 1886.**

Appellate Court—continued.

(6)—*Crim. Pro. Code (1882), s. 435—Enhancement of sentence by Appellate Court—Appellate Court quashing conviction on one charge but acquitting on the other—Sentence.*—An appellate Court has no power to maintain the entire sentence passed by the original Court, when it reverses the conviction on one of the charges, such a maintenance being an enhancement of the sentence. **22 B. 760.** [*F.*, 1 M.L.T. 403=5 Cr. L.J. 88=30 M. 48; *R.*, 3 N.L.R. 67=6 Cr. L.J. 43].

(7)—*Solitary confinement—Enhancement.*—When an appellate Court reduces the term of the imprisonment but orders a term of solitary confinement, this is an enhancement of the sentence and is illegal. **A.W.N. 1890, 170.**

(8)—*Remission of sentence.*—A Sessions Judge, as a Court of appeal, is not competent to remit the remainder of the appellant's sentence, on the ground of the youth of the appellant, and of his father's services. It is an usurpation of the powers of Government. **11 P.R. 1869 Cr.**

(9)—*Crim. Pro. Code, s. 421—Rejection of appeal—Judgment.*—In rejecting an appeal under s. 421, Crim. Pro. Code, the appellate Court is not bound to write a judgment. **20 B. 540.** [*F.*, 2 Weir 473=25 M. 534; *R.*, U.B.R. 1906, Second Quarter, Crim. Pro. Code, 49=4 Cr. L.J. 284].

(10)—*Judgment of.*—Courts subordinate to the revisional jurisdiction of the High Court should incorporate in their judgments materials to enable the High Court to grasp the nature of the case without reference to the record. **18 P.R. 1897 Cr.** (19 A. 506, *R.*)

(11)—*Summary dismissal by—Writing of judgment by, if necessary—Alteration or reduction of sentence—Crim. Pro. Code (1882), ss. 421, 423, 424 and 367.*—It is not necessary for an appellate Court to write a judgment while summarily dismissing an appeal under s. 421, Crim. Pro. Code. That section does not provide for any material alteration or reduction of any sentence. A sentence can only be reduced after an appeal is admitted and orders are passed under s. 423. In that case a judgment should be written as required by s. 367 read with s. 424. **L.B.R. (1893—1900), 606.** (22 C. 214, *F.*)

(12)—*Power of—Rejection of appeal.*—*Held*, that an appellate Court would not be exercising its discretion properly, if it was to reject an appeal by the accused, merely after perusing the Lower Court's judgment and the grounds of appeal and hearing the appellant's agent, without any reference to the Lower Court's record, which the appellate Court had not before it. Such a procedure would be a ground for revision by the High Court. *Per Rattigan, J.*—What is contemplated by s. 278 is that the appellate Court exercising the discretionary powers of rejecting an appeal conferred by the section should do so, not arbitarily, but on some sound judicial principles. An appellate Court which omits to send for and peruse the proceedings of the first Court, when the grounds

Appellate Court—continued.

of appeal impeach the findings of that Court, and raise objections which cannot fairly be disposed of without a reference to the record, commits an error of a material kind; the error consists in omitting to exercise a power which the Legislature has conferred in the interests of the accused person where a proper case for its exercise is shown to exist, and it is material because it affects the merits of the case and possibly occasions a failure of justice. *Per Beverley, J.*—As it did not appear that the appellate Court could have satisfied itself on all material grounds of appeal without examining the records of the case, it would not be acting properly in rejecting the appeal without so doing. *Per Elsmie, J.* (Contra)—As the judgment of the Lower Court was sufficiently full and detailed to satisfy the appellate Court that the material points in the case, including those raised in the appeal, have been rightly disposed of, and as there was no *prima facie* ground for questioning the correctness of the Magistrate's conclusion or the legality of his proceedings, the appeal was properly disposed of, without sending for the record. **35 P.R. 1882 Cr.** (35 P.R. 1882 Cr., note, 31 P.R. 1881 Cr. and 5 P.R. 1876 Cr., *R.*)

(13)—*Appellate Court—Order for re-trial—Crim. Pro. Code (1882), s. 423.*—S. 423, Crim. Pro. Code, 1882, gives a discretion to the appellate Court to order a re-trial when the circumstances of the case require it. **Rat. Un. Cr. C. 245=Cr. Rg. 12 of 1886.**

(14)—The power of an appellate Court, in an appeal from a conviction, is not restricted to making an order for the committal of the accused person, when the case is triable exclusively by the Court of Sessions. The section authorises the appellate Court to order a re-trial where necessary. **Rat. Un. Cr. C. 938=Cr. Rg. 49 of 1897.**

(15)—Under the provisions of s. 423 (1) (*b*), the re-trial, if ordered, must be by a Court of competent jurisdiction subordinate to the appellate Court; the appellate Court cannot order the re-trial to proceed before itself. **Rat. Un. Cr. C. 982=Cr. Rg. 42 of 1898.**

(16)—In an appeal from a conviction, the appellate Court is competent, after reversing the conviction, to order the re-trial of the appellant by a Court of competent jurisdiction, on the ground that the original Court, although possessing jurisdiction to try the case, had not the competency to adequately punish for the offence. **16 P.R. 1895 Cr.** (15 A. 205 and 16 B. 580, *F*; 8 A. 14, *Not F*).

(17)—Under s. 423 (*b*) of the Crim. Pro. Code, an appellate Court, being competent to order a re-trial of the accused by a subordinate Court of competent jurisdiction, or to order him to be committed to the sessions, should, instead of rejecting an appeal, referring the case to the High Court, reverse the finding and deal with the case under the powers conferred upon an appellate Court by the section above quoted. **L.B.R. (1893—1900), 123.**

Appellate Court—continued.

(18)—*Duty of—to give the benefit of doubt to the appellant.*—The law of appeal constitutes the appellate Court a Judge of the facts as completely as the Court of first instance, and the former Court should give the benefit of the doubt to the accused, if it feels any doubt about the guilt of the accused. **5 P.R. 1876 Cr.**

(19)—Though in criminal cases, an appellate Court should be guided in its estimate of the evidence of a witness by remarks recorded by the first Court under s. 363, Crim. Pro. Code, as to the demeanour of that witness, such appellate Court is bound to independently consider the facts of the case, and the prisoner is entitled to the benefit of a reasonable doubt in the appellate no less than in the first Court. **6 P.R. 1898 Cr.**

(20)—In every appeal, and *a fortiori* in every reference under s. 34 of the Code of Criminal Procedure, it is obviously the duty of the Sessions Judge to carefully weigh the evidence himself and not to rely solely upon the weight attached to it by the Court whose order is appealed against or is referred to for confirmation. No doubt an appellate Court is right in attaching in all cases a certain weight, and in some cases very considerable weight, to the fact that the Lower Court believed the witnesses for the prosecution; but even in such cases the appellate Court is not justified in placing complete reliance upon the Lower Court's view as to the credibility of the witnesses. It is bound to look into all the circumstances of the case and to see whether they in any way impugn the statements made by them. **L.B.R. (1872—1892), 516.**

(21)—*Appellate Court not fully going into the evidence—Power of revision.*—Where the appellate Court dismisses the appeal, and its order betrays little or no indication that it has examined the evidence or brought an independent judgment to bear on the main points, it becomes necessary to examine the case in greater detail than would ordinarily be justified on revision. **16 P.W.R. 1907 Cr=6 Cr. L.J. 137.**

(22)—*Misquoting of section by Court—Duty of appellate Court.*—If a Judge or Magistrate misquotes the proper section which is applicable to the conviction, it is the duty of the superior Court, before which the matter may come afterwards, to look to the proper section of the law rather than, by attributing the conviction to the wrong section, cause a failure of justice. **Rat. Un. Cr. C. 338=Cr. Rg. 29 of 1887.**

(23)—*Proceedings involving further inquiry or the taking of additional evidence.*—Any proceedings involving further enquiry or the taking of additional evidence under s. 422, Crim. Pro. Code, should be promptly completed by the Lower Courts of criminal appeal. **4 W.R. Cr. Cir. 1.**

Appellate Court—continued.

(24)—*Crim. Pro. Code (1898), s. 428—Appellate Court—Examination of further witnesses—Proceedings to be adopted.*—If a Sessions Judge, hearing an appeal, thinks that the evidence of some more witnesses, who were not examined in the Lower Court is necessary, he should proceed under cl. (1) of s. 428, Crim. Pro. Code. **31 C. 710.**

(25)—*Powers of—Setting aside order for payment of Court-fees under s. 31 of Court Fees Act—Sentence.*—The order, directing the accused convicted of a non-cognisable offence, to repay to the complainant the fee paid by him on his complaint, does not form part of the sentence passed upon the accused for the offence. An appellate Court is not, therefore, competent to set aside the order of the trying Magistrate under s. 31 of the Court Fees Act. **31 M. 547 Cr.=5 M.L.T. 223=9 Cr. L.J. 83.**

(26)—*Order of confiscation by, where no such order is made by convicting Court—Alteration of sentence of fine to one of imprisonment—Enhancement of sentence—Crim. Pro. Code (1882), s. 423—Forest Act, s. 54.*—S. 54 of the Forest Act empowers the convicting Magistrate to order confiscation of timber in respect of which a Forest offence has been committed, and his order is subject to appeal. The Act does not empower the appellate Court to confiscate timber when no confiscating order has been made by the convicting Magistrate. Assuming that the Sessions Judge had the power of confiscating the timber, his power would be limited by the provisions of s. 423, Crim. Pro. Code, which prevents an appellate Court enhancing a sentence on appeal. To alter a sentence of fine to one of imprisonment is an enhancement which an appellate Court is not competent to order. **L.B.R. (1893-1900), 423.** (18 B. 751, *F.*)

(27)—*Function of—Crim. Pro. Code (1898), s. 537—Evidence Act, s. 167.*—It is not a mere Court of error, but the Court, as a Court of reference, appeal or revision is enjoined by ss. 537, Crim. Pro. Code, and s. 167, Evidence Act, not to reverse or alter the finding or sentence passed by a Court of competent jurisdiction on account of any error, omission, irregularity, improper admission or rejection of evidence, unless, in its judgment, such error, omission or irregularity has, in fact, occasioned a failure of justice or unless independently of the evidence objected to and admitted there was not sufficient evidence to justify the decision, or if the rejected evidence had been received, it ought to have varied the decision. **24 M. 523.** (15 B. 66, *R.*).

—Procedure in deciding appeals against acquittal—*See* ACQUITTAL, L.B.R.(1893—1900), 42.

—Power of, to order payment of fees—*See* ACT VII OF 1870, s. 31, 1 Weir 723.

—Power of appellate Court rejecting appeal to enhance sentence—*See* ACT XI OF 1874, s. 26, 24 W.R. Cr. 29.

Appellate Court—continued.

—Power of appellate Court to pass order for detention in a Reformatory School—*See* ACT VIII OF 1897, ss. 8, 9 and 11, 4 C.W.N. 225.

—Substitution of imprisonment for an order of detention in Reformatory Schools by—*See* ACT VIII OF 1897, s. 16, 3 C.W.N. 576, 18 P.R. 1907 Cr. = 43 P.W.R. 1907 = 55 P.L.R. 1908.

—Power of appellate Court to add charge—*See* CHARGE, 7 N.W.P. 137, 26 C. 863 = 3 C.W.N. 653, 27 C. 990 = 5 C.W.N. 31.

—Power of—to acquit the accused of theft and convict for distinct offence—*See* CHARGE, 27 C. 660.

—Power to interfere with verdict of Jury—*See* CHARGE TO JURY—MISDIRECTION, 23 C. 252, 25 C. 711 = 2 C.W.N. 369.

—Power of appellate Court to direct committal—*See* COMMITMENT TO SESSIONS COURT, 23 C. 350, 8 A. 14.

See COMPENSATION, 3 A.L.J. 382 = A.W.N. 1906, 145 = 3 Cr. L.J. 441 = 28 A. 625.

—Powers of—*See* CRIM. PRO. CODE (1898), ss. 106 and 423, 29 C. 393 = 6 C.W.N. 678.

—Power of, to set aside order under s. 106, Crim. Pro. Code—*See* CRIM. PRO. CODE (1898), ss. 106 and 423, 30 C. 101 = 6 C.W.N. 422.

—Jurisdiction of appellate Court to try case itself, instead of ordering retrial by subordinate Court—*See* CRIM. PRO. CODE (1898), ss. 190, 191, 423 (1) (6) and 528, 30 M. 228 = 16 M.L.J. 546 = 2 M.L.T. 46 = 5 Cr. L. J. 104 = 6 Cr. L.J. 133.

—Power of, to alter finding—*See* CRIM. PRO. CODE (1898), ss. 195, 198, 423, 25 A. 434 = A.W.N. 1903, 100.

See CRIM. PRO. CODE (1898), ss. 221 (7), 342, 412 and 511, 4 N.L.R. 163 = 9 Cr. L.J. 56.

—Conviction in absence of charge—New trial, power of appellate Court to order—*See* CRIM. PRO. CODE (1898), ss. 232 and 423, 28 C. 63 = 5 C.W.N. 819.

See CRIM. PRO. CODE (1898), ss. 253, 437, 2 Ind. Cas. 825.

See CRIM. PRO. CODE (1898), ss. 367, 369, 421, 422, 423, 5 N.L.R. 76 = 9 Cr. L.J. 553 = 2 Ind. Cas. 247.

See CRIM. PRO. CODE (1898), s. 402, 116 P.L.R. 1904.

—Powers of—*See* CRIM. PRO. CODE (1898), ss. 403 and 423 (*b*), 22 C. 377.

See CRIM. PRO. CODE (1898), s. 421, 32 C. 178, 25 M. 534 = 2 Weir 473.

See CRIM. PRO. CODE (1898), ss. 421, 423, excpt. 1 (*d*), 2 Weir 473.

See CRIM. PRO. CODE (1898), ss. 422, 423, 2 Weir 474.

Appellate Court—continued.

See CRIM. PRO. CODE (1898), s. 423, 17 C.P.L.R. 97, 26 M. 478 = 2 Weir 483 = 13 M.L.J. 263, Col. Dig. Cri. 26 of 1875, 23 C. 975, 2 Weir 480, 484, 485.

See CRIM. PRO. CODE (1898), ss. 423 excpt. 1 (*d*), 428, 2 Weir 481.

See CRIM. PRO. CODE (1898), ss. 423 and 522, 7 O.C. 208.

—Powers of High Courtto act under s. 562 on appeal—*See* CRIM. PRO. CODE (1898), ss. 423 (*b*) and 562, 24 A. 306 = A.W.N. 1902, 69.

See CRIM. PRO. CODE (1898), s. 424, 2 Weir 535.

See CRIM. PRO. CODE (1898), ss. 424 and 367, 2 Weir 536.

See CRIM. PRO. CODE (1898), ss. 428, 437, 439, 6 C.L.J. 251 = 6 Cr. L.J. 357.

See CRIM. PRO. CODE (1898), s. 520, 2 Weir 674.

See CRIM. PRO. CODE (1898), s. 522, 5 C.W.N. 432.

See CRIM. PRO. CODE (1898), s. 537, 2 Weir 709 = 7 M.H.C. App. 25.

—European British subject not claiming trial by jury—*See* EUROPEAN BRITISH SUBJECT, 27 A. 397 = 2 A.L.J. 20 = A.W.N. 1905, 5 = 2 Cr. L.J. 17.

See IRREGULARITY, 19 M. 3 = 2 Weir 40.

See JOINDER OF CHARGES, 25 M. 61 = 11 M.L.J. 233 = 3 Bom. L.R. 540 = 28 I.A. 257 = 5 C.W.N. 866 = 2 Weir 271 = 10 M.L.J. 147, P.C.

—Judgment of appellate Court, form and contents of—*See* JUDGMENT, 19 A. 506, F.B.

See JUDGMENT, 21 C. 92, 22 C. 241, 23 C. 420, 12 C.W.N. 114, 12 C.W.N. 134 = 6 Cr. L. J. 427 = 35 C. 138.

See PENAL CODE, s. 289, 3 N.L.R. 90 = 6 Cr. L.J. 100.

—Duty of appellate Court to write judgment —*See* PRACTICE AND PROCEDURE, 2 Weir 473.

—Re-trial, power of appellate Court, to order —*See* RE-TRIAL, 7 C.W.N. 301, L.B.R. (1893-1900), 238.

—Appellate judgment dismissing appeal as time-barred—*See* REVISION, 6 Bom. L.R. 360.

—Application for sanction to an appellate Court—*See* SANCTION TO PROSECUTE, 16 A. 80.

—Power of appellate Court to grant sanction —*See* SANCTION TO PROSECUTE, 31 C. 811.

—Revocation of sanction by appellate Court —*See* SANCTION TO PROSECUTE, 2 Weir 195.

See SANCTION TO PROSECUTE, 56 P.R. 1905 Cr. = 180 P.L.R. 1905 = 3 Cr. L.J. 121, 2 Weir 160.

Appellate Court—concluded.

See SECURITY TO KEEP THE PEACE, 10 Bom. L.R. 759=8 Cr. L.J. 267, 4 A. 212, F.B., 16 C. 779, 29 M. 190=3 Cr. L.J. 461, 7 C.L.J. 602=12 C.W.N. 752=35 C. 434=8 Cr. L.J. 9 =4 M.L.T. 340, 1 M.L.T. 343=4 Cr. L.J. 498=30 M. 182, 10 O.C. 287=6 Cr. L.J. 302, 127 P.L.R. 1901, 6 P.R. 1907 Cr.=23 P.W.R. 1907=6 Cr. L.J. 276, 21 P.R. 1908 Cr.

—What amounts to enhancement of sentence by appellate Court—*See* SENTENCE, 23 B. 439.

See SENTENCE, 1 M. 54, 30 M. 48=1 M.L.T. 403=5 Cr. L.J. 88=8 M.H.C. App. 8, 3 N.L.R. 67=6 Cr. L.J. 43, 30 M. 103=1 M.L.T. 375=16 M.L.J. 560, F.B=5 Cr. L.J. 36.

See SESSIONS JUDGE, JURISDICTION OF, 18 B. 751, 20 A. 181, 22 B. 759.

See UNLAWFUL ASSEMBLY, 35 C. 718=8 Cr. L.J. 203.

Application to High Court.

—*Application to Court—Scandalous or defamatory matter—Return.*—Where an application made to the High Court contains defamatory or scandalous matter about the trying Magistrate and other officers of the Government, it cannot be placed on the record and may be returned to the party. **Rat. Un. Cr. C. 480.**

Apprentice.

See PENAL CODE, s. 381, 157 P.L.R. 1905 =50 P R. 1905 Cr.=3 Cr. L J. 70.

Approver.

See 1. ACCOMPLICE.
2. ACCUSED.
3. CHARGE TO JURY.
4. COMMITMENT.
5. CONFESSION.
6. CRIM. PRO. CODE (1898), SS. 337-339.
7. EVIDENCE ACT, SS. 114, 133.
8. PARDON.

(1)—"*Accomplice*"—*Circumstances constituting a person an accomplice.*—Persons, who alleged that they had no other object than that of getting the deceased a beating, but who was eventually murdered, were treated as accomplices in the offence of murder, having regard to the part they took in disposing of the body, to their silence for three days and to their finally going to assist in removing the body from the place of concealment to the railway line, the body having been mutilated on the way on being deposited on the rails. **6 Bom. L.R. 481.**

(2)—*Crim. Pro. Code (1882), ss. 337, 339—Conditional pardon, effect of.*—(1) The accused being charged with offences under ss. 471, 472 and 474, I.P.C., made a statement to the Magistrate of Benares, implicating others in Calcutta. He was in the meanwhile sent to Calcutta and was charged along with four others upon charges under ss. 467, 473 and 475, Penal Code. He was offered a conditional

Approver—continued.

pardon and, upon his acceptance, was taken as approver. The Magistrate at Calcutta, holding that there was no sufficient corroboration of the accused's evidence, discharged the persons charged in that case, and there was nothing in the record to show that the Magistrate was dissatisfied with the statements made by the approver, or considered that he had not complied with the conditions on which the tender was made. Thereafter the accused was brought back to Benares to have his trial for offences under ss. 471, 472 and 474, Penal Code, completed. In that trial he pleaded not guilty, but did not specially plead the conditional pardon as a bar to the trial and was convicted and sentenced. *Held* that, as both sets of charges were closely connected and mixed up, and as it was not shown that the conditional pardon granted by the Calcutta Magistrate had ever been withdrawn, the accused was protected from trial at Benares in respect of the offences under ss. 474, 471, 472, I.P.C., and was not liable to be proceeded against in respect of them. (2) Although it is clear that s. 337, Cr.P.C., does not in terms cover a case in which a Magistrate holding a preliminary enquiry for committal against several persons, tenders a conditional pardon to one of them, examines him as a witness, and subsequently discharges all the accused for want of a *prima facie* case to justify a committal; yet, the words "every person accepting a tender under this section shall be examined as a witness in the case" mean that, for all purposes, subject of course to his failure to satisfy the conditions of his pardon as provided by s. 339, he ceases to be triable for the offence or offences under enquiry, or, looking again to s. 339, for "any other offence of which he appears to have been guilty in connection with the same matter while making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offences" directly under inquiry. (3) When a pardon is tendered, the approver should be encouraged to give the fullest details, so that points, capable of corroboration, may be found in his evidence. **11 A. 79.**

(3)—*Crim. Pro. Code (1882), s. 337—Withdrawal of conditional pardon and trial of the person with the other accused, validity of.*—A person, to whom a pardon has been granted in connection with an offence, should not be tried for an alleged breach of the conditions upon which the pardon was tendered, or for any other offence of which he appears to have been guilty in connection with the offence for which he had received the pardon, until the original case has been fully heard and determined. **14 A. 336.** [*F.*, 23 B. 493, 27 C. 137, 13 C. P. L.R. 123; *R.*, 22 C. 50, 14 Bur. L.R. 306= 7 Cr. L.J. 245=U.B.R. (1907), 4th Quarter, Crim. Pro. Code, p. 7; *Diss.*, 20 A. 529=18 A.W.N. 152, 3 A.L.J. 615=A.W.N. (1906), 258=29 A. 24].

(4)—*Tender of pardon to—Withdrawal of pardon—Joint trial of, with co-accused.*—An accused person to whom a pardon was tendered and who was examined as a witness under that

Approver—continued.

pardon against the co-accused, should, if such pardon is subsequently withdrawn, be tried separately after the trial of the co-accused. A joint trial of the approver with the co-accused is bad. **A.W.N. 1891, 182.**

(5)—*Approver—Withdrawal of conditional pardon—Validity of trial along with other prisoners.*—It is unfair to put an approver, whose conditional pardon has been cancelled, on trial along with the other prisoners, in the course of whose trial such approver has given evidence. The proper course is to defer taking action against the approver until the conclusion of the trial then proceeding. **15 M. 352=2 Weir 394.** [*F.*, 22 C. 50, 23 B. 493; *R.*, L.B.R. (1893—1900), 536, 6 O.C. 236].

(6)—*Crim. Pro. Code (1882), ss. 338, 339—Withdrawal of pardon tendered to an approver and subsequent trial.*—Where a man has given evidence upon a tender of pardon, and such evidence is considered by the Sessions Judge to be false evidence in which he has wilfully concealed something essential, he ought not to be put back into the dock at once and tried, but the trial against him on the original charge ought to be a subsequent proceeding. **14 A. 502.** [*F.*, 23 B. 493, 20 A. 529=18 A.W.N. 152].

(7)—*Tender of pardon—Withdrawal of pardon—Trial of accused.*—An accused person was committed to the Court of Session for trial on a charge of murder; and an approver was sent along with him. At the trial of the accused, after one witness for the prosecution was examined, the approver was put into the witness-box, and at the end of his examination, the Sessions Judge, being of opinion that he had given false evidence, withdrew the pardon, drew up a charge against him and convicted him on his plea of guilty. The sentence, however, was postponed. The trial of the accused then went on with the result that he was found not guilty and discharged. The Judge, thereafter, sentenced the approver to death. *Held*, that the approver had no legal trial, as he had no opportunity to defend himself, and there was nothing to show that the charge was explained to him. **3 Bom. L.R. 489.**

(8)—*Withdrawal of pardon granted to approver and order of commitment after judgment—Legality—Crim. Pro. Code (Act X of 1872), s. 349.*—Where the Judge, at a sessions trial, after acquitting the prisoner, withdrew the pardon granted to an approver, ordered his commitment and put him on his trial, *held*, he acted contrary to the provisions of s. 349 of the Code and that the trial was illegal; the words "before judgment has been passed" in the section limiting the time before which the power to direct commitments may be exercised—*Per Mitter, J.* It is not necessary that the commitment order should be made before judgment is passed, it being enough if it appears to the Judge, before passing judgment, that the conditions of the pardon have not been complied with.—*Per Maclean, J.* **8 C. 560=10 C.L.R. 369.**

Approver—continued.

(9)—It is doubtful whether the deposition of an approver, taken before the committing Magistrate, may be used as evidence against his accomplices on their trial before the Sessions Court, the conditional pardon of the approver having been withdrawn. **7 C.L.R. 66.** [*R.*, 13 C.L.R. 326].

(10)—On the withdrawal of the conditional pardon of an approver, the Judge would be exercising a sound discretion, if he waited till the conclusion of the trial of the other prisoners before him, and then, before passing judgment on them, proceeded, under s. 349, Crim. Pro. Code, against the approver. **7 C.L.R. 66.** [*F.*, 22 B. 493; *R.*, 22 C. 50].

(11)—A party charged along with others with murder, having had a conditional pardon granted to him by the Deputy Magistrate, retracted before the Sessions Judge the statements he had made before the Deputy Magistrate. On being sent back to the Deputy Magistrate, that officer committed him for trial on a charge of giving false evidence. The Sessions Judge considered that the Deputy Magistrate was bound, under s. 349, Crim. Pro. Code, to commit on the original charge of murder, and not on that of giving false evidence, and he recommended that the order of commitment should be quashed and the Deputy Magistrate directed to commit on the charge of murder. The High Court declined to interfere as there was evidence on the record tending to support the charge for giving false evidence, and as s. 349 did not have the effect of taking away from the Magistrate the power to entertain a charge of this kind. **23 W.R. Cr. 12.**

(12)—*Withdrawal of conditional pardon and prosecution—Proof of wilful concealment and of giving false evidence—Right of approver.*—When a person who has accepted a tender of pardon is subsequently prosecuted for the offence, in respect of which the pardon was tendered, it must appear that he either wilfully concealed something essential, or that he gave false evidence and thus failed to comply with the condition on which the pardon was tendered, and if the prosecution does not aver such failure, it is at least open to the accused to plead that he did not either wilfully conceal anything essential or give false evidence; and this plea, if produced, would be a bar to the trial. The mere order by the Court, before which the person gave evidence that he was prosecuted for not complying with the condition of his pardon, does not preclude the Court before which the prosecution is instituted from enquiring into the question of fact involved in the plea, the opinion of the Court directing the prosecution, even if relevant, not being conclusive, especially when the order is made, as in practice may occur, without the accused person having any opportunity of showing cause against the order. **6 P.R. 1889 Cr.**

(13)—*Crim. Pro. Code (1872), s. 349—Withdrawal of pardon, grounds for.*—Where a Sessions Judge withdrew a pardon, on the

Approver—continued.

ground that the person to whom the pardon was tendered had not conformed to the conditions, but had given an utterly incredible account of the circumstances, and he came to that conclusion, not after a patient hearing of the whole of the evidence, or upon proof that it was inconsistent in any but the most immaterial and trifling degree with his previous statement's or that it was contradicted by other evidence, but on the Judge's own responsibility, and before any evidence affecting his veracity had been given, *held*, that the withdrawal of the pardon was not properly made. **12 C.L.R. 226.**

(14)--*Grant of pardon to an accomplice, Revocation of, after trial.*—An accomplice was granted a conditional pardon and was sent as a witness to the Sessions Court, which considered his evidence to be false. After the trial, the District Magistrate revoked the pardon and committed him to the Sessions for trial. *Held*, that the commitment was contrary to law, inasmuch as the District Magistrate had no power to revoke the pardon after the conclusion of the trial. **A.W.N. 1895, 163.**

(15)—*Tender of pardon to accomplice—Retraction of statement.*—The statement made before the committing Magistrate by an accused, who was examined as a witness after the offer and acceptance of a pardon and retracted before the Court of Session as having been made on the intimidation of the police, should not be used and acted upon by the Court of Session, but should be discarded as being involuntary. The proper course would be to call his attention to the various passages of his deposition seriatim before using it to contradict him. **A.W.N. 1881, 74 and A.W.N. 1882, 31.**

(16)—*Crim. Pro. Code (1882), s. 338—Tender of pardon to accomplice, when not permissible.*—The word "supposed," in s. 338, must be taken merely as intended to exclude the case of a man who has actually been convicted of the crime, and not the case of a man, who, although admitted to be a party to the crime, is unconvicted. Where pardon was tendered to, and accepted by, a person, who, being charged with others with the same offence, pleaded guilty, and such person was examined as a witness against the other accused, *held*, that the pardon was properly tendered and that his evidence was admissible. **7 A. 160.** [*F.*, Rat. Un. Cr. C. 750; *R.*, 10 M.L.J. 147, F.B., 2Weir 276 =25 M. 61, P.C.]

(17)—*Commitment of approver—Crim. Pro. Code (1898), s. 339.*—A Sessions Judge is competent to order the commitment of an accused person to whom a conditional pardon has been tendered, if he finds that the conditions of the pardon have not been fulfilled. But, in such a case, one of the questions of fact to be tried and decided at the trial will be whether the accused has or has not forfeited his pardon. **31 P.R. 1904 Cr.** (6 P.R. 1889, F.B., Cr., 1 P.R. 1889 Cr., *F.*; 26 C. 492, 19 P.R. 1901 Cr., *D.*; 5 P.R. 1899 Cr., 24 P.R. 1902 Cr. *doubted.*)

Approver—continued.

(18)—*Commitment of person to whom pardon had been tendered along with others—Crim. Pro. Code (1898), s. 337.*—Where a person, who had been tendered a pardon by the District Magistrate, was subsequently committed for trial jointly with the other accused, his version of the affair not being believed either by the District Magistrate or by the committing Magistrate, *held*, that, as the approver was throughout the proceedings treated as an accused person, and not as a witness, his commitment and trial along with other accused was legal, he being at the date of his commitment not a person accepting a tender of pardon. **5 P.R. 1899 Cr.**

(19)—*Commitment of an approver in a case of murder.*—Where a person who has accepted a tender of pardon in a case of murder, was, on the acquittal of the accused, directed by the Sessions Judge to be committed for trial on a charge of murder, *held*, that the order of the Sessions Judge should be regarded as one under s. 436. **1 P.R. 1898 Cr.**

(20)—*Withdrawal of pardon—Power of Sessions Court to try approver forthwith on its own charge.*—S. 477, Crim. Pro. Code, 1882, does not empower a Sessions Court to try forthwith on its own charge, under s. 193, I.P.C., a person from whom it has withdrawn a pardon under s. 439, Crim. Pro. Code, unless and until the Chief Court has sanctioned the prosecution. **42 P.R. 1884 Cr.**

(21)—*Examined as witness and tried as accused in the same trial--Procedure irregular—Crim. Pro. Code (1898), s. 193.*—A Sessions Judge is incompetent to examine an approver as a witness, then withdraw the pardon granted to him, and try him as an accused person in the same trial. He should complete the trial against the other accused persons and then direct the Magistrate to commit the approver in regular course. A Court of Session can only take cognizance of an offence as a Court of original jurisdiction only on a commitment made by a Magistrate duly empowered in that behalf. **L.B.R. (1893—1900), 536.** (22 C. 50, *F*; 15 M. 352, *R.*).

(22)—*Accomplice—Witness erroneously treated as accomplice.*—Where a Magistrate treated a mere witness as an accomplice and granted him a conditional pardon, *held* that his evidence did not require corroboration. **5 B.H.C. Cr. 85.**

(23)—*Evidence of accomplice—Practice.*—The evidence of an accomplice must be very strictly watched, especially, when the offence spoken to relates to public officials. The evidence must be corroborated by independent testimony. **Rat. Un. Cr. C. 844 = Cr. Rg. 13 of 1896.**

(24)—The uncorroborated testimony of an approver is not sufficient to convict a person charged with an offence. **3 B.L.R.A. Cr. 66. 3** W.R. Cr. 8, 8 W.R. Cr. 19, 8 W.R. Cr. 57, 12 W.R. Cr. 5.

(25)—A Sessions Judge should warn the jury of the infirmity which attaches to the evidence

Approver—continued.

of an approver and he should also tell them (if the fact be so) that the approver is speaking under the influence of an offer of conditional pardon. **8 W.R. Cr. 19.**

(26)—If the jury find a prisoner guilty on the uncorroborated evidence of an approver, after the Judge in his summing up had pointed out to them the desirability, under the circumstances, of such corroboration, the High Court on appeal would refuse to set aside the conviction. **6 B.L.R. Ap. 108=15 W.R. Cr. 37.** (5 W.R. Cr. 80, B.L.R. Sup. Vol. 459, *R.*)

(27)—The evidence of persons who are themselves liable to punishment should be carefully sifted and tested befere they can be relied on in any Court of law. **6 W.R. Cr. 77.**

(28)—*Confessions of some prisoners—Evidence of approvers—Corroborative value.*—Confessions of prisoners, made in the absence of their fellow-prisoners, as well as the statements of approvers, are always regarded as tainted and not entitled to the same weight as the evidence of ordinary witnesses. [*R*., 6 Bom. L.R. 481, 3 P.R. 1904 Cr.] Such confessions would not be corroborative evidence of the statement of the approver such as to justify the conviction of the other prisoners, nor would they be of any weight against them. **10 C. 970.**

(29)—*Approver's evidence—Corroboration—Confession by co-prisoner.*—Approver's evidence should be corroborated as to the identity of the accused person. The confession of a co-prisoner implicating the accused cannot be accepted as evidence to corroborate the testimony of the approver. **1 B. 475.**

(30)—When evidence is given by an approver, it is not important to consider whether a story told by the accused to him tallies with that made to another person. **1 Ind. Jur. N.S. 171.**

(31)—*Accomplice, evidence of—Nature of corroboration required.*—As regards the nature of the corroboration required to convict a person on the testimony of an accomplice, it must be confirmatory of some of the leading circumstances of the story of the approver as against the particular prisoner. Facts, which do not show the connection of the prisoner with the commission of the offence with which he is charged, are no corroboration in the sense in which the word is used in such cases, although they may tend to show that certain portions of what the accomplice says is true. Courts ought not to convict upon an accomplice's testimony, unless it is confirmed not only as to the offence, but as to the identity of the individual prisoner as the person or one of the persons, who participated in the offence, and juries ought to be so advised and directed. It will be an error in summing up, if a Judge, after pointing out the danger of acting upon the uncorroborated evidence of an accomplice were to tell the jury that the evidence of the accomplice was corroborated by a fact, which did not amount to any corroboration at all. **29 C. 782=6 C.W.N. 553.**

Approver—continued.

(32)—Where the evidence of an approver is entirely uncorroborated by any evidence to show that it was the accused who committed the offence with which he is charged, the accused cannot be convicted. The approver's evidence must be corroborated by material facts tending to point to the accused as the guilty person. Where the evidence against an accused person charged with murder consisted of only the testimony of the accomplice or approver, and the Sessions Judge convicted the accused on the ground that the medical certificate was consistent with the approver's statements and that marks of blood were found at the spot which the approver pointed out as the the place where the deceased fell, *held*, that the conviction was bad and should be set aside. Observations on the duty of Sessions Judges to sift facts in Sessions trials, when this is not sufficiently done by pleaders for the prosecution and defence. **4 Ind. Cas. 391.**

(33)—The corroboration of the evidence of an approver should arise from other evidence relative to facts which implicate the prisoner in the same way as the story of the approver does. **10 W.R. Cr. 17.**

(34)—*Accomplice—Degree of corroboration necessary.*—The evidence of an accomplice, here as under English practice, requires corroboration not only as to facts but also as to the identity of each and every one of the accused whom he implicates. The evidence should not weigh at all as against those whose identity is not corroborated. **3 B.H.C. Cr. 57.** [*R.*, 6 B.H.C. Cr. 57 (58), 14 B. 331, Rat. Un. Cr. C. 840, 848].

(35)—*Evidence of approver—Correspondence of details, value of.*—The exact correspondence in detail of several statements made by an approver in the course of a trial, is not corroborative evidence such as Courts ordinarily require to make it safe to convict any particular prisoner upon. **10 C. 970.**

(36)—*Crim. Pro. Code (1882), s. 288—Evidence of approver.*—Where an approver, under conditional pardon, gave a deposition before the committing Magistrate, and the Sessions Judge, after the denial of it by the approver, retracted the pardon, it was held doubtful whether the deposition before the committing Magistrate could be used in evidence against his accomplices. **13 C.L.R. 326.** [*R.*, 22 C. 50].

(37)—*Evidence of an accused person in police custody who has confessed and been admitted as an approver.*—Where an accused person in police custody has confessed and has been admitted or is likely to be admitted as an approver, any evidence that he might afterwards give is open to the greatest suspicion that the police have arranged his statements so as to fit in with the evidence that they may have obtained elsewhere. **7 C.W.N. 457.**

(38)—*Approver, evidence of—Admissibility in Sessions Court of such evidence taken by Sub-Magistrate.*—A Sessions Judge should not

Approver—continued.

allow an approver's evidence before a Sub-Magistrate to be laid before the jury. **4 M.H. C. App. 21.**

(39)—*Approver's evidence — Corroboration necessary for—Retracted confession how far evidence against co-accused—Accomplice, evidence of.*—*Held*, that, before a conviction can be based on the evidence of an approver, it must be corroborated as to the identity of the person or persons accused. *Held*, further, that the retracted confession of an accused has very little weight as evidence against the other accused persons, and does not constitute the independent evidence of corroboration of the statement of an approver which is necessary to base a conviction thereon. **12 O.C. 418.**

(40)—*Evidence of accomplice—Penal Code, s. 460—Possession of stolen property, whether sufficient corroboration.*—Criminal Courts dealing with an approver's evidence, in a case where several persons are charged, should require corroboration of his statements in respect of the identity of each of the individuals charged. Where five persons were charged under s. 460, I.P.C., and the only direct evidence against the accused was that of an approver, but as to the first three accused, there was the further proof that they produced, or caused to be produced, certain portions of the property stolen on the night of the crime, from the house where the crime was committed; as to the fourth, it was proved that he was present when the second accused pointed out the place where some of the property was dug up; but he did not appear to have said anything or given any direction about it; and as to the fifth, no property was found with him or produced through his instrumentality; *held*, that the recent possession by the first three accused of part of the stolen property, soon after it had been stolen, was not such corroboration of the approver's evidence of their participation in the dacoity and that, as to the fourth and the fifth accused, there was not sufficient material to warrant the inference of guilty knowledge on their part. **8 A. 509.** [*R.*, Rat. Un. Cr. C. 750].

(41)—*Evidence not sufficient to corroborate his statement—Retracted confession good evidence against the person making it, but not against others.*—*Held* that evidence to prove that certain accused persons were seen on certain occasions with the gang of the dacoits before and after a dacoity, and particularly where that evidence is unsatisfactory, is not sufficient to corroborate the approver's statement so as to make it admissible against the said accused. *Held*, also, that it is a recognized rule of the Law of Evidence that a retracted confession may be used against the person making it, but not against others jointly accused with him. **28 P.W.R. 1907 Cr. =7 Cr. L.J. 227.**

(42)—*False evidence—Application for sanction to prosecute—Proper procedure.*—An application for sanction to prosecute an approver for giving false evidence should be made by

Approver—concluded.

motion on behalf of the Crown in open Court. and not by a letter of reference. **24 C. 492,** [*Cited*, 10 P.R. 1904 Cr.; *R.*, 30 B. 611=8 Bom. L.R. 740].

(43)—*Prosecution—Application for sanction.*—An application to the Chief Court for sanction to prosecute an approver for giving false evidence should be by motion on behalf of the Crown in open Court, and not by a letter of reference. **10 P.R. 1904 Cr.** (24 C. 492, *cited*).

(44)—*Dacoity.*—Corroboration of the evidence of an approver is required in a case of dacoity under s. 400, I.P.C. **11 W.R. Cr. 21.**

(45)—*Accomplice of accused person—Corroboration when not necessary.*—The evidence of an accomplice may be admitted without corroboration, if the witness is not open to the same charge as the accused. **13 W.R. Cr. 24.**

See COMMITMENT TO SESSIONS COURT, 42 P.R. 1884 Cr.

See CONFESSION, 5 N.W.P. 217, 12 P.W.R. 1907 Cr. =5 Cr. L.J. 437.

See CRIM. PRO. CODE (1898), ss. 193, 287, 288, 339 and 349, 15 M. 352=2 Weir 394.

See PARDON, 32 M. 173=9 Cr. L.J. 571=2 Ind. Cas. 343, 5 N.L.R. 134, 5 A.L.J. 691= A.W.N. 1908, 259, 4 U.B.R. Crim. Pro. 7=7 Cr. L.J. 245=14 Bur. L.R. 306.

See REVISION, 157 P.L.R. 1908=22 P.W.R. 1908.

See SECURITY FOR GOOD BEHAVIOUR, 5 L.B.R. 72.

Arbitration.

(1)—*Award in criminal matter—Civ. Pro. Code (1859), s. 327.*—In this case, a complaint was preferred to a Criminal Court and the Magistrate directed the subject matter of the complaint to be referred to arbitration. If the parties consent and proceed to such reference, *held* that the award might be enforced under the provisions of s. 327, Civ. Pro. Code, 1859. **1 Agra 45.**

(2)—*Consent to refer to arbitration—Additional property—Mutual mistake.*—A succession dispute was referred to arbitration. It was found after the award that there was more property than was supposed to exist at the time of the reference. It was held that a party to such reference is not debarred from claiming his share in the additional property. **L.B.R. (1872—1892), 196.**

See ACT II OF 1899, s. 62, 7 A.L.J. 180.

—Reference to arbitration of disputes about land—*See* CRIM. PRO. CODE (1898), s. 145, 7 C.W.N. 461.

—Power of Presidency Magistrate to refer a dispute to arbitration—*See* CRIM. PRO. CODE (1898), ss. 403 (1 to 4 and Expl.), 436, 437, 439 (1 to 4), 1 C.W.N. 49.

See PENAL CODE, ss. 21 and 434, 30 C. 1034.

Arbitration—concluded.

—Suit in Court of Small Causes referred to arbitrator—Fabrication of evidence, forgery and using forged document before such arbitrator—Sanction of the Court of Small Causes—*See* SANCTION TO PROSECUTE, 17 M.L.J. 420=6 Cr. L.J. 331=2 M.L.T. 496.

Arms.

(1) *Arms—Definition.*—"*Arma, armes*, in the common law signified anything that a man striketh or hurteth withal." **U.B.R. (1897-1901), Vol. I, 1.**

(2)—*Unlawful possession of—Master sending his servant with a gun for shooting.*—A master, who was licensed to carry a gun, sent his servant with his gun to shoot some game with it. The servant being found in possession of the gun while carrying out his master's orders was convicted by the District Magistrate and the gun was confiscated. On reference to the High Court, it was held, that, under the circumstances of the case, the conviction and confiscation were bad. **A.W.N. 1881, 7.**

Arms Act.

See ACT XXXI OF 1860.

„ ACT XI OF 1878.

Arrest.

(1)—*Crim. Pro. Code (1882), s. 54—Powers of arrest.*—S. 54 authorizes the arrest not only of persons against whom a reasonable complaint has been made or a reasonable suspicion exists of their having been concerned in a cognizable offence, but also of persons against whom "credible information" to that effect has been received. **10 B. 506.** [*R.*, U.B.R. (1892—1896), 172].

(2)—*Crim. Pro. Code (1898), s. 79—Warrant of arrest, without endorsement of any name.*—Under the terms of s. 79, the endorsement should be regularly made by name to a certain person in order to authorise him to make the arrest. If not, the person resisting the arrest is not liable to be punished under s. 224, I.P.C. **4 C.W.N. 85.**

(3)—*Crim. Pro. Code (1898), ss. 56 and 80—Arrest in accordance with an order in writing under s. 56—Police officer making the arrest, whether bound to notify the authority to arrest.*—S. 80 should not be extended to an arrest made by the Police on an order in writing under s. 56 so as to require any information to be given to the person arrested in order to make it an arrest warranted by law. The order in writing is an authority to the Subordinate Police officer to make an arrest which the superior Police officer, if present, could himself make on his own responsibility. It may be desirable or even obligatory that, if called upon, the Police officer making such an arrest should show the person arrested the authority under which he is acting; but to hold that he is bound to do so before he can properly arrest and detain in custody such a person, so as to make the arrest and the detention lawful would be to

Arrest—continued.

extend the law beyond what the Legislature has thought proper to declare it. **27 C. 320=4 C.W.N. 311.**

(4)—*Crim. Pro. Code (1898), ss. 68 and 79—Warrant of arrest addressed to a Police officer—Endorsement by another Police officer to process serving peons, legality of—Obstruction to execution of warrant—Persons competent to execute warrant.*—Where a warrant of arrest addressed to a Court Sub-Inspector was by an order in writing, signed by the Court Head Constable, endorsed to two process-serving peons for execution, *held*, that the execution of the warrant by these persons did not constitute a lawful arrest, inasmuch as the officer to whom the warrant was directed did not lawfully endorse it to these persons, and *held*, further, that, even if it had been lawfully endorsed, the persons to whom the warrant was endorsed, not being Police officers, were not competent to make the arrest, under the provisions of s. 79 of the Code. Therefore, persons rescuing the persons arrested under such warrant and obstructing the execution of the warrant cannot be punished under the Penal Code.

(5)—The terms of s. 79 expressly provide that no other person, except a Police officer, is competent to execute a warrant of arrest under an endorsement from another Police officer. **27 C. 457; 4 C.W.N. 822.**

(6)—*Crim. Pro. Code (1898), s. 59—Arrest by a private person for theft—Handing over the person to a village Chowkidar—Penal Code, s. 225—Rescuing from lawful custody.*—Arrest by a private person for alleged theft, not committed in his view, is not lawful. The person so arrested and delivered to the custody of the village Chowkidar cannot be regarded as being in lawful detention, and, therefore, a person rescuing him from such custody is not guilty of an offence under s. 225, Penal Code. **27 C. 366=4 C.W.N. 252.** [*R.*, A.W.N. 1907, 94=29 A. 377=5 Cr. L.J. 277].

(7)—*Crim. Pro. Code (1898), s. 80—Warrant of arrest—Notification of substance—Penal Code, s. 225-B.*—Where a Police officer arrests a person for an offence, for which he is not competent to make the arrest without warrant, and does not notify the substance of the warrant to the person, *held*, that an arrest so made is not a lawful arrest, and a resistance to such an arrest does not, therefore, amount to an offence under s. 225-B, Penal Code. **26 C. 748=3 C.W.N. 741.** [*R.*, 16 P R. 1904 Cr.]

(8)—*Re-arrest.*—The re-arrest on the same charge of a prisoner who has been discharged is illegal. The officer making it may be guilty of wrongful confinement. **19 W.R. Cr. 27.**

(9) *Rescue from illegal arrest.*—Where the arrest is illegal, rescue from that arrest is not an offence punishable under the Penal Code. **12 P.R. 1898 Cr.**

(10)—*Law regarding—Handcuffs, use of—Bailable offence—Resistance to unlawful force, no offence under s. 224, Penal Code—Crim. Pro.*

Arrest—continued.

Code (1898), ss 46 and 50—Abuse to be checked by Magistrates.—All that is necessary to constitute an arrest is that the arresting officer shall touch the body of the person to be arrested; even the touching of the body is not necessary when the person to be arrested submits to the arresting officer's custody by word or action. The arresting officer should intimate to the person he intends to arrest that he is about to do so, and, if he touches him, he does so in pursuance of his intention. In the case of persons charged with minor offences and even in some cases of persons charged with grave offences, an opportunity should be given to the person to be arrested, of "submitting to the custody by word or action." It is by no means necessary that a Police officer should, in arresting the accused immediately proceed to put handcuffs on him, or to tie him with cord or chain. After an arrest has been effected in either of the above ways, the accused is thereafter in the arresting officer's custody, even if that officer does not actually hold or confine him, and if the accused intentionally escapes or attempts to escape from that officer's custody, or from any other officer's custody before he is duly released, he commits an offence punishable under s. 224 of the I.P.C. **1 L.B.R. 173.**

(11)—*Irregularity in the arrest.*—When accused persons are brought before a Criminal Court, it is the duty of the Court to try them for the offences with which they are charged, and any irregularity in the arrest is not in itself a ground for acquitting them. **U. B. R. (1897—1901), Vol. I, 211.** (U.B.R., 1892—1896, Vol. I, pp. 2, 123, 153 and 317 and U.B.R., 1897—1901, Vol. I, 182, *F.*).

(12)—*Warrant not addressed to the Bailiff—Resistance, whether punishable under s. 225-B, I.P.C.*—Where a warrant of arrest is not addressed to a bailiff as required by Form No. 154, Sch. IV of the Crim. Pro. Code, a person resisting the execution of such warrant cannot be convicted of an offence under s. 225-B of the Penal Code. **16 P.R. 1904 Cr.** (23 C. 896, 26 C. 748, 28 C. 399, *R.*).

(13)—*Arrest under s. 100, Crim. Pro. Code (1882)—Penal Code, s. 99—Right of self defence.*—*Held*, that a Police officer was justified in arresting a person who in midnight worked around in a village inhabited by professional dacoits. *Held*, further, that, even if the arrest were not strictly justifiable, the accused had not, under the circumstances of the case, the right of private defence. **7 P.R. 1869 Cr.**

(14)—*Right of arrest and private defence of property—Limit.*—The accused was watching his field, the grain of which had, on previous occasions, been stolen; he saw a thief cutting corn in it, and gave chase. The thief ran his head against a tree and fell. The accused hit him recklessly with a stick while on the ground, and fractured his skull into pieces, causing his death. The thief when he fled did not carry any corn with him. *Held*, that the right of private defence of property and the right of

Arrest—continued.

arrest provided by s. 59, read with s. 46, Crim. Pro. Code, were exceeded by the accused, who must have known that he was likely to cause death, and that he was guilty of an offence under s. 304, Penal Code. **29 P.R. 1902 Cr.=2 P.L.R. 1903.**

(15)—*Gambling in public places—Offender escaping immediate arrest—Arrest by police without warrant—Prosecution—Process of Criminal Court—Public Gambling Act, s. 13.*—S. 13, Public Gambling Act, gives no authority to the police to apprehend, without warrant, any person committing any of the acts made punishable by that section, except at the time and place where such act is committed. But this section does not protect any such offender, who may escape arrest at such time and place, from being prosecuted in a competent Criminal Court, nor does it place such offender beyond the reach of the ordinary process of a Criminal Court, which, in such a case as the present, would be a summons and not a warrant. **L. B.R. (1893—1900), 256.**

(16)—*Crim. Pro. Code (1882), s. 54—Complaint of cognizable case to police—Power to refrain from arresting person charged.*—A police officer to whom a complaint of a cognizable offence is made, ought, if there be circumstances in the case which led him to suspect the information, to refrain from arresting persons of respectable position, and leave the complainant to go to a Magistrate and convince him that the information justifies the serious step of the issue of warrants of arrest. **Rat. Un. Cr. C. 795=Cr. Rg. 53 of 1895.**

(17)—*Finding person with stolen property.*—It is open to the police without any formal complaint to apprehend any person found with stolen property. **8 W.R. Cr. 28.**

(18)—*Arrest of Government brig.*—In a case, where a Government brig employed in supplying pilots to vessels at the sand heads, was arrested under a proceeding *in rem*, it was held that the brig, by 21 & 22 Vic., Ch. 126, had become the property of the Crown, and as such was entitled to the same exemption from arrest as all other Queen's ships, and that the proceeding *in rem* was therefore illegal. **1 Hyde 253.**

(19)—*Reg. XXI of 1827—Jurisdiction to try offence under the Regulation—Limit of power to fine—Power to arrest without warrant—Crim. Pro. Code (1861), s. 108.*—A District Magistrate's Court is the proper tribunal to try an offence under Reg. XXI of 1827, relating to the smuggling of opium. He has, under s. 21, Crim. Pro. Code, 1861, power to inflict any fine which he may be competent to impose under the Regulation. His pecuniary jurisdiction is not in such cases limited to one thousand rupees. An arrest without a warrant for an offence under Reg. XXI of 1827, is generally illegal, though, under the provisions of s. 108, Crim. Pro. Code, it is competent to him, under the circumstances therein named, to arrest without a warrant. **9 B.H.C. 343.**

Arrest—continued.

(20)—*Arrest of judgment debtor going to Court.*—Where an arrest under civil process of a judgment-debtor, going to a Court in obedience to a citation to give evidence, was made within the precincts of that Court and with some show of violence and contempt of Court, *held* such circumstances did not entitle the officers making the arrest to protection under s. 78, I.P.C. **3 W.R. Cr. 53.**

(21)—*Civil Procedure Code, s. 642—Exemption from arrest—Arrest under the Rent Act, XVIII of 1873.*—The privilege conferred by s. 642, Civ. Pro. Code, is the privilege from arrest under such process only as may have been issued under the Code of Civil Procedure. Therefore, the protection from arrest afforded by s. 642, does not apply to an arrest under a Revenue Court process under Chap. VII of Act XVIII of 1873. **4 A. 27.**

(22)—*Privilege of witness.*—In this case it was held that, on the facts shown in the affidavit, the prisoner was privileged as a witness at the time of his arrest. **1 C. 78.**

(23)—*Attachment for contempt of Court.*—The right of privilege from arrest while proceeding to the Court or leaving the Court on the hearing of the suit does not apply against whom a writ of attachment for contempt has been issued. **4 B.L.R.O.C. 90.**

(24)—*Arrest on Sunday.*—Arrest under civil process of a mofussil Court on Sunday is legal in this country. **4 M.H.C. App. 62; 1 B.L.R. Ap. Cr. 17; 3 W.R. Rec. Ref. 2; 7 M.H.C. 285.**

(25)—*Government of India Notification, No. 11431, dated 22nd March, 1888—Effect.—Jurisdiction to arrest persons along the line of the Railway in the Hyderabad State for offence committed in British India.*—The jurisdiction which H.H. the Nizam of Hyderabad conferred upon British India is the Civil and Criminal jurisdiction along the line of the Railway as is the case on other lines running through independent states. *Held*, therefore, that the arrest of a person charged with the abetment of an offence under ss. 116 and 161, committed in the British territory, at a place within H.H. the Nizam's territories, but also within the Railway limits defined in the Notification, was not legal, merely because the accused at the time of arrest happened to be physically present on a portion of that line of Railway over which jurisdiction was given for the purpose of Criminal and Civil jurisdiction. **6 P.R. 1897 Cr.P.C., on appeal from 1 P R. 1896 Cr.**

(26)—*Warrant of arrest to be executed in Hyderabad—Valid warrant—Government of India—Notification, 22nd March, No. 11431—Crim. Pro. Code (1882), ss. 77, 82, 83, 191 (c), 205 and 537.*—Where a warrant is issued under s. 191 (*c*) and not under s. 200, Crim. Pro. Code, the Magistrate may issue the warrant, without examining the complainant. Under that section the District Magistrate can act on information received from any person other than a Police officer or on his own

Arrest—continued.

knowledge or suspicion that the offence for which he issues the warrant has been committed. *Held*, that the omission in a warrant to sufficiently specify the person against whom it was directed was remedied by a Police officer being sent out to point out and identify the accused and s. 357, Crim. Pro. Code, cured any such defect. Where the warrant of arrest of an accused person, a subject of His Highness the Nizam of Hyderabad for the abetment of an offence punishable under ss. 116 and 161, I.P.C., committed in British territory was issued to the resident at Hyderabad, *held*, that the warrant should have been addressed, according to the Government of India Notification, No. 11431. dated 22nd March 1888, to the Railway Magistrate or the Superintendent of the Railway police, but as it was delivered and executed by the proper Magistrate, the irregularity was cured by s. 537, Crim. Pro. Code. *Held*, further, as in the place where the accused was arrested full jurisdiction had been ceded over British subjects as well as H. H. The Nizam's subjects, the fact that the accused was a subject of H.H. The Nizam did not affect the arrest. **1 P.R. 1896 Cr.** [*See on appeal*, 6 P.R. 1897 Cr., P.C.].

—Power of—*See* ACT XIII OF 1857, s. 24, 24 C. 691.

—Without warrant for offence under Opium Act, s. 9—*See* ACT I OF 1878, s. 9, 24 C. 691.

—Warrant of arrest to be in possession at time of arrest—*See* ACT XIV OF 1882, s. 651, 5 A. 318.

See BEN. ACT IV OF 1866, ss. 46, 72, 4 C. L J. 92=4 Cr. L.J. 71.

See BEN. ACT VI OF 1870, s. 39, cl. (2), 12 C.W.N. 367=7 Cr. L.J. 188=35 C. 361.

See BEN. ACT VII OF 1878, ss. 39, 40, 4 C. W.N. 245.

See BOM. ACT VIII OF 1867, s. 12 (1), Rat. Un. Cr. C. 26.

See BOM. ACT IV OF 1887, s. 6, 4 Bom. L. R. 946.

—Of person pending appeal—*See* APPEAL—APPEAL FROM ACQUITTAL, 2 A. 386, 2 A. 340, F.B., 1 C. 281.

See BAIL, 6 M. 69=2 Weir 413, 14 A. 45.

See COGNIZABLE OFFENCE, L.B.R. (1893—1900), 390.

—Validity of, by reason of illegal arrest—*See* CONVICTION, 17 P.R. 1906 Cr.=5 Cr. L.J. 89=60 P.L.R. 1907.

See CRIM. PRO. CODE (1898), s. 46, 29 P.R. 1894.

See CRIM. PRO. CODE (1898), s. 55, 3 L.B. R. 94=3 Cr. L.J. 20.

See CRIM. PRO. CODE (1898), s. 56 (1), 10 C.W.N. 287=3 Cr. L.J. 201.

See CRIM. PRO. CODE (1898), ss. 87, 88, 90, 3 L.B.R. 116.

Arrest—concluded.

See CRIM. PRO. CODE (1861), s. 140, 11 W. R. Cr. 20.

See CRIM. PRO. CODE (1882), ss. 177 and 252, 6 P.R. 1899.

See CRIM. PRO. CODE, s. 437, U.B.R. (1892—1896), Vol. I, 18.

See JURISDICTION OF CRIMINAL COURTS, 25 C. 20=24 I.A. 137=2 C.W.N. 1, P.C.

See NATIVE STATE, 7 B.H.C.O.C.J. 172.

—Arrest by a private person—*See* PENAL CODE, ss. 224, 225, 29 A. 575=A.W.N. 1907, 179=4 A.L.J. 483=6 Cr. L.J. 10.

See PENAL CODE, s. 225, 5 L.B.R. 21=2 Ind. Cas. 619.

See SECURITY TO KEEP THE PEACE, 6 A. 132.

—Of a witness, during course of trial, improper—Effect of such arrest—*See* WITNESS, L.B.R. (1893—1900), 355.

Arrest of judgment.

See ACT XVIII OF 1862, s. 41, 1 B.L.R.O. Cr. 1, 15=15 W.R. Cr. 71, note.

Artificers.

See ACT XIII OF 1859, s. 2, 2 B.L.R.A. Cr. 32=12 W.R. Cr. 26.

Artisan.

—*Person driving engine.*—A person driving an engine on board a steamer is an artisan within the meaning of the Indian Emigration Act. **9 Bom. L.R. 1059=32 B. 10=7 Cr. L.J. 238.**

—Washerman, whether—*See* MAD. ACT III OF 1871, 1 M. 174=1 Weir 726.

Assam Labour and Emigration Act.

See BEN. ACT VI OF 1901.

Assault.

See PENAL CODE, ss. 349—358.

(1)—*Assault - Term defined.*—Any gestures calculated to excite in the party threatened a reasonable apprehension that the party threatening intends immediately to offer violence, or is about to use criminal force to the person threatened, constitute, if coupled with a present ability to carry such intention into execution, an assault in law. Mere words do not amount to assault. But the words which the party threatening uses at the time may either give to his gestures such a meaning as may make them amount to an assault, or on the other hand, may prevent them from doing so. **1 B.H.C. 205.**

(2)—*Penal Code, s. 351—Assault, what constitutes.*—To substantiate a charge of assault upon a particular person, it is necessary that a gesture or preparation should be made by a person which would cause another person to apprehend that the person was about to use criminal force to him then and there. It would

Assault—continued.

not be enough to prove that the words used and the preparations made were calculated to cause that person to apprehend that criminal force would be used to him, if he persisted in a certain course of conduct. **30 C. 97=6 C.W. N. 342.**

(3)—*Penal Code, ss. 351 and 336—Throwing missiles at human beings—Assault.*—For throwing a bottle into a house, the accused was convicted of a rash and negligent act under s. 336. *Held*, that such an act, done with the intention of hurting or frightening the inmates, constitutes the offence of assault under s. 351, and not an offence under s. 336. **4 Cr. L.J. 201=3 L.B.R. 194.**

(4)—*Joint assault—Cause of action.*—An assault made by parties proceeding together and acting in conjunction as to time, place, and assault is a single act, and the cause of action one common to all the parties. **14 W.R. 419.**

(5)—*Penal Code, ss. 114, 34, 326 and 352—Abetment of assault—Grievous hurt with dangerous weapon—Knowledge of abettor—Offence committed in presence of abettor.*—A person urged another to attack the complainant; and such other person cut the complainant in the fore-arm with a clasp knife, while the former threw sticks at him. It appeared from the evidence that there was no proof that the latter had the knife in his hand at the time of the former's urging him on; nor was there evidence that the former knew in any other way that the latter would be likely to use the clasp knife. *Held* that the former could not be convicted of abetting the offence of causing grievous hurt with a dangerous weapon under s. 326, Penal Code, but that he could only be convicted of abetting an assault. S. 114 of the Penal Code only applies where, the abetment having been made beforehand, the abettor is also present when the offence abetted is subsequently committed. **4 L.B.R. 271.**

(6)—*Assault on a woman—Act causing slight harm, no offence.*—The complainant, a young woman, went after sunrise with an earthen jar through a public thoroughfare to fetch water from a well, when the accused standing at his door caught hold of her hand, which prevented her from proceeding in the direction in which she was going. The Magistrate convicted the accused of an offence under s. 352, Penal Code. The Sessions Judge who was of opinion that the complainant was a woman of loose morals and did not offer any resistance to the accused and, therefore, no offence had been committed, referred the case to the High Court. *Held* that, though there was evidence to sustain a conviction for an offence under s. 352, Penal Code, the harm complained of was so slight that it would be absurd to treat it very seriously. **A.W.N. 1887, 73.**

(7)—*Assault on a public servant—Collectorate peadah—Penal Code, s. 353.*—Persons assaulting a Collectorate peadah, who had been deputed

Assault—continued.

to keep the peace during a distraint are guilty under s. 353 of assaulting a public servant while in the execution of his duty. **13 W.R. Cr. 49.**

(8) *Assault on vaccinator—Assaulting vaccinator taking lymph from arm of person objecting to it.*—An attempt by a vaccinator to take the lymph from the arm of a person who objects to it, notwithstanding the objection, is unlawful, and resistance to such an attempt will not be an offence under s. 353, Penal Code. **3 C.W.N. 627.**

(9)—*Penal Code, s. 353—Assault on a process-server while executing a warrant—Necessity of producing the warrant in evidence—Evidence Act, s. 91—Duty of Magistrates towards getting at the facts of a case.*—The accused were convicted of assaulting a process-server in order to deter him from discharging his duty of arresting a person under a warrant issued by a Civil Court. The warrant was not produced, nor was there any legal evidence of the contents of the warrant. On behalf of the accused, this defect was pointed out and it was contended that, without production of the warrant, there could be no conviction, but the Magistrate convicted them ruling that the production of the warrant was not necessary at all. *Held*, on appeal, the evidence on the record did not support the conviction. The fact, that the process-server was attempting to discharge his duty as a public servant, is an essential part of the offence and of that fact there was no legal evidence of any kind on the record. As required by ss. 250 and 251 of the Civil Procedure, the warrant must have been in writing, and, therefore, under s. 91 of the Evidence Act, the fact, that the warrant gave authority to the process-server for making the arrest, could not be proved except by the production of the warrant or by secondary evidence of its contents and no circumstances appeared on the record which could render secondary evidence admissible. **3 L.B.R. 128.**

(10)—*Criminal complaint no bar to a civil suit.*—The fact that a person, who was assaulted, brought a criminal complaint does not prevent him from subsequently bringing a suit for damages in respect of such assault. **A.W.N. 1893, 62; A.W.N. 1887, 104.**

See ATTEMPT, 45 P.R. 1882 Cr.

See COMPOUNDING OFFENCE, 6 N.W.P. 302.

See CRIM. PRO. CODE (1898), ss. 244, 250, **Rat. Un. Cr. C. 403.**

—Right of police constable to enter houses of suspected persons—Assault on the constable—*See* CRIMINAL TRESPASS, 27 M. 52=1 Weir 529 and 346=13 M.L.J. 285.

See JOINDER OF CHARGES, 26 M. 454=2 Weir 296.

—On public servant—*See* PENAL CODE, ss. 352 and 353, 9 B. 558.

See MAD. REG. XI OF 1816, s. 10, 1 Weir 923.

Assault—concluded.

See SANCTION TO PROSECUTE, 17 M.L.J. 559=31 M. 43=7 Cr L.J. 6=3 M.L.T. 113.

See SECURITY TO KEEP THE PEACE, 3 N.W.P. 96, 7 O.C. 338.

Assessors.

See 1. CHARGE TO JURY.

2. JUDGE AND JURY.

3. JURY.

4. VERDICT OF JURY.

(1)—*To be elected "from persons summoned"—Number of—Crim. Pro. Code (1882), s. 248.*—Out of six assessors summoned to appear at a criminal sessions, three absented themselves, two were discarded by the Sessions Judge as not appearing to be intelligent and only one was appointed to act as assessor. Two new persons were sent for to fill up the places of the discarded persons. They were neither summoned to act as assessors nor competent to act as such. *Held* that, under the above circumstances, there having been only one properly appointed assessor, all the proceedings conducted with his aid were void and a new trial should be ordered. **A.W.N. 1894, 207.**

(2)—*Liability to serve as—Penalty for non-attendance—Crim. Pro. Code (1882), ss. 320 and 332.*—Placing gentlemen of high position such as hereditary Rajas on the list of assessors and fining them for non-attendance when summoned to serve as such are contrary to the usages of the country and consequently highly undesirable. **A.W.N. 1897, 167.**

(3)—*Crim. Pro. Code (1882), ss. 268, 272, 284, 285—Trial with aid of one assessor only.*—After the accused claimed to be tried, pleading not guilty, the Sessions Judge chose two assessors; but, as one of them was suffering from fever, the Judge at once dispensed with his attendance and proceeded with the trial with the aid of one only. *Held*, that the procedure was clearly opposed to ss. 284 and 285 of the Code. [*F.*, 3 Bom. L.R. 274=25 B. 694]. In a Court of Sessions, the trial "with the aid of assessors" does not commence with the reading of the charge, as the assessors are chosen under s. 272, only if the accused has refused to, or does not plead guilty to the charge, or claims to be tried. **15 B. 514.**

(4)—*Crim. Pro. Code (1898), ss. 284, 285, 537—Trial with the aid of assessors—Trial with the aid of one assessor only.*—Where a trial before the Court of Sessions begins and ends with one assessor only, it is not a legal trial and the whole proceedings are vitiated by the error. **25 B. 694=3 Bom. L.R. 274.**

(5)—*Case triable with assessors tried by jury—Appeal on facts.*—The trial by jury of a case properly triable with assessors is not invalid on that ground; but, in such a case, the prisoner does not lose his right of an appeal on the facts, which he would have had, if the case had been tried with assessors. (MITTER, J., *dubitante*). **3 C. 765.** [*Cons.*, 6 M.L.J. 14; *R.*, 4 C.L.R. 405, 3 Bom. L.R. 278, F.B., 26 M. 243].

Assessors—continued.

(6)—*Crim. Pro. Code (1882), s. 285—Assessors—Trial with the aid of two assessors, one of them being deaf—Validity.*—Before a Sessions trial began, it was found that one of the three assessors who attended was deaf, and the trial proceeded with the aid of two assessors. It was found, after the Public Prosecutor had closed his case, that another assessor was so deaf as to be incapable of understanding the proceedings. *Held*, that the proceedings were null and void, as the trial was held with the aid of only one assessor who was capable of acting as such, and that s. 285 did not apply, as the section applied only to a case of a trial which had commenced with the aid of two or more assessors, who at the commencement of the trial were capable of acting as assessors. **21 A. 106.** [*F.*, 3 Bom. L.R. 274=25 B. 694; *R.*, 24 M. 523].

(7)—*Crim. Pro. Code (1882), ss. 268, 285—Trial with the aid of assessors—Absence of assessor, effect of.*—The first part of s. 285 explicitly provides that the assessors shall attend throughout the proceedings, that is to say, that there shall be no break in their attendance, which shall be exactly commensurate with the entire continuance of the trial down to the time when the finding is made. At the early stage of a Sessions trial, one out of three assessors died, and later on, another became too ill to take any further part in the trial. The third assessor was obliged to be absent on account of illness during the address of the accused's pleader; *held*, that the trial should be set aside, because it was before a Court without jurisdiction, a portion of the trial having been conducted without the aid of any assessor. **13 A. 337.** [*R.*, 24 M. 523=2 Weir 345.]

(8)—*Crim. Pro. Code (1898), ss. 268 and 285—Trial with the aid of assessors—Absence of an assessor—Trial without aid of assessor.*—When a trial is resumed by a Sessions Judge in the absence of one of the assessors, but still with the aid of the other assessor or assessors present, the absent assessor ceases to occupy the position of an assessor aiding at the trial. It is clear that what the law requires is that a Sessions trial should be held, under exceptional circumstances, by the Sessions Judge with the aid of at least one assessor sitting throughout during all the proceedings. **6 C.W.N. 715.**

(9)—*Crim. Pro. Code (1882), ss. 268, 428, 537—Recording evidence in the absence of assessors.*—Where in a trial for murder, the Sessions Judge, relying on a statement made by the deceased, convicted the accused, but there was evidence to show that the statement was not recorded by the Judge until after the assessors had been discharged, *held*, that the error vitiated the trial, and it was not covered by the provisions of s. 537. In only one instance is a Court of Sessions authorised to record evidence in the absence of the jury or the assessors, and that is, when additional evidence is called for by the appellate Court. **15 A. 136.** [*R.*, 24 M. 523=2 Weir 346].

Assessors—continued.

(10)—*Procedure—Assessors—Plea of guilty.*—Where a prisoner pleads guilty, a conviction upon that plea is valid, although there are no assessors. **10 W.R. Cr. 43.**

(11)—Where, after pleading guilty, the accused makes an addition to the plea of guilty, to the effect that he was really not guilty of the offence charged, as he was out of mind when he committed it, and it becomes necessary to have a formal trial, and to take evidence before a conclusion on the issue raised can be arrived at, then, the trial cannot proceed without the aid of assessors. **5 N.W.P. 110.** [*F.*, Rat. Un. Cr. C. 698].

(12)—*Crim. Pro. Code (1898), s. 309—Sessions trial—Assessors, opinion of—Grounds.*—Assessors should be invited and encouraged by the Judge to state briefly the grounds of their opinion as well as the result. **2 Bom. L.R. 322.**

(13)—An accused cannot be legally convicted unless the opinion of the assessors is taken on the whole of the evidence in a case. **15 W.R. Cr. 3.**

(14)—*Crim. Pro. Code (1898), s. 309—Sessions trial—Opinion of assessors, recording of.*—The Sessions Judge should record fully the opinion of the assessors. The reasons for the opinion should be briefly stated and not merely the result of the opinion. Where one of the assessors merely found the accused not guilty of the offence charged and the other concurred with him, *held*, that such opinion could not be of any assistance to the Sessions Judge at the trial or to the High Court on appeal. **2 Bom. L.R. 323.**

(15)—The grounds given by each assessor for his opinion should be distinctly recorded by the Judge. **3 W.R. Cr. 6.**

(16)—*Grounds of opinion—One assessor concurring with the other.*—In a case where one of the two assessors said that he thought it proved that a war was waged against the Queen, that there was a conspiracy to carry on that war, and that the prisoner was guilty of all the acts charged, and the other assessor concurs with him, *held* that it could not be said that the assessors have no reason for their opinion. **7 B.L.R. 63=15 W.R. Cr. 25.**

(17)—*Assessors differing from Judge—Grounds of opinion.*—Assessors must give the grounds of their opinions when they differ in opinion from the Judge. **3 W.R. Cr. 21.**

(18)—*Opinions of assessors, how to be delivered—Summing up of evidence, record of.*—The Sessions Judge should require *each* assessor to state his opinion orally. If the Sessions Judge is not able to record the substance of his summing up of the evidence in a case, he should employ an independent person to record it and not ask the Public Prosecutor to do it. **9 C. 875=12 C.L.R. 506.**

(19)—Although the old Criminal Procedure Code did not expressly provide for the summing up of the evidence in a trial with the aid of

Assessors—continued.

assessors yet there was nothing in the Code to prevent a Judge from summing up the evidence to the assessors. **7 B.L.R. 63=15 W.R. Cr. 25.** *But see* **7 B.L.R. 67, note=11 W.R. Cr. 39.**

(20)—*Crim. Pro. Code (1861), s. 324—Case tried with assessors—Absence of evidence against the accused—Procedure.*—In a case tried with assessors, if the prisoner pleads not guilty and if the Public Prosecutor is not able to offer evidence in support of the charge, the Judge should instruct the assessors that they are bound to find the prisoner not guilty. **4 M.H.C. App. 39.**

(21)—*Crim. Pro. Code (1882), ss. 309, 537—Case tried with the aid of assessors—Omission to record judgment.*—The omission of a Judge to record a judgment, in a case tried with the aid of assessors, is an irregularity that is covered by s. 537 of the Code. **2 Weir 392.**

(22)—*Trial with assessors—Omission to state reasons for judgment—Crim. Pro. Code, Act XXV of 1861, s. 379.*—In a trial with the aid of assessors, the Judge's omission to state the reasons for his judgment is an irregularity which does not vitiate the finding. **6 B.H.C. Cr 55.**

(23 & 24)—*Crim. Pro. Code, Act XXV of 1861, s. 372—Acquittal—Opinion of assessors—Practice.*—When a judgment of acquittal is recorded under s. 372 of the Crim. Pro. Code, 1861, it is not necessary to take and record the opinions of the assessors. **7 B.H.C. Cr. 82; Rat. Un. Cr. C. 35.**

(25)—Where there is any evidence to support the charge, the opinions of the assessors should be taken, even though the Sessions Judge may consider such evidence to be unworthy of belief. **9 C.P.L.R. 24 Cr.** (10 A. 414; 16 B. 414, *R.*).

(26)—*Crim. Pro. Code (1872), ss 255, 265, Scope of.*—The intention of the Legislature in ss. 255 and 265 of the Criminal Procedure Code, in a case in which the accused was tried on two charges, was that the assessors should give a definite opinion whether the prisoner is guilty of either of the offences charged, and, if so, of which of the charges preferred against him, and that the Judge, on delivering judgment, should give it with advertence to the opinion of the assessors. **22 W.R. Cr. 34.**

(27)—*View by assessors of scene of offence.*—As to a view by the assessors of the scene of an alleged offence, the Judge could not delegate his own function of examining witnesses on the spot to the assessors, who cannot under s. 348, Crim. Pro. Code, 1861, speak to or communicate with any person other than the officer appointed to conduct them to the place. **5 W.R. Cr. 59.**

(28)—*Crim. Pro. Code (1882), ss. 321, 325—Holding Sessions in another District.*—The Sessions Judge of Canara asked the High Court for

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special permission to hold his Court at Sirsi, instead of at Karwar, for the Sessions of September 1886. *Held* that, as the assessors can only be chosen from the list prepared under s. 321, Crim. Pro. Code, which can only be revised once a year (s. 325, Crim. Pro. Code), the Court should, therefore, decline to grant the permission asked for, there being no assessors available for the Sessions at Sirsi. **Rat. Un. Cr. C. 304=Cr. Rg. 52 of 1886.**

—Order of Sessions Judge fining—*See* APPEAL, 8 W.R. Cr. 83.

—Offence triable both by jury and assessors—Proper procedure—*See* CRIM. PRO. CODE (1898), ss. 269 (3) and 309, 2 Weir 334.

See CRIM. PRO. CODE (1898), ss. 269, 409, 536, 24 M. 641=2 Weir 458.

See CRIM. PRO. CODE (1898), s. 285, 2 Weir 340, 8 C.P.L.R. Cr. 9.

See CRIM. PRO. CODE (1898), ss. 285 and 537, 24 M. 523=2 Weir 340.

See CRIM. PRO. CODE (1898), s. 289, 10 A. 414.

See CRIM. PRO. CODE (1898), s. 307, 8 Bom. L.R. 599=4 Cr. L.J. 192.

See CRIM. PRO. CODE (1898), s. 309, 48 P.R. 1905 Cr.=192 P.L.R. 1905=3 Cr. L.J. 132.

—Trial by jury instead of with the aid of assessors—*See* CRIM. PRO CODE (1898), ss. 418, 439, 536, 25 B. 680=3 Bom. L.R. 279, F.B.

See CRIM. PRO. CODE (1898), s. 536, cl. 2, 23 M. 632=2 Weir 331.

See CRIM. PRO. CODE (1898), ss. 536 and 537, 26 M. 243, note.

See CRIM. PRO. CODE (1898), s. 537, 1 A. 610.

See SESSIONS JUDGE, JURISDICTION OF, 22 C. 805.

—Opinion of assessors—*See* WITHDRAWAL OF PROSECUTION, Rat. Un. Cr. C. 307=Cr. Rg. 58 of 1886.

Assistant Sessions Judge.

—*Crim. Pro. Code (1882), s. 193—Assistant Sessions Judge—Taking charge—Jurisdiction.*—An Assistant Sessions Judge, who has been directed by the Government to take over charge of the duties of Judge and Sessions Judge during the temporary vacancy of the office, is not an officer appointed to act as a Sessions Judge and has no jurisdiction to try any case even as Assistant Sessions Judge, unless it was made over to him under a general or special order under the last para of s. 193 of the Crim. Pro. Code. **Rat. Un. Cr. C. 500=Cr. Rg. 12 of 1890.** (14 C. 887, *R.*).

Attachment.

See CRIM. PRO. CODE, ss. 87, 89 and 146.

(1)—*Profits obtained during the attachment to be delivered—Crim. Pro. Code (1882), s. 146.* —A Magistrate attaching immoveable property under s. 146, Crim. Pro. Code, pending the decision of a Civil Court in respect thereof, should not, after the decision of the Civil Court, retain in his hands the profits derived from such property during the attachment. **A.W.N. 1893, 100.**

(2)—*Claim*—Bona fide *interest.*—A Magistrate must inquire judicially into and decide a claim to property attached under his orders in attempting to recover a fine. A claimant must be given an opportunity of showing a *bona fide* interest in such property before it was attached. **L.B.R. (1872—1892), 332.**

(3)—*Attachment of property of absconding accused—Attachment and sale in execution of money-decree—Sale by Magistrate.*—Where the property belonging to an absconding accused was attached, under s. 172, Crim. Pro. Code, and subsequently sold, and the same property was in the meantime also attached and sold in execution of a money-decree, *held*, the title conferred on the purchaser at the Magistrate's sale was the superior one. So long as the attachment by the Magistrate continued, no title could be conferred by any attachment subsequently made. **9 C. 861=12 C.L.R. 411.**

(4)—*Crim. Pro. Code (1898), s. 88—Attachment of property—Claim by third person—Duty of Magistrate—Rights of claimant—Civil suit.* —Where the District Magistrate attached the property of an absconder under s. 88 of the Crim. Pro. Code, a claim made to such property cannot be investigated by the Magistrate. But the Magistrate should stay the sale to give the claimant time to establish his right; and, if the Magistrate errs, the remedy of the aggrieved party is by civil suit and not by criminal revision petition. **4 L.B.R. 109.**

(5)—*Power of Magistrate to enquire into claims to property attached as belonging to the accused—Order as to disposal of property respecting which accused appears to have committed an offence—Crim. Pro. Code (1882), ss. 88, 89, 523, 512 and 517.*—Ss. 88 and 89, Crim. Pro. Code, do not provide for any enquiry into the claims of other persons to the property attached as belonging to an accused, and a Magistrate should be very careful only to attach property belonging to the absconding accused person. S. 523 does not apply to property produced under a search warrant issued by a Criminal Court, or produced by the police in carrying out the order of a Magistrate. When an accused person has absconded, the only enquiry which a Magistrate can make into the truth of the complaint made against him is an enquiry under s. 512, Crim. Pro. Code, and, if any offence appears to have been committed regarding any property produced before the Magistrate at such enquiry, it seems permissible and proper to make an order as to the disposal of such property under s. 517. **L.B.R. (1893—1900), 324.** (17 Bom. 748, *F.*)

Attachment—concluded.

—Attachment of the undivided interest in the joint family of an absconding party—*See* CRIM. PRO. CODE (1898), ss. 87 and 88, 2 Weir 43.

Where parties fail to appear after proclamation—*See* CRIM. PRO. CODE (1898), ss. 87 and 88, 6 C.P.L.R. Cr. 38.

See CRIM. PRO. CODE (1898), s. 88, 28 C. 540=6 C.W.N. 175.

See CRIM. PRO. CODE (1898), ss. 88, 189, A. W.N. 1904, 159.

—Possession delivered by Civil Court—Dispute concerning lands so delivered—Attachment of land by Magistrate, legality of—*See* CRIM. PRO. CODE (1898), ss. 145 and 146, 32 C. 796 =2 Cr. L.J. 761.

—Order of, of crops belonging to tenants of the land in dispute under s. 145, Cr. P.C.—*See* CRIM. PRO. CODE (1898), ss. 145 and 146, 5 C. W.N. 105.

—Conditions essential for passing order for attachment of property—*See* CRIM. PRO. CODE (1898), s. 146, 2 A.L.J. 149. 6 Bom. L.R. 723, 9 C.W.N. 897=1 C.L.J. 331=2 Cr. L.J. 408, 26 M. 410.

—Under s. 146, if valid where Magistrate unable to satisfy himself who was in possession—*See* CRIM. PRO. CODE (1898), ss. 146 and 435, 7 Bom. L.R. 18.

See PENAL CODE, ss. 183, 186, 27 A. 258= 1 A.L.J. 595=A.W.N. 1904, 229.

Attempt.

See PENAL CODE, s. 511.

(1)—*Attempt defined.*—An attempt is an intentional preparatory action which fails in object—which so fails through circumstances independent of the person who seeks its accomplishment. **2 Bom. L.R. 286.**

(2)—When a man does an intentional act with a view to attain a certain end and fails in his object through some circumstances independent of his own will, he has attempted to effect the object at which he aimed. **2 Bom. L.R. 304.**

(3)—*Penal Code, s. 511—Attempt, what constitutes.*—S. 511 does not cover only the penultimate act towards the completion of an offence. It also covers acts precedent, if those acts are done in the course of the attempt to commit the offence, with the intent to commit it and towards its commission. The question whether an act is an act of preparation, or an act in the attempt and towards commission, is a fact to be determined upon the evidence. It is in most cases a question for the jury to distinguish between an act before attempt has begun, an act after attempt begun, and towards the commission of the offence attempted, and an act independent of the attempt altogether. **15 A. 173.** [*R.*, 25 B. 90, 2 A.L.J. 718].

Attempt—continued.

(4)—*Per Ranade, J.*—S. 511, I.P.C., does not relate only to the penultimate act, but to all preceding acts if they were done with intent to commit or facilitate the commission of the act. **25 B. 90=1 Bom. L.R. 653.**

(5)—A person cannot be convicted of attempting to commit an offence, unless the offence would have been committed, had the attempt proved successful. **22 C. 131.**

(6)—To constitute an attempt to commit an offence, there must be something "commenced which would have ended in the crime if not interrupted." **7 C. 352=8 C.L.R. 572.** [*F.*, 1 L.B.R. 264; *Diss.*, 15 A. 173; *R.*, Rat. Un. Cr. C. 470, 22 C. 131].

(7)—Between the preparation for the attempt and the attempt itself, there is a wide difference. The preparation consists in devising or arranging means or measures necessary for the commission of the offence; the attempt is the direct movement towards the commission after preparations are made. The law allows a *locus penitentiæ* and will not hold that a person has attempted a crime, until he has passed beyond the stage of preparation. **3 M. 4=1 Weir 543.**

(8)—*Penal Code, ss. 75, 511—Applicability of s. 75 to attempt under s. 511.*—S. 75 does not apply to cases which are confined to s. 511. The offences which come under s. 511 must be punished entirely irrespective of s. 75. **17 A. 123.**

(9)—S. 75, I.P.C., is restricted to offences under Chapters XII and XVII of the Penal Code, when the term of imprisonment awardable is three years' imprisonment and upwards, and does not refer to an attempt to commit any of those offences, nor can any case be brought within it, merely because the punishment that may be given for it extends to three years and upwards. **21 W. R. Cr. 35.**

(10)—*Penal Code, s. 511—Attempt distinguished from preparation.*—To constitute the offence of attempt under s. 511, there must be an act done with the intention of committing an offence and for the purpose of committing that offence, and it must be done in *attempting* the commission of the offence. Although the provisions of the section extend to a much wider range of cases than would be deemed punishable under the English Law, they would not extend to make punishable as attempts acts done in the mere stage of preparation. Although such acts are done towards the commission of the offence, they are not done in the attempt to commit the offence. The term "attempt" indicates the actual taking of those steps which lead immediately to the commission of the offence, although nothing be done, or omitted, which of itself is a necessary constituent of the offence attempted. **4 N.W.P. 46.** [*R.*, 16 A. 409; *Expl.*, 15 A. 173; *D.*, 2 A. 105].

(11)—There is a distinction between the commission of an offence, the attempt to commit it, and a preparation to commit it. Preparation, or providing an opportunity to commit an offence, is a stage of the proceeding short of attempt, and is not punishable by law. **7 P.L.R. 1903.**

(12)—Preparation to commit an offence is punishable only when the preparation is to commit dacoity. Preparation to commit an offence and an attempt are distinct; if the actual transaction has commenced and would have aided in a crime, if not interrupted, there is an attempt. **18 P.R. 1886 Cr.**

(13)—The act of a milk-man in going in the direction of the place where the cows are about to be milked with about three gallons of stale milk in his possession, the milk being in a can similar to the cans in which the cows are milked, amounts only to a preparation to adulterate the milk intended for sale as food or drink, but not to an attempt. **40 P. R. 1885 Cr**

(14)—*Attempt to abet an offence.*—An offence can be abetted, within the meaning of s. 109, I.P.C., though the means which are intended to be employed are such that it is physically impossible that the effect requisite to constitute the offence should be caused by them. **20 P.R 1885 Cr.** (*Contra*, 7 C. 352).

(15)—It is not legally impossible to attempt the abetment of an offence, which is provided for in s. 511. There is, therefore, no legal obstacle to punishing such an offence. **49 P.R. 1887 Cr.**

(16)—*Penal Code, ss. 467, 511—Attempt to commit forgery.*—Where the first appellant personating another person, accompanied by the second appellant, purchased from the stamp-vendor a stamp paper in the name of the person personated, and thereupon requested a petition-writer to engross on the stamp paper a bond by which the person personated acknowledged that he had borrowed a certain amount from the second appellant and the petition-writer took them to the *thana*, his suspicions being aroused, *held*, that the second appellant was guilty of an attempt to commit an offence under s. 467, and that the first appellant was guilty of an abetment of the same. **16 A. 409.** [*R.*, 25 B. 90].

(17)—*Penal Code, s. 307—Attempt to commit murder.*—Where a woman of 20 years administered *datura* to her parents and brother, *held*, that it should be presumed that she was aware that death might be caused by the administration of *datura*, although she might not have intended to kill them. **20 A. 143.** [*Not F.*, A. W.N. 1908, 243=30 A. 568=4 M.L.T. 402=8 Cr. L.J. 383.]

(18)—S. 307 of the Penal Code was not intended to exhaust all attempts to commit murder which could be punishable under the Code, but applies only to acts done which are capable of causing death in the natural and ordinary course of things, if the act took effect. In considering, however, an attempt under

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s. 511, it is unnecessary to see whether the causing of death was possible or not, if the act was completed. In this case, the prisoner was about to pull the trigger of a loaded gun which, however, was not capped, though the prisoner believed it to be so, when the gun was pulled from his hands. *Held*, there was an attempt to murder, not under s. 307, but under s. 511 coupled with ss. 299 and 300 of the Code. **4 B. H.C. Cr. 17.** [*Diss.*, 14 A. 38; *R.*, 30 P.R. 1904 Cr.].

(19)—The mere act of bringing a sword is not an act of such an approximate nature as would amount to an attempt to commit murder or grievous hurt, although it may be a preparation towards the commission of some such offence. But, under the circumstances of the case, it was held that the prisoner's act might amount to an assault, as it was likely to cause the complainant to apprehend that the prisoner was about to use criminal force to him. **45 P. R. 1882 Cr.**

(20)—The fact that the illegitimate child of a Brahman widow was found wrapped up in a cloth and with a pot turned over its head, when the police rushed into the room just opened, and the suggestion that the mother was interested in killing the child, are not sufficient evidence to support a conviction for an attempt to murder. **8 B.H.C. Cr. 164.**

(21)—*Held* (Ormond, J., *dissenting*) that the offence, which is called shortly, in the marginal index to s. 307, Penal Code, "attempt to murder," does not depend at all on the nature of the hurt actually inflicted; it is an offence which may be committed without inflicting any hurt at all, as will be clear from the first illustration to the section. Though, in most cases, the nature of the injuries inflicted is of considerable assistance in coming to a finding as to the intention with which the accused acted, yet, such intention must also be deduced from a consideration of the whole facts of the case and may even be ascertained, in some cases, without reference to the wounds at all. **4 L.B.R. 311. F.B.**

(22)—*Attempt to murder—Attempt to cause grievous hurt.*—Where the accused ran after the complainant with an axe in his hand and raising it to the shoulder when about four *kadams* from the complainant, but the axe was snatched away before he could do any thing in pursuance of that object, *held*, that the accused was not guilty of an attempt to commit murder, but was guilty of an attempt to cause grievous hurt under s. 511 read with s. 326. **30 P.R. 1904 Cr.**

(23)—An attempt to murder must not be confounded with causing grievous hurt with dangerous weapons. **32 P.R. 1886 Cr.**

(24)—*Raising a knife in a threatening manner, but without trying to stab, if attempt—Penal Code, s. 511.*—In order to constitute an attempt punishable under s. 511. Penal Code, there must be an intention to commit a particular crime, a commencement of the commission and

Attempt—continued.

an act done towards the commission. The act of raising a knife in a threatening manner, manifesting an intention to stab, but without actually trying to stab, the complainant, falls short of an attempt to stab. **1 L.B.R. 264.** (7 C. 352, *F.*)

(25)—*Attempt to commit murder—Preparation.*—A request to a native doctor by the accused for medicine for the purpose of poisoning her son-in-law was not an attempt to commit murder, but was merely a preparation. But the act could be held to be an instigation of the doctor to abet the accused in the commission of murder, punishable under s. 302 read with s. 116, I.P.C. **24 P.R. 1882 Cr.**

(26)—*Attempt to commit suicide—Causing grievous hurt to himself.*—A person cannot be convicted under s. 309, for emasculating himself. **22 P.R. 1878 Cr.**

(27)—*Attempt to commit dacoity.*—S. 511, Penal Code, does not apply to a case of dacoity. **7 W.R. Cr. 48.**

(28)—*Attempt to commit house-breaking.*—Removing some projecting tiles from the roof of a house is not a step towards committing house-breaking and consequently is not an attempt to commit house-breaking. **A.W.N. 1886, 290.**

(29)—*Attempt to commit house trespass, after previous conviction under Chapter XVII, Penal Code—Enhanced punishment.*—A person previously convicted of an offence under Chapter XVII, I.P.C., cannot be convicted under s. 75, I.P.C., and sentenced to an enhanced punishment for an attempt to commit an offence punishable under s. 456, I.P.C. **27 P.R. 1872 Cr.** [*F.*, 37 P.R. 1882 Cr.]

(30)—*Attempt to commit an offence under s. 215, Penal Code, when complete—Proposal and contract distinguished.*—In order to constitute an attempt to commit an offence under s. 215, Penal Code, it is not necessary that the person who is willing to take and the person who is willing to give, the illegal gratification should agree both as to the object for which the gratification is to be given and also as to the shape or form the gratification is to take. When once a proposal has been made for the payment of an illegal gratification, whether it is completed by an agreement or not, the offence of an attempt to commit an offence under s. 215 is complete. Proposals as defined in s. 2 of the Contract Act are attempts to complete an agreement, or in other words, to arrive at the mutually expressed view of two wills whereby the legal bond, called a contract, is constituted. **2 L.B.R. 310.** (20 A. 389, *Diss.*)

(31)—*Penal Code, ss. 379, 511—Attempt to commit theft.*—Trying to open a gate for the purpose of stealing some paddy is an act done towards the commission of the offence of theft, which was admittedly their object. They can be convicted, therefore, under s. 511 and s. 379 of I.P.C. **U.B.R. (1892—1896), Vol. I, 293.**

Attempt—continued.

(32)—*Fabricating false evidence—Attempt.*—Where the facts showed that the accused had dug a hole, intending to place salt therein, so that the discovery of the salt so placed might be used in evidence against his enemy in a judicial proceeding, he would be guilty of an attempt to fabricate false evidence. **4 N.W.P. 133.**

(33)—*Public servant preparing an incorrect document—Attempt to cheat.*—If after framing an incorrect document coming under the provisions of s. 218, I.P.C., the public servant submits the document, with intent thereby to procure credit for payment of more than, to his own knowledge, is due to him, all the elements of an attempt to cheat, in its simple or aggravated form, would be present; but it does not follow that, because there was no complete offence to cheat, there was no complete offence. **13 P.R. 1881 Cr.**

(34)—*Penal Code, s. 511—Attempt to cheat—False claim for payment of lost currency notes.*—An accused person sent to the Currency Office at Calcutta a letter enclosing two half currency notes, stating that the other halves were lost, and asking what steps should be taken for the recovery of the money. The Currency Office caused a search to be made and came to know that the amount of the notes had been paid to the holder of the other halves. However, the usual form of claim was sent to the accused person to be filled up and sent to the office, although the office never contemplated payment. The accused, after filling up the form, sent it to the office. *Held*, that the accused was guilty of an attempt to cheat by sending up the claim form filled up, although the first letter was a mere letter of enquiry and did not amount to an attempt. **16 C. 310.** [*R*, 8C.W.N. 784].

(35)—*Attempt to cheat where person forewarned.*—A man may attempt to cheat, although the person he attempts to cheat is forewarned and is, therefore, not cheated. **16 C. 310.**

(36)—*Penal Code, ss. 417, 511—Attempt to cheat—Attempt distinguished from preparation.*—The accused, at the Central *Octroi* Office in Mathura, falsely represented that three *kuppas* (skin vessels), which were then and there produced, contained *ghi*, whereas only two contained *ghi* and the third contained oil; the object of this false representation was to obtain a certificate entitling him to a refund of *octroi* duty on the three *kuppas* of *ghi*, which would have amounted to 30 annas, instead of the proper refund, which would have been 25 annas only. It was alleged by the prosecution that, prior to granting the refund certificate, the *octroi* officers found out, after examining the contents of the three *kuppas*, that the accused's statement was false. The procedure in case of a refund of *octroi* at Mathura was, that the Central Office, on satisfying itself that the articles produced were, what they were said to be, granted a certificate which used to be endorsed by the outpost clerk, when he passed the goods out of the town. The owner would take back the certificate so endorsed to the Central Office, where these certificates used to be encashed once a week. *Held*, that even assuming that the accused had falsely represented the contents of the *kuppas* as alleged, he had not completed an attempt to cheat, but only had made a preparation for cheating, for, before the time of presentation on a Saturday, he might have altered his mind even from prudence, if not from penitence, and torn up the certificate, and no cheating could then have happened. **8 A. 303** [*R.*, 15 A. 173, U.B.R. (1892—1896), 191, 25 B. 90, 2 A.L.J. 718].

(37)—*Attempt distinguished from preparation—Attempt to commit adultery.*—Preparation or providing an opportunity being a stage of the providing, short of an attempt, is not punishable by law. An opportunity made for sexual intercourse by a married woman going to the accused's shop, the object being frustrated by people following her and besieging the shop, was held to be a mere preparation. **25 P.R. 1902 Cr.** (13 P.R. 1879 Cr., *F.*)

(38)—From the moment when an intention is formed to commit an offence, every act done to facilitate the commission of the offence with that object is in one sense "an act done towards the commission of the offence," but the doing of every such act does not constitute an attempt to commit the offence. It is in every case a question depending upon the circumstances whether a particular act done (with the requisite intention) towards the commission of an offence, is sufficiently proximate towards its commission to constitute an attempt, or is so remote as to merely constitute a preparation for its commission. [*F.*, 25 P.R. 1902 Cr.] Where a woman, brought to a house for the purpose of having sexual intercourse with the accused, was taken out of the house by her husband, before the accused had sexual intercourse with her, *held*, that the accused had not passed beyond the stage of preparation, and that the conviction, therefore, for attempt to commit adultery was not legal. **13 P.R. 1879 Cr.**

(39)—*Attempt to commit mischief.*—The possession of an instrument to commit mischief by fire and the going about of the person with it are sufficient to raise a presumption that he intended to commit the act, and had already begun to move towards the execution. These facts are sufficient to constitute an attempt. **3 B.L.R.A.C. 55.**

(40)—*Penal Code, ss. 376, 511—Attempt to commit rape—Proof of potency.*—In India, the potency of a person who is charged with committing rape or attempting to commit rape has to be proved by evidence in each case. A person proved to have the power of erection must be presumed to be physically capable of committing rape. **Rat. Un. Cr. C. 865 = Cr. Rg. 31 of 1896.**

Attempt—continued.

(41)—*Penal Code, s. 494—Attempt to commit bigamy—Publishing the banns.*—The causing of the publication of the banns of marriage is not an attempt to marry, but only a preparation for such an attempt. **8 1 A. 316.**

(42)—*Penal Code, ss. 328 and 511.*—An attempt to commit an offence, as defined in s. 511, I.P.C., means not merely an act with the intention to commit an offence which is unsuccessful because it could not possibly result in the completion of the offence, *but an act done towards the commission of the offence*, that is to say, the offence remains incomplete, only because something yet remains to be done, which the person intending to commit the offence is unable to do by reason of circumstances independent of his own volition. An action complete in itself and not constituting an offence did not constitute an "*attempt*" to commit an offence, *e.g.*, as the administration of a harmless substance which the accused wrongly believed to be poison. **9 C.P.L.R. 14 Cr.** (4 B.H.C. 17 Cr. *Diss.*; 11 B. 376, 14 A. 38, *R.*)

(43)—*Attempt to evade payment of Railway fare—Attempt to cheat—Railway Act XVIII of 1854.*—A mere attempt to evade the payment of fare is punishable under the provisions of the Railway Act (XVIII of 1854). But to evade payment by the production of an old pass, altered as to the date and the number of persons, amounts to the offence of attempting to cheat **6 P.R. 1868 Cr.**

(44)—*Attempt to commit an offence—Whipping Act, s. 2.*—S. 2 of the Whipping Act refers to the commission of offences and not to attempts to commit offences, *e.g.*, an attempt to commit theft. **12 C.P.L.R. Cr. 1.**

See ABETMENT, 49 P.R. 1887 Cr., 24 P.R. 1882 Cr.

See ACT XVIII OF 1854, s. 3, Rat. Un. Cr. C. 123.

See ACT VI OF 1864, s. 2, 3 B.H.C. Cr. 37, L.B.R. (1872—1892), 399.

—Attempt to cheat—*See* CHEATING, 9 C. W.N. 764=2 Cr. L.J. 422, 2 A.L.J. 718=2 Cr. L.J. 788.

See CRIMINAL INTIMIDATION, 11 B. 376.

See CRIM. PRO. CODE (1898), ss. 236, 237. 1 L.B.R. 221.

—Attempt to commit suicide—*See* CRIM. PRO. CODE (1898), s. 439 (5), 2 L.B.R. 209.

See CRIMINAL TRESPASS, 15 P.R. 1907 Cr. =44 P.W.R. 1907=6 Cr. L.J. 444=56 P.L.R. 1908.

See HOUSE-BREAKING BY NIGHT, 8 Bom. L.R. 855=4 Cr. L.J. 450.

See PENAL CODE, ss. 75, 511, 14 P.R. 1906 Cr.

See PENAL CODE, ss. 107, 109, 379, 382 and 393, 18 P.R. 1879 Cr.

See PENAL CODE, ss. 124, 124-A, 153, 153-A and 505, 14 P.W.R. Cr. 1907=5 Cr.L.J. 439=2 M.L.T. 272=10 P.R. Cr. 1907.

Attempt—concluded.

See PENAL CODE, s. 161, 2 A. 253.

See PENAL CODE, ss. 302, 307, 15 B. 194.

See PENAL CODE, ss. 307, 511, 14 A. 38.

See PENAL CODE, s. 309, 8 M. 5=1 Weir 330.

See PENAL CODE, ss. 354, 375 and 511, 5 B. 403.

See PENAL CODE, ss. 417, 468, 511, 25 M. 726=1 Weir 481=12 M.L.J. 68.

—Previous conviction for theft—Subsequent charge of attempt to commit theft—Enhanced punishment—*See* SENTENCE, 5 B. 140; also 17 A. 120, 14 C. 357.

See SENTENCE, 14 P.R. 1906 Cr.=5 Cr. L. J. 85=12 P.L.R. 1907=15 P.W.R. 1907 Cr.

See WAGING WAR AGAINST THE QUEEN, L.B.R. (1872—1892), 158.

Attorney.

See 1. ADVOCATE.
2. BARRISTER.
3. COUNSEL.
4. PLEADER.
5. VAKIL.

(1)—*Crim. Pro. Code (1872), s. 186 (=s. 340 of the Code of 1898)—Accused defended by authorised pleader—Vakalathnama.*—An advocate or attorney of the High Court or an authorised pleader, appearing in defence of an accused person, under s. 186, is not required to file a *vakalathnamah*. **2 Weir 402=7 M.H.C. App. 40.**

(2)—*Striking off the rolls—Power of High Court*—The High Court in Calcutta is not authorised in striking an attorney off the rolls, when such a step would not be sanctioned by the practice of the Courts in England. **1 B.L.R. P.C. 55=10 W.R. P.C. 43.**

(3)—*Suspension for negligence.*—Where an attorney had been guilty of negligence in allowing his clerk to act in his absence and file a false affidavit and adopted it without inquiring into its character, he was suspended from practising in the High Court in its original jurisdiction for one year, but he was at liberty to practise as a vakil on the appellate side. It had not been proved that the clerk was acting as an attorney without a license, or had a share in the profits. Had this been so, the attorney's name would have been struck off from the rolls. **Bourke O.C. 377.**

(4)—*Prosecution before Presidency Magistrate by advocate or attorney—Presidency Magistrate's Act (IV of 1877), s. 129.*—With the exception of certain officers, such as the Advocate-General, Standing Counsel, Government Solicitor, etc., no counsel or attorney can claim the right to conduct a prosecution before the Presidency Magistrate without his permission. **6 C. 59=6 C.L.R. 374.**

Auction.

—Betting on figures of auction—*See* BOM. ACT IV OF 1887, ss. 3, 4, 5, 26 B. 533=4 Bom. L.R. 271.

Autrefois Acquit, Plea of.

See CRIM. PRO. CODE (1898), s. 403.

(1)—*Act XXV of 1861, s. 55—Principle.*—Where the accused was once acquitted of an offence, *held* that he was not liable to be tried again for the same offence and that his second conviction was, therefore, under s. 55, Act XXV of 1861, illegal. **2 Agra 3 Cr.**

(2)—Where a former trial is set aside on the ground of want of jurisdiction and illegality, such a setting aside is not a bar to a second trial. **2 W.R. Cr. 10.**

(3)—Discharge of a prisoner by the Sessions Court for illegality and irregularity of procedure is no bar, under s. 55 of the Code of Criminal Procedure, to his being subsequently tried and convicted of the same offence. **13 W.R. Cr. 42.**

(4)—An order for the release of the accused, as being not guilty, amounts to an acquittal and not a discharge; such an order would exempt the prisoner from a second trial for the same offence. **18 W.R. Cr. 10.**

(5)—*Stealing and receiving stolen property.*—The mere fact of a person's having once been acquitted of the charge of stealing any property does not of itself prevent his trial at any future time on the charge of receiving the same property knowing it to be stolen. **25 W.R. Cr. 47.**

(6)—*Rioting and criminal trespass.*—The dismissal by one Court of a charge of rioting instituted by the police is no bar to the trial by another Court of a charge of criminal trespass instituted by a third person, although the two charges may substantially refer to the same occurrence. **6 W.R. Cr. 51.**

(7)—*Forgery.*—P was tried on a charge of forging, etc., document A, and acquitted. In order to prove the charge, evidence was given in respect of another document B, which was also alleged to have been forged, and the prosecutor mainly based his case on the alleged exact resemblance between the signatures to A and B, both of which, it was said, exactly resembled a third signature admitted to be genuine. *Held* that the acquittal in respect of A did not operate as an acquittal in respect of the document B, so as to enable the accused to plead *autrefois acquit*. **2 Ind. Jur. N. S. 67=7 W.R. Cr. 15.**

(8)—*Crim. Pro. Code (1872), ss. 455, 456, 460—Previous acquittal of some of the accused and committal of others—High Court's order for retrial on appeal from convicted persons, effect of.*—Where a Magistrate acquitted some of the accused and convicted the remaining two of grievous hurt, and the Sessions Judge, on appeal by the latter, holding that they had been guilty of an attempt to murder, referred the case

Autrefois Acquit, Plea of—concluded.

to the High Court, which ordered a new trial, *held* that the proceedings taken against all the five accused, though the order referred only to the two who appealed from their conviction was valid, and the plea of *autrefois convict* and *autrefois acquit* could not be urged by any of them as an answer to the charge of an attempt to murder. **7 N.W.P. 371**

(9)—*Crim. Pro. Code (1898), ss. 1 and 403—Bombay Act V of 1878, ss. 3 (5), 56—Acquittal by competent Magistrate—Retrial.*—Where a Magistrate of the second class, who has, under ss. 3 (5), 56, Bombay Act V of 1878, jurisdiction to try an offence against Act V of 1878, has acquitted the person so charged, no retrial can be held on the same charge, unless the acquittal has been set aside on an appeal by the Government. **10 B. 181.** [*R.*, 1 Bom. L.R. 15].

See ACQUITTAL, 1 W.R. Cr. Letters, 10.

See BUR. ACT III OF 1898, ss. 92 (1, 2, 3), 180, 5 L.B.R. 12=9 Cr. L.J. 578=2 Ind. Cas. 357.

See CRIM. PRO. CODE (1898), ss. 247, 403 (1), 2 C.L.J. 622=3 Cr. L.J. 115.

See CRIM. PRO. CODE (1898), ss. 253, 366, 367, 437, 31 M. 543=5 M.L.T. 184=9 Cr. L.J. 80.

See CRIM. PRO. CODE (1898), s. 403 (1), 6 A.L.J. 262=9 Cr. L.J. 526=31 A. 317=2 Ind. Cas. 219.

See CRIM. PRO. CODE (1898), s. 423, 22 C. 377.

See DISCHARGE OF ACCUSED, 31 M. 543, 12 M. 35.

See PENAL CODE, s. 352, 7 B.L.R. App. 25 =16 W.R. Cr. 3.

Autrefois Convict, Plea of.

See CRIM. PRO. CODE (1898), s. 403.

—*Departmental punishment—Subsequent punishment by Magistrate—Competency.*—A fine judicially inflicted cannot be remitted, if it is not in itself an improper one. Departmental punishment cannot withdraw a wrong-doer from the cognizance of the ordinary Courts, or relieve him from the penalties provided by the law. The fine imposed departmentally can probably be remitted departmentally. **Rat. Un. Cr. C. 318=Cr. Rg. 6 of 1887.**

See ACT XIII OF 1859, 21 C. 262.

See AUTREFOIS ACQUIT, PLEA OF, 7 N.W.P. 371.

See CRIM. PRO. CODE (1898), ss. 235 and 403, A.W.N. 1906, 32=3 A.L.J. 2=3 Cr. L.J. 93.

Award.

See ARBITRATION, 1 Agra 45, L.B.R. (1872—1892), 196.

Bad character.

See 1. EVIDENCE.

2. EVIDENCE ACT, ss. 53-55.

(1)—*Relevancy of evidence of accused's previous character.*—Where evidence of the good character of an accused person has not been given, evidence of his previous bad character is irrelevant at any stage of a criminal proceeding as covered by the explanation to s. 54, Evidence Act. **15 P.R. 1888 Cr., F.B.**

(2)—*Relevancy of previous conviction—Evidence Act, ss. 14, 43, 54.*—Except for the purpose of awarding enhanced punishment in cases falling within the provisions of s. 75, Penal Code, evidence of previous convictions now stands upon the same footing, as regards admissibility, as other evidence of bad character. Such evidence is only relevant where the accused has shown that he has a good character or where the bad character of any person is itself a fact in issue (s. 54, Evidence Act), or where the existence of the judgment of conviction is itself a fact in issue, or relevant under some other provision of the Evidence Act (*vide* s. 43), such as s. 14 or s. 8, and possibly certain other sections referring to the relevancy of facts. **7 P.R. 1895 Cr.**

Bail.

See 1. BAIL BOND.

2. CRIM. PRO. CODE (1898), ss. 497-498.

(1)—*Granting of bail in appeal—Practice.*—A convicted person should not be admitted to bail where the chance of his acquittal depends on a mere technical ground. **Rat. Un. Cr. C. 480.**

(2)—*Release on bail of accused—Grounds upon which release may be ordered.*—The question, whether an appeal should be admitted is not the same as the question whether an appellant should be released on bail, and Criminal Courts, to which applications for release on bail are made before the appeal is heard, must always be on guard, lest they should fall into the error of prejudging the case before the appeal is heard, or lest, to avoid this danger, they should fall into the habit of passing indiscriminate orders for release on bail without any real consideration of the grounds upon which such release may be properly ordered. The main questions for consideration when an application for release on bail is made by an appellant who stands convicted and sentenced by a Court of competent jurisdiction are, where, upon perusal of the judgment or the record and the petition of appeal, *prima facie* ground is disclosed for substantial doubt whether the conviction or sentence can be maintained, or, secondly, whether circumstances beyond the control of the appellant are likely to delay the decision of the appeal for an unreasonable time. **L.B.R. (1893—1900), 235.**

(3)—*Crim. Pro. Code (1898), s. 497—Bail—Grant of bail in non-bailable offences—*

Bail—continued.

Practice.—The rule in respect of non-bailable offences is that bail is not to be taken except in special circumstances. **8 Bom. L.R. 420=3 Cr. L.J. 499.**

(4)—*Crim. Pro. Code (1898), s. 498—Bail—Non-bailable offence.*—An accused person ought to be released on bail until reasonable grounds are made out on the evidence for believing him to be guilty. **10 C.W.N. 1093=4 Cr. L.J 221.** [*R.*, 13 C.W.N. 43, 13 C.W.N. 51=4 M.L.T. 432].

(5)—*Discretion of High Court or Court of Session as to granting of bail—Crim. Pro Code (1898), s. 498.*—S. 498, Crim. Pro. Code, gives the High Court or Court of Session an unlimited judicial discretion with an application for admission to bail. **1 L.B.R. 62.**

(6)—S. 498 of the Code of Criminal Procedure gives the Court of Sessions and High Court very wide powers to admit an accused to bail even when he is charged with a non-bailable offence. The admission to bail is a matter within the discretion of the Sessions Judge. In this case the Judge having exercised his discretion with proper care, the High Court refused to interfere. **5 A.L.J. 419 Cr.=A.W.N. 1908, 195=8 Cr. L.J. 49.**

(7)—*Crim.Pro.Code (1872), s. 125—Non-bailable case—Admission to bail by Police officer.*—A Police officer reports for the orders of a Magistrate a non-bailable case under s. 125, Crim. Pro. Code, admitting the accused to bail, there being, in the Police officer's opinion, no sufficient evidence to justify the immediate transmission of the accused to the Magistrate. The Magistrate, however, considers that the evidence does establish a *prima facie* case, and he, accordingly, orders its committal to him: *Resolved*, that the admission to bail by the Police under s. 125 of the Code being a purely provisional arrangement, when the Magistrate determines that there is a *prima facie* case of a non-bailable offence, the accused should be re-arrested and forwarded to the Magistrate in custody. **Rat. Un. Cr. C. 121.**

(8)—*Sufficiency of bail—Duty of the Court.*—If the Court admits a man to bail, it is of course at liberty to call for a report from the Police as to the sufficiency of the bail, but the duty of deciding as to the sufficiency or otherwise is with the Court itself, and not with the Police. If such duties are irregularly entrusted to the Police, two dangers are likely to arise: first, a Police officer may sometimes be unscrupulous enough to take advantage of the power entrusted to him for the purpose of extortion, secondly, the bringing of false charges against the Police. **15 C. 455.**

(9)—*Bail, effect of.*—A person who is released on bail cannot be regarded as under imprisonment so long as he is on bail, though it might not have the effect of restoring complete freedom. **30 C. 872, P.C.=30 I.A. 154=7 C. W.N. 729=5 Bom. L.R. 490.**

Bail—continued.

(10)—*Arrest of accused person—Application for bail—Evidence necessary to remand the accused person to custody.*—Where an accused person, after his arrest, applies for bail, evidence should be given on which the Magistrate could, in the exercise of his discretion, determine whether for the ends of justice it is necessary to detain the accused in custody. It will not be necessary on the first occasion accused persons are produced before the Court to go fully into the charge; it is ordinarily sufficient to show by the evidence of a police officer that the police are in possession of information which they believe to be reliable, that an offence has been committed and that the accused are concerned in its commission. When the accused are brought up after a remand, some direct evidence of the connection of the accused with the crime should be required to justify the Magistrate in refusing bail, and with each remand the necessity for the production of implicating proof becomes more strong. **6 M. 69=2 Weir 413.** [*R.*, Rat. Un. Cr. C. 892].

(11)—*Crim. Pro. Code (1872). ss. 160, 352, 355 and 185 (=ss. 76, 90, 93 of the Code of 1898)—Arrest of witnesses—Bail.*—A Magistrate is competent to admit to bail recalcitrant witnesses arrested under ss. 352 and 355 (s. 90) of the Crim. Pro. Code. **2 Weir 39.**

(12)—*Act XVIII of 1850 (The Judicial Officers' Protection)—Refusal of bail.*—The duty of a Magistrate in accepting or refusing bail is not merely a ministerial but a judicial duty. A mistake in the exercise of that duty, without malice, will not sustain an action. **2 M.H.C. 396.** [*R.*, 6 M.H.C. 423].

(13)—*Crim. Pro. Code (1882), s. 55—Option of the person arrested to furnish bail.*—When the Police act under s. 55, they are bound to give the person arrested the option of bail, and the bail should not be excessive, but in accordance with the position in life occupied by the person arrested. **14 A. 45.**

(14)—*Crim. Pro. Code, s. 107—Proceedings—Bail.*—No bail should be called for from a person, against whom proceedings under s. 107 of the Crim. Pro. Code, are contemplated, but not actually initiated. The most that can be required of him is to furnish recognizance, and that only where there is any likelihood of his absenting himself from Court. **11 C.W.N. 415=5 Cr. L.J. 194.**

(15)—*Contempt of Court—Criminal Procedure Code (1861), s. 163.*—If sufficient bail is tendered in a case of contempt the Court before which the offence is committed is bound, under s. 163, Crim. Pro. Code, 1861, to accept it. **12 W.R. Cr. 18.**

(16)—*Crim. Pro. Code (1872), s. 390—Power of Sessions Court to admit convicted person to bail.*—The Court of Sessions is not competent to make an order, under s. 390, Crim. Pro. Code, 1872, directing the admission of a convicted person to bail, as a convicted person is not an accused person. **1 A. 151, F.B.** [*Appl.*, 17 B. 334].

Bail—continued.

(17)—A Court of Sessions acting under s. 296, Crim. Pro. Code, 1872, has no power to admit a convicted person to bail. **3 C.L.R. 404.**

(18)—A Sessions Judge has no jurisdiction to release an accused on bail after convicting him, pending his appeal to the High Court. Crim. Pro. Code (1898), s. 498 indicates generally the powers of a Sessions Judge to release on bail all prisoners who he thinks may be found to have been wrongly convicted, and whose case he can either deal with, himself or has power to refer to the High Court. It does not give him power in any way to alter or vary his own order. **4 Bom. L.R. 55.** [*R.*, 15 P.R. 1908 Cr.=19 P.W.R. 1908 Cr.=8 Cr. L.J. 89].

(19)—S. 390, Crim. Pro. Code, 1872, refers only to the period during which a case is under enquiry and when the party concerned is still in the position of an accused person, and, therefore, the Sessions Judge cannot admit him to bail after he is sentenced and convicted. **24 W.R. Cr. 8; 23 W.R. Cr. 40; 3 C.L.R. 404; 3 C.L.R. 405 (note).** [*R.*, 17 M. 334].

(20)—*Power of Sessions Judge to give bail pending reference to High Court.*—Pending a reference to the High Court under Act X of 1872, s. 296, a Sessions Judge cannot release on bail persons convicted by the Magistrate. **24 W.R. Cr. 7.** [*Cons.*, 22 C. 669; *R.*, 17 B. 334].

(21)—A person sentenced to one month's imprisonment by a Magistrate, from which sentence no appeal is allowed under s. 411 of Act XXV of 1861, is not an accused person within the meaning of s. 436 of the same Act, so as to be admitted to bail by the Court of Session, when his case is referred to the High Court under s. 434 of the same Act. **1 B.L.R.A. Cr. 7; 10 W.R. Cr. 16.** [*R.*, 17 B. 334; *D.*, 2 C. L.J. 379].

(22)—*Power of Single Judge of High Court pending appeal—Release on bail.*—Pending the hearing of an appeal, a single Judge of the High Court may order the release of a prisoner on bail. **W.R. 1864 Cr. 18.**

(23)—*Crim. Pro. Code (1882), s. 497—Order granting bail—Power of District Magistrate to revise the order.*—The discretionary powers vested in a Magistrate of granting bail are not revisable by the District Magistrate. If he considers the order to be wrong, the proper course is to refer it to the High Court. **22 B. 549.**

(24)—*Crim. Pro. Code, Act X of 1882, s. 497—Discretion of Magistrate—Interference of High Court.*—The High Court will be very cautious in interfering with the discretion of a Magistrate in case of bail under s. 497 of the Crim. Pro. Code, especially where the prosecution has not tendered evidence to connect the accused with the offence. **Rat. Un. Cr. C. 892.** (6 M. 63 and 6 M. 69, *R.*)

(25)—*Crim. Pro. Code (1872), s. 297—Proceedings on an application for bail, whether judicial proceedings—High Court's powers of interference.*—The proceedings in which it is or has

Bail—continued.

to be determined whether bail from an accused person should be taken falls within the definition of "judicial proceeding" and the High Court has power to interfere with orders made in such proceedings when they prove to be illegal. **6 M. 63=2 Weir 409.** [*F.*, Rat. Un. Cr. C. 892].

(26)—*Conviction of person by High Court Sessions—Appeal to Privy Council—Jurisdiction of High Court to release the accused on bail.*—A person was convicted and sentenced by the Criminal Sessions of the Madras High Court. Upon a certificate being granted by the Advocate-General under s. 26 of the Letters Patent, the High Court had reviewed the case and determined that the conviction on certain counts ought not to be upheld and therefore reduced the sentence. The accused obtained special leave to appeal to Her Majesty in Council and was asked by the Judicial Committee to apply for bail to the High Court. On his applying to the High Court to be released on bail, *held*, that the High Court had jurisdiction to make an order, in the circumstances of the case, releasing the accused on bail, pending the decision of the Privy Council. Having also regard to the rule laid down by the Privy Council as to the circumstances in which an appeal in a criminal matter will be admitted by the Privy Council (*Ex-parte* Carew, 1897, A.C. 790), the accused ought to be released on bail in the present case. **24 M. 161=2 Weir 657.**

(27)—*Crim. Pro. Code (1898), s. 498—Chief Court has no power to release a prisoner on his expressing intention of appealing to the Privy Council.—Held*, that, after deciding a criminal case, whether on the Original, Appellate or Revision side and upholding the conviction of a prisoner, the Chief Court, Punjab, has no power under s 498, Crim. Pro. Code (Act V of 1898), to suspend the operation of his sentence and to release him on bail, on his asserting his intention to appeal to His Majesty in Council, because;—(*a*) the section does not refer to a case where the Court is *functus officio* but refers to cases where the Court has still some power left as regards the sentence of the accused; (*b*) the Crim. Pro. Code, does not provide for an appeal to the Privy Council and does not provide for the release of the accused appealing to the Privy Council. **19 P.W.R. 1908 Cr.=15 P.R. 1908 Cr.=8 Cr.L.J. 89.**

(28)—*Crim. Pro. Code (1898), ss. 497, 498, 167 and 344—Explosives Act (VI of 1908)—Bail when to be granted—Likelihood of absconding—Evidence of complicity—What evidence sufficient—Police-officer swearing to existence of evidence—Delay in production of evidence—Remand—Bail, cancellation of.*—On a question whether bail should be granted by the High Court to certain persons undergoing trial under the Explosives Act (VI of 1908), *held* that the decisions of English Courts are not necessarily a safe guide in interpreting sections of the Criminal Procedure Code. It is not correct to say that, in exercising its discretion under s. 498 of the Code in granting bail to under-trial prisoners, the High Court should confine its attention only to the question whether the prisoner is or is not likely to abscond. There may be other circumstances also which may affect the question of granting bail to accused persons who are alleged to have committed crimes of a grave and serious nature. It is the right of an accused person to demand that the charge against him should be tried without any unreasonable delay, and such delay will dispose the Court to grant bail. Under s. 167 of the Code, a Magistrate, on the mere perusal of the entries in the police diaries relating to the case to which the accused have no access, may, from time to time, authorize the detention of the accused in custody for a term not exceeding 15 days on the whole. Thereafter, he can, under s. 344, by a warrant remand an accused for any term not exceeding 15 days at a time, if sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence and it appears likely that further evidence may be obtained by such remand. Where, on the accused being placed for trial, a police-officer of superior rank swore to the existence of evidence implicating the accused, and it did not appear that the production of the evidence was being unreasonably delayed, bail was refused. Bail was allowed, however, to those in regard to whom the production of evidence was being unreasonably delayed. A Magistrate may commit an accused person who has been released on bail, if a *prima facie* case is made out against him by the sworn testimony given before him. **13 C.W.N. 43=36 C. 166=9 Cr. L. J. 375=1 Ind. Cas. 738.**

(29)—*Crim. Pro. Code (1898), ss. 497 and 498—Explosives Act (VI of 1908)—Bail, when to be granted—Object of bail—Non-bailable offence—Likelihood of absconding—Seriousness of offence charged—Evidence of complicity—What kind of evidence sufficient—Prosecution, opportunity to, to produce evidence—Remand—Conspiracy, case of—Cancellation of bail.*—The petitioners who were charged with offences under the Explosives Act (VI of 1908), which are non-bailable and of a very serious nature, were refused bail by the enquiring Magistrate. *Held*, (*per Mitra, J.*; *Coxe, J.*, dissentiente) on an application to the High Court, under s. 498 of the Crim. Pro. Code, for bail, that the main question for consideration was whether there were reasonable grounds for believing that the petitioners were guilty of offences of which they were accused. Other considerations must also arise, and one of these, which has always guided Courts of Justice both in England and India, is, whether there are any grounds for supposing that the accused, if released on bail, would abscond and attempt to escape justice by avoiding or delaying an enquiry or trial. An accused may ordinarily be released on substantial bail, until reasonable grounds are made out for presuming his guilt. If, after remand, evidence of an incriminating character is not adducede and if the prosecution had already sufficient, time to

Bail—continued.

adduce such evidence, the Court would reasonably come to the conclusion that such evidence was not forthcoming at the time. It should then, under s. 497, cl. (2) of the Code, release the accused on bail, whatever be the nature of the offence, though the preliminary enquiry should proceed. Whether there are reasonable grounds or not for believing that the accused are guilty of the offences charged must be decided judicially, that is to say, there should be tangible evidence, on which, if unrebutted, the Court might come to the conclusion that the accused might be convicted. The statement by a witness in the witness-box that he has seen a certain act done—an act of an incriminating character—may be sufficient. As to whether the witness can be fully relied on or not is a question for subsequent consideration. But if there be no evidence whatsoever or evidence of a very flimsy character on the face of it, the inference would naturally be, after a reasonable time has elapsed since the beginning of the enquiry, that there are no reasonable grounds for supposing that an accused is guilty. The prosecution must, however, have a fair opportunity, according to the nature of the case, of adducing evidence of a really incriminating character. The detention of an accused under trial is not intended to be penal, but its object is to secure attendance. The seriousness of an alleged offence and some evidence of its perpetration by the accused would, however, justify detention. Bail allowed to an accused person may be cancelled by the Magistrate, if, upon further evidence produced, a case is made out against him. **13 C.W.N. 51=4 M.L.T. 432=36 C. 174=9 Cr. L.J. 409=1 Ind. Cas. 910.**

(30)—*Ss. 496 and 114, Crim. Pro. Code (1882), —Who can apply for bail.*—Where a person arrested under s. 114, Crim. Pro. Code, was refused bail on the ground that he could claim it under no provision of the Code, *held* that, under s. 496, Crim. Pro. Code, "any person other than a person accused of a non-bailable offence" who "is arrested or detained without warrant by an officer in charge of a police station, or appears, or is brought before a Court" may claim it. It is extremely unsafe to trust to a marginal note as giving the full purport of the section to which it relates. **6 C.P.L.R. 31 Cr.**

(31)—*Liability of sureties—Crim. Pro. Code, ss. 498 and 499.*—Before any person is released on bail, a bond for such sum of money as is thought sufficient shall be executed by the accused, and in the case of a release on bail, by one or more sureties. The penalty of the bond should be a specific sum which the principal and the sureties bind themselves jointly and severally to pay in case of default. More than the penalty of the bond cannot be recovered from one or all of them. **2 L.B.R. 235.** (1 L.B.R. 79, 1 U.B.R., 1897—1901, 26, *R.*)

(32)—*Discharge for want of evidence—Criminal Procedure Code (Act XXV of 1861), s. 212—Act X of 1872, s. 389.*—Where the accused in a case of dacoity and assault were discharged by the Magistrate for want of evidence, but were ordered to give certain security to appear before him any time within six months if called upon, *held* that the order for security was illegal and should be quashed. **1 B.L.R.S.N. 26=10 W.R. Cr. 34.**

Bail—concluded.

See ACT XV OF 1903, ss. 7 and 8, 33 C. 1032 =4 Cr. L.J. 366.

See ACT XIV OF 1908, ss. 12, 14 (1). 14 C.W.N. 512, 516.

See BOM. ACT VIII OF 1867, s. 12. Rat. Un. Cr. C. 26.

—Bail for personal appearance at a future date of accused permitted to appear by agent.—*See* CRIM. PRO. CODE (1898), s. 50, Col. Dig. Cr. 9 of 1873.

See CRIM. PRO. CODE (1898), ss. 75, 76, 13 C.W.N. 1091.

See CRIM. PRO. CODE (1898), ss. 106, 226, 354, 7 M.L.T. 104.

See CRIM. PRO. CODE (1898), ss. 125 and 476, 14 C.W.N. 306.

See CRIM. PRO. CODE (1898), ss. 439 and 497, 10 M.L.J. 411.

See CRIM. PRO. CODE (1898), s. 496, 6 N.W.P. 366.

—Of persons appearing before Magistrate and released on bail.—*See* CRIM. PRO. CODE (1898), s. 496, 32 C. 80=8 C.W.N. 779.

See LETTERS PATENT (MADRAS), cl. 15, 4 Ind. Cas. 871 Cr.

See PRACTICE AND PROCEDURE, 15 B. 488.

See SECURITY TO KEEP THE PEACE, 4 Cr. L.J. 456=11 C.W.N. 121.

See SENTENCE, 7 C.L.R. 393.

Bail Bond.

See 1. BAIL.
2. CRIM. PRO. CODE (1898), s. 514.
3. SECURITY TO KEEP THE PEACE.
4. SECURITY FOR GOOD BEHAVIOUR.
5. SECURITY PROCEEDINGS.

(1)—*Crim. Pro. Code (1898), s. 514—Bail bond—Guarantee by surety for appearance of accused—Non-appearance of accused before a different Magistrate—Forfeiture of bond.*—Where a person stood as a surety for an accused and executed a bond guaranteeing the appearance of the accused before the Deputy Magistrate before whom the case was pending, and the accused did not appear before the District Magistrate to whom the case was subsequently transferred, *held*, that there was no breach of the condition of the surety bond so as to make the surety liable to pay the penalty. **30 C. 107=6 C.W.N. 885.**

B. N. DAR, B. A. LL. B.
Vakil High Court,

Bail Bond—concluded.

(2)—*Crim. Pro. Code (1898), s. 514—Bail bonds for production of accused before Sessions Court on a certain date—Requisition to appear before District Magistrate—Non-appearance—Liability of sureties.*—A bail bond recited, "we hereby stand surety for the production of the above named persons in the Sessions Court, on the 1st December next in the sum of Rs. 200 each, and in case of default, we shall forfeit the amount of the surety to the King-Emperor." The accused appeared in the Court of Sessions on the 1st December, 1908, and on the other dates of the hearing. After the appeals were dismissed by the Sessions Court, the District Magistrate ordered the sureties to produce the persons named within 14 days. They did not do so. Then the District Magistrate ordered forfeiture of ten *per cent.* of the amounts of the bond. *Held*, that the condition of the bonds was satisfied when the accused appeared before the Sessions Court on the 1st December, 1908, and that the subsequent proceedings of the District Magistrate were not valid. Such a bond should contain a clear proviso for the production of the accused persons before the Court or officer who is to take measures to secure the surrender of the accused and to recommit them to jail in terms of the warrant: (see General Rules and Circular Orders Criminal of the High Court, Chap. I, Rule 119). **36 C. 749=10 Cr. L.J. 251=3 Ind. Cas. 188.**

(3)—*Bail bond—Forfeiture of bond—Terms of bond—Evidence to explain terms.*—Where the petitioner was released on bail pending the decision of his petition for revision against his conviction under s. 409, I.P.C., and the bail bond executed by his surety provided that the petitioner shall attend before the Chief Court on the day or days that he may be ordered therefor in order to prosecute his case in obedience to the order of the Court, and in case of his making default therein, the surety bound himself to forfeit the sum of Rs. 2,500, and the petitioner failed to surrender to his bail after the decision of his petition, *held*, that the surety vouched for the appearance of the petitioner only on the dates he might be ordered to attend in order to prosecute his case, which means the date fixed for his hearing; in the absence of notice to the petitioner that he should remain in attendance until his appearance was dispensed with, the surety committed no breach of his bond when the petitioner disappeared without the leave of the Court; a bail bond must be interpreted with reference to its own language, if it is plain, and no external evidence will be admitted to explain its conditions. **55 P.L.R. 1902.**

See CONTRACT ACT, ss. 23 and 24, 10 Bom. L.R. 553.

See CRIM. PRO. CODE (1898), s. 514, 30 C. 107=6 C.W.N. 885.

See NOTICE, 4 M.H.C. App. 45.

See SURETY BOND, Rat. Un. Cr. C. 126.

Bailiff.

—Illegal resistance to attachment of property by bailiff—*See* PENAL CODE, s. 183, 15 B. 564.

Balance Sheet.

—Balance sheet under the Indian Companies Act, nature of—*See* ACT VI OF 1882, s. 215, 16 A. 88.

—Cheating by finishing false balance sheet—*See* PENAL CODE, ss. 109, 415, 418, 16 A. 88.

Bank.

See ACT VI OF 1882, 16 A. 88.

Banker.

(1)—*Loss of* hundi—*Negligence—Criminal Act of Bank servant.*—A person sent a *hundi* by post to a bank, and the bank presented it for payment by one of its servants, who brought it back reporting that payment had been refused. The manager of the bank with the intention of returning it to the owner placed it in an envelope, sealed and stamped, which was laid upon the table ready for the post, in accordance with the custom of the bank. The *hundi* did not reach the owner and it afterwards appeared that the bank servant presented it for payment the following day, and obtained cash for it. *Held* that the bank was guilty of such neglect as to render it liable for the amount of the *hundi*. **2 Hyde 57.**

See ACT VI OF 1882, 16 A. 88.

—Use by banker of customer's money—*See* CRIMINAL BREACH OF TRUST, 32 P.R. 1901 Cr.

Banker and Customer.

See CRIMINAL BREACH OF TRUST, 135 P. L.R. 1901.

Bankers' Books Evidence Act.

See ACT XVIII OF 1891.

Barrister.

See 1. ADVOCATE.
2. ATTORNEY.
3. COUNSEL.
4. PLEADER.
5. VAKIL.

(1)—*Suspension from practising*—Malus animus—*Ground for suspension.*—An order of a High Court suspending a barrister from practise for five years was set aside, the ground being that there was no *malus animus* to show an intention to commit a fraudulent act, although there had been grave irregularity. **10 B.L.R. 88=17 W.R. 35=14 M.I.A. 267.**

(2)—*Barrister or pleader appearing as litigant in person—Practice.*—In cases where a barrister or pleader appears before the Court as a litigant in person, he must not address the Court from the Advocate's table or in robes, but from the same place and in the same way as any ordinary member of the public. **9 A. 180.**

See ACT XIV OF 1908, 13 C.W.N. 605.

See ADVOCATE, 15 P.R. 1897 Cr.

Bastardy Proceedings.

See 1. CRIM. PRO. CODE (1898), s. 488.

2. MAINTENANCE.

—*Crim. Pro. Code (1882), s. 488—Bastardy proceedings — Their nature — Evidence Act, s. 120.*—Bastardy proceedings, under s. 488, Crim. Pro. Code, are civil proceedings within the meaning of s. 120 of the Evidence Act, and the defendant thereto may give evidence on his own behalf. **16 C. 781.**

Battle-axe.

See ACT XI OF 1878, s. 4 (3), 1 Weir 654.

Bazaar.

See ACT V OF 1861, U.B.R. (1892—1896), Vol. I, 296.

Beggar.

—Liability of a beggar to pay maintenance—*See* MAINTENANCE, 2 Weir 616.

Begin, Right to.

See CRIM. PRO. CODE (1898), s. 434, 8 B. 200.

See REFERENCE, 19 C. 380.

Bench of Magistrates.

(1)—*Bench of Magistrates, powers of—Crim. Pro. Code (X of 1872), ss. 50, 530.*—A Bench of Magistrates, being empowered only to try offences, is not competent to deal with the miscellaneous matters mentioned in s. 530 of the Crim. Pro. Code of 1872. **3 C. 754.**

(2)—It is not competent to a Bench of Magistrates to deal with a case under s. 530. **2 C.L.R. 263.**

(3)—*Bench of Magistrates, decision of—Appeal - Summary procedure.*—No appeal lies to a District Magistrate, in a case tried under Chap. XVIII of the Crim. Pro. Code, from the decision of a Bench of Magistrates consisting of an Assistant Magistrate with second class powers and two or more Honorary Magistrates. **9 C. 96=11 C.L.R. 423.**

(4)—*Irregular order by Bench of Magistrates—Case partly heard by one Bench and decided by another.*—Where, in a summary case, no member of the Bench of Magistrates, that heard the evidence for the prosecution, was on the Bench that recorded, on another day, the evidence for the accused and acquitted them, *held*, by the High Court, that the order of acquittal was irregularly made and should be set aside and the case should be tried *de novo*. **12 C. 558.**

(5)—Where a prosecution was commenced before a Bench of Magistrates, and on a subsequent day the trial was proceeded with before a Bench which contained only one of the Magistrates, who heard the case on the previous occasion and the accused was convicted, the High Court set aside the conviction and ordered a new trial. **18 M. 394=2 Weir 17.**

(6)—Where evidence for the prosecution was taken before two Honorary Magistrates and, on a subsequent day, the evidence for the

Bench of Magistrates—continued.

defence was taken before one of them and another Magistrate who delivered the judgment and convicted the accused, the High Court set aside the conviction and ordered a new trial. **20 C. 870.** [*F.*, 23 C. 194, 18 M. 394=2 Weir 17; *D.*, 21 M. 246=2 Weir 17].

(7)—In the absence of any provision of law providing for a change in the constitution of Benches of Magistrates, only those Magistrates, who have heard the whole evidence can decide a case. S. 350 of the Code does not apply to cases of this description. A decision given by a Bench consisting of three Magistrates, only two of whom heard the entire evidence, was set aside. **23 C. 194.** [*R.*, 1 N.L.R. 187; *D.*, 2 Weir 17=21 M. 246, 3 N.L.R. 67].

(8)—*Trial by Bench of Magistrates—Absence of some of the members at the adjourned trial, effect of.*—Where a case triable by a first class Magistrate was at first tried by a Bench exercising first class powers, but the individual Magistrates having no such power, the case was, at the adjourned trial, tried before only one of them, *held* that he was not competent to try the case alone. **2 C.L.R. 348.**

(9)—*Bench of Magistrates—Absence of one of them during a portion of the trial.*—Where a person was tried by a Bench consisting of a stipendiary and two Honorary Magistrates, and, in the course of the trial, one of the Honorary Magistrates, was absent, and important evidence was recorded in his absence, but on the following day he resumed his seat and joined with the other Magistrates, in signing the order for the conviction of the accused, *held*, that the conviction was bad. **13 C.L.R. 212.** [*F.*, 23 C. 194; *R.*, 20 C. 870, 25 C. 233].

(10)—Where three out of the six Magistrates constituting a Bench, who had heard only the defence part of the trial, expressed their judgments in the case, as well as the three who had tried the case throughout, and came to the same conclusion as the latter three Magistrates on a question of law, *held*, that, as the conclusion they had arrived at was a correct one, the irregularity was not of such a nature or degree as to vitiate the proceedings, or to require the interference of the High Court. **2 Weir 18.**

(11)—*Crim. Pro. Code (1882), s. 16—Bench of Magistrates—Right of an absent member to vote.*—A Magistrate who has been absent from the Bench during a material part of the trial of a case is entitled to vote with his brother-Magistrates, when a difference of opinion arises. **2 Weir 13.**

(12)—*Crim. Pro. Code (1882), s. 261—Offence under s. 48, Police Act (XXIV of 1859)—Jurisdiction of Bench of Magistrates.*—S. 48 of the Police Act, which relates to obstruction and nuisances in roads (within the limits of towns), is a general conservancy clause, and the offences committed thereunder are within the cognizance of a Bench of Magistrates. **13 M. 142 =1 Weir 910=2 Weir 327.**

Bench of Magistrates—continued.

(13)—*Crim. Pro. Code (1882), ss. 15 and 16—Conviction by a Bench of Magistrates consisting of an appointed Chairman and another Special Magistrate—Power of Chairman to convict, availing himself of his right to a casting vote.*—Paragraph 1 of the Rules made by the Government, dated 5th April, 1889, under ss. 15 and 16, Crim. Pro. Code, as amended by the Government Order, dated 18th July, 1889, lays down that, in the absence of a salaried Magistrate, the Bench could not consist of less than three members. Government order, dated 30th July, 1890 merely empowered the Benches of Magistrates at Madura and Dindigal to try, even in the absence of a salaried Magistrate, the offences under the Penal Code specified in clause 1 of paragraph 1 of the Rules, dated 5th April, 1889, a class of offences, which was theretofore triable by them only in conjunction with a salaried Magistrate, and it appointed specially designated Presidents for the trial of such cases, but the power was given and the Chairman appointed subject to the Rule contained in the proviso to paragraph 1. Where a person was tried by a Bench of Magistrates at Dindigal consisting of a pensioned District Munsiff, who had been appointed the Chairman of the Bench and one Special Magistrate, for an offence punishable under s. 352 of the Penal Code and the Magistrates differing as to the guilt of the accused, he was convicted by the Chairman availing himself of his right to a casting vote, *held*, that the Court was not legally constituted and that the conviction was wrong. **16 M. 410 =2 Weir 14.**

(14)—*Municipal offence—Salaried officer of Municipality—Disqualification—Crim. Pro. Code (1882), s. 555.*—A conviction for a Municipal offence, by a Bench of Magistrates including a salaried officer of the Municipality, is bad in spite of the provisions of s. 555 of the Crim. Pro. Code. **10 C. 194.** [*R.*, 18 B. 442; *D.*, 15 A. 192].

(15)—*Bench of Magistrates—Conviction in absence of two members of the Bench.*—Where a case was tried by a Bench consisting of seven Magistrates and when the judgment was pronounced and the accused was convicted, only five out of those seven Magistrates were present, *held*, that the mere circumstance that two out of the seven Magistrates were absent on the day when the accused was convicted did not affect the legality of the conviction. **21 M. 246 =2 Weir 17.** [*R.*, 3 N.L.R. 67].

(16)—*Trial by—Alteration in constitution of, during trial*—'Quorum.'—Where a Bench of Magistrates consisted of four members, but only two of them, who constituted a *quorum* of the Bench, sat throughout the trial, heard all the evidence and decided the case, the removal from the Bench, during the trial, of two other Magistrates, who were supernumerary to the *quorum* necessary to constitute a valid Bench, does not invalidate that Bench or vitiate the trial. **3 N.L.R. 67=6 Cr. L.J. 43.**

(17)—*Bench of Magistrates—Powers of member to act independently of the Bench.*—An Honorary Magistrate, who is a member of an independent Bench, which exercises third class powers, cannot act independently, that is to say, when not sitting on the Bench, unless he is authorised to act independently. **29 C. 483= 6 C.W.N. 596.**

Bench of Magistrates—concluded.

See MAD. ACT XXIV OF 1859, s.48, 13 M. 142=1 Weir 910=2 Weir 327.

See CRIM. PRO. CODE (1898), s. 15, A.W.N. 1902, 148.

See CRIM. PRO. CODE (1898), s. 16, cl. (*d*), 3 C.L.J. 492, F.B.=10 C.W.N. 642.

See CRIM. PRO. CODE (1898), ss. 16 and 350, 20 C. 870.

—Power of Bench of Honorary Presidency Magistrates to take action under s. 106, Crim. Pro. Code—*See* BENCH OF HONORARY PRESIDENCY MAGISTRATES, 7 Bom. L.R. 833.

See CRIM. PRO. CODE (1898), s. 21, 8 C.W. N. 862.

See CRIM. PRO. CODE (1898), ss. 264, 407, 9 M. 36=2 Weir 460.

—Municipal Councillor reporting a case for prosecution--His competency to be one of Bench of Magistrates to try the case—*See* CRIM. PRO. CODE (1898), s. 558, 2 Weir 728.

See SUMMARY TRIAL, 4 L.B.R. 277.

Bench of Honorary Presidency Magistrates.

—*Crim. Pro. Code (1898), ss. 18, 21, 106—Bench of Honorary Presidency Magistrates.*—S. 18 of the Code confers the full powers of a Presidency Magistrate on a Bench of Honorary Presidency Magistrates under the Code; and the Bench can, therefore, take action under s. 106. **7 Bom. L.R. 833=2 Cr. L.J. 770.**

Benefit of doubt.

(1)—*Principle explained.*—Where the probabilities in favour of the prosecution outweigh those in favour of the defence, but, looking to all the circumstances, there remains a reasonable doubt in favour of the accused, the accused must get the benefit of that doubt. **Rat. Un. Cr. C. 127.**

(2)—The accused must be given the benefit of the doubt, but that doubt must be a reasonable or substantial one, such as a jury would give effect to, in their ordinary every day's action as men of business, and not the mere creature of speculative ingenuity or mental timidity. **1 C. W.N. 465.**

(3)—The doubt of which it is usual to give an accused person the benefit is a reasonable doubt. Slight doubt of his guilt is not a proper ground for reversing his conviction. **L.B.R. (1893—1900), 149.**

(4)—The doubt which entitles an accused person to an acquittal is a reasonable doubt and no other. **S. C. 221, Oudh.**

Benefit of doubt—concluded.

(5)—A Court should carefully consider the evidence for the prosecution and the probability or improbability of the statements made by the witnesses being true, and if that evidence left *reasonable doubt* in its mind as to the guilt of the accused, it should give them the benefit of that doubt. **L.B.R. (1893—1900), 349.**

(6)—*Burden of proof—Guilt of accused—Benefit of doubt.*—When L was convicted of the offence of murder and K of abetment. the Chief Court set aside the conviction of K, holding that evidence against L was overwhelming, but the police report and the surrounding circumstances showed that probably K was implicated owing to his being extremely unpopular in the village. **90 P.L.R. 1909.**

See APPELLATE COURT, 5 P.R. 1876 Cr., 6 P.R. 1898 Cr.

See CRIM. PRO. CODE (1898), ss. 253, 254, 2 P.R. 1906 Cr.=37 P.L.R. 1906=3 Cr. L.J. 345.

See PENAL CODE, s. 467, 1 P.L.R. 1907=1 P.W.R. 1907 Cr.

Benefit Society.

—Whether it is liable to be taxed—*See* MAD. ACT I OF 1884, 11 M. 253.

Bengal Acts.

See ACTS—BENGAL ACTS.

Bengal Abkari Act.

See BEN. ACT XXI OF 1856.

Bengal Affrays Act.

See BEN. ACT IV OF 1840.

Bengal Civil Courts Act.

See BEN. ACT VI OF 1871.

Bengal Excise Acts.

See 1. BEN. ACT III OF 1873.
2. BEN. ACT II OF 1876.
3. BEN. ACT VII OF 1878.
4. BEN. ACT IV OF 1881.

Bengal Municipal Act.

See BEN. ACT V OF 1876.

Bengal Survey Act.

See BEN. ACT V OF 1873.

Bengal Tenancy Act.

See BEN. ACT VIII OF 1885.

Berar Criminal Procedure Code.

See CRIM. PRO. CODE (BERAR).

Berar Penal Code.

See PENAL CODE (BERAR).

Betting.

See 1. GAMBLING.
2. GAMBLING ACTS.
3. GAMING.

Betting—concluded.

—*Gaming.*—A bet cannot, for the purposes of criminal law, be treated as a game. Under the Indian Law, mere betting is not punishable. **13 B. 681.** [*Doubted*, 31 C. 542 =8 C.W.N. 458].

—On rainfall—*See* BOM. ACT IV OF 1887, ss. 3 and 4, 13 B. 681.

—On figures of auction—*See* BOM. ACT IV OF 1887, ss. 3, 4, 5, 26 B. 533=4 Bom. L.R. 211.

—Distinction between gaming and betting —*See* GAMING, 31 C. 542=8 C.W.N. 458.

Bhagdaree and Narvadaree Act.

See BOM. ACT V OF 1862.

Bicycle.

—*Bicycle, if a vehicle.*—A bicycle is a vehicle with springs—under the Municipal Acts. *See* **19 M. 83.**

Bigamy.

See PENAL CODE, ss. 494, 495.

(1)—*Penal Code, s. 494—Bigamy—Essentials of the offence.*—S. 494 requires proof of a second contract of marriage in the lifetime of the husband or wife of the party as the case may be, and of the invalidity of such contract by reason of the husband or wife being alive. Polygamy is not permitted to women by the general Hindu Law. **1 Weir 565, F.B.** [*R.*, 1 Weir 563].

(2)—*Penal Code, s. 494—Right of Hindu woman to marry second time.*—The Hindu Law, which recognises the right of a Hindu husband to contract a valid second marriage, notwithstanding the continuance of a former marriage, does not recognise a correlative right on the part of a Hindu wife. In cases under s. 494, the point for determination is whether there was a valid subsisting marriage at the date of the second marriage. **1 Weir 563.**

(3)—*Penal Code, ss. 52, 79, 494, 497—Custom of caste authorising dissolution of marriage without husband's consent and second marriage.*—A woman of the Talapad Koli caste was convicted under s. 494 of contracting a marriage with another, during the lifetime of her first husband. The bigamous husband was convicted of committing adultery with that woman. The defence was that a *natra* marriage had been solemnized between them, and that it was the custom of the caste that a woman may, without the consent of her husband, leave him and contract a valid marriage with another man. *Held* that such a custom as that set up, even if it be proved to exist, was invalid as being entirely opposed to the spirit of the Hindu Law, and that a marriage entered into in accordance with such a custom was void. **2 B.H.C. 117.** [*R.*, 10 B.H.C. 381 (382), 1 B. 97 (117), 2 B. 140 (141), 4 B. 330 (332), 4 B. 545 (567), 12 C. P. L.R. 19 Cr.; *D.*, 5 B.H.C. 17 Cr., 17 B. 400].

Bigamy—continued.

(4)—Sagai *or* nikka *marriage—Relinquishment of wife—Penal Code, s. 494.*—A conviction under s. 494, Penal Code, cannot be supported where there is evidence to show that, by the custom of the caste, *sagai* or *nikka* marriage was admissible and that the husband had relinquished his wife. **19 C. 627.** (7 C. L. R. 354. *F.*)

(5)—A *nikka* marriage falls within ss. 494 and 495, I.P.C. **6 W. R. Cr. 60.**

(6)—Jhingara *marriage.*—The *jhingara* ceremony of marriage does not by custom constitute a valid marriage within the meaning of s. 494, I.P.C. **25 P.R. 1888 Cr.**

(7)—*Mahomedan Law—Absence of husband for four years.*—The fact that a certain school of Mahomedan lawyers have declared that a woman is competent to marry again, if her husband has been absent for 4 years, will not bring a case under the exception to s. 494, I.P.C. **27 P.R. 1878 Cr.**

(8)—*Continuous absence of husband for seven years—Second marriage.*—In order to entitle the accused to the benefit of the exception to s. 494, I. P. C., it is only necessary to prove that the other party to the marriage has been continuously absent from, and not been heard of as alive by, the accused for the space of seven years, it being immaterial under such circumstances, whether or not the accused made any inquiries or had reasonable grounds for believing the other party to be dead. **1 P. R. 1900 Cr.**

(9)—*Mahomedan Law — Second marriage during iddat.*—Under the Mahomedan Law, a second marriage contracted with a woman who is in the state of observing her *iddat*, subsequent to the death of her husband, *viz.*, a period of 4 months and 10 days from such death, is not valid, unless a special custom to the contrary has been recognised as valid and binding upon the parties. **43 P.R. 1882 Cr.**

(10)—*Penal Code, s. 494—Conversion of Hindu wife to Mahomedanism and re-marriage with a Mahomedan—Bigamy.*—The conversion of a Hindu wife to Mahomedanism does not operate to dissolve her marriage with the Hindu husband, with whom she has lived up to the time of her conversion. She cannot, therefore, during the life-time of her Hindu husband, marry a Mahomedan husband. **4 B. 330.** [*Not F.*, 17 M.L.J. 476=30 M. 550=2 M.L.T. 345=6 Cr. L.J. 338; *R.*, 9 M. 466, 18 C. 264, 25 B. 644, 49 P.R. 1907=83 P.L.R. 1908=110 P.W.R. 1907].

(11)—The apostacy of a Hindu wife does not dissolve the marriage union. **32 P.R. 1870 Cr.**

(12)—According to Mahomedan Law, when a Hindu wife becomes a convert to the Mussalman faith, and the husband is an unbeliever, the Magistrate, on her application, is to call upon him to embrace Islam, and if he does so, the woman continues, as his wife, but if he refuses, the Magistrate must separate them;

Bigamy—continued.

and if the wife embraces Islam in a foreign country and the husband is an unbeliever, separation takes place on the expiration of three terms of the wife's courses. British India not being a foreign country within the meaning of the intention of the above rules, a Hindu wife, on conversion to Mahomedanism, must, before she marries a Mahomedan, either give the notice through a Magistrate, or seek the intervention of the Court by instituting a suit, after notice to the husband, for a declaratory decree that, under Mahomedan Law, her former marriage is dissolved, and that she is competent to marry again. If she does not do so, her marrying a Mahomedan husband during the lifetime of her former Hindu husband would make her liable under s. 494 of the Code. **18 C. 264.** [*D.*, 17 M. 235],

(13)—*Penal Code, s. 494—Marriage of minor Mahomedan girl—Second marriage after attaining puberty while the former husband was in jail—Repudiation of marriage—Proof of marriage under Mahomedan law—Option of puberty.*—The first prisoner, a Mahomedan girl, when only 5 years old, was given in marriage by her mother, to the complainant. Before the girl had attained puberty, the complainant was sentenced to a term of imprisonment for the offence of theft; and whilst he was in jail, the girl attained puberty and married the second prisoner. It was found that the second prisoner was aware of the first marriage with the complainant. The only proof of marriage between the complainant and the first prisoner offered in the case was the evidence of the complainant and the girl's mother and of two witnesses who were said to have been present on the occasion. *Held*, on appeal from the conviction for an offence under s. 494 of the Code, that, on the facts of the case, there was not any valid marriage between the first prisoner, inasmuch as there was no proof of the presence of a Mollah with necessary witnesses and vakils at the ceremony or that the *sigha* was recited, or the *akd* performed. *Held*, also, that her second marriage was a sufficient indication that she never ratified the unauthorised marriage, which was never consummated, and that, even supposing that the girl was governed by the *sunni* law, it was not necessary to signify her assent or dissent, inasmuch as the complainant was in jail when she attained puberty. The conviction was accordingly set aside. In a legal marriage, according to the Mahomedan Law, a Mollah would be present, with the necessary witnesses and vakils to read the *sigha*. The *sigha* would be recited and the *akd* performed. If there is no proof of these, it cannot be said that there has been a valid marriage. In a prosecution for bigamy, if proof of either marriage is unsatisfactory, there ought to be no conviction. [*R.*, L.B.R. (1893—1900), 607, 8 C.W.N. 705=31 C. 849; *D.*, 10 C.W.N. 992]. Under the Mahomedan Law, when a child is given in marriage by any person other than the father or grandfather, he or she has the option of either ratifying or repudiating it, on attaining puberty. This is called the option of

Bigamy—continued.

puberty. The only difference between the *Sunni* and the Shiah Law, on the question of option of puberty, is that whereas, according to the latter school, a marriage contracted for a minor by a person other than the father or grandfather is wholly ineffective, until it is ratified by the minor on attaining puberty, it continues, according to the *sunni* school, effective until it is cancelled by the minor. Both schools give to the minor an absolute power, either to ratify, or to cancel the unauthorised marriage. In criminal proceedings under s. 494 of the Code, where a conviction can take place only if it is found conclusively that the former marriage is still binding and effective, the accused may plead the exercise of the right of option." **19 C. 79.**

(14)—*Penal Code, ss. 109 and 494—Abetment of bigamy of a young girl.*—A Hindu father giving his married daughter, who, on account of her youth has not the knowledge and intelligence to commit an offence under s. 494, again in marriage to another in the lifetime of her husband, is guilty of the abetment of bigamy, although the girl herself cannot be convicted under s. 494. **6 C.W.N. 343.** (4 C. 10, *D.*)

(15)—*Penal Code, ss. 83, 495—Bigamy—Child of ten years.*—A girl of ten years of age should be deemed not to have attained sufficient maturity of understanding to judge of the nature and consequences of her act in going through a second marriage, which marriage and the previous one were negotiated by her mother. **Rat. Un. Cr. C. 876=Cr. Rg. 55 of 1896.**

(16)—*Validity of second marriage.*—Where a widow, charged with bigamy, contended that her second marriage was invalid, as she was married when she was a minor without the consent of her relations, *held*, that the marriage was legal. **2 P.R. 1869 Cr.**

(17)—*Penal Code, s. 494—Bigamy—Proof of first marriage.*—To substantiate a charge of bigamy, the first marriage of the complainant and his alleged wife must be strictly proved. **Rat. Un. Cr. C 190.**

(18)—*Consummation of marriage.*—Consummation is not required to complete a marriage. **4 P.R. 1874 Cr.** (48 P.R. 1867, *overruled.*)

(19)—*Bigamy—Invalidity of second marriage.*—Where during the subsistence of a first marriage, a person goes through a form of marriage recognised by law, he is guilty of bigamy, although the second marriage may be void for other reasons than that of its being bigamous. **19 P.R. 1876 Cr.**

(20)—*Question of marriage—Duty of Criminal Court.*—A Criminal Court is bound to decide the question of marriage when it is essential to the decision of the question whether an offence has been committed or not. **27 P.R. 1878 Cr.** (2 P.R. 1879 Cr.)

(21)—*Validity of marriage—Decision of a Civil Court.*—In arriving at a decision as to

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whether there has been a valid subsisting first marriage, the Criminal Court is not bound by the fact of the decision of a Civil Court for custody of the wife, or by proceeding in execution of that decree. **18 P.R. 1881 Cr.**

(22)—*Penal Code, s. 494—Second marriage with a Hindu woman by a person relapsing from Christianity to Hinduism—Bigamy.*—*Held* by Holloway and Innes, JJ.—A Hindu Christian convert relapsing into Hinduism and marrying a Hindu woman cannot be convicted of bigamy on the ground that he has another wife living whom he married while a professing Christian. *Per* Holloway, J.—A second marriage of a Hindu is not void in consequence of a previous valid Hindu marriage. It is manifest, therefore, that the second marriage cannot be rendered void in consequence of a previous marriage which the Hindu Law could not have recognised, it not having been performed with any reference to its provisions. If again, the accused is to be treated as still a Christian, the union entered into with a Hindu woman, cannot, in the view of any law governing Christian unions, be considered a marriage at all. *Per* Innes, J.—Although doubtless the tendency of Christianity is adverse to polygamy, polygamy as an offence exists only by statute, and there is no statute applicable to India except the Statute 9, Geo. IV., c. 74, s. 70, which makes polygamy an offence. But that Statute applies to a second marriage, not by an apostate from Christianity to Hinduism, but by one still professing the Christian religion at the time of the second marriage. Therefore, there is, by Statute, no obligation imposed on an apostate to Hinduism to observe monogamy, and, therefore, nothing in the Statute Law which renders void the second marriage by reason of the first wife being alive. **1 Weir 561=3 M.H.C. App. 7.** [*D.*, 4 M.H.C. App. 3, 1 Weir 563; *Diss.*, 2 M.L.T. 345=17 M.L.J. 476=6 Cr. L.J. 338 =30 M. 515.

(23, 24)—*Penal Code, s. 494—Bigamy—Marriage according to Hindu rites of relapsed convert—Subsequent conversion and marriage to Christian—Onus of proving dissolution of first marriage.*—A, in her childhood, was with her parents baptized into the Roman Catholic Church, but after her father's death, the family relapsed into Hinduism. A was then married to a Hindu. The husband, after sometime, discarded her on the ground of her former baptism, which was not known to him at the time of the marriage. She was then re-admitted to the Roman Catholic Church by the second accused and was married by him to a Roman Catholic Christian. *Held*, that the woman was guilty of bigamy under s. 494, Penal Code, and the second accused of abetting the same. [*R.*, 18 C. 264, 17 M. 235, F.B. U.B.R. (1897—1901), Civil, p. 488, 49 P.R. 1907, 17 M.L.J. 476=2 M.L.T. 345=6 Cr. L.J. 338=30 M. 550.] When once a marriage in fact has been proved, there arises a presumption, in the absence of any evidence to the contrary, that there has also been marriage in law. There

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can be no such presumption as to a form of marriage gone through, when a former valid subsisting marriage has been proved. In such a case, the *onus* is entirely upon the defence to show that the earlier subsisting marriage has been validly dissolved. **10 M. 218=1 Weir 566.**

(25)—*Bigamy—Penal Code, s. 494—Means of acquiring knowledge if the husband was alive.*—*Held* that, where there was no evidence that the woman knew that her husband was alive, but she had the means of acquiring knowledge of the fact had she chosen to make use of such means, a conviction could not be supported. The English law as to the absence of the husband or wife is the same as that embodied in the exception to s. 494, Penal Code. **1 P.L.R. 1900 Cr.=1 P.R. 1900 Cr.**

(26)—*Penal Code, s. 494—Attempt to commit bigamy—Publishing the banns.*—The causing of the publication of the banns of marriage is not an attempt to marry, but only a preparation for such an attempt. **1 A. 316.**

(27)—*Crim. Pro. Code (1898), s. 198—Meaning of the term "aggrieved person"—Penal Code, s. 494—Complaint by the husband.*—It cannot be said that the only "person aggrieved" under s. 494 is the person with whom the second ceremony was gone through. The husband is also a "person aggrieved" under s. 198, Crim. Pro. Code and the Court should, therefore, take cognisance of an offence under s. 494, Penal Code, on a complaint by the husband. **26 C. 336.** (10 B. 340, 1 C.L.R. 523, *R.*) [*R.*, 3 C.L.J. 38].

(28)—In a case of bigamy, the person aggrieved is either the first husband or the second husband, and not the father. Hence, where, in such a case, a complaint was preferred by the father of the husband, but not by either of the husbands, *held*, there was no valid complaint before the Court and that the commitment was bad. **7 A.L.J. 10.**

(29)—The brother of a lunatic, whose wife is charged with having committed bigamy, is not a "person aggrieved by such offence," within the meaning of s. 198, Crim. Pro. Code. **10 B. 340.** [*R.*, L.B.R. (1872—1892), 617, 26 C. 336, 25 A. 132=22 A.W.N. 198, 3 C.L.J. 38=3 Cr. L.J. 197, 11 O.C. 148=7 Cr. L.J. 457].

(30)—*Penal Code, s. 494—Evidence necessary for conviction under the section.*—In order to sustain the conviction of a woman under s. 494, it must be proved (1) that the accused had a husband living; (2) that she married during the lifetime of the first husband; and (3) that such second marriage is void by reason of its taking place during the life of such husband. Where there is proof that such second marriages are not uncommon among persons of the caste to which the accused belonged, and instances are given of such marriages having occurred, a conviction under the section cannot be had. **7 C.L.R. 354.** [*F.*, 19 C. 627].

Bigamy—concluded.

(31)—*Penal Code, ss. 496, 494—Marriage, fraudulently going through form of—Essence of offence—Show of marriage—Ulterior fraudulent purpose—Practice—Trial by jury—Charge under one section, if can be converted into another by High Court.*—Under the Hanifi Law, where the father of a minor girl is present at her marriage and is a consenting party, no special recitations are necessary to make a valid marriage. *Semble*—The marriage is irrevocable and cannot be repudiated by the girl on the attainment of puberty. The essence of an offence under s. 496 of the Code, is that the marriage ceremony should be fraudulently gone through and that there should be no lawful marriage. The accused must have the knowledge that there is no marriage. A case of bigamy is not contemplated by s. 496 of the Code. Where it is intended that there should be a valid marriage and not that there should be only a show of marriage for some ulterior and fraudulent purpose, the case does not come under s. 496 of the Code. Where the trial was by jury, the High Court refused to convert the charge from one under ss. 496/109 to one under ss. 494/109 of the Code. **10 C.W.N. 982=4 Cr. L.J. 152.**

—Charge of—Persons competent to complain—*See* CRIM. PRO. CODE (1898), s. 198, 25 A. 132=A.W.N. 1902, 198, 25 A. 209, 3 C.L.J. 38=3 Cr. L.J. 187, 11 O.C. 148=7 Cr. L.J. 457.

See PENAL CODE, s. 496, W.R. 1864, 13 Cr.

Bill in Legislative Council.

—Bill in Legislative Council, if guide in construction of statutes—*See* STATUTES, CONSTRUCTION OF, 3 A. 283.

Billiard Saloons.

See BOM. REG. XII OF 1827, s. 19, Rat. Un. Cr. C. 490.

Boat Rules.

—S. 14—*See* MAD. ACT VII OF 1876, 10 M. 121.

Boats in Harbours Act, Madras.

See MAD. ACT IX OF 1846.

Boat Theft.

—*Summary trial—Boat and cattle thefts.*—Boat thefts and cattle thefts call ordinarily for a severe sentence of two years' rigorous imprisonment; a summary trial is not suitable for them. **L.B.R. (1893—1900), 198.**

Boiler Inspection Act (Bombay) as applied to Berar.

See C. P. ACT II OF 1901.

Bomb.

—*Bomb found in house—Possession.*—When a bomb was found in a *baitakkhana ghar* in a house to which all the members of the family had access, it could not be held that any particular member was in possession of the bomb. **9 C.L.J. 663=13 C.W.N. 861=2 Ind. Cas. 681.**

Bombay Acts.

See ACTS—BOMBAY ACTS.

Bombay and Madras Land Customs Act.

See ACT XI OF 1869.

Bombay Boiler Inspection Act, as applied to Berar.

See C.P. ACT II OF 1891.

Bombay Coasting Vessels Act.

See BOM. ACT XIX OF 1838.

Bombay Cotton Frauds Act.

See BOM. ACT VII OF 1878.

Bombay District Municipalities Act.

See 1. BOM. ACT VI OF 1873.
2. BOM. ACT III OF 1901.

Bombay District Police Act.

See BOM. ACT IV OF 1890.

Bombay Hereditary Officers' Act.

See 1. BOM. ACT XI OF 1843.
2. BOM. ACT III OF 1874.

Bombay Irrigation Act.

See BOM ACT VII OF 1879.

Bombay Land Revenue Code.

See BOM. ACT V OF 1879.

Bombay Municipal Act.

See BOM. ACT III OF 1888.

Bombay Municipal Amendment and Continuance Act.

See BOM. ACT IV OF 1878.

Bombay Salt Act.

See BOM. ACT II OF 1890.

Bombay Salt Revenue Act.

See BOM. ACT XXXI OF 1850.

Bombay Spirituous Liquors Act.

See BOM. ACT III OF 1852.

Bombay Town Police Act.

See 1. BOM. ACT XIII OF 1856.
2. BOM. ACT XLVIII OF 1860.

Bona Fides.

See 1. CRIM. PRO. CODE (1898), s. 133.
2 DEFAMATION.

(1)—*Good faith.*—The question cf good faith is one of fact. It must be considered with reference to the position of the accused and the circumstances under which he acted. **12 B. 377.** [*R.*, 31 B. 293=9 Bom. L.R. 230].

See ACT XVIII OF 1850, S.C. 19, Oudh.

—'*Bona fide*' transfe rof case under s. 145 by Magistrate not so empowered—*See* CRIM. PRO. CODE (1898), ss. 145, 192, 529 (*f*), 5 C.W.N. 686.

Bona Fides—concluded.

See DEFAMATION, 3 A. 342, 3 A. 664, 3 A. 815, 6 A. 220, 22 A. 234, 2 N.W.P. 473, 4 B. 298, 9 B. 269, 15 B. 351, 9 Bom. L.R. 230=5 Cr. L.J. 237=31 B. 293, 8 B. H.C. Cr. 168, 11 Bom. L.R. 638, 4 C. 124=3 C.L.R. 122, 15 M. 214=1 Weir 617=2 M.L.J. 127.

See NUISANCE UNDER CRIM. PRO. CODE, 23 C. 499.

See UNLAWFUL ASSEMBLY, 21 M. 249=1 Weir 310.

Bond.

—Acknowledgment of debt attested by witness. whether a—*See* ACT I OF 1879, s. 3 (4) (*b*), 22 C. 757.

See RECOGNIZANCE, 4 M.H.C. App. 44.

Books.

See PENAL CODE, s. 486, 26 C. 232=3 C.W. N. 97.

Booth.

See BOM. ACT VII OF 1867, s. 33, 22 B. 742.

Boundaries Act.

See BUR. ACT V OF 1880.

Boundary Officer.

See BUR. ACT V OF 1880, ss. 2, 17 and 18, 4 L.B.R. 153=7 Cr. L.J. 462.

Boycott.

See COMPLAINT, 5 M.L.T. 1=32 M. 3=9 Cr. L.J. 108=1 Ind. Cas. 22.

Breach of bond.

See CRIM. PRO. CODE (1898), Ch. VIII, U.B.R. (1892—1896), Vol. I, 21.

Breach of contract of service.

—By workman—*See* PENAL CODE, s. 490, U.B.R. (1892—1896), Vol. I, 288.

Breach of Etiquette.

See MURDER, 4 L.B.R. 132.

Breach of the peace.

See 1. CRIM. PRO. CODE (1898), ss. 106—123.
2. CRIM. PRO. CODE (1898), s. 145.
3. DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY.
4. POSSESSION.
5. RECOGNIZANCE TO KEEP THE PEACE.
6. SECURITY TO KEEP THE PEACE.
7. SECURITY PROCEEDINGS.

(1)—*Likelihood of breach of the peace—Crim. Pro. Code, Chapter VIII.*—Where a Magistrate apprehends a breach of the peace, he is to adopt the procedure prescribed by Chap. VIII, Crim. Pro. Code, and to take security. **14 B. 25.**

Breach of the peace—concluded.

(2)—*Crim. Pro. Code (1898), s. 144—Breach of the peace apprehended—Power of a Criminal Court to take property in dispute into custody—High Court's power to interfere—Restoration of matters to the original condition.*—Where disputes and differences having arisen between head members of a Church and its Secretary, the Magistrate drew up a proceeding under s. 144, Crim. Pro. Code, and passed an order for bidding anything that might tend to disturb public tranquillity, and at the same time directed, with the consent of both parties, that certain articles concerning which the parties were in dispute be removed into the custody of the Court and should remain there for two months or until the decision of a civil suit regarding the same, which was then pending before the High Court; *held*, that the Court's custody of the articles was wholly without jurisdiction and the High Court has power to order that matters should be restored to exactly the same condition as the Magistrate found them in, before he passed the order removing them into Court's custody. **12 C. W. N. 1044=8 Cr. L.J. 230.**

(3)—*Crim. Pro. Code (1898), ss. 144 and 145—Order under s. 145—Omission to state the grounds of dispute—Non-service of notice to a party admitted to be in possession—Legality of the order.*—Where an order by a Magistrate, under s. 144, did not state the grounds on which he came to the conclusion that there was a dispute likely to cause a breach of the peace, *held*, that the omission was not a ground for holding that the proceedings were void, that it would, at the most, be an irregularity, and that the High Court would not interfere in revision, unless either of parties had been prejudiced by such omission. An order passed under s. 145 would not be improper even though some person admitted to be in possession was not served with notice, if such person did not question the order. **3 M.L.T. 18=30 M. 548=7 Cr. L. J. 28.**

—Procession likely to cause breach of the peace—Power of police—Removal of banners from persons in the procession—*See* MAD. ACT XXIV OF 1859, ss. 21 and 49, 17 M. 37.

—What amounts to—*See* CRIM. PRO. CODE (1898), s. 107, 31 C. 350.

—Mode of taking evidence as to the likelihood of—*See* CRIM. PRO. CODE (1898), s. 107, Col. Dig. Cr. 15 of 1874.

See CRIM. PRO. CODE (1898), s. 147, S.C.64, Oudh.

See CRIM. PRO. CODE (1898), ss. 451, 127, 7 B. 42.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 33 C. 352, F.B.=9 C.W.N. 1068=2 C.L.J. 259.

See PENAL CODE, s. 504, U.B.R. (1892—1896), Vol. I, 290.

Breach of trust.

See 1. CRIMINAL BREACH OF TRUST.
2. CRIMINAL MISAPPROPRIATION.

Bribe.

—*Alleged offer of bribe to Police officer conducting search—Confiscation without further enquiry—Validity.*—Where money found in the petitioner's house by the police during the search of a house was alleged by the police officer conducting the search to have been offered to him as a bribe by the petitioner's brother and was, therefore, confiscated to the Government by the District Magistrate, without any further enquiry at all, *held*, that the money should be refunded to the petitioner. **16 P.R. 1896 Cr.**

See CRIM. PRO. CODE (1898), ss. 234, 235 (1), 2 Weir 299.

See EVIDENCE ACT, ss. 114 and 133, 14 B. 331.

Bribery.

See ILLEGAL GRATIFICATION.

(1)—*Penal Code, ss. 161, 165—Bribery.*—A police officer employed in a Criminal Court to read the diaries of cases investigated by the police, and to bring up in order each case for trial with the accused and witnesses, brought up, in the usual manner, a case in which two persons were charged with the offence of theft. After the conviction and sentence of the accused in that case, a sum of money, the proceeds of the theft, was made over to the complainant. The police officer asked for and received from the prosecution a portion of that money. There was no evidence that the money was given with any of the objects mentioned in s. 161, Penal Code. *Held*, that the police officer could not be convicted under s. 161, I.P.C., as the money was not promised and given as a reward for his performance of his duty in Court, but was liable to be punished under s. 165. **1 A. 530.**

(2)—*Person giving bribes—Accomplice.*—A person who gives bribes is an accomplice of the person who receives them; and, while it is usually unsafe to convict public servants on the uncorroborated evidence of persons who say that they have given bribes, the question as to the amount of corroboration depends on the circumstances of each case. **26 B. 193=3 Bom. L.R. 694.** [*R.*, 6 Bom. L.R. 443, 10 C. W.N. 669=33 C. 649=3 Cr. L.J. 452].

(3)—*Penal Code, s. 193—Crim. Pro. Code (1882), s. 161—Answer to an incriminating question.*—A Police Patel in an investigation by a Police officer, stated that he had paid Rs. 5 to a Revenue officer as a bribe for not increasing the assessment on his land, and subsequently stated before the Magistrate that he had paid the sum for provisions. On a prosecution under s. 193 for false evidence under alternative charges, *held*, that the offer of a bribe being a punishable offence and also exposing the patel to dismissal from office, he could not be required to answer truly a question respecting that, put to him by the Police officer, under s. 161, Crim. Pro. Code. He could not, therefore, be convicted under s. 193 of the Penal Code, unless the statement before the Magistrate was clearly proved to be false. **Rat. Un. Cr. C. 488=Cr. Rg. 57 of 1889.**

Bribery—concluded.

(4)—*Charge of bribery against an officer—Complaint by the officer against witnesses for conspiracy to bribe him—Power of High Court to interfere on the ground that the complaint was vindictive in its nature—Evidence Act, ss. 80, 132.*—An officer, in the Revenue Settlement Department, who was convicted of an attempt to receive a bribe from certain raiyats, who gave evidence against him in the trial, subsequently charged the raiyats who deposed against him with having conspired to bribe him. The District Magistrate transferred the complainant for disposal to the Deputy Magistrate, who, after examining the complainant, issued process. *Held*, that there was nothing illegal on the part of the Deputy Magistrate in entertaining the complaint and issuing process and that it was premature for the High Court to interfere on the ground that the complaint was vindictive in its nature. *Held*, also, that, in the case mentioned above the depositions of the raiyats given in the case of bribery, against the officer, incriminating themselves, were admissible under s. 80 of the Evidence Act. **15 M. 63=2 Weir 794.**

See ACCOMPLICE, 14 B. 115, 26 M. 1=2 Weir 521.

See BOM. ACT II OF 1864, ss. 29, 30, 9 Bom. L.R. 331=5 Cr. L.J. 309=31 B. 335.

See CRIM. PRO. CODE (1898), s. 478, 15 M. 36=2 Weir 218.

See PENAL CODE, s. 94, 14 B 115.

See PENAL CODE, s. 214, 1 Weir 194.

See PENAL CODE, ss. 420 and 161, 1 C P. L.R. 24 Cr.

See PUBLIC SERVANT, 28 C. 344=4 C.W.N. 798.

Brief.

See ACT XVIII OF 1879, ss. 13 and 14, 12 C.W.N. 381.

British Baloochistan.

See JURISDICTION OF CRIMINAL COURTS, 5 P.R. 1907 Cr.=6 Cr.L.J. 108=41 P.L.R. 1907 =26 P.W.R. 1907.

British India.

See ACT I OF 1868, s. 2 (8), 6 P.R. 1878 Cr.

—Jurisdiction to dispose of case outside British India.—*See* DISTRICT MAGISTRATE, Rat. Un. Cr. C. 376.

See JURISDICTION OF CRIMINAL COURTS, 8 C. 985=10 C.L.R. 241, F.B.

British Seaman.

See HIGH SEAS, OFFENCES COMMITTED IN, 21 C. 782.

British Subject.

See JURISDICTION OF CRIMINAL COURTS, 2 Weir 11=6 M.H.C. 7.

See WRONGFUL CONFINEMENT, 19 B. 72.

Brothel.

See BEN. ACT III OF 1906, s. 2, 6 C.L.J. 710.

Buddhist Law.

1. GENERAL.
2. DIVORCE.
3. MARRIAGE.

——**1.—(General).**

See PENAL CODE, ss. 363 and 366, 1 U.B.R. (1902—1903), Penal Code, 15.

——**2.—(Divorce).**

See CRIM. PRO. CODE (1898), s. 488, L.B.R. (1872—1892), 362, U.B.R. (1897—1901), Vol. I, 106 and 108.

——**3.—(Marriage).**

—*Right of husband to chastise wife.*—Husbands have no right whatever to chastise their wives, even with small canes or bamboos. **L.B.R. (1872—1892), 421.**

See PENAL CODE, ss. 363, 366, U.B.R. (1897—1901), Vol. I, 328.

See PENAL CODE, s. 366, L.B.R. (1872—1892), 202.

See MAINTENANCE, 4 L.B.R. 146=7 Cr. L.J. 444, 4 L.B.R. 340, F.B.

Building.

See MUNICIPAL ACTS.

—*Power to erect building.*—Sanction by a Municipality to erect a building carries with it power to put up such ordinary scaffolding as would be necessary under ordinary circumstances for the execution of the work. **A.W.N. 1907, 251.**

See BEN. ACT III OF 1899, ss. 372, 383 and 449 (1), 12 C.W.N. 271=7 Cr.L.J. 110=7 C.L.J. 243.

—Demolition of buildings, order for—*See* BEN. ACT III OF 1899, ss. 449, 450, 452, 579, 3 C.L.J. 571=3 Cr. L.J. 465=33 C. 646, 3 C. L.J. 90=10 C.W.N. 182=3 Cr. L.J. 211=33 C. 287, 11 C.W.N. 30=4 Cr. L.J. 408=34 C. 341.

See BOM. ACT VI OF 1873, s. 33(1), Rat. Un. Cr. C. 145.

See BOM. ACT III OF 1888, s. 353, 19 B. 372.

See PUNJ. ACT XX OF 1891, s. 92 (6), 61 P. R. 1905 Cr=41 P.L.R. 1906=3 Cr. L.J. 344.

See NUISANCE UNDER CRIM. PRO. CODE, 4 M.H.C. App. 34.

See PENAL CODE, s. 442, 6 N.W.P. 307.

Bull.

—dedicated to idol—*See* CRIMINAL MISAPPROPRIATION, 11 M. 145=1 Weir 498.

—Killing of a bull set at large at Sraddha—*See* PENAL CODE, ss. 295, 378, 403, 425, 17 C. 852.

—"Bull" and "Cow" and "any other animal," meaning of—*See* PENAL CODE, s. 429, 22 C. 457.

—Set at large upon relative's death—*See* STOLEN PROPERTY, 9 A. 348.

Burden of proof.

See 1. EVIDENCE ACT, ss. 101—114.
2. PRESUMPTION.

(1)—*Offence—Rule as to.*—It is the first principle of criminal law, that where a statute creates a criminal offence, the ingredients of that offence must be strictly proved, and that where the doing of an act without authority or without consent is made a criminal offence, and the statute does not expressly put upon the accused the proof of such consent or authority, it is a necessary part of the case for the prosecution to negative by evidence such consent or authority. **19 A. 74.**

(2)—*Evidence Act, s. 101—Criminal cases—Conviction—Burden of proof.*—In a criminal case, the burden of proof is on the prosecution under s. 101, Evidence Act, and a conviction must be based on evidence which excludes the theory of innocence; not on circumstances of suspicion, or on mere probabilities. **Rat. Un. Cr. C. 779=Cr. Rg. 43 of 1895.**

(3)—*Person accused of offence—Exceptions under the Penal Code—Burden of proof.*—When a person is accused of an offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Penal Code is upon the accused, and it is directed by the statute that the Courts should presume the absence of such circumstances. **20 A. 459.**

(4)—The burden of proving the exception of good faith is on the accused. A mistake of law does not make an exception under s. 79, I.P.C., even when due care and attention under s. 52 is proved. As a rule, when the act done comes within the words of the Penal Code, proof of a general or special exception is required to take it out of the same. **Rat. Un. Cr. C. 820=Cr. Rg. 66 of 1895.**

(5)—Since the Evidence Act, the burden of proving the existence of circumstances, bringing the case within any general or special exceptions in criminal trials in the Mofussil, lies on the accused. **4 C. 124=3 C.L.R. 122.**

(6)—*Suit for damages for malicious prosecution.*—In a suit for damages for malicious prosecution, the plaintiff must, in the first instance, make out a *prima facie* case that the defendant had no reasonable or probable cause for the prosecution and acted maliciously. The acquittal of the plaintiff by the Criminal Court is not alone sufficient proof of this. **L.B.R. (1893—1900), 387.**

(7)—*In case of theft—Facts which may be presumed—Strong presumption—Absence of evidence as to owner, whether rebuts the presumption and shifts* onus—*Evidence Act, ss. 4 and 114.*—When persons are discovered dealing with property of a sort which can be easily pilfered where it passes in large quantities from one possessor to another for transport and export, the strong presumption which arises that the property was stolen by the accused and his companions, or dishonestly received by them cannot be treated as in any degree rebutted by

Burden of proof—concluded.

the absence of evidence as to whose property it was that was stolen. S. 114, Evidence Act, read together with s. 4 of the Evidence Act, shifts the burden of proof at a certain stage in the evidence on to the accused, and a Court may, therefore, in the absence of any credible explanation or satisfactory rebuttal, well regard the existence of a recent theft as proved, when property (for the possession of which no satisfactory explanation is forthcoming) is surreptitiously conveyed by persons whose conduct renders it so highly probable as to leave no room for reasonable doubt that they are either thieves or receivers of stolen property. **L.B.R. (1893—1900), 276.**

(8)—Onus *of proof—Suit for land attached under s. 3 of Ben. Act IV of 1840.*—In a suit for the possession of land attached by the Magistrate under s. 3 of Act IV of 1840, the *onus probandi* is on the plaintiff. **W.R.F.B. 7=1 Ind. Jur. O.S. 35.**

See ACT IX OF 1872, s. 23, 11 W.R. 313.

See ACT I OF 1878, 2 O.C. 99.

—Criminal cases - Shifting of *onus* from prosecution to the accused—*See* ACT I OF 1878, Rule 1 (XX), U.B.R. (1892—1896), Vol. I, 144.

See ACT XII OF 1896, ss. 3 (1) (*n*), 30, 51, 5 L.B.R. 52, F.B.=2 Ind. Cas. 543.

See ACT XII OF 1896, s. 51, U.B.R. (1906), Excise, 30.

See BOM. ACT XIII OF 1856, s. 35 (1), 20 B. 348.

See BOM. ACT III OF 1888, ss. 398, 410, 7 BOM. L.R. 726=2 Cr. L.J. 604=30 B. 126.

—Of omission to report death to municipal authorities—*See* C.P. ACT XVIII OF 1889, s. 84, 16 C.P.L.R. 63.

See CRIMINAL BREACH OF TRUST, Rat. Un. Cr. C. 860, 872.

See CULPABLE HOMICIDE, 1 Weir 288.

See DEFAMATION, 6 A. 220.

See EASEMENT, 11 C. 13.

—Where provocation alleged for murder—*See* MURDER, 14 C.P.L.R. 188, L.B.R. (1893—1900), 452.

See PENAL CODE, s. 84, Rat. Un. Cr. C. 818.

See PENAL CODE, s. 467, 1 P.L.R. 1907=1 P.W.R. 1907 Cr.

See REGULATION VII OF 1891, s. 40, 33 C. 895=4 Cr. L.J. 206.

See REVISION, Rat. Un. Cr. C. 794.

See SECURITY TO KEEP THE PEACE, 9 A. 452, 2 N.W.P. 431.

Burial.

See CRIM. PRO. CODE (1898), ss. 144, 143, 133, 2 Weir 64.

Burial ground.

—*Crim. Pro. Code (1898), s. 133—Burial ground, order closing.*—An order prohibiting the use of a graveyard is not such an order as can be made under s. 133, Crim. Pro. Code. **12 C.W.N. 70.**

See BEN. ACT II OF 1888, ss. 381, 382, 24 C. 492.

—Cultivation of burial ground—*See* CRIMINAL TRESPASS, 1 Weir 513=6 M.H.C. App. 25, 3 M. 178=1 Weir 286.

—Trespass on burial place—*See* PENAL CODE, s. 297, 18 A. 395, 1 Weir 287.

Burma Acts.

See ACTS—BURMA ACTS.

Burma Forest Act, 1902.

—*S. 63—Burning firewood without paying first royalty.*—S. 63 (= s. 67 of Burma Forest Regulation V of 1898) cannot apply, and was never intended to apply to a case of burning firewood without first paying the royalty. **1 U.B.R. (1902—1903), Forest, 1.**

Burman.

See ACT I OF 1878, Rule I, cl. XX, U.B.R. (1892—1896), Vol. I, 144.

Burman Buddhist Law.

See BUDDHIST LAW.

Burning ghat.

See CRIM. PRO. CODE (1898), ss. 133, 140, 25 C. 425=2 C.W.N. 113.

Butcher.

—License to keep butcher's shop—*See* MAD. ACT IV OF 1884, ss. 191, 192, 193, 198, 10 M. 216=1 Weir 741.

Bye-law.

—*Powers of Corporations to make Bye-laws—Act XXVI of 1850—Municipality—Bye-law partly good—Effect.*—A corporation or company or other public body, whether created by Act of Parliament or by Charter, has no power of making bye-laws beyond what is clearly given to it by the Act or Charter. And such rules or bye-laws, if inconsistent with the express or implied provisions of the Charter or Act, would be void as *ultra vires*, though sanctioned by the Executive Government. [*R.*, 5 B. 188]. The power to make rules given to Municipal Commissioners under Act XXVI of 1850 and to provide penalties for breaches thereof does not carry with it the power to adjudicate or even to determine who shall adjudicate whether a person has broken the rules. Rules, therefore, giving power to a committee of the Municipal Council to try and punish such breaches, are *ultra vires* and void. [*R.*, 8 B.H.C. (A.C.J.), 213.] (5 B.H.C. Cr. 10, *F.*) *Obiter.*—The effect of English decisions appears to be that a bye-law, though *ultra vires* as to a part, is good as to the remainder, if the good part is divisible from the bad and unconnected with it. **8 B.H.C. Cr. 39, F.B.**

Bye-law—concluded.

—*Administration of Bye-laws.*—Laxity in the administration of the Rules and Bye-laws of the Municipality by the officers condemned. **4 C.L.J. 411=4 Cr. L.J. 394.**

See BEN. ACT VI OF 1863, Bourke O.C. 412.

See BEN. ACT V OF 1876, 21 C. 837.

See BEN. ACT III OF 1885, ss. 139, 78, 11 C.W.N. 1099=6 Cr. L.J. 319.

See BEN. ACT II OF 1888, ss. 412, 417, 419, 20 C. 605.

S. 1—*See* BEN. ACT III OF 1899, cl. 18, ss. 559, 561 (*b*), 631, 10 C.L.J. 623.

See BOM. ACT II OF 1884, s. 33 (*b*), 4 Bom. L.R. 585.

See MAD. ACT III OF 1871, ss. 127 and 129, 8 M H.C. App. 3.

See PUNJ. ACT XX OF 1891, ss. 92 (4) and 145, 13 P.R. 1909 Cr.

—Of Municipality, validity of—Presumption—*See* U.P. ACT XV OF 1883, s. 55, 19 A. 493.

—to be reasonable—Unreasonable bye-law will not be enforced by Court—*See* U.P. ACT I OF 1900, A.W.N. 1902, 117.

Calcutta Abkari Act.

See BEN. ACT XI OF 1849.

Calcutta Municipal Act.

See BEN. ACT VI OF 1863.

See BEN. ACT III OF 1899.

Calcutta Municipal Consolidation Act.

See 1. BEN. ACT IV OF 1876.

2. BEN. ACT II OF 1888.

Calcutta Police Act.

See BEN. ACT IV OF 1866.

Calendar.

—*Destruction of duplicates of calendars.*—The calendars and proceedings of the Magistracy sent to the Court of Sessions are not, properly speaking, records. The originals which are retained in the Magistrate's Courts are the only official records. But any how the duplicates should be retained for a period of three years and can then be destroyed or returned to the Magistrate's office, if required. **6 M.H.C. App. 6.**

Canals Act.

See BEN. ACT V OF 1864.

Canal and Drainage (Northern India) Act.

See ACT VIII OF 1873.

Canara Forest Rules.

—Rule 7 (2)—*See* MAD. ACT V OF 1882, 13 M. 21=1 Weir 767.

Cancellation.

—Cancellation of an order for maintenance on the ground of a disputed compromise—*See* MAINTENANCE, 2 Weir 649.

Canongoe.

See BEN. ACT V OF 1875, s. 45, 6 C.W.N. 120.

Cantonments Act.

See 1. ACT XXII OF 1864.

2. ACT III OF 1880.
3. ACT XIII OF 1889.
4. BOM. ACT III OF 1867.
5. MAD. ACT I OF 1866.
6. CANTONMENT CODE, 1899.

Cantonment Code, 1899.

(1)—*Ss. 5, 89, 283—Building without permission of Cantonment Magistrate.*—The officer commanding a regiment in the Cantonment is not the authority whose permission, to build within Cantonment limits, is sufficient under the Cantonment Code. Building a hut with the permission of the Commanding Officer, but without the permission of the Cantonment Magistrate, is an offence, under ss. 89, 283, Act XIII of 1889. **1 A.L.J. 608.**

(2)—*S. 7—See* No. 29, *infra.*

(3)—*Ss. 22, 282—Failure to pay hackney carriage fee.*—Failure to pay hackney carriage fee to the Cantonment authority is not punishable either under s. 22 or s. 282 of the Cantonment Code. **22 P.L.R. 1907.**

(4)—*S. 66 (a), (xi)—Shaking down leaves from road-side tree—'Defacing.'*—The shaking down of leaves from a road-side tree does not amount to defacing the same within the meaning of s. 66 (*a*), (xi) of the Cantonment Code. **2 Bom. L.R. 540.**

(5)—*S. 66 (1)—Carrying meat exposed to public view—Servant's offence—Master's liability.*—The offences aimed at by s. 66 (1) of the Cantonment Code are personal offences, and not offences which can be committed by delegation. Hence, a master cannot be punished under the section for an act of his servant in carrying meat in a bullock cart exposed to public view, which is not proved to be committed with his knowledge or authority. **10 Bom. L.R. 1052 = 9 Cr. L.J. 182.**

(6)—*S. 66 (1), (g)—Gambling—Common gaming house, use of.*—*Held*, that persons found gambling in a common gaming house cannot be said to be using the house as a common gaming house within the terms of s. 66 (1), (*g*) of the Code. **167 P.L.R. 1905 = 3 Cr. L.J. 78.**

(7)—*Ss. 79 and 96—Notice—Power delegated to two members—Notice by one.*—Where the Cantonment Committee delegated the power to issue notices to a sub-committee of two members, any single member has no power to issue a notice to a house owner to repair his house. **4 A.L.J. 694 = A.W.N. 1907, 275 = 6 Cr. L.J. 348.**

Cantonment Code, 1899—continued.

(8)—*Ss. 83, 85, 283—Notice, nature of.*—Where a Cantonment Magistrate issued a notice under s. 83, Cantonment Code, to the accused to the effect that a house belonging to the latter being declared both ruinous and insanitary by expert opinion, he was thereby directed to carry out the repairs indicated in an attached report which recommended general repairs, and the accused having failed to comply with the notice was prosecuted and convicted, *held*, that for the purposes of a prosecution under s. 85 read with s. 83, Cantonment Code, 1899, it is not necessary for the prosecution to begin by proving that the authority which issued the notice was duly constituted, that the Court ought to presume, until some evidence is given to destroy the presumption, that the Cantonment authority used the regular and lawful procedure, that the common course of business was followed in its procedure, and that it was for the person raising the objection to give some evidence to show that it would not be safe to make such a presumption ; *held*, also, that the phrase, "insanitary state" in s. 83 did not mean an insanitary state generally, but an insanitary state as qualified by the preceding words, that is, an insanitary state resulting from the ill-construction or dilapidation of the building. The word "defects" in that section means "sanitary defects" and the repairs which the notice may require the owner to execute must, therefore, be such repairs as are necessary to remove the sanitary defects resulting from the ill-construction or dilapidation of the building. *Held*, therefore, that the repairs which the accused was required to carry out were repairs of such a nature as to put the house into habitable order generally, and not merely repairs to remove the sanitary defects of the nature contemplated in s. 83 ; that the Cantonment authority was not authorised by the provisions of s. 83 to issue a notice for general repairs ; that it did not exercise a legal discretion in directing under that section such repairs to be carried out, and that the notice was bad and invalid in law. **7 O.C. 51.** (19 A. 493, 20 B. 732, *R.*). [*F.*, 7 O.C. 68].

(9)—*Ss. 83, 85, 283—Penalty for failure to comply with notice for repairs.*—Where a Cantonment Magistrate, by a notice purporting to have been issued in accordance with s. 83, Ch. VI, Cantonment Code, directed the accused to carry out certain general repairs in a house as recommended by a Committee of Arbitration, but the accused having failed to comply with the notice, was convicted under s. 283, Cantonment Code, *held* that, s. 83, Cantonment Code, did not authorise the procedure adopted by the Cantonment Magistrate, that the repairs ordered to be carried out were not the kind of repairs contemplated by s. 83, and that the notice purporting to have been issued under that section was bad and invalid in law. *Held*, further, that as a penalty for failure to comply with a notice under s. 83, was expressly provided for in s. 85, the conviction under s. 283 was bad. **7 O.C. 68.** (7 O.C. 57, *F.*)

(10)—S. 85—*See* Nos. 8, 9, *supra.*

Cantonment Code, 1899—continued.

(11)—S. 89—*See* No. 1, *supra*.

(12)—*S. 94—Jurisdiction of Court to interfere with the discretion given by the section.*—Civil or Criminal Courts have no jurisdiction to interfere with the discretion given to the Cantonment authorities under s. 94, unless it is exercised corruptly or maliciously. **19 P.R. 1904 Cr.** (13 P.R. 1903 Cr., *cited*).

(13)—*Ss. 94 and 104—Notice by Cantonment authority—The remains of a building to be removed—No option given of repair.*—The petitioner, the liquidator of the club of Northern India, was required by the Cantonment Committee, by notice under s. 94, to demolish certain roofless walls of the club, which remained standing, after being destroyed by fire, since they were, in the opinion of the committee, dangerous to the public safety. On the petitioner denying apprehension of danger by way of reply, he was directed to appeal to the General Commanding Officer under s. 104. The appeal was rejected summarily without a hearing. The Magistrate convicted the petitioner. *Held*, on revision, that the conviction must be set aside, as it was illegal for the General to decide the appeal summarily, and as no option was given to the petitioner to repair or to remove, whereas s. 94 gives the option. **23 P.R. 1905 Cr.=168 P.L.R. 1905=3 Cr. L.J. 301.**

(14)—*Ss. 94, 104, 291—Notice issued by Cantonment Magistrate, on his own authority, under Rule 94, validity of.*—Where the authority to issue notice under Rule 94 is vested by the Code in a constituted Committee or Sub-Committee, a notice issued by the Cantonment Magistrate, on his own single authority, without any reference to or direction or consideration by the Sub-Committee, of which he was only one of the members, is *ultra vires*. And a conviction under Rule 104 for disobedience of such notice is illegal. The defect in authority to issue the notice is not a defect or irregularity not affecting the merits of the case, and so, cannot be condoned by Rule 291. **3 P.R. 1907 Cr.=5 Cr. L.J. 493=47 P.L.R. 1907.**

(15)—*Ss. 94, 104, 240—Repair of buildings dangerous to "public safety," order issued by Cantonment authorities as to, conviction for disobedience of—Power of Chief Court to interfere on revision.*—It is for the Cantonment authority to issue the notice under Rule 94, and an appeal lies from that decision under Rule 240; and with these orders the Court cannot interfere; but, when there is a criminal proceeding under Rule 104 for not complying with the notice and a conviction, it is open to the Chief Court to review the proceedings and decide the legality or otherwise of the conviction. Also, the provisions of s. 94 apply only to such repairs as may be necessary for the "public safety," *i.e.*, the safety of the general public and not of a particular person, as a tenant of a bungalow or his guest. So, where the Cantonment authority, before issuing a notice, had not decided that the step was necessary in view of the public safety, it was *held* that the Chief Court might hold the notice to have been illegal and might, on revision, set aside the conviction and sentence for not having complied with such notice. **1 P.R. 1906 Cr.=48 P L.R. 1906=3 Cr. L.J. 346.**

(16)—*S. 96 (2) (a) and (b)—"Cantonment authority," Cantonment Magistrate, whether—Order issued by him—Validity.*—*Held*, that, under sub-sections (2) (*a*) and (*b*) of s. 96 of the Cantonment Code, the "Cantonment authority," *i.e.*, the Cantonment Committee, is the only authority that can require the owner of land to remove a boundary wall, and, that, before an order can be legally issued even by a Cantonment Committee, the members of that body must form the opinion that the wall is unsustainable, unsightly or otherwise objectionable. *Held*, also, that, under s. 17 of the Code, the Cantonment Magistrate is declared to be the executive officer of the Cantonment authority, and all orders must be issued through him, but *he has no authority, of his own initiative, to issue an order under s. 96*, and that an order, not being based on an opinion formed by the Cantonment Committee, or one issued by them, had no legal validity as an order under s. 96 (2) (*a*) and (*b*). **3 S.L.R. 11=9 Cr. L.J. 447=1 Ind. Cas. 940.**

(17)—S. 96—*See* No. 7, *supra*.

(18)—*S. 104—Prospective daily fine.*—S. 104, Cantonment Code, 1899, does not allow a prospective daily fine for failure to comply with an order under the Cantonment Code irrespective of the period between the date of the conviction and the date on which the order may be complied with. **19 P.R. 1904 Cr.** (13 P.R. 1903 Cr., *cited*) [*R.*, 23 P.R. 1905 Cr.=168 P.L.R. 1905].

(19)—S. 104—*See* Nos. 13, 14, 15, *supra*.

(20)—*Ss. 131, 283—Contract of renting a stall from Cantonment authorities—Failure to pay rent, whether an offence under s. 283.*—S. 283 provides a penalty, in cases not otherwise provided for, for failure to comply with any notice under, or for breach of, any of the provisions of the Cantonment Code. But, in a contract of renting a stall, notice to pay stallage or rent is not a notice under the Code, and failure to pay such stallage or rent is not a breach of any provision of the Code, within the terms of s. 283. **15 P.R. 1906 Cr=5 Cr. L.J. 87=45 P.L.R. 1907.**

(21)—*S. 141—Obstructing public road—S. 141, Cantonment Code, 1899.*—In this case the accused were convicted of the offence of obstructing the public road, under s. 141, Cantonment Code, 1899, and sentenced to rigorous imprisonment for eight days. The Sessions Judge submitted the proceedings for revision to the Chief Court with the remark that the extreme sentence of 8 days' rigorous imprisonment, for the very petty offence to which the accused pleaded guilty, was excessive. The Chief Court remitted the unexpired part of the sentence. **P.L.R. 1900, 5 Cr.**

Cantonment Code, 1899—continued.

(22)—*S. 141 (a)—Carriage standing on a public road.*—The accused went in his own bullock-carriage to see his son who was ill, and during his visit left the carriage standing at the door in the street. The evidence showed that the carriage stood there for about 20 minutes. *Held*, per *Batty and Whitworth, JJ.* (*Fulton, J., dissentiente*) that the accused was liable to be punished under Rule 141 (*a*), as it would be straining language to say that it was necessary to wait nearly 20 minutes to take up or set down any passenger, and, therefore, the rule laid down in s. 141 (*a*) seemed technically to have been infringed. Per *Fulton, J* :—In every case in which a person is charged under Rule 141 (*a*) with causing a carriage to remain in the street longer than may be necessary for taking up passengers, the Magistrate must decide whether the detention was really for the purpose aforesaid. If he finds that the carriage was sent to stand in the street long before the time when it could be required, he will probably hold that there has been an infringement of the rule. But when he finds that it was kept standing merely whilst the owner was paying a visit or transacting business for a reasonable time, he will come to the conclusion that it has not been caused to remain longer than was necessary for the purpose of taking him up. Per *Batty, J.*—The phrases "taking up" and "setting down" are correlative, and as "setting down" could extend to nothing further than the mere alighting of the passengers, so "taking up" would include nothing beyond his getting in and taking his seat, and would not include waiting for passengers while they are engaged on business or pleasure. Per *Whitworth, J.*—The words "taking up or setting down passengers" in Rule 141 (*a*) of the Cantonment Code cannot properly be extended to any purpose distinct from the two named. The making of a visit, which was the occasion in the present instance of the carriage standing in the street, was not a purpose incidental to the taking up or setting down of passengers, but was a purpose distinct from and beyond those two acts. **2 Bom. L.R. 918.**

(22-*a*)—S. 167—*See* No. 34, *supra*.

(23)—*S. 167, cl. (i)—Article of "perishable nature"—Brown sugar—Crim. Pro. Code (V of 1898), ss. 190, 191.*—Where a Cantonment Magistrate institutes a prosecution, under the Cantonment Code, against the accused, he ought to inform him that the latter is entitled to have his case tried by another Magistrate, and his not doing so is an irregularity which will vitiate the proceedings. Brown sugar is not an "article of food which is of a perishable nature," within the meaning of s. 167, cl. (*j*), of the Cantonment Code and the person selling it within the Cantonment is not guilty of any offence. **3 A.L.J. 694 = 4 Cr. L.J. 374 = A.W.N. 1906, 303.**

(24)—*Ss. 167, 168, 173—License for sale of ærated waters—An invalid condition in the license, breach of, no offence.*—The accused held a license under s. 167 of the Act for the sale of ærated waters in a Cantonment and for having sold ærated waters manufactured by a firm not approved of by the Cantonment Committee; he was charged with and convicted of the breach of a condition in the license, which restricted him to vend ærated waters manufactured by certain manufacturers approved of by the Cantonment Committee. *Held*, on revision, that, as s. 168 of the Code only authorised the Committee to lay down the sources from which the water used in the manufacture is procured, and as there was no provision in the Code empowering the Committee to select manufacturers for the license, the condition in the license in question was *ultra vires* and the conviction was wrong. **47 P.R. 1905 Cr. = 191 P.L.R. 1905 = 3 Cr.L.J. 131.**

(25)—S. 168—*See* No. 24, *supra*.

(26)—S. 173—*See* No. 24, *supra*.

(27)—*S. 203—Meaning of section—Information by Medical officer of one cantonment to another, whether amounts to "prima facie grounds for believing."*—Information forwarded by the Medical officer of one cantonment to the authorities of another, to the effect that a woman is believed to have a venereal disease, amounts to "*prima facie* grounds for believing," within the meaning of s. 203 of the Cantonment Code. The section does not mean that the authorities issuing the notice must have something in the nature of legal evidence before them; on the contrary, the vague and general wording employed in the section seems intended to cover all such matters as would reasonably justify an executive officer in taking action. **3 S.L.R. 184.**

(28)—*S. 212—Returning to Cantonment without permission.*—S. 212, Cantonment Code, 1899, deals with harbouring and concealing a person who has been required to remove from the Cantonment, and not with returning to the Cantonment without permission. **2 Bom. L.R. 338.**

(29 and 30)—S. 240—*See* No. 15, *supra*.

(31)—S. 282—*See* No. 3, *supra*.

(32)—*S. 283, fine under, for breach of the conditions of a license—No notice to the accused—Legality of fine—Proceedings, if judicial proceedings—Revision—Accused entitled to copy of proceedings in the summary register.*—Where the accused was fined under s. 283 of the Cantonment Code for breach of the conditions of his license, and there was no proof that any notice was issued to the accused and that he failed to comply with any such notice or otherwise committed a breach of the provisions thereof, *held* that s. 283 of the Code was not applicable, there being no notice to the accused; that the proceedings were judicial proceedings and, as such, revisable by the Chief Court; that the only lawful penalty was the cancellation or suspension of the license; and that the accused was entitled to a copy of the proceedings in the summary register. **9 P.R. 1909 Cr.**

Cantonment Code, 1899—concluded.

(33)—S. 283—*See* Nos. 1, 8, 9, 20, *supra*.

(34)—*Ss. 283 and 167.*—Reading together s.167 of the Code and the proviso to it, a person wishing to start a dairy cannot be held to have infringed the Rule, until and unless it is shown either that he has not applied for a license, or that, having so applied, he has failed to obtain it by reason of his unwillingness to comply with the conditions imposed under s. 168. Hence, where the accused applied for a license and his failure to obtain it resulted, not from any fault of his own, but from the illegal action taken by the Cantonment authority in prohibiting him from starting the dairy, *held* that the prohibition was *ultra vires* and could be disregarded. **14 C.P.L.R. 135 Cr.**

(35)—S. 291—*See* No. 14, *supra*.

(36)—*Rule 141 (d)—Obstruction to public street.*—The accused had kept for years past a wooden box in front of his shop for use as a step to facilitate access to his *ota* which was three feet above ground. The wooden box was placed upon a stone slab covering the gutter at the side of the road adjoining the accused's shop. *Held* that the accused was not guilty of causing wilful obstruction to the free passage of a street under Rule 141 (*d*) of the Cantonment Code. **5 Bom. L.R. 741.**

Cantonment Magistrate.

See 1. ACT III OF 1880.
2. ACT XIII OF 1889.
3. MAD. ACT I OF 1866.
4. BOM. ACT III OF 1867.
5. CANTONMENT CODE, 1899.

(1)—*Cantonment Rules, Rule 9—Magistrate's order to build privy*—Rule 7 of the Cantonment Rules does not empower a Cantonment Magistrate to order any person to construct a privy, and a failure to comply with such an order is not an offence. **Rat. Un. Cr. C. 541 = Cr. Rg. 16 of 1891.**

—Power to cancel license—*See* BEN. ACT VII OF 1878, s. 14, 15 C. 452.

See MAD. ACT XXIV OF 1859, s. 48, 5 M.H.C. App. 25.

See MAD. ACT I OF 1866, s. 19, 8 M. 428 = 1 Weir 708.

See MAD. ACT I OF 1866, s. 22, 8 M. 350.

Cantonment Officer.

See ACT XVIII OF 1850, S.C. 19, Oudh.

Cantonment Rules.

See ACTS XXII OF 1864, III OF 1880, XIII OF 1889.

See CANTONMENT CODE, 1899.

See CANTONMENT MAGISTRATE.

(1)—*Rule 7—Conviction.*—The mere finding that the compound of a house, of which the accused is the landlord, was kept in a dirty

Cantonment Rules—concluded.

state, is not sufficient to support a conviction under Rule 7. To justify a conviction under the Rule, it must be found that the accused, being the owner or occupier of the house, had allowed dirt, filth, refuse, rubbish, or noxious or offensive matter, to be kept for more than 24 hours on the ground attached to and occupied with the house. **Rat. Un. Cr. C. 398 = Cr. Rg. 58 of 1888.**

(2)—*Rule 57*—A person, who neglects to repair his house which is within the Cantonment limits, does not commit an offence punishable under Rule 57, Chapter III of the Cantonment Rules. **Cr. Rg. 38 of 1891.**

(3)—*Rule 67, Chapter III, Notification 759, dated 25th March, 1876—Public place.*—A place in the open air, between a barrack wash-house and kitchen by the side of a path leading from the public road, and visible from the public road, is not a "public place," within the meaning of Rule 67. **1 P.R. 1873 Cr.**

(4)—*R. 74—Keeper of house—Meaning.*—The owner of a house who lets it to prostitutes who use it for prostitution, but who does not live in it himself or exercise control over its inmates, is not "the keeper of a house, etc." within the meaning of Rule 74 of the Cantonment Rules. **Rat. Un. Cr. C. 572 = Cr. Rg. 38 of 1891.**

Capitation Tax.

See BUR. ACT III OF 1889, s. 9 (2), 4 L.B.R. 150 = 7 Cr. L.J. 450.

Carcase.

—Theft of the carcase of a buried bullock—*See* THEFT, 1 Weir 384 = 4 M.H.C. App. 30.

Cards.

See 1. GAMBLING.
2. GAMING.
3. GAMBLING ACTS.

—Playing at—*See* GAMBLING, L.B.R. (1872—1892), 57 and 59.

—Gambling with cards in a public road—*See* PENAL CODE, s. 290, 1 Weir 239.

Carelessness.

—How it differs from dishonest misappropriation—*See* CRIMINAL BREACH OF TRUST, 1 Weir 464.

Carrier.

See PENAL CODE, s. 407, 9 Bom. L.R. 229 = 5 Cr. L.J. 235.

Cash.

See EVIDENCE ACT, s. 27, 2 S.L.R. 27 Cr. = 10 Cr. L.J. 239.

Caste.

See 1. DEFAMATION.
2. CONVERSION.

Caste—concluded.

—*Caste matters—Jurisdiction of Courts.*—If caste matters fall within the exclusive cognisance of a caste assembly, it is clear that the Courts will not interfere, on the ground that the procedure of such assemblies is not strictly or even approximately "judicial" as to the manner of recording either evidence or resolutions, when there is no evidence that, according to custom or otherwise, it is necessary to keep such a record. For the same reason, it is not open for the Courts to determine whether or not the evidence on which the caste assembly acted is such as a Court of Justice would act upon. **1 Weir 614.**

See BOM. ACT VI OF 1873, s. 73, 14 B. 180.

See BIGAMY, 2 B.H.C. 117.

—Threat to put a person out of caste—*See* CRIMINAL INTIMIDATION, Rat. Un. Cr. C. 37.

See PENAL CODE, s. 499, Rat. Un. Cr. C. 387=Cr. Rg. 39 of 1888.

Caste Disabilities Removal Act.

See ACT XXI OF 1850.

Cattle.

See 1. ACT III OF 1857.
2. ACT I OF 1871.
3. CATTLE TRESPASS.

—Trespass of cattle on accused's land—Accused receiving money payment on threat of impounding the cattle—*See* EXTORTION, 1 Weir 440, 1 Weir 433.

—In a forest under re-settlement—*See* MISCHIEF, 8 Bom. L.R. 549=4 Cr. L.J. 93.

Cattle Theft.

—*Boat and cattle thefts—Summary trial of such thefts.*—Boat thefts and cattle thefts call ordinarily for a severe sentence, *e.g.*, of two years' rigorous imprisonment and a summary trial is not suitable for them. **L.B.R. (1893-1900), 198.**

—Whether an offence in Upper Burma—*See* CRIM. PRO. CODE (1898), s. 45, U.B.R. (1892—1896), Vol. I, 19.

Cattle Trespass.

See also 1. ACT III OF 1857.
2. ACT I OF 1871.

(1)—*Owner's neglect to keep cattle from straying.*—Mere neglect on the part of an owner of cattle to keep them from straying into fields is not causing them to enter a compound within the meaning of s. 425, I.P.C. The section requires that, before the owner is convicted of the offence, it must be proved that he actually caused the cattle to enter, knowing that, by so doing, he was likely to cause damage. **6 B.L.R. Ap. 3.**

(2)—*Trespass by cattle when amounts to mischief.*—In order to constitute the offence of mischief, it is not sufficient to show that the

Cattle Trespass—concluded.

accused was guilty of carelessness, in allowing her goat to stray. The prosecution was bound to show that there was an intention to cause wrongful loss or damage. **7 B. 126.**

(3)—*Cattle causing damage to crop—Liability of owner.*—The owner of an animal which strays on to another's land and causes damage to the crop thereon, does not, unless he has wilfully driven it upon the land, commit the offence of mischief under s. 426, Penal Code. **9 B. 173.**

(4)—*Order by a Magistrate prohibiting the straying of cattle.*—An order by a Magistrate, prohibiting the straying of cattle within certain local limits, is not an order within the meaning of s. 62 of the Criminal Procedure Code (Act XXV of 1861). **9 B.L.R. Ap. 36.**

—Permitting cattle to stray upon Railway—*See* ACT IX OF 1890, s. 125 (1), 18 M. 228=1 Weir 874.

See U. P. ACT I OF 1900, 2 A.L.J. 26=A. W.N. 1905, 19=2 Cr. L.J. 19.

Cattle Trespass Acts.

See 1. ACT III OF 1857.
2. ACT I OF 1871.

Census Register.

See EVIDENCE ACT, s. 74, 6 Bom. L.R. 535.

Central Provinces Act.

See CENTRAL PROVINCES ACT.

C. P. Courts Act.

See C. P. ACT II OF 1904.

C. P. Municipal Act.

See C. P. ACT XVIII OF 1889.

Certificate.

—*Certificate of administration—Possession.*—The grant of a certificate of administration under Act XXVII of 1360 does not decide any question of title to the possession of the land. **2 B.L.R. A. Cr. 27; 11 W.R. Cr. 18; 9 W.R. Cr. 18.**

—Certificate by Political Agent—*See* CRIM. PRO. CODE (1898), s. 188, 24 A. 256, Rat. Un. Cr. C. 253=Cr. Rg. 13 of 1886.

See JURISDICTION OF CRIMINAL COURTS, A.W.N. 1884, 85.

Certificate of Administration.

See CERTIFICATE.

Certificate by Political Agent.

See CERTIFICATE.

'Certiorari,' Writ of.

(1)—*Writ of* certiorari—*Discretion of Court.*—The right of a defendant to a writ of *certiorari* to remove proceedings before a Magistrate is not *ex debito justitiae*, the issue of it being discretionary with the Court. **8 B.H.C. Cr. 1.**

Certiorari, Writ of—concluded.

(2)—*Bom. Act XIII of 1856 (Police), s. 111—Jurisdiction of High Court to interfere and issue writ of* certiorari.—The High Court has jurisdiction to remove and quash convictions and sentences of the Police Magistrates and Petty Sessions of the town and island of Bombay in cases where the Court of Queen's Bench in England would do so in respect of inferior Criminal Courts of that country. But s. 111, Act XIII of 1856, does not say that a conviction may be quashed where a Magistrate may be considered to have come to a wrong conclusion on the evidence before him. That has never been a ground for a writ of *certiorari*. In order to justify such a procedure, the objection to the conviction must have a substantial meritorious ground, and not merely an error of form or procedure. In cases where the Magistrate has convicted an accused person of a charge which the Magistrate had no jurisdiction to hear and determine, or had awarded a sentence which he had no power to award, or had proceeded in such a manner as to afford ground for saying that the accused person had not had reasonable opportunity of defending himself, the conviction can be quashed. The section, in short, says that to quash a conviction there must be merits, not that whenever there are merits in the general sense of the word, the conviction will be quashed. **10 B.H.C. 102.**

(3)—Upon a writ of *certiorari*, the High Court has no jurisdiction to enter into the merits of the case or to consider whether or not upon the evidence the Magistrate had come to a correct conclusion. **10 B.H.C. 109, note.** (*Queen* v. *Justices of Cheshire*, 11 Add. and Ell. 139; *Queen* v. *Bolton*, 1 Q.B. 66; *Thompson* v. *Ingham*, 14 Q.B.D. 710, 718; *Barber* v. *Nottingham and Grantham Railway Co.*, 33 L.J.C.P. 194; *Queen* v. *Dayman*, 7 Ell. and B. 672, 6 B.H.C. Cr. 27 and *Queen* v. *Jan Muhammad*, Unreported Cr. case, *R.*).

(4)—*Rule* nisi *to quash conviction—Practice.*—In this case where a writ of *certiorari* was granted to bring up a conviction of Justices, in order to quash it, and a rule *nisi* to quash the conviction was moved for, it was *held* that the *certiorari* should be returned into Court before the motion for the rule *nisi* is made. **1 Ind. Jur. N.S. 293.** [*Appr.*, 9 W.R. 325].

See ACT X OF 1875, ss. 115 and 147, 12 B.H.C. 217 (A.C.J.).

See BEN. ACT IV OF 1876, s. 117, 11 C. 275.

Cess Act.

See BEN. ACT IX OF 1880.

Cess in lieu of Village Fees Act.

See MAD. ACT IV OF 1864.

Cesspool.

See BOM. ACT III OF 1901, ss. 107 (2), 155, 11 Bom. L.R. 1349.

Chairman of Municipality.

See MUNICIPALITY.

See BEN. ACT II OF 1888, 19 C. 195 (*n*), 22 C. 717, 19 C. 198, 19 C. 192.

Chairman of Municipality—concluded.

—Order directing appearance before him by Chairman of Municipal Commissioners appointed under Act XXVI of 1850—*See* CONTEMPT OF COURT, 5 B.H.C. Cr. 33.

See CRIM. PRO. CODE (1898), s. 556, 15 M. 83=2 Weir 326.

See MAGISTRATE, JURISDICTION OF, 18 B. 442.

—Liability of Chairman of Municipality—*See* PENAL CODE, s. 290, 1 Weir 243.

—Whether a public servant—*See* SANCTION TO PROSECUTE. 1 Weir 243 and 2 Weir 226.

Chanks.

—in Palk's Bay and Gulf of Mannar, whether capable of being subject of theft—*See* THEFT, 27 M. 551=14 M.L.J. 248=1 Weir 386.

Charge.

1.—GENERAL.
2.—ADDITION OF CHARGE.
3.—ALTERATION OF CHARGE.
4.—ALTERNATIVE CHARGE.
5.—AMENDMENT OF CHARGE.
6.—EXPLANATION OF CHARGE.
7.—FORM OF CHARGE.
8.—WITHDRAWAL OF CHARGE.

——**1.—(General).**

See 1. (ALTERNATIVE CHARGE).

2. CRIM. PRO. CODE (1898), ss. 221—240.

(1)—*Meaning of the term "charge."*—A charge is a precise formulation of the specific accusation made against a person, who is entitled to know its nature at the earliest stage. **28 C. 434=5 C.W.N. 609.**

(2)—*Per Sargent, C.J., and Bayley, J.*—The word "charge" in the Crim. Pro. Code, is generally used as the statement of a specific offence and not as the aggregate of all the separate offences for which the prisoner is being tried. There is nothing in the Code of 1882 to justify the term "charge" having a different meaning given to it in ss. 226, 227, from what it has throughout the other sections of the Code. *Per* Scott, J:—The word "charge" is used in the Code both as indicating the whole series of counts or heads of charges, and also, as indicating a charge of specific offence. In s. 227, it is used in the former sense. **8 B. 200.**

(3)—*Framing of charge.*—A charge of an offence under the Penal Code should be drawn up in the words of the section defining the offence. **5 C.P.L.R. Cr. 18.**

(4)—All verbiage should be avoided in the drawing up of charges and a strict adherence to the language of the Penal Code should be maintained while adopting the forms given in Chapter XIII, Crim. Pro. Code. **1 W.R. Cr. Letters, 1.**

Charge—continued.

——**1.—(General)**—*continued.*

(5)—In framing a charge, a Magistrate is not restricted to the offences stated in the complaint or police report. If, on the evidence, he finds that an offence different from that which had been made the special subject of a complaint has been committed, he is competent to enquire into and proceed against the accused with regard to such other offence. **11 C.P.L.R. 9 Cr.** (5 B.H.C. Cr. 100, 8 W.R. Cr. 82, *R.*).

(6)—Charges should be drawn up only with reference to the offence disclosed. It is not proper for a Magistrate to consider whether the framing of a certain charge will or will not render committal to the Sessions Court necessary. **5 P.R. 1901 Cr.**

(7)—Where the committing officer resolved the crime into its elementary facts in the charge, all that combined to constitute the compound offence should be specified. **1 W.R. Cr. Letters, 10.**

(8)—*Charge—Unnecessary averments.*—Unnecessary averments included in a charge may be rejected as surplusage and the substantial portion of the charge alone considered. **4 B.H. C. Cr. 17.**

(9)—*Crim. Pro. Code (1882), s. 560—Framing of charge—Charge held as frivolous and veratious.*—The fact that a Magistrate has framed a charge, under s. 254, Crim. Pro. Code, against an accused, does not of itself prevent him from holding after full enquiry that the charge is frivolous and vexatious under s. 560. **Rat. Un. Cr. C. 734 = Cr. Rg. 2 of 1895.**

(10)—*Charge, when to be framed.*—It is irregular to frame a charge against the accused after his defence has been recorded. **3 N.W.P. 271.**

(11)—*S. 300, Penal Code—Frame of charge.*—The charge against a prisoner with "causing B's death by inflicting on him a wound with a '*chennai*' with the intention of causing bodily injury, such as was sufficient, in the course of nature to cause death, or which he knew to be likely to cause death," if it was intended probably to refer to the 2nd and 3rd clauses in s. 300 of the Penal Code, is defective and inexact as regards both clauses. With reference to the second clause, it should be "likely to cause the death of B, the person to whom the harm was caused," and with reference to the third, it should have said "ordinary course of nature." **8 C. 211 = 10 C.L.R. 11.**

(12)—*Crim. Pro. Code (1898), ss. 222, 235—Framing of charge.*—S. 222, Crim. Pro. Code, provides for a charge being framed in respect of gross sums appropriated within 12 months from the first to the last and enacts that a charge so framed shall be deemed to be a charge within the meaning of s. 234, Crim. Pro. Code, but it does not follow that the acts so charged should be deemed to be one transaction within the meaning of s. 235, Crim. Pro. Code. **30 M. 328 = 17 M.L.J. 141 = 2 M.L.T. 177 = 5 Cr. L.J. 341.**

Charge—continued.

——**1.—(General)**—*continued.*

(13)—*Crim. Pro. Code(1861), s. 250—Omission to prepare charge.*—The omission to prepare a charge in writing, although a very great irregularity, does not form a proper ground for setting aside a conviction, as it cannot be said to have occasioned a failure of justice. **5 B.H. C. Cr. 40.**

(14)—*Error in charge.*—Where there was an irregularity in the charge, in so far as it stated that the defamation was of the complainant, the husband, and not of the wife, *held*, that it was an error or irregularity in the charge which had not prejudiced the accused or occasioned a failure of justice. **15 M.L.J. 224 = 2 Cr. L.J. 381.**

(15)—*Crim. Pro. Code (1872), ss. 272, 283. 443—Charge—Omission to specify in charge of theft the word "dishonestly."*—The mere omission of the word "dishonestly" in a charge of theft and in the record of conviction is no ground for the reversal of the conviction and sentence, when the accused persons fully understood the nature of the offence with which they were charged, and were not prejudiced by the omission. **10 B.H.C. 373.**

(16)—*Form of, in case of rape—Amendment of.*- A full denial of the exception contained in s. 375 of the Penal Code should be made in the body of the charge and not at the end of it, and it should be drawn up formally. Where a charge is incorrectly drawn up, the Sessions Judge is competent under the provisions of s. 244, Crim. Pro. Code, to alter or amend it. **1 W.R. Cr. Letters, 2.**

(17)—*Form of—Forgery of valuable security and abetment—Giving and fabricating false evidence.*—The first head of the charge should state that the forged document is a document purporting to be a valuable security. The second head should follow the wording of the first head. The abetment charged on this head is not punishable under s. 109, I.P.C., but under that section coupled with section 467 of the Penal Code; and in order properly to make those sections apply, it should be declared that "the act abetted was committed in consequence of the abetment." Giving and fabricating false evidence being distinct offences, they should be charged separately. **1 W.R. Cr. Letters, 9.**

(18)—*Murder—Form of charge—Denial of exceptions in the charge—Penal Code, s. 300.*—In a count of wilful murder, the words "culpable homicide amounting to murder" must be used. The special exceptions contained in s. 300, I.P.C., must be fully denied in the charge. **1 W.R. Cr. Letters, 9.**

(19)—*Grave and sudden provocation.*—In the case of murder, the offence should be entered as a "culpable homicide amounting to murder," and not merely as "culpable homicide," which is an indefinite term. In the denial of the 1st exception under s. 300, Penal Code, it should be stated that the provocation was given by the deceased. Mention also should be made of the provisos to that exception. **1 W.R. Cr. Letters, 13.**

Charge—continued.

——**1.—(General)**—*continued.*

(20)—*Form of—The word "et cetera," use of.*—The abbreviation of charges against the accused by introducing the word 'et cetera' cannot be made. Explicit and full statements, such as can easily be intelligible to an accused, are always requisite in charges. **1 W.R. Cr. Letters, 13.**

(21)—*How to be framed—Exceptions in cases of murder—Culpable homicide not amounting to murder and grievous hurt—Crim. Pro. Code (1861), ss. 237, 239 and 243.*—In drawing up charges for offences falling under any of the sections of the Penal Code which contain special exceptions, the provisions of s. 237, Crim. Pro. Code, must be strictly attended to; except when the charge is for murder, culpable homicide not amounting to murder and grievous hurt, in which cases the forms given in ss. 243 and 239 are to be followed. **8 W.R. Cr. Cir. 3.**

(22)—*Charge, defect in—Charge, omission to frame—Conviction, validity of—Embezzlement—Penal Code, ss. 408 and 116.*—Where the charge against the accused was to the effect, that he, on or before the 21st day of June, 1907, committed breach of trust in respect of some deeds which he took from the complainant and was thereby guilty of an offence punishable under s. 406, I.P.C., but at the trial he was convicted of embezzling, not the deeds, but amounts obtained by dealing with those deeds; *held*, that the conviction was bad and ought to be set aside. Where an accused, who was tried with the other accused against whom the above mentioned charge was framed, was convicted under s. 406 read with s. 116, I.P.C., without any specific charge having been framed against him, but it appeared that he knew of the charge, as he put in a written statement denying it; *held* that his conviction was also bad and ought to be set aside. **12 C.W.N. 577=7 Cr.L.J. 372.**

(23)—*Attempt to cheat—Defect in the charge.*—In the case of an attempt to cheat, the omission in the charge to specify the person upon whom the alleged attempt to cheat was made, and also the manner in which it was intended by the accused to influence the conduct of that person, is a serious defect. **8 C.W.N. 278.**

(24)—*Assumption of absence of general or special exceptions in a charge for offence.*—Though the Crim. Pro. Code of 1872 contained no provisions analogous to those in ss. 235 and 237 of the Code of 1861, it might be inferred, from s. 439, illustration (*a*) of the Code of 1872, that the absence of all general exceptions and of some other exceptions mentioned in the Penal Code was to be assumed as before without allegations in the statement of an offence in the charge.—*Per* MARKBY, J. **4 C. 124=3 C.L.R. 122.**

(25)—*Penal Code, s. 217—Charge expressed in vague terms.*—The least that can fairly be allowed in favour of one criminally convicted is that when a charge has been expressed in vague terms, the prosecution on appeal should

Charge—continued.

——**1.—(General)**—*continued.*

be limited to the particular sense in which the charge has been understood in the actual trial. **2 B. 142.** [*R.*, Rat. Un. Cr. C. 764; *D.*, 22 C. 392].

(26)—*Charge—Omission to charge a previous conviction, effect of.*—Where a Magistrate passes a sentence which he is competent to pass for the offence charged, the mere fact that the Magistrate has, in passing the sentence, been influenced by a previous conviction of which the accused has not been formally charged, will not render the sentence illegal. **2 Weir 264** [*F.*, 2 Weir 265].

(27)—*Penal Code, s. 75—Previous conviction—Form of charge.*—A charge alleging a previous conviction, which makes the accused liable for enhanced punishment under s. 75, Penal Code, need not specify the extent of the former punishment. **4 M.H.C. App. 11.**

(28)—*Warrant cases—Separate charges for each offence—Penal Code, s. 75—Enhanced punishment.*—The object and direction of the Crim. Pro. Code are that, for each offence, there must, in warrant cases, be a separate charge. In order to award the enhanced punishment, provided by s. 75, the Magistrate should frame a charge under that section and try the prisoner on that charge. **9 M. 284=2 Weir 266.**

(29)—*Crim. Pro. Code (1861), Ch. XIV—Procedure before preparing a charge.*—The course to be taken by a Magistrate before preparing a charge must depend upon the circumstances of each case. **3 M.H.C. App. 2.**

(30)—*Joinder of charges—Joint trial of several witnesses alleged to have given false evidence*—A joint trial of several witnesses alleged to have given false evidence was held to have prejudiced the accused, as it might have deprived each of the accused of the advantage of calling the other persons, who were by reason of the joint trial in the position of co-accused, to give evidence for him. **39 P.R. 1888 Cr.**

(31)—Three separate offences of giving false evidence should have a separate charge for each, with reference to which there should be a distinct finding and a distinct sentence. **3 N. W.P. 314.**

(32)—*Crim. Pro. Code (1898), s. 233—Charge—Cheating.*—Where one charge was framed against two persons, charging them with cheating the complainant and two others on three different occasions, *held*, that the charge was bad in law. **13 C.W.N. 1067.**

(33)—*Two distinct charges on distinct individuals—Order, nature of.*—A Magistrate is not entitled to pass one order applying to two distinct charges between two distinct individuals. **7 C.W.N. 521.**

(34)—*Joinder of charges—Security for good behaviour.*—Where there is no association between the persons against whom proceedings for security for good behavicur are taken, nor

Charge—continued.

——**1.—(General)**—*continued.*

are they residents of the same village, evidence against each of them should be taken separately. **6 P.R. 1896 Cr.**

(35)—*Joinder of charges—Distinct offences—Dacoity.*—Where four accused were charged at one and the same trial for three dacoities committed during the course of a single day, and one of them was charged further with rescuing a person from lawful custody, with murder of a constable and with taking part in the dacoity in which the constable was murdered, *held*, that the irregularity of jointly trying the fourth along with the others was cured by s. 537, Crim. Pro. Code, inasmuch as the charge against him was kept separate, and the opinions of the assessors were separately recorded on the charges affecting him. **7 P.R. 1901 Cr.**

(36)—*Joinder of charges—Misjoinder not curable.*—The provisions of ss. 233, 239, Crim. Pro. Code, as to the framing of charges must be strictly observed. Any violation of them is an illegality which cannot be remedied by s. 537. A person accused of kidnapping a girl, or having kept a kidnapped girl in confinement cannot be tried jointly with a person who is found disposing of her on a subsequent date and is charged with an offence under s. 419, I.P.C. Similarly a person accused of theft cannot be tried jointly with a person who is alleged to have dishonestly received from the alleged theft properties stolen by him. **17 P.R. 1903 Cr. = 149 P.L.R. 1903.** (25 M. 61, P.C., *R.*).

(37)—*Alternative charge.*—Where an accused is charged on the same facts in the alternative on a graver and on a less serious count, the Court should record a definite finding on each count. **L.B.R. (1872—1892), 324.**

(38)—*Alternative charges—Alternative findings.*—Alternative charges should be framed as in the form given in Sch. V, No. XXVIII, subhead (ii). When there is no reason to doubt which of two offences specified in an alternative charge the accused has committed, there should not be an alternative finding. **L.B.R. (1872—1892), 436.**

(39)—*Crim. Pro. Code, s. 242—Nature of offences to form alternative charge.*—In order to make an alternative charge under s. 242 of the Crim. Pro. Code, both the offences must be offences under the Penal Code. Thus, criminal breach of trust cannot form an alternative charge to one of undue exaction of money under Reg. XVII of 1827, s. 16. **8 B.H.C. Cr. 115.**

(40)—*Duty of Magistrate to decide on charges disclosed by the complaint.*—It is for the Magistrate to decide on the exact charge disclosed on the complaint The accused can be convicted on a charge different from that preferred by the complainant, if the charge is involved in the complaint. **60 P.R. 1867 Cr.**

(41)—*Power of appellate Court to add charge.*—Where the accused persons were committed

Charge—continued.

——**1.—(General)**—*continued.*

for trial under an erroneous and untenable alternative charge under s. 193, I.P.C., and the Court of Sessions amended the charge under s. 193 and added charges under ss. 201 and 203, *held*, that it was doubtful whether the amendment and addition did not prejudice the accused. **7 N.W.P. 137.**

(42)—*Crim. Pro. Code (1898), ss. 227, 228, 229—Adding a charge* :—While the law empowers a Magistrate to add a charge at any stage of the proceedings before judgment, he must, when doing so, exercise a sound and wise discretion. *Held* that a Sessions Judge did not exercise a wise and sound discretion in adding a new and grave charge of dacoity at a late stage of the trial, after the conclusion of the case for the defence, and in continuing the trial without any adjournment. **6 C.W.N. 72.**

(43)—*Crim. Pro. Code (1872), s. 446—Power of Sessions Judge to expunge a charge before calling upon accused to plead.*—Where a Magistrate commits an accused person to the Sessions to be tried on specific charges, the Sessions Judge has no power, before calling upon the accused to plead, to expunge one of the charges. **7 C.L.R. 143.** [*R.*, 12 A. 551].

(44)—*Notice of the charge to the accused.*—An accused is entitled to know with certainty the matter with which he is charged and unless he has this knowledge he cannot but be seriously prejudiced in his defence. When two or more persons are jointly tried, one of such persons cannot be called as a witness either for or against another of such persons. **15 C.P.L.R. 112.**

(45)—*Crim. Pro. Code (1882), ss. 237, 238—Extradition on charge of dacoity—Conviction for theft, validity of.*—Where the extradition from a Native State of an accused person has been obtained on a representation charging him with an offence, under s. 395, Penal Code, of dacoity committed within British India, and he is committed to the Sessions, the Judge, if he has jurisdiction over the accused independently of the extradition, is competent to convict him of theft, if the offence of dacoity is not proved against him. Extradition is only a means of bringing the accused before the tribunal having jurisdiction. "All crime is local; the jurisdiction over the crime belongs to the country where the crime is committed." If the jurisdiction of the Court cannot be disputed, there is nothing to justify the Court in applying at the trial rules and principles other than those which, in ordinary cases, it is bound to apply under the Code of Criminal Procedure. Even assuming that the extradition proceedings could in some way limit the jurisdiction of the Sessions Court, if there is nothing on the face of those proceedings to warrant the conclusion that any such limitation has been in fact imposed, the mere circumstance that the offence of dacoity alone was mentioned, when extradition was demanded, does not necessarily lead to the conclusion

Charge—continued.

——**1.—(General)**—*continued.*

that the extradition was allowed for the purpose of a trial only on that charge, and on no other charge whatever. **17 B. 369.** [*R.*, Rat. Un. Cr. C. 773].

(46)—*Charge—Sessions Court—Practice—Facts proved not supporting charge.*—When a Sessions Judge trying a case considers that the facts do not support the charge on which the prisoner is tried but finds that he committed the offence at some later time, he may alter the charge, but cannot order a re-commitment in respect of such charge. **7 B.H.C. Cr. 81.**

(47)—*Crim. Pro. Code, s. 232—Accused charged with offence triable as warrant case—Conviction for a summons case not charged, validity of—Penal Code, ss. 143 and 379.*—When a case is being tried as a warrant case and a charge is drawn up of an offence which is triable as a warrant case. if it is intended to proceed against him also for an offence which is triable only as a summons case, the offence should form part of the charge. Where an accused person was summoned for offences under ss. 143 and 379, Penal Code, but only a charge for an offence under s. 379 was drawn up, *held*, that a conviction under s. 143 should be set aside, as no charge had been drawn of the offence of which he had been convicted and, as by the absence of the charge, the accused had been misled. **29 C. 481=6 C.W.N. 599.**

(48)—*Penal Code, s. 147—Common object—Rioting.*—A conviction for rioting, in the absence of a finding as to the common object of the assembly charged with rioting, is improper. **3 C.W.N. 605; 26 C. 630.**

(49)—*Penal Code, s. 193—False evidence—Charge.*—The alleged false evidence, and not its assumed substance and purport, should be set forth in a charge under s. 193, I.P.C. **7 N.W.P. 137.**

(50)—A man who is called upon to answer to a charge of giving false evidence should know exactly what is the false evidence imputed to him. **3 N.W.P. 314.**

(51)—*Facts not constituting an offence under s. 211, I.P.C., but one under s. 182 (a)—Magistrate bound to frame a charge under s. 182 (a), I.P.C.—S. 45 (c), Crim. Pro. Code (1898)*—Where the facts alleged do not amount to an offence under s. 211, I.P.C., but the Magistrate was of opinion that an offence under s. 182 (*a*) has been made out, *held*, he ought to have framed a charge of an offence punishable under s. 182 (*a*), I.P.C. **6 M.L.T. 175.**

(52)—*Penal Code, s. 408—Charge under the section in respect of general deficiency in accounts.*—In a case of criminal breach of trust under s. 408, a count based upon a general deficiency was struck out of the indictment by the presiding Judge after consultation with the Chief Justice. **24 C. 193.** [*Appr.*, 2 C.W.N. 341].

Charge—continued.

——**1.—(General)**—*continued.*

(53)—*Crim. Pro. Code (1898), s. 240—Scope.*—S. 240, Crim.Pro. Code, applies only to charges in the same case and has no application to separate cases. **Rat. Un. Cr. C. 977=Cr. Rg. 34 of 1898.**

(54)—*Crim. Pro. Code (1882), s. 237—Dacoity—Receiving stolen property.*—A person charged with dacoity cannot be convicted of dishonestly receiving stolen property which has not been shown to be a part of the property taken in the dacoity. **Cr. Rg. 19—9—1890.**

(55)—*Forgery—Using false document—Abetment of forgery.*—When a Civil Court sends a prisoner before a Magistrate on a charge of forgery, it is competent to the Magistrate to commit him for trial on a charge either of forgery, or of abetting forgery, or of using as genuine a false document. **6 W.R. Cr. 20.** [*R.*, 15 W.R. 352, 5 M. 397, F.B.; *F.*, 3 A. 538; *D.*, 13 W.R. 147].

See ACT XVIII OF 1862, 1 B.L.R.O. Cr. 1, 1 B.L.R.O.Cr. 15=15 W.R. Cr. 71.

See ACT X OF 1875, s. 147, 1 C. 356.

See COMMITMENT TO SESSIONS COURT, 9 Bom. L.R. 225=5 Cr. L.J. 213, 27 M. 54.

—Committal after drawing up—*See* COMMITMENT TO SESSIONS COURT, 3 C. 495=2 C.L.R. 2.

—Defamation not alleged in complaint—Subsequent adding of it on examination of complainant—*See* COMPLAINT, 10 A. 39, also 5 M.L.T. 1=32 M. 3=9 Cr. L.J. 108=1 Ind. Cas. 22, 5 C.W.N. 296.

See CONVICTION, Rat. Un. Cr. C. 854.

See CRIMINAL CASE, 4 Bom. L.R. 938.

See CRIM. PRO. CODE (1898), Ch. XXI, U.B.R. (1892—1896), Vol. I, 37.

See CRIM. PRO. CODE (1898), ss. 188 and 537, 8 Bom. L.R. 507=4 Cr. L.J. 49.

—Whether should be framed in proceedings under s. 477, Crim. Pro. Code—*See* CRIM. PRO. CODE (1898), ss. 195 and 477, 28 C. 434=5 C.W.N. 609.

See CRIM. PRO. CODE (1898), ss. 198, 367, 3 A. 322.

—Expunging one and substituting another—*See* CRIM. PRO. CODE (1898), ss. 215 and 227, 10 C.P.L.R. 13 Cr.

—Liability to whipping—Grounds of liability to be stated both in charge and judgment—*See* CRIM. PRO. CODE (1898), s. 221, 5 M. 158, 2 Weir 265, 2 Weir 266.

—Need for care in framing charges—*See* CRIM. PRO. CODE (1898), s. 221, U.B.R. (1892-1896), Vol. I, 22.

See CRIM. PRO. CODE (1898), ss. 221 (7), 342, 412 and 511, 4 N.L.R. 163.

Charge—continued.

——**1.—(General)**—*continued.*

—Joinder of more than three charges—*See* CRIM. PRO. CODE (1898), s. 222, 1 A.L.J. 599.

See CRIM. PRO. CODE (1898), ss. 222, 223, 15 B. 491.

—More than three acts committed within one year charged—*See* CRIM. PRO CODE (1898), ss. 222, 234, 24 A. 254=A.W.N. 1902, 44.

—Form of—*See* CRIM. PRO. CODE (1898), ss. 222, 234. 27 A. 69=A.W.N. 1904, 165.

See CRIM. PRO. CODE (1898), ss. 225, 233, 234, 235, 236 and 237, 10 Bom. L.R. 801=8 Cr. L.J. 272=33 B. 77=1 Ind. Cas. 641.

See CRIM. PRO. CODE (1898), ss. 227 and 537, 20 P.W.R. 1909 Cr.

—Conviction in absence of charge—New trial, power of appellate Court to order—*See* CRIM. PRO. CODE (1898), ss. 232 and 423, 28 C. 63=5 C.W.N. 819.

See CRIM. PRO. CODE (1898), s. 234, 2 C.W. N. 341.

See CRIM. PRO. CODE (1898), s. 256, 14 C. P.L.R. 137.

See CRIM. PRO. CODE (1898), s. 271 (2), Rat. Un. Cr. C. 327.

—Withdrawal of—Proper procedure—*See* CRIM. PRO. CODE (1898), s. 494 (*b*), 2 A.L.J. 30=2 Cr. L.J. 21.

—Omission to set out guilty intention in—*See* CRIM. PRO. CODE (1898), s. 537, 22 C. 391.

—Counter charge—*See* CRIMINAL PROCEEDINGS, 14 C. 358.

See DEFAMATION, 30 C. 402=7 C.W.N. 74.

See FALSE CHARGE, 5 M.L.T. 269, F.B.=32 M. 258.

Form of—*See* FALSE EVIDENCE, 7 A. 44.

—Splitting up of charges for purposes of jurisdiction—*See* MAGISTRATE, JURISDICTION OF, 11 C. 236.

—Defective charge—*See* PENAL CODE, ss. 17, 124-A, 153-A, 5 M.L.T. 24=19 M.L.J. 81=9 Cr. L.J. 140=1 Ind. Cas. 42.

See PENAL CODE, ss. 147, 323, 448, 30 C. 288.

See PENAL CODE, ss. 201, 302, 30 P.L.R. 1904.

See PENAL CODE, s. 225, 5 L.B.R. 21=2 Ind. Cas. 610.

See PENAL CODE, s. 409, 17 A. 153.

—Criminal misappropriation—General deficiency in accounts—*See* PENAL CODE, s. 409, 18 A. 116.

See PENAL CODE, s. 475, 15 B. 189.

Charge—continued.

——**1.—(General)**—*concluded.*

—Commitment to jail before charge is framed—Validity—*See* PRELIMINARY INQUIRY, 28 C. 434=5 C.W.N. 609.

See SANCTION TO PROSECUTE, 9 C.L.J. 690=13 C.W.N. 942=10 Cr. L.J. 150=36 C. 808=2 Ind. Cas. 697, 4 C. 712, 1 L.B.R. 286.

See TRANSFER OF CRIMINAL CASE, 30 M. 233=2 M.L.T. 89=5 Cr. L.J. 290.

——**2.—(Addition of charge).**

(1)—*Crim. Pro. Code (1882), s. 227—Addition of charge at a Sessions trial.*—The Court has power under s. 227, to add a fresh charge upon which the accused has not been committed for trial. **9 A. 525.** [*R.*, 10 C.P.L.R. 13].

(2)—Although a Sessions Judge has power to alter or amend a charge, he cannot add an entirely new charge which is not even cognate to the charge on which an accused person has been committed for trial. **3 N.W.P. 337.** [*R.*, 9 A. 525].

(3)—*Charges added at sessions—Depositions before Magistrate, admissibility of—Dead and absconding witnesses.*—The evidence of witnesses, one of them being dead and the other absconding, given before a Magistrate, was held admissible at the sessions trial, even though fresh charges had been added. **7 C. 42 =8 C.L.R. 273.**

(4)—*Additional charges against accused without previous notice to him.*—An accused should not, on the day of trial, be required to meet additional charges, without previous intimation, other than those entered against him in the Police register on arrest. **8 C. 195.**

(5)—*Crim. Pro. Code (1882), ss. 229 and 537—Addition of new charge.*—Where a new charge was read aloud to the jury, but was not specially explained to the prisoner and he was not called upon to plead to that charge, but his counsel, on being asked, did not require a new trial, *held* that the accused was not prejudiced by the addition of the new charge, and the omission would not affect the trial. **8 B. 200.**

(6)—*Crim. Pro. Code (1898), ss. 227, 228, 199 and 238—Charge—Addition of a charge—Irregularity—Penal Code (Act XLV of 1860), ss 363, 366 and 498.*—The accused was committed to the Sessions on charges under ss. 363 and 366 of the Indian Penal Code. At the conclusion of the evidence, to establish these charges in the Sessions Court, the Court added a charge under s. 498 of the Penal Code, after the evidence for the defence had been recorded. The Court then convicted the accused on all the three charges. *Held*, that the procedure followed by the Sessions Judge was not regular; the additional charge, framed at the stage it was framed, was prejudicial to the accused, and that, therefore, the conviction

Charge—continued.

——2.—(Addition of charge)—*concluded.*

under s. 498 should be set aside and the case be further investigated into on the other charges. **9 Bom. L.R. 148=5 Cr. L.J. 164=31 B. 218.**

—Power of Sessions Judge to add charge and try it—*See* PENAL CODE, ss. 226, 236, 237, 537, 8 A. 665.

——3.—(Alteration of charge).

(1)—*Omission to frame separate charge for separate offence.*—The omission of the Magistrate to frame the charge so as to contain a separate head for each offence may be remedied by the Sessions Judge exercising the powers of amendment contained in s. 244 of the Code of Criminal Procedure, 1861. **7 W.R. Cr. 8.**

(2)—*Omission of count in charge—Defect in charge—Power of appellate Court.*—The appellate Court may confirm a conviction under a section of the Penal Code different from that upon which the prisoner was tried and convicted, provided the prisoner has not been prejudiced or injured by the substitution of one section for another. **1 Ind. Jur. N.S. 46.**

(3)—*Alteration of charge from culpable homicide to s. 154, Penal Code.*—The Sessions Judge is competent to alter a charge and to try the prisoner for any offence coming under any one of the sections of the Code. **1 Agra Cr. 13.**

(4)—*Amendment of charge by Sessions Judge after commitment to Magistrate—Reasons of Magistrate for committing case in certain way.*—Where a Magistrate gives reasons for committing a case for trial in a certain way, the Sessions Judge must either accept the charges as framed or frame others himself: he cannot insist on a redrawing of the charge by the Magistrate, unless he specifies the charge which he wishes to be sent up. **25 W.R. Cr. 17.**

(5)—*Form of charge—Altering charge after plea of guilty.*—When an accused pleads guilty to a charge already framed, the Sessions Judge has no power to alter the charge upon the evidence on the record. **4 B.L.R. Ap. 101=13 W.R. Cr. 55.**

(6)—*Crim. Pro. Code (1861), s. 244—Trial by jury—Alteration of charge after verdict.*—On a trial by jury, the Sessions Judge has no power to alter the charge after the delivery of the verdict by the jury. **5 B.H.C. Cr. 9.**

(7)—*Crim. Pro. Code, ss. 236, 237, 238, 423—Appellate Court—Power to alter finding—Necessity for re-trial.*—It would obviously be improper and unfair to an accused that, on his appeal, he should be convicted of a more serious offence, to which he had never pleaded on the trial, and there are many instances in which the adopting of such a course would work injustice upon the accused. This would be particularly so, if the offence which the appellate Court might consider to be established was not cognate to the offence of which he had been tried and convicted, and it would also be so, if

Charge—continued.

——3.—(Alteration of charge)—*continued.*

there were circumstances of aggravation of an offence to which the accused had not pleaded. But there are exceptions to this rule. Some of these are referred to in ss. 236, 237 and 238. Another exception is the case in which the prosecution has established certain acts constituting an offence, and the Court has misapplied the law to those acts by charging and convicting him for an offence other than that for which he should have been properly charged on proof of commission of those acts. Here, if notwithstanding this error, the accused has by his defence endeavoured to meet the accusation of the commission of those acts, understanding the charge to mean an offence arising out and made up of those acts, his conviction for the offence which those acts properly constitute may be maintained, if the accused has not been prejudiced by the alteration of the finding. Such an error is one of form rather than of substance, and the alteration by an appellate Court of the charge or finding to the more serious offence would not necessitate a re-trial expressly on a charge of that offence. Where a person is convicted of an attempt to commit an offence, the appellate Court, if it thinks that the acts of the accused constitute the substantive offence itself, may convict him of the substantive offence without ordering a re-trial. **26 C. 863=3 C.W.N. 653.** [*F.*, 13 C.P.L.R. 125, U.B.R. (1903), 3rd Qr., Penal Code, p. 9, 3 N.L.R. 67, 3 L.B.R. 232].

(8)—*Conviction for theft—Power of appellate Court to acquit the accused of theft and convict for a distinct offence—Penal Code, ss. 143 and 379—Crim. Pro. Code (1898), s. 423.*—It is on the proceedings taken before the Magistrate that the facts constituting an offence for which a trial is held are made known to the accused, and the law is applied by the Magistrate to the facts established, so as to constitute the charge which the accused is called upon to answer. Where a person was convicted of theft, the only charge which he was called upon to answer, a conviction by the appellate Court under s. 143, Penal Code, upon finding that no theft has been committed, could not be legal, inasmuch as he was never called upon to answer to any charge other than theft, and he could not, therefore, be fairly convicted of an offence of an entirely different character. **27 C. 660.** [*F.*, 3 L.B.R. 232].

(9)—*Penal Code, ss. 147 and 379—Conviction for rioting, common object of unlawful assembly being theft—Finding by appellate Court of different common object—Alteration of charge—Validity.*—The accused were convicted by a Magistrate of theft of mangoes and also of rioting, the common object of the unlawful assembly being the forcible taking away of the mangoes belonging to the complainant. The Sessions Judge, on appeal, finding that the common object was not the taking away of the mangoes, but was regarding certain land, dismissed the appeal and confirmed the conviction and sentence. *Held*, that the accused

Charge—continued.

——**3.—(Alteration of charge)**—*concluded.*

were entitled to an acquittal, inasmuch as the accused were convicted by the appellate Court of an offence for which they had never been tried. **27 C. 990=5 C.W.N. 31** [*R.*, 33 C. 295=2 C.L.J. 516].

(10)—*Crim. Pro. Code (1898), s. 423, cl. (b)—Alteration of finding under ss. 109 and 211 to one under s. 193, I.P.C.*—In proceedings taken on a charge of the abetment of an offence punishable under s. 211, it would be improper to convict the accused of intentionally giving false evidence. The two offences are entirely of a different character, and in making a defence on a charge of the first named offence, the accused could not be regarded as pleading to a charge of intentionally giving false evidence in regard to some particular statement. **3 C.W.N. 367.** [*R.*, 3 L.B.R. 232].

(11)—*Crim. Pro. Code, Act X of 1872, s. 478—Alteration of charge—Rape—Adultery.*—Where a Magistrate altered a charge of rape into one of adultery on the representation of the accused, without any request on the part of the husband of the woman, and committed the case to the Sessions, *held* that the procedure was irregular and that he should have committed for the offence of rape, but that, though the Sessions Judge could not quash the commitment under s. 197 of the Crim. Pro. Code, it was competent for him under s. 446 to draw up a proper charge and proceed with the case. **A.W.N. 1882, 165.**

See CRIM. PRO. CODE (1898), ss. 236, 237, 238, 8 Bom. L.R. 120=3 Cr. L.J. 240.

See CRIM. PRO CODE (1898), s. 417, 16 B. 414.

——**4.—(Alternative charge).**

—*Penal Code, s. 193—Alternative charge—Evidence before Constable or Magistrate.*—An alternative charge of giving false evidence either before the Chief Constable or the Magistrate is wrong as the former falls under the earlier part of s. 193 and the latter, being given in a judicial proceeding, is a distinct offence. **Rat. Un. Cr. C. 503.** (Rat. Un. Cr. C. 333, 10 B. 124, *R.*)

See CONFESSION, 11 B. 702, F.B.

See FALSE EVIDENCE, 18 B. 377, F.B., 10 C. 405, 10 C. 937, 23 M. 544 (Foot-note)=1 Weir 166, 1 L.B.R. 101.

—Charge of theft or, in the alternative, of receiving stolen property—*See* JOINDER OF CHARGES, 17 M.L.J. 219.

——**5.—(Amendment of charge).**

(1)—*Penal Code, ss. 415 and 420, what an indictment under, should state—When defective indictment should be objected to—Amendment of formal defect—Act XVIII of 1862, s. 41.*—An indictment for cheating, under ss. 415 and 420 of the Penal Code, should state that the property obtained was the property of the person defrauded. But an indictment defective in

Charge—continued.

——**5.—(Amendment of charge)**—*concluded.*

this respect is defective for uncertainty and must be objected to, if at all, before the jury is sworn. *Semble*, the latter part of s. 41 of Act XVIII of 1862, only gives power to amend where the defect is formal. **1 M.H.C. 31.**

(2)—Amendments in a charge ought to be made formally, and should appear on the face of the record. **9 W.R. Cr. 14.** [*D.*, 8 B.H.C. Cr. 28].

(3)—*Several offences under same section—Amendment of charge.*—If a charge consists of several offences under the same section, the committing Magistrate should frame the charge so as to contain a separate head for each offence. **7 W.R. Cr. 8.**

(4)—*Conviction on charge different from that of which notice was given to accused.*—An accused person called on to answer to a specific charge cannot be convicted on an entirely different charge without previous notice of the offence imputed to him and opportunity being afforded him of meeting the accusation. **26 W.R. Cr. 8.**

(5)—*Crim. Pro. Code (1882), ss. 236, 237—Amendment of charges.*—Although it is open to a Magistrate to amend his charges, and, if he is satisfied that the graver charge includes the smaller complained of, to proceed upon the graver charge, such power can only be exercised when both the charges are *ejusdem generis* and when they fall under the same or similar class of offences, one being only an aggravation of the other. When a complaint is made of an offence under ss. 499, 500, I.P.C., a Magistrate, for the reasons above mentioned, is not competent to change the charge to one under s. 211, I.P.C., and also for the additional reason that the changed charge would shift the burden of proof sensibly from one side to the other. **19 B. 51.**

(6)—*Criminal Law Amendment Act XVIII of 1862, s. 1—Amendment of charge—Prejudice to accused.*—Under s. 1 of Act XVIII of 1862, the Court has power to order an amendment of a charge provided that the person indicated will not be prejudiced by the amendment in his defence on the merits. Where it is doubtful whether he was so prejudiced or not, the leaning of the Court should be in his favour. **6 B.H.C. Cr. 76.** [*R.*, 22 C. 391].

(7)—*Crim. Pro. Code, s. 244—Offence committed in foreign territory—Act I of 1849, s. 3—Sessions Judge—Procedure.*—Where a Sessions Judge, in the course of a trial, finds that the offence was committed in foreign territory, the proper procedure is to direct the committing Magistrate to obtain the permission of the Government under Act I of 1849, s. 3, and on receipt of such order, to amend the charge and then continue the trial, giving the accused the option to re-examine witnesses already examined. **Rat. Un. Cr. C. 33.**

See CRIM. PRO. CODE (1872), s. 445, 21 P.R. 1872 Cr.

Charge—continued.

——6 —(Explanation of charge).

(1)—*Criminal proceedings—Thorough explanation of charge to accused, necessity for.*—The charge should be read and so *explained* to the accused that the Court is sure that he has understood the nature of the charge thoroughly; and it is only then that his plea should be received. **5 C. 826.** [*R.*, L.B.R. (1893—1900), 328].

(2)—*Crim. Pro. Code (Act X of 1882), s.221—Right of accused person to know the exact value of the charge brought against him.*—An accused person is entitled to know, with certainty and accuracy, the exact value of the charge brought against him. Unless he has this knowledge, he must be seriously prejudiced in his defence. This is true in all cases, but it is more especially true in cases, where it is sought to implicate an accused person for acts not committed by himself, but by others with whom he was in company. **11 C. 106.** [*R.*, 22 C. 391, 7 C.W.N. 301].

(3)—*Explanation of charge to accused—Omission to explain charge when amended—Criminal Procedure Code, 1872, s. 445.*—A prisoner charged with dacoity and riot and acquitted cannot be convicted of house trespass, unless the charge was amended by the addition of the new charge and was read out or explained to him, and he was called on to plead to it. **23 W.R. Cr. 59.** [*F.*, 26 B. 50; *R.*, 3 Bom. L.R. 558].

(4)—*Plea of guilty and charge of murder—Admission by an accused person that he killed the deceased, effect of.*—A bare admission by an accused person that he had killed the deceased would not amount to an admission of murder. Where certain persons accused of murder admitted that they killed the deceased and added that they made the admissions of their own accord without being persuaded by others, *held*, that they could not be convicted under s. 302, Penal Code, inasmuch as they were not asked in their examination whether they intended to kill, or in what circumstances they killed, and their statements did not disclose on their part a knowledge of the elements constituting the offence of murder. **9 M. 61=2 Weir 337.** [*R.*, L.B.R. (1893—1900), 328].

——7.—(Form of charge).

(1)—*Form as to time and place of offence.*—Where a charge does not show such particulars as to time and place as are reasonably sufficient to give notice to the accused of the matter with which he is charged, the accused must be acquitted. **25 W.R. Cr. 46.**

(2)—*Reference to section of Code under which charge is made—Crim. Pro. Code (1861), ss. 234, 237.*—The framing of a charge should be such as to refer to the section of the Penal Code under which the offence charged is punishable. This is required by ss. 234 and 237 of the Code of Criminal Procedure. **9 W.R. Cr. 33.**

(3)—*Sufficiency of charge.*—In order to constitute a proper charge, one count charging each

Charge—continued.

——7.—(Form of charge)—*continued.*

specific offence and describing it with a reasonable degree of certainty, is sufficient. **5 W.R. Cr. 7.**

(4)—*Charge in case of omission to give offence.*—A charge should distinctly set forth the particular offence in respect of which the accused either omitted to give information, or gave information which he knew to be false; and it should appear precisely what his duty was in the matter. **8 W.R. Cr. 37.** [*R.*, 14 W.R. Cr. 46].

(5)—*Defect in charge, effect of.*—An indictment will not be invalidated in consequence of the charge not notifying the specific section. **1 Ind. Jur. N.S. 43.**

(6)—*Form of charge—Penal Code, s. 193.*—Whenever a person is committed for trial under s. 193 of the Penal Code, the evidence alleged to be false should be set out in the charge. **Rat. Un. Cr. C. 511=Cr. Rg. 35 of 1890.**

(7)—In charges of false evidence, the charge should specifically state what words or expressions the accused is charged with having uttered, and in what respect they are supposed to be false. **8 W.R. Cr. 95.**

(8)—Where the accused is charged with giving false evidence on three different occasions, each occasion should form the subject of a distinct head in the charge. **9 W.R. Cr. 14**; 17 W.R. Cr. 32, 17 W.R. Cr. 33, 9 W.R. Cr. 25. [*D.*, 8 B.H.C. Cr. 28].

(9)—Charges of perjury ought to be based strictly upon the exact words which are used by the person who is charged, and no evidence, which does not profess to give the exact words, can alone be a safe foundation for a conviction. **23 W.R. Cr. 28.**

(10)—Charges of perjury should contain a distinct assertion, with regard to each statement intended to be characterised as perjury, of the following particulars:—(1) that it was made; (2) that it was untrue in fact; (3) that the accused knew it to be so when he made it; and the Court should investigate each of these points singly. **9 W.R. Cr. 54.** [*D.*, 8 B.H.C. Cr. 28].

(11)—*Several charges.*—It is the duty of the Court of Sessions to find judicially whether all, or, if not all, which, of the particular charges of perjury, where there is more than one charge, are or is made out against each prisoner. **9 W.R. Cr. 66.**

(12)—*Penal Code, s. 193.*—In this case six persons were charged in the same charge as follows:—"That you, on or about the....committed the offence of voluntarily giving false evidence in the stage of a judicial proceeding, etc." *Held*, the charge was bad and defective for the following reasons: *first*, as it charged a number of persons jointly with giving false evidence; *second*, as it did not show what statement the accused persons made; *third*, as it

Charge—continued.

——7.—(Form of charge)—*continued.*

did not mention the day and the year when the offence was committed; *fourth*, as it did not indicate the Court or officer before whom the false evidence was given. **7 B.L.R. Ap. 66=16 W.R. Cr. 47.**

(13)—It is necessary that a charge under s. 193, I.P.C., should specify not only the judicial proceeding in the course of which the prisoner is accused of having made the false statement, but the particular stage of the proceeding in which the statement is made. **1 B.L.R.A.Cr. 13=10 W.R.Cr. 37.** [*F.*, 8 B.H.C. Cr. 37. 13 W.R. Cr. 56; *R.*, 16 W.R. Cr. 47].

(14)—*Crim. Pro. Code (1861), s. 242—Contradictory statements.*—S. 242 pointed out how the charge is to be drawn up in a case in which it is doubtful which of the two statements made by the accused is false. **12 W.R. Cr. 23.** [*F.*, 23 M. 544].

(15)—*Charge of giving false evidence—Several accused—Joint trial.*—Where several persons are charged with having given false evidence, each of them is entitled to have the specific charge made against him tried independently of a like charge against another person. **5 B.H.C. Cr. 55; 9 W.R. Cr. 66; 2 N.W.P. 21.** [*Appr.*, 2 N.W.P. 21].

(16)—Where a person is accused of perjury, he is entitled to have the specific charge made against him tried quite independently of a similar charge against another person. **5 B.H.C. Cr. 55.** 9 W.R. Cr. 66; 2 N.W.P. 21.

(17)—*Crim. Pro. Code (1882), s. 233—Form of charge—Conviction for another charge.*—The accused, having been summoned to answer a charge of storing wool under the city of Bombay Municipal Act of 1888, was convicted of storing cotton. *Held*, that the conviction was illegal, the accused having had no opportunity of meeting the latter charge. **Rat. Un. Cr. C. 529=Cr. Rg. 61 of 1890.**

(18)—*Penal Code, s. 397—Crim. Pro. Code, Act XXV of 1861, s. 234—Form of charge.*—In offences such as the one falling under s. 397 of the Penal Code, which provides a minimum punishment for the offence on account of the existence of aggravating circumstances, such circumstances should be set forth in the charge so that the accused person may know what kind of offence it is he pleads guilty to or what fact he is called upon to rebut. **Rat. Un. Cr. C. 55=Cr. Rg. 31—8—1871.**

(19)—*Penal Code, s. 411—Charge, form of.*—A charge under s. 411, I.P.C., should state that the articles found in the accused's possession were property stolen from A.B. the owner thereof. **1 B.H.C. 95.**

(20)—*Crim. Pro. Code (1882), s. 439—Judgment not stating the common object of an unlawful assembly—Revisional powers of High Court—Penal Code, s. 147.*—The High Court,

Charge—continued.

——7.—(Form of charge)—*continued.*

on an application for revision from the conviction and sentence of certain persons for rioting, should not grant a rule to show cause why the conviction and sentence should not be set aside, under the powers created by s. 439 of the Code, on the ground that the charge does not specify any common object and the judgments of the lower Courts do not find that any common object existed, or what it was, if it did exist, unless that Court is prepared, on the materials, on which the rule is granted, to make it absolute, or, in other words to acquit the accused, if no cause were shown against it. The above mentioned defects in the charge and the judgments are not by themselves sufficient to warrant the acquittal of the accused if there is ample material, in the evidence on the record, to justify the conviction. **21 C. 827.** [*F.*, 22 C. 391; *R.*, 2 Bom. L.R. 1129].

(21)—*Crim. Pro. Code (1872), s. 439.*—Under s. 439 of the Code, to prove a previous conviction against an accused person for enhancing the punishment, the fact of that previous punishment must be stated in the charge. In case of its omission, it may be added to the charge at any time previous to the sentence being passed, but not after. **19 W.R. Cr. 41.**

(22)—The fact of a previous conviction should, under s. 439 of the Crim. Pro. Code, be stated in the charge when it is intended to prove it in order to enhance the punishment. **21 W.R.Cr. 40.**

(23)—Under s. 439 of the Code, a charge of having committed the offence after a previous conviction therefor should be stated specifically. A statement in a Court that, at the time when the prisoner committed the offence (no offence being specifically mentioned in the Court), he had been previously convicted of offences punishable under Ch. XVII of the Penal Code is not sufficient under s. 439. **22 W.R. Cr. 39.**

(24)—*Penal Code, s. 499—Charge, form of.*—In framing a charge under s. 499, I.P.C., it is not necessary that the charge should negative the exceptions contained in s. 499, I.P.C. **9 B.H.C. 451.**

(25)—*Charge under Penal Code, s. 471—Conviction under s. 467—Legality.*—Where a person was charged with simply using as genuine a forged document, under s. 471 of the Penal Code, and convicted of an offence under s. 467, the document falling within the description given therein, *held* that the conviction was illegal and that the charge should have specified that the document was one described in s. 467. **6 B.H.C. Cr. 43.**

(26)—*Penal Code, s. 101—Charge—Right of private defence.*—It is a Magistrate's duty to draw up a charge in accordance with the offence disclosed, and not to consider such questions as to whether he himself has or has not jurisdiction to try the offence, or whether a particular charge will or will not require a committal to

Charge—continued.

——7.—(Form of charge)—*continued.*

the Sessions. It appeared that the accused had every reason to believe that he was about to be subjected to personal violence, that his carriage had been stopped by Beluchis who refused to abate the restraint, in itself a criminal offence, that in the scuffle a person properly under arrest was directly released or enabled to escape, and that the accused either let off his gun by accident, or that he fired it off, without any careful aim at the assailants, to secure his own safety. *Held* that, if the gun went off by accident, there was no offence, and if the accused fired it, he came under s. 101, Penal Code, and was entitled to be acquitted. **51 P.L.R. 1901.**

(27)—*Penal Code, ss. 282, 336—Plying unsafe vessel.*—Where certain sailors were charged under s. 336, I.P.C., with doing an act which endangered the lives or the personal safety of others, in having plied on a certain river a boat which was out of order and had also a crack, *held* that s. 336, I.P.C., was not applicable to the offence committed by the accused, but that s. 282, I.P.C., applied. **1 B.H.C. 137.**

(28)—*Form of charge—Murder—Penal Code, s. 302—Objections to charge.*—Technical objections to criminal charges, particularly on the ground of the want of a sufficient specification of details, should be taken before the conclusion of the trial, when the Judge may, if necessary, amend the charge, and not afterwards, unless it appear that some failure of justice has been caused by the irregularity complained of. A charge under s. 302 of the Penal Code need not set out at length all the facts necessary to constitute the offence of murder, and negative all the exceptions contained in s. 300, which defines the crime of murder. **5 W.R. Rec. Ref. 1.**

(29)—*Rioting—Separate charges against members of rival parties.*—Where there is riot and fight between two factions, the members of each party should be committed for trial separately, and not all together. **9 W.R. Cr. 33**; B.L.R. Sup. Vol. 750=8 W.R. Cr. 47. [*Doubted*, 11 C. 349; *R.*, 8 C.L.R. 390, 6 C. 718].

(30)—*Unlawful assembly and theft—Cutting and carrying away crops in disputed land—Penal Code, ss. 143, 379.*—Observations of the Court as to the proper framing of the charge in cases of unlawful assembly, with the object of committing theft by cutting crops. **4 C.W.N. 190.**

(31)—*Mischief—Mischief by setting fire to house.*—The charge in a case of mischief by fire, with intent to cause the destruction of a dwelling-house, should lay the intent as an intent to cause the destruction, not of a house simply, but of a house used as a human dwelling. **8 W.R. 30.**

(32)—*Illegal gratification—Vagueness of charge.*—A charge of attempting to obtain a gratification for influencing a public servant in the exercise of his public functions is illegal, as disclosing no legal offence, when it omits to

Charge—continued.

——7.—(Form of charge)—*concluded.*

state the person or persons for whom the gratification was obtained, or the public servant to be influenced in the exercise of his public functions. **3 W.R. Cr. 69.**

(33)—*House-trespass—Penal Code, s. 451.*—A charge under s. 451, Penal Code, must charge the accused with committing house-trespass with intent to commit some specific offence punishable with imprisonment. **16 W.R.Cr. 63.**

(34)—*Hurt — Causing hurt — Penal Code, s. 324.*—In a case of causing hurt, the charge and finding need not contain a negation that the hurt was caused on grave and sudden provocation. **4 M.H.C. App. 5.**

(35)—*Charge—Conviction without charge—Conviction for offences under ss. 447, 352, I.P.C.—Conviction by appellate Magistrate for offences under s. 379—Legality.*—Where the accused were charged under ss. 447 and 352, I P.C., and convicted by the Magistrate and the appellate Magistrate, without expressing any opinion as to whether those convictions were right, convicted the accused under s. 379, I.P.C., *held* that the charge of theft is a distinct and separate charge, and should have been separately made, and the accused given the opportunity of answering the same. **7 M.L.T. 202.**

See CHARGE—GENERAL, 5 C.P.L.R. Cr. 18, 1 W.R. Cr. Letters, 1, 11 C.P.L.R. Cr. 11, 5 P.R. 1901 Cr., 1 W.R. Cr., Letters, 10, Rat. Un. Cr. C. 734, 3 N.W.P. 271.

See CRIM. PRO. CODE (1898), ss. 233, 235, 26 A. 195=A W.N. 1903, 231.

See DACOITY, 1 Weir 447.

See FENAL CODE, s. 124-A, 5 M.L.T. 393=32 M. 384.

See PENAL CODE, s. 193, Rat. Un. Cr. C. 488.

See PENAL CODE, s. 323, Rat. Un. Cr. C. 20.

See PLEA OF GUILTY, L.B.R. (1893—1900), 328.

See UNLAWFUL ASSEMBLY, 13 C.W.N. 801 =36 C. 865.

——8.—(Withdrawal of charge).

(1)—*Charge—Withdrawal of charge—Crim. Pro. Code (1882), ss. 226, 227—Power of Sessions Judge to withdraw a charge.*—The Sessions Court is not precluded from withdrawing a charge framed by itself at the commencement of the trial and which it considers to have been an improper charge. The word "alter" in s. 227, Cr.P.C., must be taken to include "withdraw." **12 A. 551.**

(2)—*Crim. Pro. Code (1898), s. 240—Withdrawal of further proceedings—Several charges of embezzlement—Penal Code (Act XLV of 1860), s. 408.*—Case in which the High Court in appeal directed withdrawal of remaining charges (of embezzlement) against the accused, under s. 240 of the Crim. Pro. Code. **9 C.L.J. 257.**

Charge—concluded.

——8—(**Withdrawal of charge**)—*concluded.*

(3)—*Crim. Pro. Code (1861), ss. 57, 61, 459 (ss. 492, 494, 240 of the Code of 1898)—Powers of a Government pleader to withdraw a charge—Power of District Magistrate to withdraw charge.*—Unless a Government pleader has been appointed a Public Prosecutor, under the provisions of s. 57 (s. 492), and so has power under s. 61 (s. 494) to withdraw a charge, the Code does not authorise him to withdraw it, except in the case mentioned in s. 459 (s. 240), that is to say, where several charges have been preferred against the same person and he has been convicted of one of them. Where it is within the powers of a Government pleader to withdraw a charge, the law confers on him a discretion to do so, which is not subject to the control of the Magistrate of the District. **2 Weir 258 = 2 Weir 652.**

See CRIM. PRO. CODE (1898), ss. 271 (2), 342 (1), 439, 494, 5 M.L.T. 216.

Charge-Sheet.

See ACCUSED PERSON.

—Right of accused to copy of—*See* ACCUSED PERSON, 19 M. 14 = 2 Weir 143.

Charge to Jury.

1.—GENERAL.

2.—MISDIRECTION.

——**1.—(General).**

See 1. ASSESSORS.

2. CRIM. PRO. CODE (1898), ss. 297-307.

3.—JURY.

4.—VERDICT OF JURY.

(1)—*Charge to the jury, how to be recorded.*—Although, under the law, only the heads of the charge to the jury need be recorded, still, as the law allows an appeal on grounds of misdirection, it is not only desirable, but necessary, that the charge should be recorded in an intelligible form and with sufficient fulness, to enable the appellate Court to satisfy itself that all points of law were clearly and carefully explained to the jury, in reference to the facts and the evidence in the case. **34 C. 698 = 11 C. W.N. 666 = 5 Cr. L.J. 427.**

(2)—*Sessions trial—Summing up—Duty of Judge.*—A Judge in summing up is entitled to have regard to the elaboration and skill with which the rival contentions have been placed before the jury by the advocates on both sides, but he should not, in doing so, omit pointedly to call the attention of the jury to matters of prime importance, especially, if they favour the accused, merely because they have been discussed by the advocate. **27 B. 644 = 4 Bom. L.R. 683.** [*F.*, 27 B. 626 = 5 Bom. L.R. 599, 3 S.L.R. 102 Cr.]

(3)—It is the duty of a Judge in charging the jury to give a narrative and history of the case, and to place the facts and evidence in a clear manner before the jury so as to enable

Charge to Jury—continued.

——**1.—(General)**—*continued.*

them to grasp the details and come to a right decision. All the facts of prime importance in favour of the accused must be placed before the jury. It is not the duty of the Judge to say that the jury may neglect any portion of the evidence: that is clearly against the provisions of the law which says that the jury are to give their verdict upon the whole of the evidence on the record. **6 Bom. L.R. 31.**

(4)—In trials by jury, the Judge in his charge, should not state his own view of important matters of fact so positively as to leave the jury no loop-hole for taking any other view. S. 297 requires the Judge to sum up the evidence for the prosecution and the defence, but s. 299 leaves it to the jury to decide which view of the facts, is true. The duty of the Judge is to lay down the law authoritatively to the jury and to decide on the admissibility of evidence. **Rat. Un. Cr. C. 748 = Cr. Rg. 15 of 1895.**

(5)—Though a Judge can, in his charge to the jury, express his opinion of the effect of any portion of the evidence, he should always be careful to add that it is for the jury to form their own opinion. **10 C. 970 = 17 W.R. Cr. 47.** [*F.*, 25 C. 230].

(6)—It is the duty of the Judge to explain the law to the jury, and to tell them what offence the facts would prove against the prisoner if they believed them, and it is then for the jury to see whether, within the definition given by the Judge, the facts as proved constitute the offence. Where the jury found the accused not guilty of the charge framed against them, stating at the same time, that they thought an offence had been committed by one of the prisoners, although they were uncertain as to the section of the Penal Code under which the offence came, the Judge was held not to have acted properly, in handing over the Code to the jury to decide under what section the offence came. **14 C. 164.** [*R.*, Rat. Un. Cr. C. 736 = 6 Bom. L.R. 258].

(7)—The duty of the Judge in charging a jury in a criminal case is to make up his mind as to what the law is, and to tell the jury what it is, as succinctly and clearly as he can. If he turns out to be wrong, a higher tribunal can set him right. But to cite to the jury a large number of cases, which the jury cannot possibly understand, is calculated to confuse them and lead to a miscarriage of justice. **1 C.L.J. 159 = 2 Cr. L.J. 157.**

(8)—A Judge in charging a jury, should call the attention of the jury, to the nature and history of the case as laid before the Court by the prosecution. The question as to the identity of thumb-impressions on two or more documents, for the purpose of ascertaining whether the thumb-impressions are of one and the same person, is eminently a matter for the jury, and not for the Judge. **1 C.L.J. 385 = 2 Cr. L.J. 311.**

Charge to Jury—continued.

——**1.—(General)**—*continued.*

(9)—The Sessions Judge, in his charge to the Jury in a supplementary trial should not put before them the result of the original trial, without qualifying the reference with an admonition. **1 W.R. Cr. Letters, 10.**

(10)—In a charge to a jury, a Judge is only bound to lay carefully and plainly before them the evidence as recorded by him, noting discrepancies and inconsistencies, and pointing out generally the way in which it is favourable or unfavourable to the accused. **25 W.R. Cr. 54.**

(11)—Principles for the guidance of a Judge in charging a jury laid down. **10 B.L.R. Ap 36=19 W.R. Cr. 71.** [*F.*, 25 C. 230; *R.*, Rat. Un. Cr. C. 748].

(12)—*Crim. Pro. Code (1882), ss. 297, 367—Judge's charge to jury—Explanation of law—Duty of Judge—Record of judgment—Indication in charge to jury of compliance with law.*—It is incumbent on the Judge to explain the law relating to the particular offence with which the accused is charged, in order to enable the jury to apply the law to the special facts of the case. Mere references to sections of the Penal Code will not be sufficient. Although the Judge is not bound to record a judgment, yet, he should give a sufficient indication in his record of the heads of the charge that he has complied with the law so as to enable the appellate Court to determine whether or not he has acted in accordance with s. 297. **25 C. 786=2 C.W.N. 484.**

(13)—*Explanation of the law bearing on case—Presumption of innocence.*—A Judge's charge to the jury should consist only of a summing up of all the evidence and of showing how the law applies to it. Where facts are as consistent with a prisoner's innocence as with his guilt, innocence must be presumed; and criminal intent or knowledge is not necessarily imputable to every man who acts contrary to the provisions of the law. **8 W.R. Cr. 87.**

(14)—*Crim. Pro. Code (1861), s. 379—Summing up, when defective.*—The summing up contemplated by s. 379 cannot mean any statement of the evidence which a Judge may, in his caprice, think proper to make to the jury, but a proper summing up containing a full and distinct statement of the evidence on both sides, with such advice as to the legal bearing of the evidence, and the weight which properly attaches to the several parts of it, as a sound judicial discretion would suggest. If the Judge does not sum up in that manner, an error in a matter of law has been committed within the meaning of the Crim. Pro. Code, and the conviction based on such summing up shall be reversed if the accused person shall have been prejudiced by the defect. The ends of justice will, in most cases, be satisfied by considering whether, if the case had been tried by a Judge and assessors, the Court will set aside the finding. In cases of very serious offences and where the

Charge to Jury—continued.

——**1.—(General)**—*continued.*

evidence is merely circumstantial, the evidence should be read over *in extenso* to the jury. **5 B.H.C. Cr 85.** [*F.*, 5 Bom. L.R. 207; *R.*, 6 B.H.C. 47, Rat. Un. Cr. C. 644, 16 A. 84, F.B., Rat. Un. Cr. C. 719, 720, 19 B. 741, Rat. Un. Cr. C. 748, 806, 19 B. 749, Rat. Un. Cr. C. 850, 917, 23 B. 316, 3 S.L.R. 102].

(15)—*Omission to state the facts of the case, whether amounts to a defect in charge.*—Where a charge to the jury did not show what the facts of the case were, what the evidence adduced was, or what the case for the accused was, *held*, that the case was not put to the jury as required by law, or in such a way as to enable them to exercise their functions as jurymen. **30 C. 822=7 C.W.N. 639.**

(16)—*Defective summing up—Weight to be given to evidence in a case—New trial, when could be ordered.*—It would lead to defeat and not to promote justice, if a verdict were set aside and a new trial granted for a defective summing up with reference to the weight of evidence given in a case, in which a High Court would, upon evidence given in a trial, have affirmed a conviction if, instead of a trial by jury, the trial had been before a Judge and assessors. In matters like these, the question to be considered is not whether upon a proper summing up of the whole evidence, a jury might possibly have given a different verdict, but whether the legitimate effect of the evidence would require a different verdict If the Court is of opinion that the evidence would not, on any proper view of the case, support a conviction, it would be worse than useless to send back a case for a new trial in order that a jury may have the opportunity of convicting on such evidence upon a proper summing up. **29 C. 782=6 C.W.N. 553.**

(17)—The power of setting aside convictions, and ordering new trials for any error or defect in the summing up, will be exercised by the High Court only when the Court is satisfied that the accused person has been prejudiced by the error or defect, or that a failure of justice has been occasioned thereby. **5 W.R. Cr. 80=B.L.R. Sup. Vol. 459.** [*F.*, 3 B.L.R. 66; *R.*, Rat. Un. Cr. C. 245, 19 W.R. Cr. 68, 3 Bom. L.R. 694, 29 C. 792, 26 B. 193, 26 M. 1, 25 M. 147].

(18)—*Trial by jury—Omission to read to the jury the material portion of evidence.*—An objection to a trial by jury, on the ground that, in delivering his charge to the jury, the Judge did not read material portions of the evidence, is not, in itself, sufficient for the reversal of a verdict of the jury. In each case it must be a question whether the omission to read the material portions of the evidence was such as to misdirect a jury. A Court of appeal will not interfere with the verdict of the jury if such omission has not prejudiced the accused. **5 Bom. L.R. 207.**

Charge to Jury—continued.

——**1.—(General)**—*continued.*

(19)—*Misdirection—Evidence discussed generally—Retracted confession—Corroboration.*—Where the Sessions Judge did not sum up the evidence to the jury calling their attention to the material facts of it and leaving them to form their own opinion on it, but only treated it generally and called it "very poor evidence" which, "standing alone, amounted to nothing," *held*, that the charge was defective. *Held*, also, that it was a misdirection to tell the jury that the law, in the case of retracted confessions, was to look for corroboration in independent evidence, as there is no rule of law that a retracted confession must be supported by independent reliable evidence corroborating it in material particulars. **23 B. 316.**

(20)—*Misdirection to jury—Failure to point out to jury as to the irrelevancy of confession under s. 24.*—Where a Sessions Judge, in his charge to the jury made no reference to the relevancy or otherwise of a confession made to a village Magistrate on inducement, but merely told the jury that, if the confession was true, it was enough to warrant the conviction of the accused, *held*, that there had been a material and important misdirection likely to lead to an erroneous verdict. **26 M. 38 = 2 Weir 733.**

(21)—*Misdirection to jury—Question of whether possession of stolen property was recent enough to warrant conviction for substantive offence.*—Where a Judge, in his charge to the jury directed them that the finding of the stolen property with the accused two months after the dacoity was "so short" a time as to justify them in convicting the accused of the dacoity itself, instead of convicting them of receiving stolen property, *held*, that the Judge had misdirected the jury. Whether the possession of the stolen property was recent enough to warrant a conviction for the substantive offence was a matter entirely for the jury, and should not have been put to them in the positive way which the Judge adopted. **26 M. 467 = 2 Weir 517.**

(22)—*Common object of unlawful assembly, not mentioned in the charge-Misdirection—Crim. Pro. Code (1882), s. 225.*—Where a Judge in his charge to the Jury propounded two different common objects of an unlawful assembly, the accused being charged with one of them only, *held*, that the conviction of the accused should be set aside and a retrial should be ordered, inasmuch as it was impossible to say which of the two common objects the jury accepted and, if they had accepted the one on which he had not been charged, he had no opportunity of meeting it. **22 C. 276.** [*F.*, 33 C. 295 = 2 C.L. J. 516 = 3 Cr. L.J. 153; *R.*, 2 Bom. L.R. 1129, 38 P.W.R. 1907; *D.*, 4 C.W.N. 196].

(23)—*Charge to jury—Misdirection—Burden of proof—Evidence Act, s. 103—Crim. Pro. Code (1898), ss. 298, 299 and 537—Retrial owing to misdirection—Powers of High Court.*—It is for the jury, and not for the Judge, to say what fact has or has not been proved. The Judge

Charge to Jury—continued.

——**1.—(General)**—*concluded.*

should call the attention of the jury to the evidence, and having done so, should leave it to them to form their own conclusion. *Held*, that the Judge, in stating to the jury, that, under s. 103 of the Evidence Act, the *onus* may be said to be on the accused to show that the deed in respect of which he was charged with forgery was genuine, took an erroneous view of the law and misdirected the jury, and that s. 537 would not apply to such a misdirection.

(24)—It is doubtful whether the High Court has the power to try a case in which it has set aside a conviction on the ground of misdirection. The accused is entitled in such a case to have the case re-tried before a jury and, as a matter of procedure and in justice to the accused, this course should be adopted. **4 C.W. N. 576.**

See CRIM. PRO. CODE (1898), ss. 238, 423 (2), 2 Weir 509.

—Splitting up of—*See* CRIM. PRO. CODE (1898), s. 297, 2 Weir 384 = 2 Weir 493.

See CRIM. PRO. CODE (1898), ss. 297, 298, 2 Weir 385.

See CRIM. PRO. CODE (1898), ss. 304, 307, 28 B. 412 = 6 Bom. L.R. 361.

See CRIM. PRO. CODE (1898), s. 423, cl. 2, 2 Weir 517.

See TRIAL BY JURY, 3 S.L.R. 102.

——**2.—(Misdirection).**

(1)—*Charge to jury—Duty of Judge.*—The duty of a Judge charging a jury is to present the facts in their natural aspect; and if that aspect is greatly favourable to the one side or the other, any attempt by the Judge to redress the balance, by out-of-the-way suggestions and far-fetched explanations, not put forward by the parties, is not impartial, but the reverse. Such suggestions and explanations may, properly, be urged by the pleaders and the jury will give them their true weight; whereas, if they are put forward by the Judge, a value will be attached to them to which they are not intrinsically entitled. **9 M.L.J. 380.**

(2)—*Summing up of evidence—Duty of Judge—Misdirection.*—It is a sufficient compliance with the requisition of the Code, if the Judge, in summing up to the Jury, points out the principal features of the evidence, both as regards the case for the Crown and that for the defence. **13 W.R. Cr. 23.**

(3)—It is no misdirection for the Judge to tell the Jury not to disbelieve a mass of otherwise consistent evidence, because in one or two minor points, the witnesses differed in their statements. **1 W.R. Cr. 17.**

(4)—Where the Judge omitted to aid the Jury in arriving at a proper conclusion on questions of fact, but himself arrived at a conclusion on the facts which he should have left to the Jury, *held* that the verdict founded thereon was bad and that the prisoner ought to be released. **10 W.R. Cr. 7.**

Charge to Jury—continued.

——2.—(Misdirection)—*continued.*

(5)—*Omission to point out weakness of evidence for prosecution.*—The omission of a Judge to point out to the jury the weakness of the evidence against the accused and the possibility of other persons being guilty parties does not amount to a positive misdirection. **5 W. R. Cr. 13.**

(6)—*Bare statements of prisoners—Evidence.*—It is not proper to admit the bare statements of prisoners as evidence; and, consequently, it is improper for a Judge to allude to them in his charge to the jury. **7 W.R. Cr. 108.**

(7)—*Hearsay statement—Anonymous letter.*—The receiving of a hearsay statement as evidence against the accused, and also of an anonymous letter which was put in without showing how or by whom it was sent, are facts that unjustifiably prejudice the accused; and an omission to draw the attention of the jury to these facts would amount to a misdirection. **24 W.R. Cr. 77.**

(8)—*Accomplice evidence—Corroboration necessary.*—The Judge merely telling the jury, in a case of murder, that it was for them to consider whether the evidence of the accomplice was strictly corroborated as to the prisoners or not, would not amount to a proper direction. The Judge should go through the history of the crime as detailed by the accomplices, and must point out any independent evidence proving facts, showing that the prisoners were or must have been present at or cognizant of the murder. **6 W.R. Cr. 17, 44.**

(9)—*Omission to warn jury not to convict on uncorroborated evidence of accomplice.*—The omission to warn the jury not to convict on the uncorroborated evidence of an accomplice, and his treating as corroborative evidence what, in law, was no corroboration at all, is a good ground for setting aside the sentence and conviction. **8 W.R. Cr. 19.**

(10)—*Evidence of persons not having personal knowledge from their own observation.*—The evidence of persons not having personal knowledge from their own observation ought not to be allowed to go to the jury, especially when such persons do not orally depose before the jury, but their evidence is presented to the jury in the form of a written deposition. **10 W.R. Cr. 57.**

(11)—*Different trials of different persons in respect of same crime—Fresh charge to jury necessary.*—When different trials, of different persons, are held at different times, though in respect of the same crime, a fresh charge to each jury should be delivered in each case. **W.R. 1864 Cr. 16.**

(12)—*Crim. Pro. Code (1861), s. 379—Omission to sum up evidence—New trial.*—A new trial would be ordered if the Judge fails to sum up the evidence, and neglects the provisions laid down in s. 379, Crim. Pro. Code, 1861. **9 W. R. Cr. 51.** (B.L.R. Sup. Vol. 359, 5 W.R. Cr. 80, *R.*)

Charge to Jury—continued.

——2.—(Misdirection)—*continued.*

(13)—Although the above conditions are not satisfied, there may be circumstances in which it would be unnecessary to set aside the conviction. **14 W.R. Cr. 66**

(14)—The Sessions Judge in advising the jury on questions of fact may inform them of the impression, which the evidence in the case might have made on his own mind. **13 W.R. Cr. 34.**

(14-*a*)—But he must add in the clearest terms that the ultimate decision rests with the jury. **W.R. 1864 Cr. 5.**

(15)—The Sessions Judge, in his charge to the jury, must not give a positive opinion as to the guilt or innocence of the accused. **1 W.R. Cr. 2; 1 W.R. Cr. 26.**

(16)—The Sessions Judge should sum up the evidence as recorded before him; and, if he considers the prisoner guilty, he should state his reasons for so considering. **7 W.R. Cr. 25.**

(17)—*Crim. Pro. Code, Act X of 1882, s. 297—Charge to jury—Record.*—A Sessions Judge, in summing up to the jury, should set out the evidence fully and should also record in his charge what evidence he has read out to them. **Rat. Un. Cr. C. 917=Cr. Rg. 23 of 1897.** (5 Bom. H.C. 85, *R*).

(18)—*Penal Code, s. 304—Form of charge to jury.*—A Sessions Judge in summing up to the jury in the case of an offence under s. 304 of the Penal Code, should draw their attention to both parts of the section and ask them to say explicitly under which part they find the accused guilty. **Rat. Un. Cr. C. 530=Cr. Rg. 62 of 1890.**

(19)—Where a jury returns a verdict of not guilty of culpable homicide, it is the duty of the Sessions Judge to require them to find expressly whether or not the accused is guilty of any minor offence. **2 Bom. L.R. 334.**

(20)—*Summing up to jury—Omission to notice evidence, effect of.*—Where the defence evidence, which appeared to the High Court to be untrustworthy, was not noticed by the Sessions Judge at the original trial in his charge to the jury, the summing up was held not defective on that account. **7 C. 42=8 C.L.R. 273.**

(21)—*Crim. Pro. Code (1882), s. 271—Explanation of the charge to jury.*—A Sessions Judge should explain to the jury the charges against the prisoner. **2 Weir 339.**

(22)—*Crim. Pro. Code, Act X of 1882, ss. 298, 537—What amounts to misdirection.*—Mere non-direction does not amount to misdirection to the jury, and the High Court will not interfere with a verdict of the jury, unless the non-direction appears to be so material as to amount to a misdirection. **Rat. Un. Cr. C. 644=Cr. Rg. 17 of 1893.** (5 B.H.C. 85, 10 B.H.C. 88, 7 C. 42, *R.*).

Charge to Jury—continued.

——2.—(Misdirection)—*continued.*

(23)—*Crim. Pro. Code (1898), ss. 418, 423 (2) —Misdirection to jury—Interference by High Court.*—Where, in charging a jury, the Sessions Judge deals with all the points of importance urged on behalf of the accused, the mere fact that some of the points were not amplified, as they might have been, does not amount to a misdirection. Before interfering with the verdict of a jury on the ground that a piece of evidence was wrongly admitted and allowed to go before the jury, the High Court must be satisfied first, that the verdict is erroneous, secondly, that the error was caused either by the Judge's misdirection to the jury as to the evidence, or by a misunderstanding, on their part, of the law as to it as laid down by the Judge. Where material evidence which ought not to be admitted is admitted and the jury are placed in possession of it, there is an error of law in the trial under s. 418, and there is a misdirection of law when the Judge tells the jury that it is evidence which they can consider and on which they can, if they think proper, convict the accused. The fact that, after putting the jury in possession of the inadmissible evidence, the Judge in his charge goes on also to point out circumstances which would justify the jury in disbelieving the wrongly admitted evidence, does not make the misdirection any the less a misdirection. Where inadmissible evidence is let in with other evidence legally admissible, and the former is of a material character, it would be mere speculative refinement to hold that the jury must, in convicting the accused, have relied upon the latter and rejected the former. **27 B. 626=5 Bom. L.R. 599.**

(24)—*Sessions trial—Omission to put certain important matters before jury—Misdirection.*—It was contended that, in a trial before a Court of Sessions, though the Judge took a fair and lenient view of the case, yet, in his charge to the jury, he failed to put before them certain important matters, by which omission the accused had been prejudiced, and a failure of justice had thereby been occasioned. *Held*, on the facts of the case, that, though the heads of the charge to the jury might have shown greater detail, the Court saw no reason to doubt that the main points on both sides were fairly put before them. **2 Bom. L.R. 1129.**

(25)—*Penal Code, ss. 361, 366—Misdirection to jury on the question of intention.*—Where a Sessions Judge, in a trial for kidnapping, charged the jury thus:—"It remains only to consider the question of intent. The charge was that the girl was kidnapped in order that she might be forced or seduced to illicit intercourse. As to this, it is sufficient to say that no other inference is possible under the circumstances. When a man carries off a young girl at night from her father's house, the presumption is that he did so with the intent indicated above. It would be open to him, if he had admitted the kidnapping, to prove that he had

Charge to Jury—continued.

——2.—(Misdirection)—*continued.*

some other object, but no other object is apparent on the face of the facts." *Held*, that this amounted to a misdirection, and had prejudiced the accused, as the question of intent was a pure question of fact, and as it did not appear that the Judge left the jury any alternative, and practically what he told them was that, upon the evidence, there was only one conclusion they could arrive at, namely, the intent charged was proved. **14 A. 25.**

(26)—*Charge to jury—Misdirection—Offences under ss. 474 and 475, I.P.C.*—The accused was charged, first, "with having in his possession 37 papers, on which seals or signatures or other marks and devices, which are used for the purpose of authenticating documents of the nature of valuable securities, had been counterfeited, intending that such seals or signatures, or other marks and devices shall be used for the purpose of giving authenticity to documents thereafter to be forged on such papers, an offence punishable under s. 475, I.P.C. The second charge against the accused was "being in possession of the above 37 documents, knowing the same to be forged and intending that the same shall be fraudulently or dishonestly used as genuine, an offence punishable under s. 474, I.P.C." The Sessions Judge convicted the accused of both the offences. On appeal to the High Court, *held* that the conviction under s. 475 was not sustainable, as the Sessions Judge had not explained the nature of the offence to the jury, as the evidence necessary to support which was never placed before them, and as to which the Judge was wholly silent. *Held*, also, that the Sessions Judge had misdirected the jury on the second charge, inasmuch as he told them that the only issue they had to decide was whether the forged documents were in the possession of the accused, ignoring altogether the question of knowledge combined with intention which is so absolutely requisite to justify a conviction under s. 474, and as he had omitted to direct the jury as to the description of the documents necessary for the constitution of an offence under s. 474. **16 B. 165.**

(27)—*Misdirection of jury—Misunderstanding of the charge.*—In a case of alleged misdirection, the High Court is bound to give all due weight to the statement of the Judge himself, as to what he really said to the jury. An application on behalf of an accused person made to the High Court to set aside a conviction, on the ground of misdirection, was refused, on the ground, that the counsel for the accused had merely misunderstood the expressions used by the Judge in charging the jury, and that the Judge's charge could not have the meaning suggested by the counsel for the accused. **10 C. 1079.** [*R.*, 3 Cr. L.J. 1=3 L.B.R. 75, F.B.].

(28)—*Misdirection of the jury—Delay—Reference to the Calcutta High Court, under s. 80 of the Burma Courts Act.*—Where the additional

Charge to Jury—continued.

——**2.—(Misdirection)**—*continued.*

Recorder of Rangoon omitted to point out to the jury the fact, that the complainant did not charge four of the seven accused until eighteen days after the assault against the complainant was made, whereas the first three accused were charged on the day of the occurrence, *held* that such omission amounted to a misdirection of the jury, and that it so prejudiced the accused as to justify the setting aside of the verdict of the jury. **11 C. 10.** [*R.*, 4 C.W.N. 196].

(29)—*Crim. Pro. Code (1882), ss. 337, 364 and 434—Misdirection to jury—Evidence of accomplice—Improper reception of evidence—Letters Patent, 1865 (Calcutta), s. 26—High Court's powers of review.*—O was charged with the murder of the deceased. The two principal witnesses for the prosecution were M and G, to whom pardons were tendered by the committing Magistrate, under s. 337 of the Crim. Pro. Code, and were accepted by them. The case for the prosecution was that the three persons, O, M and G went out armed at night, broke into a house, from which they took some property; they used at other houses violence to persons found there; they carried off the deceased at dead of night from his house and took him to the tank. While there, he was shoved into the tank by O,G being close by and, though not aiding, and only so far as his presence might tend to intimidate the deceased from making resistance, not interfering to prevent the deceased from being so treated. O murdered him within three yards of G by a gun. After it was fired. M returned and found the deceased in the water. M and G deposed before the Magistrate, that O was at the tank with the deceased, and G deposed further that O fired the shot that killed the deceased. *Held*, that G was an accomplice and it was the duty of the Judge to follow the ordinary rules and to advise the jury not to act on his evidence without corroboration in a material part of it. Where the Judge, in the above case, in his direction to the jury, expressed that G was not an accomplice, *held*, that it amounted to a misdirection in fact, though not in form, as the effect of such direction would be that his evidence ought to be given as much weight as that of a perfectly independent and unprejudiced witness. *Held*, further, that the depositions of G and M before the committing Magistrate were improperly read to the jury as they had not been admitted in evidence and that the admission prejudiced the prisoners. The Court did not determine the question whether M was an accomplice. [*D.*, 27 C. 144]. In case of such a misdirection to the jury and the improper reception of evidence, the High Court ought to exercise its powers of review under cl. 26 of the Letters Patent. **17 C. 642.** [*F.*, 25 C. 711; *R.*, 10 M.L.J. 147, 25 M. 61=2 Weir 281, P.C., 2 M.L.T. 414=9 Bom. L.R. 789=6 Cr. L.J. 164].

(30)—*Crim. Pro. Code (1882), ss. 423 (d), 537—Misdirection to jury—Erroneous verdict.*—Before a verdict can be interfered with, the

Charge to Jury—continued.

——**2.—(Misdirection)**—*continued.*

High Court must be satisfied that such verdict is erroneous owing to a misdirection by the Judge or to a misunderstanding on the part of the jury as to the cases laid down by him. Both ss. 423 (*d*) and 537 require that before the verdict can be set aside on the ground of misdirection, the Court must be satisfied that the misdirection was of such a nature that it may be reasonably supposed that the verdict was erroneous by reason of such misdirection; or, in other words, there has been a failure of justice by reason of such misdirection. It is not necessary that the High Court should go through the facts, and find for itself whether the verdict is actually erroneous upon the facts. Where a Judge in his charge to the jury in a case of rape said "you will observe that the sexual intercourse was against the girl's will" instead of saying "you will have to determine upon the evidence in the case whether sexual intercourse was against the girl's will," and concluded the charge by saying "you have seen the witnesses and I have no doubt that you will return a just verdict." *Held* that the charge amounted to a clear misdirection as it omitted to tell the jury that it was for them to consider, whether upon the evidence adduced the offence was established and that the case should be retried as the verdict was vitiated by such misdirection. **25 C. 230.** [*R.*, 2 Weir 521=26 M. 1].

(31)—*Crim. Pro. Code (1882), ss. 480 and 423 (d)—Misdirection to jury—Charge of theft.*—In a case where a servant, charged by his master with having committed theft of a box, pleaded that he had done so with the object of giving a lesson to his master, the Judge in charging the jury said:—"If the jury find that the accused removed the box to put the owner to trouble, that is causing wrongful loss to the owner, and the act is theft. The jury will consider the accused's statement in this connection." *Held*, that the charge amounted to a misdirection, as to remove a thing to put the owner to trouble would not necessarily involve the causing of wrongful loss. **25 C. 416 =2 C.W.N. 347.**

(32)—*Misdirection to jury—Omission to explain the law.*—It is the duty of a Judge, to give a direction upon the law to the jury, so far as to make them understand the law as bearing upon the facts; and if he does not give them an explanation of the law sufficiently comprehensive to enable them to decide the particular issue, it is a misdirection. **12 C.L.R. 233.**

(33)—*Misdirection to jury—Explanation of the law—Mere reading of sections of the I.P.C.—Judge giving his opinion on facts or inference deducible from them.*—(*a*) It is the duty of the Sessions Judge, when charging the jury, to explain the law to them; merely reading the sections of the I.P.C. bearing upon the charge, and there leaving the matter, is no explanation of the law. (*b*) The Judge should not give his opinion to the jury upon a question of fact or an inference deducible from the facts. He must simply

Charge to Jury—continued.

——2.—**(Misdirection)**—*continued.*

call their attention to the facts, and then leave it to them to consider whether from those facts they conclude that a particular criminal act was done, and if they so concluded, he must then direct them that the case comes within a particular section of the Code. Failure in these respects amounts to a misdirection vitiating the trial. **4 C.W.N. 193.**

(34)—*Crim. Pro. Code (1882), ss. 423 (d), 537—Omission to explain the law to jury—Misdirection—Defect whether curable.*—An omission to explain the law to the jury amounts to a misdirection within the meaning of s. 423(*d*) of the Code. There must be some statement on the record to show that the law has been explained to the jury. The effect of ss. 423 (*d*) and 537 is to require the High Court, before interfering with the verdict of the jury, to see whether the misdirection complained of is one of a material character, that is, one which has made the verdict erroneous and led to a failure of justice. Where the accused was charged with having committed a number of offences of a complex character, *held*, that the omission of the Judge to explain the elements that go to constitute each offence was a misdirection that had vitiated the verdict and had occasioned a failure of justice, having regard to the fact that the jury were not able to say what their verdict was upon each charge. **25 C. 561.**

(35)—*Crim. Pro. Code (1898), ss. 297 and 537—Charge to jury—Omission of Judge to lay down the law—Incomplete definition of offence—Material irregularity.*—If the direction of the Judge leaves room for doubt as to whether the jury had present to their minds an essential element of the offence, with which the accused are charged, it is a misdirection to the jury. So where, in a charge of dacoity, the Judge said to the jury "the accused are charged with dacoity; dacoity is committed when any number of persons not less than five conjointly committed robbery," but did not explain to the jury what is necessary to constitute the offence of robbery, it is an omission to lay down the law, by which the jury are to be guided, as required by s. 297. It is not merely a misdirection. It is a failure to comply with an express provision of the law, and s. 537 is not applicable to such a case. **30 M. 44=1 M.L.T. 399=5 Cr. L.J. 78.**

(36)—*Misdirection of jury—Omission to point out elements of offence—Crim. Pro. Code (1882), s. 423—Reversal of verdict—Powers of appellate Court.*—It is the duty of the Judge to call the attention of the jury to the different elements constituting the offence with which an accused person is charged, and to deal with the evidence by which it is proposed to make the accused liable. Failure to do so amounts to a misdirection. Where a Judge failed to explain to the jury that, in order to convict an accused person under s. 412, Penal Code, it was necessary to find that he retained or had possession of the goods with guilty knowledge, and to bring to the notice of the jury that the accused was in police custody, at the time of the search, *held*, that the omission amounted to a misdirection. [*Appl.*, 30 M. 44=1 M.L.T. 399]. Once the verdict of the jury is set aside under s. 423 (*d*), there is no restriction on the power of the appellate Court, to deal with the case of which it has complete *seizin* in any of the manners provided in that section. Its power is not restricted to directing a retrial, and it may also reverse the finding and sentence and acquit or discharge the accused, or order him to be retired, or alter the finding and maintain the sentence, or without altering the finding, reduce the sentence. **25 C. 711=2 C.W.N. 369.**

(37)—*Misdirection to jury—Omission of Judge to direct jury to give accused the benefit of reasonable doubt.*—Where the Judge expresses a certain opinion on the facts without telling the jury that they are at liberty to form their own opinions in regard to such facts, and without telling them that if they had any reasonable doubt on any point, the accused are entitled to the benefit of that reasonable doubt, the Judge must be held to have misdirected the jury. **34 C. 698=11 C.W.N. 666=5 Cr. L.J. 427.**

(38)—A direction by the Judge to the jury that, if they entertain reasonable doubt as to the guilt of any one of the accused, the jury should give him the benefit of the doubt and acquit him, is certainly a usual and most proper direction and it ought, as a matter of practice, to be given in every case; but, it cannot be held that the omission to give it must, in every case, constitute a misdirection of such a character, as to render a conviction invalid. Where, however, the Judge thinks that the evidence is so weak that there are the very greatest doubts as to the guilt of the accused, the omission to direct the jury to give the benefit of the doubt is a misdirection, which prejudices the accused and entitles him to an acquittal. **1 M.L.T. 350.**

(39)—Where a Judge did not lay down the law by which the jury should be guided, nor properly summed up the evidence, and, at the conclusion of the charge, directed them to consider the evidence against each prisoner without, at the same time, requiring them to consider the evidence in favour of each, and omitted also to give the jury the very necessary direction that, if they entertained any reasonable doubt as to the guilt of the accused, they (the accused) were entitled to the benefit of that doubt and should be acquitted, *held*, that there was a grave misdirection by the Judge to the prejudice of the prisoners. **2 Weir 500.**

(40)—*Misdirection to jury – Penal Code, s. 471—Forgery, elements of.*—In a Sessions trial for an offence under s. 471, I.P.C., it is not sufficient for the jury merely to decide, on the evidence, whether the document in question was

Charge to Jury—continued.

——**2.—(Misdirection)**—*continued.*

a forgery, and whether the accused knew it was a forgery, when it was used. It is also necessary for them to decide whether the document has been used fraudulently or dishonestly. **8 C.L.R. 542.**

(41)—*False evidence—Misdirection.*—Where a Judge, in a case of false evidence, pointed out to the jury the contrast between the evidence for the prosecution and the course followed by the prisoner, *viz.*, a simple denial of the charge followed by a refusal to examine the witnesses in attendance, *held*, it was not a misdirection, so long as the Judge leaves it to the jury to decide between the opposing statements and to believe whichever they thought worthy of belief. **2 W.R. Cr. 60.**

(42)—*False evidence—Charge to jury—Misdirection.*—*See* **7 W.R. Cr. 105.**

(43)—*Misdirection to jury—Omission to lay before jury evidence affecting each of the accused severally.*—Where there are several accused, it is a misdirection not to lay before the jury clearly, though concisely, the evidence affecting each of the accused severally, not only what told against them, but also any that might be in their favour. **10 C.L.R. 4.**

(44)—*Crim. Pro. Code (1882), ss. 418, 323, 537—Misdirection to jury in a charge under s. 211, I.P.C.*—Where, in a charge under s. 211, I.P.C., the Sessions Judge merely directed the jury that, if they believed the charge of dacoity, which had been instituted by the accused, to be false, they should find the prisoner guilty under the section, otherwise they should acquit him, *held*, that as the Judge did not place before the jury one of the most essential elements of the charge, *viz.*, that in instituting the false charge of dacoity, there was no just ground for the charge, the conviction should be set aside and a fresh trial should be ordered. **1 C.W.N. 301.**

(45)—*Crim. Pro. Code (1898), ss. 225, 298 (2)—Omission to state common object of unlawful assembly—Misdirection—Expression of opinion on question of fact.*—The omission to correctly state the common object of an lawful assembly in the charge to the jury does not vitiate the trial, if the accused is not prejudiced thereby. S. 298 allows the Judge to express to the jury his opinion upon any question of fact. But the decision upon the questions of facts must be left entirely for the jury. When a charge to the jury places prominently before them all the circumstances that go against the accused, and does not call their attention to any of those that are in their favour, *held*, that there has been a misdirection sufficient to vitiate the trial. **4 C. W N. 196.**

(46)—*Plea of* alibi *not referred to in charge to jury.*—Where the accused pleaded an *alibi* and called witnesses to prove it, but the Sessions Judge in his charge to the jury has not referred to such evidence or to their plea, this would be a misdirection prejudicing the accused. **4 M.L. T. 194.**

Charge to Jury—continued.

——**2.—(Misdirection)**—*continued.*

(47)—*Crim. Pro. Code (1898), s. 537—Trial by jury—Judge's summing up—Misdirection.*—M, accused, was seen at the scene of offence, a week prior to its commission, with G, and other thieves. M was seen running from R's house (where M lodged) on which occasion he dropped a bundle which was found to contain a coat in the pocket of which was a spoon that was identified as one of the stolen articles. *Held* that, where the summing up of a Judge was calculated to leave upon the minds of the jury the impression that M was identified by four persons, whereas in fact he was identified by two only, the summing up was misleading. Where some of the stolen property was found in R's house, which is not the house of the accused, but where he was only lodging, the Judge ought to have told the jury that there was no evidence on which they could find that it was property found in his possession, and, as regards the spoon, the Judge ought not to have told the jury that, if they believed the evidence, the discovery of the property without doubt connected the accused with the offence. He should have left it to them to say whether, in the circumstances in which the property was found, including the period which had elapsed after the theft, they could find that it was found in the possession of the accused, and that, so soon after the theft as to enable them to presume that he was guilty of the theft. **5 M. L.T. 134.**

(48)—*Crim. Pro. Code (1898), s. 297—Direction to the jury—Misdirection, what is—Effect.*—Where a Sessions Judge did not explain to the jury as to what was meant by theft, but asked them to decide whether the accused was found at the place of theft and whether he was then with an honest or dishonest intention, and then convicted the accused on a verdict given by the jury, *held*, that the jury ought to have been directed to decide on the question of the dishonest removal of the property, and that the verdict of the jury ought to be set aside. **6 M. L.T. 324.**

(49)—*Jury, trial by—Sessions Judge telling jury that there was no force in a certain argument of accused—Misdirection—Conviction under ss. 395, 109, I.P.C.—Maintainability.*—Where the Sessions Judge told the jury that there was no force in the argument that the accused may not have foreseen and may not have intended that a dacoity should take place, and where the accused was convicted of having committed offences under ss. 395, 109, I.P.C., *held*, that the Sessions Judge should not have taken the matter out of the hands of the jury in this way, and that the conviction of the accused should be set aside. **7 M.L.T. 191.**

(50)—*Crim. Pro. Code (1882), s. 423 (2)—Misdirection to jury—Theft.*—Where, in a case of theft, the only evidence against the accused was the possession of stolen property five years after the occurrence, *held*, that the Judge had misdirected the jury by saying that "on this evidence, notwithstanding that it is nearly five

Charge to Jury—continued.

——2.—**(Misdirection)**—*continued.*

years since the crime occurred, you will decide whether you are satisfied with the prisoner's explanation for his possession of stolen property." The proper course would be to tell them to consider whether, after five years, it was reasonable to require the prisoner to prove how he came by the goods, or whether his story, not being in itself improbable, ought not to be accepted. **2 Weir 489.**

(51)—*Crim. Pro. Code (1882), s. 423 (2)—Misdirection to jury—Showing the stolen property, effect of.*—A direction to the jury that they should convict the prisoner, if they believed that he had shown the stolen property to the Police, is open to exception. If a person is found in possession or control of stolen property, there is, of course, a presumption that he was the thief. But the mere fact of knowing where such property is, is not equivalent to possession. **2 Weir 493.**

(52)—*Crim. Pro. Code (1898), s. 432 (2)—Misdirection to jury—Identification.*—Where a Judge directed the jury to acquit one of the prisoners on the ground that the witnesses who identified him had deposed falsely, *held*, that the Sessions Judge ought to have made it clear to the jury that, if they disbelieved the witnesses on whose testimony the case hinged, in regard to any one of the prisoners, that was a circumstance to be carefully weighed by them in estimating the credibility of the testimony as it affected the other accused. His omission to do so amounted to a misdirection. **2 Weir 501.**

(53)—*Crim. Pro. Code (1898), ss. 297, 298—Charge to jury—Misdirection—Judge defining dacoity as robbery committed by more than five persons.*—Where a Sessions Judge, in a trial for dacoity, in the course of his summing up to the jury, told them that dacoity is robbery committed by *more than five* persons, instead of saying that it was robbery committed by five or more persons, *held*, that it was a misdirection, but as it did not prejudice the accused but was favourable to them, their conviction was not liable to be quashed on that ground. **9 Cr. L.J. 311=1 Ind. Cas. 546.**

(54)—*Crim. Pro. Code (1898), ss. 292, 298—Charge to jury—Confession of accused implicating himself and co-accused—Absence of direction that confession should be corroborated—Misdirection.*—Where a Sessions Judge charged the jury as follows :—" It is a rule of law that, where a person confesses a crime and implicates himself, if he implicates the persons who have been tried along with him to the same extent as he implicates himself, then, if you accept his statement as being true and voluntarily given as against himself, *you can safely accept it as true as against the other persons.*" *Held*, that, as the Judge did not caution the jury that such confession should be corroborated before it could be accepted, it amounted to a misdirection **9 Cr. L.J. 404=1 Ind. Cas. 867.** (7 M.H.C. App. 15, 1 M. 163, 4 C. 483, F.B., *R.*).

Charge to Jury—continued.

——2.—**(Misdirection)**—*continued.*

(55)—*Misdirection—Omission to tell the jury that the statement of one prisoner is not evidence against his fellow-prisoner—Omission to tell the jury that they are entitled to draw their own independent conclusions upon the facts—Conduct of a brother of the accused where no privity is shown—Admissibility.*—The omission of the Sessions Judge to warn the jury that the statement of one prisoner is not evidence against his fellow-prisoner is a material error and a misdirection fatal to the trial, notwithstanding that the Sessions Judge dealt with the evidence against each of the prisoners separately. When a Judge states his own opinion to the jury, omission to tell them that they are entitled to draw their own conclusions of fact is a misdirection. Where the conduct of the brother of the accused was placed before the jury as evidence against the accused, *held*, that the evidence of the brother and of the others proving the brother's conduct should be excluded as there was nothing to show, with any degree of certainty, that his knowledge was necessarily derived from the accused and that he did not act on his own initiative and without any suggestion from the accused. **10 C.W.N. 153=3 Cr. L.J. 144.**

(56)—*Trial by jury—Defect in summing up—Statement of one accused against another—Retrial.*—The failure of a Sessions Judge in summing up to the jury, to tell them explicitly that the statement of one prisoner against another should not be considered in weighing the evidence against that other, is such a grave irregularity as to vitiate the verdict of the jury, even though the Judge, in summing up, considered separately the evidence against each of the accused without referring at all to the statement referred to (*Warden J. Diss.*). **6 B.H.C. Cr. 10.** [*R.*, 10 C.W.N. 153].

(57)—*Evidence of approver—Misdirection to jury.*—A Sessions Judge should caution the jury not to accept an approver's evidence unless it is corroborated. It is a misdirection not to do so. **12 M. 196=2 Weir 519.**

(58)—*Trial by jury—Evidence of accomplice—Direction—Practice.*—In a trial by jury, it is not sufficient for the Judge to tell the jury that it is unusual to convict on the evidence of an accomplice without corroboration in material points. He should impress on them that it is opposed to prudence and practice to convict on such evidence. Yet, his omission to do so would not amount to an error in law. **6 B.H.C. Cr. 57.** [*R.*, 14 B. 331].

(59)—*Trial by jury—Misdirection—Charge of culpable homicide against three accused—Omission to deal with intention, common and individual—Omission to deal separately with the case of accused setting up distinct defence—Failure of justice.*—Where, in a charge of culpable homicide not amounting to murder, the Judicial Commissioner directed the jury, in his charge to them, in these terms, *viz.*, " If you hold it proved that the three accused all set

Charge to Jury—continued.

——**2.**—**(Misdirection)**—*continued.*

upon with the intention of beating him, and that one of them struck the fatal blow, you will be justified in finding them all guilty of culpable homicide not amounting to murder, even if there is no evidence to show which of the three struck the blow" and also read and explained s. 34, I.P.C., *held*, (1) that the Judge misdirected the jury in stating that any one of the accused might be found guilty of culpable homicide, even though his individual intention and the common intention were merely to beat, and that the misdirection had in fact occasioned a failure of justice, and (2) that, as one of the accused denied his presence at the scene of the assault, and as there was positive evidence to support his statement, the Judge's omission to deal with his case separately in his summing up constituted a misdirection which, in fact, had occasioned a failure of justice. **3 S.L.R. 125.**

(60)—*Charge to jury—Misdirection—Proof of previous conviction against accused—Judge charging jury that they were proved—Effect of misdirection on sentence and verdict.*—Where, in a sessions case, the Judge told the jury that certain alleged prior convictions against the accused were proved, instead of leaving to them to decide whether they were proved or not : *held*, (1) that it amounted to a misdirection, (2) that the misdirection did not affect the conviction of the accused, as the question of prior convictions can be gone into only after the jury return their verdict, and (3) that, though it affected the question of sentence, the Court was not prepared to interfere, seeing that the sentences passed were not too severe. **2 Ind. Cas. 434.**

(61)—*Kidnapping—Charge to jury.*—It is no misdirection for the Judge, in a case of kidnapping, to leave the jury to decide upon the age of the girl kidnapped, merely aiding them with his own opinion in which they expressed their concurrence. **7 W.R. Cr. 22.**

(62)—*Penal Code, ss. 361, Expl., and 363—Kidnapping minor married girl from father's keeping—"Lawful guardianship"—Misdirection to jury—Failure to place evidence fairly before jury—Retrial, order for—Sentence suffered under conviction set aside.*—Where an accused was charged with having kidnapped a married Hindu girl under 16 years of age by taking her out of the keeping of her father, the father being alleged in the circumstances of the case to be the lawful guardian, what the Judge should have left to the jury was whether or not the father had been lawfuly entrusted with the care or custody of the girl. The Judge had charged the jury as follows :—"Now the lawful guardian of a married woman is no doubt her husband. But there is the evidence before you that she came with the consent of the husband into the house of her father, if you believe such evidence. Therefore, the father of the girl was her *de facto* lawful guardian for the time the girl was residing in her father's house." *Held*, that, in matters of this kind, a Judge should adhere to the words

Charge to Jury—continued.

——**2.**—**(Misdirection)**—*continued.*

of the particular section of the Penal Code, with which he has to deal and not substitute phraseology of his own. As it further appeared that, upon the point of the husband's consent, the Judge had failed to place before the jury a fair and proper statement of the evidence on the record, the conviction was set aside and a further trial ordered. *Per Jenkins, C.J.*—"I have no doubt, should the accused be again convicted, the Court, in estimating what would be the proper sentence, will have regard to the detention already suffered by him." **13 C.W.N. 754.**

(63)—*Misdirection—Statements of witnesses—Crim. Pro. Code (Act V of 1898), s. 164—Propriety—Judge's opinion on evidence.*—In a trial by jury, the Judge ought to tell the jury that the evidence of witnesses taken under s. 164 of the Crim. Pro. Code must be accepted with a great deal of caution. He ought to point out that it is not always proper for the police officer to get such statements recorded for the purpose of pinning the witnesses down to some statement, especially at a time when they are not entirely free from police influence. It is a misdirection for the Judge to say that he sees no reasons to disbelieve a particular witness. He ought to leave the question of believing or disbelieving to the jury. In placing a suggestion made by the Crown Prosecutor without any evidence to support it before the jury, the Judge ought to point out that there is no evidence to support the suggestion. **7 C.L.J. 246 = 7 Cr. L.J. 315.**

(64)—*Misdirection—Material ingredient of offence not stated—Judge's opinion on facts—Jury sole Judges of fact—First information report.*—A Sessions Judge, in charging the jury in a case of culpable homicide not amounting to murder, omitted to tell them that they must come to a conclusion as to whether, in causing the death of the deceased, the accused had the intention to cause death, or such injury as was likely to cause death, or the knowledge that he was likely to cause death. *Held*, such omission was a clear misdirection. The Judge, in giving his opinion on the facts must tell the jury that his opinion is not binding on them and that they are the sole Judges of fact. If the first information Report is properly made evidence, it must be read out to the jury as a whole and if not, the Judge should abstain from all reference to it. He must not comment on it without placing it before the jury. **7 C.L.J. 599 = 12 C.W.N. 774 = 35 C. 531 = 8 Cr. L.J. 6.**

(65)—*Charge to jury—Previous proceedings, reference to—Misdirection.*—A Judge should not, in charging the jury, refer to a previous case against some other persons tried for the same offence, except to warn the jury that they were not to be influenced in any way by the result of such previous trial. It is a misdirection for him to tell the jury that the High Court had come to a certain finding in the previous case, and they were to consider if they had any reason for coming to a different conclusion. **9 C.L.J. 380.**

Charge to Jury—continued.

——**2.—(Misdirection)**—*continued.*

(66)—*Duty of a Judge who thinks that the prosecution should have called a certain witness for examination—Sessions Judge charging police officer making search with breach of police rules.*—Where a Sessions Judge had, after the examination of a Head Constable, considered that the evidence of the Inspector of Police was necessary, *held*, that he should have intimated his opinion to the Public Prosecutor, and given an opportunity of calling him. But he should not remark upon his absence as a witness in charging the jury. Where a Sessions Judge in his charge to the jury charged a Head Constable, one of the prosecution witnesses, with a breach of the Police regulations in that. in conducting a search, he had a loose shirt on, without examining the Head Constable about it, *held*, that the Sessions Judge had misdirected the jury. **21 M. 83=2 Weir 503.**

(67)—*Crim. Pro. Code, ss. 379, 408—Accused aged above seven and below twelve—Question of fact—Trial by jury.*—The question whether an accused above the age of seven years and below twelve has sufficient maturity of understanding to judge of the nature and consequences of his act, is one of fact and to be determined by the jury. The omission by the Sessions Judge to refer this question to the jury is a ground for setting aside the conviction and ordering a new trial. **Rat. Un. Cr. C. 27=Cr. Rg. 25—11—1869.**

(68)— *Complaint by accused in previous trial —Admissibility without proof of presentation of it by him.*—Where, in a sessions trial for an offence under s. 193, Penal Code, for presenting a false petition of complaint, the petition alleged to be false was admitted on the strength of an order on its back in the handwriting of the Deputy Magistrate who tried the accused's complaint, without any further proof of the presentation of the complaint by the accused, *held*, that the document was not properly admitted, and that the Judge misdirected the jury in asking them to consider the document. **26 C. 49** [*D.*, P.L.R. 1900, 63, 3 L.B.R. 208].

(69)—*Crim. Pro. Code (1898), s. 297—Sessions Judge—Charge to Jury—Misdirection —Penal Code, ss. 148, 149, 300 and 302—Unlawful assembly—Riot—Murder—Common object of the assembly.*—The accused, ten in number, were tried for offences punishable under ss. 148 and 302 of the Indian Penal Code. In his charge to the jury. the Sessions Judge did not place before the jury the special circumstances, which, in his view, would have brought the offence within the definition of murder contained in s. 300 of the Indian Penal Code. It was not put to the jury in the charge, whether any of the intentions mentioned in the section were established as against any of the accused, and the exceptions 1, 2 and 4, were not explicitly explained to the jury. The Sessions Judge directed the jury to find that, if

Charge to Jury—continued.

——**2.—(Misdirection)**—*continued.*

the offence of rioting were established. all the accused were guilty of murder. *Held*. that this was a misdirection in the charge to the jury. Before any one of the accused could, as a member of an unlawful assembly, be held guilty of a murder, alleged to have been committed by any other member or members of that assembly, it is essential, in the first place, that the act or acts alleged to have constituted the murder should be proved to have been done with an intention, such as is specified in s. 300, and that none of the exceptions contained in that section should be applicable to the case. If any member of an lawful assembly causes death with the intention specified in s. 300, it does not necessarily follow that every member of that assembly will, under s. 149, be guilty of murder. The one essential point, which must be established before s. 149 applies, is that the act must be an act committed in the prosecution of the common object of the unlawful assembly, or must be such as the members knew to be likely to be committed in prosecution of that object. **9 Bom. L.R. 153=5 Cr. L.J. 168.**

(70)—*Penal Code, s. 401—Offence of belonging to a gang of thieves.*—In order to constitute an offence under s. 401, I.P.C., it is necessary. first, to prove association, secondly, that the association was for the purpose of habitually committing theft, and thirdly, to prove the habit by an aggregate of similar acts. This must be stated by the Judge clearly to the jury. **1 Weir 452=6 M.H.C. 120.** (27 C. 139=4 C.W.N. 97, *R.*). [*F.*, 1 Weir 452; *R.*, Rat. Un. Cr. C. 509, 27 C. 139].

(71)—*Crim. Pro. Code (1898), ss. 298, 299 and 537—Retrial of a case owing to misdirection—powers of High Court.*—It is for the jury, and not for the Judge, to say what fact has or has not been proved. The judge should call the attention of the jury to the evidence, and having done so, should leave to them to form their own conclusion. *Held*, that the Judge, in stating to the jury that, under s. 103 of the Evidence Act, the *onus* may be said to be on the accused to show that the deed, in respect of which he was charged with forgery, was genuine, took an erroneous view of the law and misdirected the jury and that s. 537, Crim. Pro. Code, would not apply to such a misdirection. It is doubtful whether the High Court has the power to try a case the conviction in which it has set aside on the ground of misdirection. The accused is entitled, in such a case, to have the case re-tried before a jury, and, as a matter of procedure and in justice to the accused, this course should be adopted. **4 C.W.N. 576.**

(72)—*Crim. Pro. Code (1882), ss. 289, 297 and 423 (d)—Omission to call upon the accused to enter upon his defence—Omission to charge the jury—Appellate Court's power to interfere with verdict of jury.*—Where, in a sessions case, the accused was not called upon to enter upon

Charge to Jury—continued.

——**2.—(Misdirection)**—*continued.*

his defence after the Public Prosecutor's address as provided by the last paragraph of s. 289 and the Judge did not charge the jury as provided by s. 297, *held*, that it was, in effect, a misdirection and that s. 423 (*d*) would not preclude the appellate Court from interfering with the verdict of the jury. **23 C. 252.**

(73)—*Charge to jury—Defective charge—Misdirection—Murder case.*—In a murder case, the Sessions Judge charged the jury thus:—

"*S. 302—The murder of Mahar Mullya—Murder defined—Punishment.*—The only question here in view of the statements made by the prisoners is, did the prisoners, any or all of them, inflict these injuries on the deceased? If they did, they are guilty of murder." *Held* that this was a very defective charge. The Judge should have left it to the jury to find whether the offence was one of murder or of culpable homicide not amounting to murder or any lesser offence after pointing out to them the legal definition of each offence. Moreover, the infliction of injuries would not necessarily make the offence of all the accused the same. The jury should have been asked to find as to the intention of the accused persons and their attention should have been drawn to the provisions of ss. 34, 35, 37 and 38, Penal Code, and they should have been told to return a verdict as to the exact guilt of each of the accused persons. **1 Bom. L.R. 784.**

(74)—*Penal Code, s. 304.*—In his charge to the jury, the Judge should draw a distinction between the two classes of culpable homicide mentioned in s. 304 of the Penal Code, and direct them to find specially under which, if either, the prisoner was guilty. **6 B.L.R. Ap. 86=15 W.R. Cr. 17**; 6 B.L.R. Ap. 87, note=12 W.R. Cr. 35.

(75)—*Murder and culpable homicide not amounting to murder—Distinction between.*—In a trial for murder, the Judge should point out to the jury accurately the difference between murder and culpable homicide not amounting to murder. **9 W.R. Cr. 51.**

(76)—*Crim. Pro. Code (1882), ss. 238, 303, 307—Charge of murder—Power of jury to find verdict of guilty of culpable homicide not amounting to murder.*—In a charge of murder, the jury in the first instance returned a verdict of murder under grave and sudden provocation. But the Judge, instead of questioning them under s. 303, Crim. Pro. Code, as to the degree of intensity of the provocation, informed the jury that he could not accept a qualified verdict, and required them to find the prisoner either guilty or not guilty of murder, telling them that if the grave and sudden provocation was of the kind which the law allowed, to acquit the prisoner. The jury returned the second time a verdict of not guilty on the charge of murder. The Sessions Judge referred the case to the High Court under s. 307, Crim. Pro. Code. *Held*, that the Judge had in the second

Charge to Jury—continued.

——**2.—(Misdirection)**—*continued.*

instance misdirected the jury, as under s. 238, Crim. Pro. Code, it was open to the jury on a charge of murder to bring in a verdict stating the circumstances which might reduce the murder to culpable homicide not amounting to murder. **20 B. 215.**

(77)—*Culpable homicide—Provocation—Form of charge to jury—See* **9 W.R. Cr. 72.**

(78)—*Penal Code, s. 411—Retaining stolen property—Charge to jury.*—In a case of retaining stolen property, it amounts to a misdirection to direct the jury that it is only necessary for them to decide whether the property was stolen and whether it was retained by the accused. The Judge should put up all the evidence in the case and direct the jury that, before they can find the accused guilty of an offence under s. 411, I.P.C., it is necessary for them to find in the affirmative (1) that the property was stolen, (2) that it was dishonestly retained, and (3) that the accused knew or had reason to believe the same to be stolen property. **15 B. 369.** [*F.*, 25 C. 711, 10 Bom. L.R. 565].

(79)—Alibi, *proof of—Erroneous direction as to admissibility of document.*—Upon a plea of *alibi* by the prisoners that they had left Patna on the 12th April, 1869, and reached Port Canning on the 20th of the same month and were now at Patna on the 30th May, the prosecutor adduced in evidence a written statement engrossed on two pieces of stamp paper, one bearing the endorsement of a stamp-vendor as sold on the 13th, and the other on the 18th April, filed on the 20th April, and alleged to bear the verification of the prisoners. No evidence was adduced to prove that the prisoners had signed it. The Judge drew the attention of the jurors to this document, and adverted to it in these terms: "If the written statement was drawn up on an earlier date than the date it bears, it could not have been prepared earlier than the day on which the principal stamp was bought,—*i.e.*, 18th." *Held* that the document should not have been received in evidence, and that there was a misdirection which contributed materially towards the jury finding the prisoner guilty. **3 B.L.R. A. Cr. 43.**

(80)—*Private defence, Right of.*—It is no misdirection for the Judge not to call the attention of the jury to cls. (1) and (2) of s. 100, Penal Code, when he called their particular attention to cl. (6) of the same section. **17 W.R. Cr. 45.**

(81)—*Unsoundness of mind—Misdirection—Crim. Pro. Code (1872), s. 425.*—In this case, the Sessions Judge, in his charge to the jury, told them that, in his judgment, the accused was, at the time of his trial, exhibiting symptoms of unsoundness of mind, and he directed them to find whether the accused was insane at the time he committed the offence. *Held* that the issue as to whether the accused was of unsound mind at the time of the trial

Charge to Jury —concluded.

——2.—**(Misdirection)** —*concluded.*

and incapable of properly making his defence was a preliminary issue to that put by the Sessions Judge, and should, under s. 425 of the Code of Criminal Procedure, have been first submitted to the jury. **19 W.R. Cr. 26.**

(82)—*Question of fact—Proof of previous conviction.*—The question of the proof of a previous conviction is one of fact which ought to go to the jury. **21 W.R. Cr. 40.**

(83)—*Special cases—Questions of law and fact—Competency of child to give evidence—Evidence Act, II of 1855, s. 14.*—The question whether or not a child was competent to give evidence within the meaning of s. 14, Act II of 1855, is one for the Judge to decide, and not for the jury. The amount of credit to be given to the statement is all that falls within the province of the jury. The error, however, in leaving the first question to the jury was held to be no misdirection. **8 W.R. Cr. 60.**

(84)—*Special cases—Recommendation to mercy.*—It is not proper for a Judge to introduce into his direction to the jury any question as to recommending a prisoner to mercy. He should leave that solely to the jury. **14 W.R. Cr. 46.**

See ABANDONMENT OF CHILDREN, 1 W.R. Cr. Letters, 10.

See APPEAL—APPEAL TO PRIVY COUNCIL, 15 A. 310, P.C., 22 B. 528, P.C., 14 Bur.L.R. 148, P.C.

See CONVICTION, 34 C. 325=5 Cr. L.J. 424.

See CRIM. PRO.CODE (1898), ss. 288, 423(2), 2 Weir 509.

See CRIM. PRO. CODE (1898), s. 297, 1 M.L.T. 350=4 Cr.L.J. 502, 11 Cr.L.J. 15=4 Ind. Cas. 608=3 S.L.R Cr. 125, 11 Cr.L.J. 13=4 Ind. Cas. 597=3 S.L.R. 102, 1 M.L.T. 399.

See CRIM. PRO. CODE (1898), ss. 299 (*a*), 302, 303, 439, 537 (*d*), 3 L.B.R. 75=3 Cr.L.J. 1.

See CRIM. PRO. CODE (1898), s. 423, 2 Weir 488.

See CRIM. PRO. CODE (1898), s. 423 (2), 2 Weir 47=2 Weir 515.

See DACOITY, 1 Weir 446.

See EVIDENCE ACT, ss. 25, 167, 11 C.L.J. 301.

See PENAL CODE, s. 361, 11 Cr. L.J. 9=4 Ind. Cas. 543=13 C.W.N. 754.

See PENAL CODE, s. 475, 15 B. 189.

See VERDICT OF JURY, 10 Bom. L.R. 565=8 Cr. L.J. 85, 14 M. 36=2 Weir 390.

Cheating.

1.—GENERAL.

2.—FALSE PERSONATION.

See PENAL CODE, ss. 415—420.

Cheating—continued.

——1.—**(General).**

(1)—*Penal Code, s. 415—Cheating, what constitutes.*—To constitute the offence of cheating, it is, from the wording of the section, enough to allege that the property obtained was in the possession of the person defrauded, and that it is not necessary to allege that such property belonged to him. **1 Weir 471=1 M.H.C. 31=1 Ind. Jur. O.S. 94.** [*R.*, 1 M.H.C. 38].

(2)—The offence of cheating, as defined in s. 415, I.P.C., requires that the person made to deliver property, etc., or to do or omit to do anything, which causes or is likely to cause him danger in body, mind, reputation or property, and which he would not have otherwise done, should be the person who has been deceived. The offence is not committed if a third party, on whom no deception has been practised, sustains pecuniary loss in consequence of the accused's act. **25 P.R. 1904 Cr.=10 P.L.R. 1905.** (14 P.R. 1880 Cr., A.W.N. 1903, 234, 17 C. 606, *R.*).

(3)—The word "intentionally" in the second branch of the definition of cheating in s. 415, Penal Code, only applies to the act or omission which the person deceived is induced to do or omit to do, and it is not necessary, in order to sustain a charge under that branch of the definition, that the accused person should also have intended to cause harm or damage as the result of such act or omission. **36 P.R. 1888 Cr.**

(4)—*Penal Code, s. 415—Scope of the section.*—The words "fraudulently" and "dishonestly" do not govern the whole of the definition of cheating in s. 415. In the second part of the section, the words "fraudulently" and "dishonestly" do not apply. **20 P.R. 1889 Cr.**

(5)—*Penal Code, s. 415—Cheating—Elements of the offence.*—In a case where a person is charged with cheating, in having represented to the complainant that he would pay the amount of a decree, and thereby induced the complainant to make the payment, *held*, that, in order to constitute the offence of cheating, it should be proved that the accused made the representation falsely, fraudulently and dishonestly, that is to say, having at the time no intention to apply the money to the satisfaction of the decree, but to misappropriate it. The proof that there was a subsequent default was some evidence of the existence of a dishonest intention at the time the money was obtained, which may be rebutted by the accused. **1 Weir 476.**

(6)—Illustrations (*f*) and (*g*) of s. 415 leave no doubt that an intention as to the future, expressed falsely or dishonestly, for the purpose of deceiving a person, would amount to deception as a constituent element of the offence of cheating. But it would be most dangerous to the liberties of the people to lay down the rule that a mere non-fulfilment of a promise constitutes, even *prima facie* evidence

Cheating—continued.

——**1.—(General)**—*continued.*

of a fraudulent intention at the time when the promise was made; for, if it were so, every breach of contract might become the subject of a criminal prosecution. In order to justify a conviction for the offence of cheating, there must be some evidence of an intention to cheat at the time when the promise, the omission to perform which completes the offence of cheating, is made. **A.W.N. 1886, 262.**

(7)—*Penal Code, ss. 417, 420—Cheating.*—The complainant purchased a lottery ticket which, at the final result, carried a price of Rs. 598. The accused took away the ticket from the complainant representing that it carried a price of Rs. 10 or Rs. 20 which he offered to pay. The complainant declined to receive the money and demanded back the ticket. The accused failed to do so. The complainant, thereupon, brought against the accused a charge of cheating. The Magistrate discharged the accused saying that, as the ticket was not a valuable security, the maxim *de minimus non curat lex* applied. *Held* that the reason given by the Magistrate for not issuing process was bad in law since, if the allegations of the complainant were established, the accused, by deceiving the complainant, fraudulently or dishonestly induced him to do something which he would not have otherwise done and which was likely to cause him the loss of the money to be drawn as the prize won by the ticket in the lottery. **4 Bom. L.R. 76.**

(8)—A person can cheat in various ways other than by inducing the person deceived to deliver any property, or to do any of the acts specified in s. 420, Penal Code. When a person is convicted of cheating by inducing the persons deceived to do any of the acts described in s. 415, but not specified in s. 420, the offence is punishable under s. 417. When the person deceived is induced to do any of the acts specified in s. 420, then, that section must be applied, and the Court is not entitled to charge under s. 417, which relates to a less serious offence. **1 L.B.R. 266.**

(9)—*Penal Code, ss. 417, 420—Distinction—Jurisdiction.*—Cheating, unaccompanied by delivery of property, is an offence under s. 417 and can be tried by a second-class Magistrate. When accompanied by delivery of property, the offence is punishable under s. 420, and is triable only by a Sessions Judge or a first-class Magistrate. **Rat. Un. Cr. C. 96=Cr. Rg. 25—9—1875.**

(10)—*Penal Code, ss. 415, 416 and 419—Cheating.*—Where the accused was found to have knowingly represented one J to be B, the mother of a sepoy named K who had been killed, and thereby induced the military authorities to grant a pension to J to which she was not entitled, it was *held* that the accused had committed the offence of cheating, punishable under s. 419 of the Indian Penal Code. **A.W.N. 1907, 291=3 M.L.T. 61=6 Cr. L.J. 426.**

Cheating—continued.

——**1.—(General)**—*continued.*

(11)—*Depriving one of property is not.*—Depriving one of property is not necessarily cheating, but it may be either theft, or extortion, or robbery according to the attendant circumstances. **1 W.R.Cr. Letters, 12.**

(12)—*Hiring certain property—Part-payment of hire—Promise to pay balance—Intention to attach the property—Cheating.*—Where the accused hired certain property from the complainant for use at a wedding, and advanced a portion of the hire, promising in writing to pay the balance and to restore the goods when the wedding was over, being fully aware that there was to be no wedding, and intending, when he got the property, to apply for its attachment before judgment as belonging to another person against whom he had brought a suit, *held* that the accused was guilty of cheating. **3 N.W.P. 16.**

(13)—*Receipt of Government promissory note—Promise to redeem certain jewels—Retaining for another debt—Cheating.*—Where the accused received a Government promissory note promising that he would redeem certain jewellery, but not intending to do so, and subsequently claimed to retain it for another debt alleged to be due to him by the sender, *held* that the accused was guilty of cheating under s. 415, I.P.C. **3 N.W.P. 17.** [*R.*, 2 C.L.J. 524=3 Cr. L.J. 160, 32 C. 941=9 C.W.N. 1006].

(14)—*Penal Code, ss. 269, 417, 420—Communicating syphilis by sexual intercourse.*—The accused, a prostitute, was charged under s. 269, I.P.C., with communicating syphilis to a person who had sexual intercourse with her. *Held*, that she was not punishable under the section, as, even assuming that there was a dangerous disease and culpable negligence, still the accused's act of sexual intercourse would not spread infection without the intervention of the complaining party, himself a responsible person and himself generally an accomplice. *Held*, also, that, if there was an offence in the case, it was one of cheating punishable under s. 417, or s. 420, if there was evidence that the intercourse was induced by misrepresentation on the part of the diseased person. **11 B. 59.**

(15)—*Penal Code, s. 417—Selling opium at rates higher than those fixed by Government.*—A licensed opium vendor commits the offence of cheating, if he sells opium at rates higher than those fixed by the Government. **4 Bom. L.R. 823.**

(16)—*Penal Code, ss. 265, 415, 417—Selling liquor by fraudulent measure.*—The accused who sold liquor, measuring it with a glass which was not a prescribed measure, and of which they fraudulently misrepresented the capacity, were convicted of the offence of fraudulent use of a false measure under s. 265, I.P.C. *Held*, that they would more appropriately have been tried for the offence of cheating. **Rat. Un. Cr. C. 386=Cr. Rg. 36 of 1888.**

Cheating—continued.

——**1.—(General)**—*continued.*

(17) – *Penal Code, s. 415—Inducing a* Karkun *to deliver a warrant of attachment.*—Where a person induces a *Karkun* under a false representation to deliver a warrant of attachment to him, and makes on it an endorsement to his own advantage, and it appears that, but for such false representation, the *Karkun* would not have parted with the warrant, the person commits the offence of cheating punishable under s. 415. **6 Bom. L.R. 375.**

(18)—*Want of dishonest intention—Penal Code, s. 415—Inducing son to pay father's debts.*—To induce a son to pay his father's debts, by acting merely on his fear of consequences to his father, is not cheating. **W.R. 1864 Cr. 25.**

(19)—*Taking money one day, and dishonestly running away without paying.*—The mere taking of money one day, and dishonestly running away without paying the next day, is not necessarily cheating. There must be an intention to deceive and defraud at the time of taking the money. **5 W.R. Cr. 5=1 Ind. Jur. N.S. 97.**

(20)—*Proof necessary for offence of cheating—Contractor receiving money for work not finished.*—A contractor in the Public Works Department, who was charged with cheating in respect of a sum of money which he received on account for work which he had not then finished, was acquitted on the ground that there was no proof (1) that there was a false pretence made use of by the accused, (2) that he knew he was making use of a false pretence or that he intended to defraud, (3) that the Public Works Department were deceived by the pretence as they believed in its truth, and (4) that the accused received the money with the intention of causing wrongful loss to the Government. **23 W.R.Cr. 43.**

(21)—*Wrongful gain or loss— Penal Code, s. 415 and ss. 23 and 24—Selling rice at higher rate than that agreed upon.*—A person, who purchased rice from a famine relief officer at a certain rate (16 seers to the rupee) on condition that he should sell it at a seer less for the rupee, would not be guilty of cheating if he did not sell it at the rate agreed on, but at 12 seers as, in such a case, there would be no wrongful gain or wrongful loss to any one. **22 W.R. Cr. 82.**

(22)—*Penal Code, s. 415—Cheating—Purchase of waste paper by Government servant under assumed name.*—In the office of the Accountant-General it was the practice from time to time to put up quantities of waste paper to public auction. One Kutab Ali, who was a *daftari* in the office, purchased at one of these auctions a quantity of waste paper, bidding for it under an assumed name. *Held* that, in the absence of any rules forbidding employés in the office from bidding at such sales, it was doubtful whether the accused had been guilty of the offence of cheating. **A.W.N. 1902, 151** [*F.*, A.W.N. 1903, 231]. *See, also,* A.W.N., 1903, 231.

Cheating—continued.

——**1.—(General)**—*continued.*

(23)—*Penal Code, s. 415—Selling adulterated milk as pure milk.*—The selling of milk and water in about equal proportions as pure milk will support a finding of cheating under s. 415 of the I.P.C. **Rat. Un. Cr. C. 145.**

(24)—*Penal Code, s. 417—Cheating—Including an article not supplied in a bill.*—The mere fact that there had been a wrong entry in a bill would not of itself constitute the offence of cheating. To constitute that offence, it must be shown that the accused, by deceiving the complainant, fraudulently or dishonestly induced him to deliver property or intentionally induced him to do or omit to do something which he would not have done or omitted, if he had not been so deceived, such an act or omission causing or being likely to cause damages to him in his property. **5 C.W.N. 255.**

(25)—*Penal Code, s. 420—Cheating—Purchase of goods—Non-payment of price—Evidence of similar previous non-payment to other firms.*—The accused purchased some wool with delivery of possession from a firm, agreeing to pay the price on the next day. Default was made in the payment of the purchase money at the stipulated time, and the accused pledged the wool to another and raised money thereon. In these circumstances, the accused was convicted of cheating and thereby dishonestly inducing delivery of property, under s. 420, Indian Penal Code. The Magistrate admitted in evidence the statements of two persons from whom the accused had purchased wool in similar circumstances, and who had not been paid yet, their wool also having been pledged by the accused to another :—*Held*, (1) that the evidence of these persons must be excluded from consideration on the principles of *Reg.* v. *Parbhudas* (11 B.H.C. 90), because their evidence related to transactions, the character of which was itself in question, and to accept their statements as proving cases of cheating against the accused would be to find him guilty in those instances without a trial ; (2) that a fraudulent purpose could not, under the circumstances, be safely inferred from the accused not paying, or from his inability to pay for the wool on the next day as agreed ; (3) that to sustain a conviction of cheating under s. 420, I.P.C., there must be evidence to prove that, when the accused bought the wool, he did not intend to pay for the same. **Rat. Un. Cr. C. 312=Cr. Rg. 66 of 1886.**

(26)—*Penal Code, ss. 465, 417, 511—An entry by debtor in creditor's book.*—Where a debtor, who owed some money to the complainant, was asked by the latter to see the account book, and the accused finding that he owed a certain sum to the complainant, and being asked by him to make an entry to that effect in the account book, made an entry in a language unknown to the complainant to the effect that he had paid the complainant that amount on a certain date, *held*, that the accused was not guilty of forgery, as the entry was not a document made

Cheating—continued.

——1.—(General)—*continued.*

by the prisoner with the intention denoted by the first clause of s. 464, or caused by him to be signed or executed within the meaning of the third clause of that section; but that the accused was guilty of an attempt to cheat. **12 M. 114=1 Weir 539.** [*F.*, Rat. Un. Cr. C. 595].

(27)—*Penal Code, ss. 415, 419 and 463—Admission to University examinations on false personation and signing answer papers in another's name.*—Where a person, by falsely representing himself to be a different person at a University Examination, got a hall ticket under that name and wrote answer papers to questions and signed them with the name of that person, *held*, that the accused was guilty under s. 419 of cheating by personation and of forgery under s. 416, Penal Code. **12 M. 151=1 Weir 480.** [*F.*, 15 A. 210=13 A.W.N. 96; *Applied*, 1 Weir 538-A=28 M. 90; *R.*, Rat. Un. Cr. C. 627, 32 P.L.R. 1907=1 P.R. 1907].

(28)—*Penal Code, ss. 415 and 463—Forwarding false certificate of character and past employment along with application for employment—Offence committed, cheating or forgery.*—Where a person, a fireman, sent an application for employment to the Locomotive Superintendent of the Burma Railways, and forwarded along with his application a false certificate, as if given by the North-Western Railway authorities, to the effect that he was employed as a driver on the North-Western Railway and was of good character, *held*, he was guilty of an attempt to cheat, and not of forgery. **1 P.R. 1907 Cr.=32 P.L.R. 1907.**

(29)—*Penal Code, s. 417—Cheating—Inducing a person to part with valuable security by false representation.*—Where a person obtains delivery of a deed, or other valuable security, after making a promise, which he, at the time, does not intend to keep, he is guilty of cheating, inasmuch as his intention in inducing the other person to part with the deed is fraudulent. **1 Weir 478.**

(30)—*Penal Code, s. 417—Application to a Tahsildar for land free of tax—Misrepresentation.*—Where a person applied to a Tahsildar for certain acres of land on *cowle* tenures free of tax for five years, having falsely represented that the lands applied for were waste lands, *held*, that the accused was guilty of cheating as the Tahsildar was deceived by the accused's misrepresentation and forwarded his application to his superior. **1 Weir 477=5 M.H.C. App. 12.**

(31)—*Person sending luggage through a passenger to evade payment of luggage fare.*—Every passenger is entitled to the conveyance of a certain quantity of luggage, whether it belongs to him or to another who has made over his luggage to him in order to evade payment of charge for over-weight. In the absence of a rule providing for the conveyance of the passengers' personal property only, the servant of a Railway Company is not competent to enquire into the over-weight of luggage which passengers take with them when travelling. To such a case, s. 417 does not apply. **25 P.R. 1903 Cr.**

(32)—*Penal Code, s. 417—Cheating—Fraud or dishonesty.*—Where a person was convicted of cheating, under s. 417 of the Penal Code, in that he induced his master's brother to go to another village, by falsely representing to him that his master was ill at that village, *held*, that the conviction was wrong, since the accused had not acted fraudulently or dishonestly within the meaning of s. 415 of the Code. **Rat. Un. Cr. C. 423.**

(33)—*Penal Code, s. 417—Cheating—Dishonest intention.*—In order to convict a person under s. 417, there must be evidence to show that, at the time at which he induces the complainant to part with his money or to do or omit to do anything, he has an intention of acting fraudulently or dishonestly. **1 Weir 478.**

(34)—*Penal Code, ss. 415, 420—Cheating—Deception and dishonesty.*—The accused was a person authorised to collect subscriptions towards the funds of a charitable society. He produced the society's subscription book before one P, the health officer of a big Municipality, and, falsely representing himself to P to be a servant of the Municipality, obtained a subscription of Rs. 10 from him for the society and duly paid the sum over to the institution. He was, however, subsequently tried and convicted under s. 420 of the I. P. Code for having made this false statement. *Held*, reversing the conviction, the accused was not guilty of cheating, since he practised no dishonest deception causing wrongful loss or wrongful gain, having regard to the fact that considerations other than the false statement might have influenced P to subscribe towards the fund. **33 C. 50=3 Cr. L.J. 244.**

(35)—*Penal Code, Act XLV of 1860, ss. 415, 420—Cheating—Serious nature—Sessions Court.*—Cheating unaccompanied by delivery of property may be punished under s. 415 or s. 420 of the Penal Code, but, if of a serious nature, the case should be sent to the Sessions Court. The trial of such a case by a Magistrate is not, however, an excess of jurisdiction. **Rat. Un. Cr. C. 2.**

(36)—*Penal Code, ss. 415, 417—Cheating, what amounts to—Concealment of prior incumbrance by vendor—Transfer of Property Act, s. 55.*—Where there is a concealment of fact, there is neither fraud nor dishonesty, unless there is a duty imposed by law, as between the accused and the person with whom he is dealing, to make the fact known. Where the vendor of a land omitted to inform the vendee of the existence of a prior mortgage, *held*, that there was no obligation cast on him by s. 55, Tr. P. Act, to disclose to the vendee the existence of the mortgage, inasmuch as

Cheating—continued.

——**1.—(General)**—*continued.*

the mortgage was effected by a registered instrument, and the vendee could, with ordinary care, have ascertained its existence, that the accused was not proved to have said that it was unincumbered on being questioned by the vendee, and that, therefore, the accused was not guilty of cheating. **27 A. 561 = A.W.N. 1905, 98 = 2 A.L.J. 268 = 2 Cr. L.J. 218.** [*Not F.*, 101 P.L.R. 1908 = 3 P.W.R. 1908 = 7 Cr. L.J. 272].

(37)—*Penal Code, ss. 177, 182, 415—False statement as to place of residence for facilitating recruitment to the police.*—A person making a false statement in respect of his place of residence, in order to facilitate his recruitment in a certain district, has not committed the offence contemplated by s. 177 or s. 182, I.P.C., nor has he committed the offence of cheating under s. 415. **6 A. 97.** [*R.*, 13 B. 506, 15 A. 210, 32 P.L.R. 1907 = 1 P.R. 1907 Cr].

(38)—*Penal Code, s. 415—Cheating—Vendor dishonestly concealing fact of encumbrance on property—Crim. Pro. Code (1898), ss. 252, 253 and 439—Discharge of accused without taking evidence for the prosecution.—Held* that, where the accused is summoned and the evidence of the complainant is ready, it is desirable that the Court should not dismiss the complaint without taking all such evidence as may be produced in support of the prosecution. *Held*, also, that, if a vendor at the time of selling his immoveable property, either makes a positive statement that the property is encumbered or dishonestly conceals the facts within his knowledge thinking that if he stated those facts the vendee would not buy, he can be convicted of cheating as defined in s. 415, I.P.C. **3 P.W.R. 1908 Cr. = 101 P.L.R. 1908 = 7 Cr. L.J. 272.**

(39)—*Penal Code, ss. 415, 417—Cheating—Debt really due—Payment made in the expectation of bond securing the debt being returned—Return of another and a false bond—Money paid available for other existing debt—False pretence—False inducement—Fraud and deceit—Damage or loss, remote, if contemplated—Conduct of parties.*—*Per* RAMPINI, J.—When a person makes a false document, a bond, with the object of inducing another person by means of the counterfeit bond to pay him his debt and then by means of a genuine registered bond previously executed by him to sue him for the money, and so recover it from him twice, he is guilty of cheating. In the absence of an express finding that the complainant was induced by the show of the counterfeit bond to part with his money, or any express statement in the complainant's evidence, it is sufficient to constitute the offence, if the conduct of the parties or the other evidence, in the case, makes it clear that the complainant parted with his money on the understanding that the genuine bond would be returned. *Per* WOODROFFE, J.—To constitute the offence of cheating, there must be a deception, which must precede and induce, under the first part of the s. 415 of the Penal Code,

Cheating—continued.

——**1.— (General)**—*continued.*

the delivery or retention of the property or the act or the omission referred to in the second part. But such deception may be by words or by conduct. As to what is sufficient to constitute a deception must be decided in each case on its own facts. When a person owes money to another, he is not bound to pay in respect of any debt other than that he admits and is, in fact, due and only then upon the return of the bond securing that debt, if at the time of tender he asks for it When a person receives money due to him from another, which that other person pays, with the intention not to credit the money to the real debt due but to deceive him into paying money, due on a real debt, and keeps the money under the pretence of crediting it to a debt, which the other person did not owe upon a bond, which he did not execute, the debt for which the payment is made remains unpaid and the person is guilty of cheating. The payment of the money cannot be severed from the other incidents of its having been paid without getting back the bond, and the fact that it has been credited to another and a false debt, and the possibility of a fraudulent claim on the retained bond cannot be considered to be a damage too remote. *Held*, further, on the evidence, the case for the prosecution was untrustworthy and the conviction should be set aside. *Per* MOOKERJEE, J.—In order to bring a case within the first part of s. 415 of the Penal Code, it is essential, in the first place, that the person who delivers the property should have been deceived before he makes the delivery, and, in the second place, that he should have been induced to do so fraudulently or dishonestly. When a person makes a payment in the hope or expectation that, after he has made the payment, the bond would be returned, it is not by itself sufficient to show that he has been deceived by the accused into making the payment. When a debtor pays his just dues, he cannot be said to be, fraudulently or dishonestly, induced to pay within the meaning of ss. 24, 25 of the Penal Code. The payment itself of such just dues cannot be said to cause any wrongful loss to the debtor or wrongful gain to the creditor, and, assuming that the creditor might have sued the debtor upon the bond and sued successfully in spite of the fact that the debt has been discharged, the wrongful loss of the complainant would be the result of enforcing such decree and the fraud of the creditor would consist in obtaining such a decree. The damage or harm referred to in s. 415 of the Penal Code must be the necessary consequence of the act done by reason of the deceit practised or must be necessarily likely to follow therefrom; the possibility of a successful fraudulent litigation is too remote to be in contemplation of the statute. However immoral a deception may be, it does not constitute the offence of cheating, if its object is only to cause a distribution of property, which the law recognises as rightful; there must be an intention to acquire, or retain, wrongful possession of that to which some other person has

Cheating—continued.

——**1.—(General)**—*continued.*

a better claim, and which that other person is entitled to recover by law; in all such cases, the object is wrongful gain attended with wrongful loss. **2 C.L.J. 524=3 Cr. L.J. 160.**

(40)—*Inducing person to enter into contract by false statements of intention.*—Where a person instigates another to enter into a contract by a false statement of his own intention to fulfil its terms, he commits the offence of cheating; but the mere non-fulfilment of the contract is no *prima facie* evidence even of an original intent to defraud. The complainant has the burden of clearly establishing the initial deceit, which is the gist of the offence. **15 C.P.L.R. 97.** (9 B.H.C. 448, *R.*).

(41)—*Penal Code, ss. 415, 420—Cheating—Contract—Breach—Intention to perform when contract entered into, absence of—Dishonest intention—Misrepresentation—Appropriation of money to other than purpose for which advanced.*—The complainant's firm had advanced money to the accused on the understanding that the accused would purchase rice from the outlying *hats* and ship and deliver the same at the firm's place of business, where it would be sold, the profits on the sale going to the accused, and the accused being liable to pay to the complainant's firm the capital advanced with interest, and a commission of one anna per maund of rice sold The accused failed to deliver the rice within the stipulated time and was charged with cheating. The representations, made by the accused to the complainant's firm when getting the advance, were not entirely false, and it appeared that the accused had, to some extent, endeavoured to carry out the terms of the agreement, though he was also found to have converted a small portion of the money to his own use in paying off his own debts. *Held*, that the case was really one of a breach of contract. The mere fact that the accused converted a small portion of the money to his own use was not in itself sufficient to prove that the intention of the accused, when he received the money from the complainant's firm, was dishonest or that he obtained it by fraudulent misrepresentation of facts. The important question to be considered was whether the accused, when he took over the money from the complainant's firm, had any intention of performing the contract. **10 C.W.N. 1005=4 Cr. L.J. 154.**

(42)—*Attempt to cheat.*—The essence of the offence of cheating is a fraudulent or dishonest intention; and the act done towards the commission of the offence, which is requisite to establish the attempt to cheat, must be done with a fraudulent or dishonest intent. **19 C. 380.**

(43)—*Penal Code, ss. 417, 511—Attempt at cheating.*—Where the evidence established the fact that the accused informed an *Octroi* Superintendent that there were 16 maunds of an article in a cart, whereas there were only 6, and by this act he induced the Superintendent

Cheating—continued.

——**1.—(General)**—*continued.*

to grant him a refund of the duty on 16 maunds of the article instead of 6 maunds, and where this was discovered before any money was paid to the accused; *held*, that the accused was guilty of an attempt at cheating under s. 417 read with s. 511, I.P.C. **2 A.L.J. 718=2 Cr. L.J. 788.**

(44)—*Penal Code, s. 420—Attempt to cheat—Preparation.*—Where the accused, an Assistant Station-Master, prepared fictitious consignment notes for articles not in existence and forwarded the same, *held*, that the act was merely one preparatory to the offence of cheating, not done in the attempt to cheat. **Rat. Un. Cr. C. 470.**

(45)—*Penal Code, ss. 417 and 511—Attempt at cheating—False representation to pleader—Damage or harm in mind, reputation—Complainant, position of.*—Where A. falsely representing himself to be a member of the firm of B, which firm were clients of a pleader C, went to the pleader and instructed him to write a letter on behalf of B, cancelling a certain contract, and where A wrote the letter, but instead of despatching it to the addressee, sent it to B's shop where the fraud was discovered: *held*, the despatch of the letter would have caused injury to the pleader in mind and reputation, he would certainly have been likely to lose reputation, and perhaps business, if it appeared that he had been negligent and had been readily deceived. *Held*, therefore, that A was rightly convicted of an attempt at cheating. The prosecutor in all Criminal cases is really the Crown; the complainant merely sets the machinery of the Court in motion. In cases of cheating, it is not necessary that the complainant should have been the person deceived. **7 C.L.J. 375=12 C.W.N. 750=7 Cr. L.J. 342.**

(46)—*Penal Code, ss. 417 and 511—Cheating and attempt to cheat—Power to impose Municipal taxes—S. 39, Act XIII of 1884.*—In this case it was proved that the accused attempted to pass at the Lahore *Octroi* goods described by him as linseed and iron bolts which were really turpentine and tobacco respectively. When charged with attempt to cheat, it was contended on his behalf that the *octroi* on turpentine and tobacco exacted by the Municipality was illegal and that no offence could be committed in evading it. The Magistrate acquitted the accused holding that, without the sanction of the Imperial Government, the *octroi* was illegal. On appeal by the Local Government, the Chief Court set aside the acquittal and convicted the accused of attempt to cheat under ss. 417 and 511, Indian Penal Code, holding that the authority which had the power to sanction the taxes in question was the Local Government of the Punjab, which had sanctioned it. Executive or administrative orders passed by the Governor-General in Council, which may be held to require that the consent of the Supreme Government should be obtained

Cheating--continued.

——1.—(General)—*continued.*

before taxes are imposed under s. 39, Act XIII of 1884, are clearly not orders and rules under the Act. **P.L.R. 1900, 38 Cr.**

(47)—*Penal Code (Act XLV of 1860), s. 417—Cheating—Attempt to defraud Railway Company.*—The accused entrusted some of his luggage at a Railway Station to a Railway passenger who paid his full fare and also for the luggage in excess of what was allowed by the rules. For this he was convicted of attempting to defraud the Railway Company under Bye-law 8 of the Railway Company. *Held*, that the conviction was illegal. **128 P.L.R. 1903.**

(48)—*Penal Code, ss. 116, 232, 241, 420—Counterfeiting Queen's coin—Abetment of cheating.*—Where a person was charged with having parted with a double pice coin, whitened with quick-silver, for the purpose of changing it for copper-coins as a rupee, *held*, that he was not liable to be convicted under s. 241, nor under s. 232, unless, at the time of whitening the coin, he intended thereby to practise deception, or knew it to be likely that deception would thereby be caused. Otherwise, the accused could be convicted of abetting the person to whom the coin was given to cheat the person to whom he was sent with the counterfeit rupee. **9 P.R. 1884 Cr.**

(49)—*Passing off girl for marriage as of another caste.*—To describe a Brahman woman as a Kirari is not cheating by personation, but may be an offence under s. 420, I.P.C. **13 P.R. 1904 Cr.**

See ABETMENT, 4 P.R. 1905 Cr.

See ACT XVIII OF 1879, s. 12, 7 A. 290, F.B.

See ATTEMPT, 6 P.R. 1868 Cr.

See CRIMINAL BREACH OF TRUST, 1 Weir 466.

See CRIMINAL MISAPPROPRIATION, A.W.N. 1905, 9.

See CRIM. PRO. CODE (1898), ss. 179, 222. 235 to 239, 531 and 537, 18 P.W.R. 1908 Cr. =8 Cr. L.J. 75.

See CRIM. PRO. CODE (1898), s. 562, 23 P. W.R. 1908 Cr.

See FORGERY, 15 A. 210, 19 C. 380.

See JOINDER OF CHARGES, 2 C.L.J. 618= 10 C.W.N. 520=3 Cr. L.J. 111.

See PENAL CODE, ss. 75 and 417, 19 P.R. 1889 Cr.

—By furnishing false balance-sheet--*See* PENAL CODE, ss. 109, 415, 418, 16 A. 88.

See PENAL CODE. ss. 230 and 420, A.W.N. 1906, 308=4 Cr. L.J. 453.

See PENAL CODE, ss. 366, 372, 419 and 420, 114 P.L.R. 1904.

Cheating—continued.

——1.—(General)—*concluded.*

—What amounts to—*See* PENAL CODE, ss. 417, 420, 27 A. 302=A.W.N. 1904, 265.

See PENAL CODE, ss. 417, 420, 467 and 468, 13 M. 27=1 Weir 545.

See PENAL CODE, ss. 417, 468, 511, 25 M. 726=1 Weir 481=12 M.L.J. 68.

——2.—(False personation).

(1)—*Penal Code, s. 415—Cheating by false representation.*—The complainant, a salt-merchant, went to buy 34 maunds of salt at Kharagoda and paid Rs. 45 to the accused, a shroff in the Kharagoda Salt Department. The accused asked him for some small change and demanded four annas, on which the complainant tendered a rupee and received only four pies change. *Held* that, on these facts, the conviction for cheating cannot be supported, as there was no evidence to show that the accused wilfully made a false representation, or that he acted fraudulently or dishonestly. **4 Bom. L.R. 442.**

(2)—The accused induced the complainant to deliver to him a bicycle under false representations that he was a commission agent and that the machine was required for an up-country purchaser, but after taking delivery, he negotiated its sale to a customer in Bombay. *Held* that the offence of cheating and dishonestly inducing delivery of property was complete as soon as the bicycle was handed over. **2 Bom. L.R. 621.**

(3) - *Purchasing stamp in the name of another representing himself to be that other.*—Where a person purchased a stamp from a licensed vendor, representing himself to be another, the vendor entering the latter's name in the Register, *held*, that he was not liable to be convicted of cheating. **16 P.R. 1876 Cr.**

(3-*a*)—*Penal Code, ss. 415, 419—Cheating by personation—Purchasing stamp in false name.*—No offence of cheating by personation is committed by purchasing a stamp from a stamp vendor in a false name. **A.W.N. 1884, 87.**

(4)—*Penal Code, ss. 417 and 419—Cheating by personation.*—The accused wished to pass a stolen note and, in order to escape detection, gave his name falsely, when he was asked by the shop-keeper, after he has cashed the note, to give his name. The shop-keeper did not know either of the men, and admitted that the name made no difference. *Held*, that the accused was neither guilty of cheating by personation, nor of cheating. **1 Weir 479.** [*R.*, 2 C.L.J. 524].

(5)—Where a servant purchased a stamped paper for his master and gave his master's name as if it had been his own, *held*, that he could not be convicted of cheating by personation, as he had no fraudulent or dishonest intention. **1 Weir 480.**

Cheating—continued.

——**2.—(False personation)**—*continued.*

(6)—*Penal Code, s. 420—Obtaining money by false representation—Promise to procure a post and to repay if post not procured—Cheating—Tests of criminality.*—The accused falsely represented to the complainant that he would be able to appoint him (the complainant) to a lucrative post on a cash security of Rs. 1,000, of which a third was to be paid in advance when submitting the application for the post. The complainant on the faith of this representation paid some money and made the application. Afterwards the accused told the complainant that, if he (the complainant) did not get the post, he would get a refund of the money. On the accused's failing to keep his promise, the complainant demanded the refund, which the accused promised to make by instalments and actually paid one of the instalments. *Held*, that the accused committed an offence under s. 420, I.P.C., as he obtained the complainant's money by a promise which he knew he could not fulfil, and the fact that, long afterwards, under pressure, the accused paid back a portion of what he had received could in no way affect his criminality. The test of the accused's criminality is not what he did months afterwards, but what was in his mind at the time when, and under what circumstances, he received the money from the complainant, and whether the accused then intended to repay the same. **13 C.W.N. 728=9 C.L.J. 605.**

(7)—*Cheating by personation—Penal Code, ss. 182 and 419.*—Where a person belonging to a certain caste, whose enlistment in the police force was prohibited, representing himself to be a member of another caste, got a Government appointment in the Police Department, *held*, that the accused was not guilty of the offence of cheating by personation, but might be guilty of an offence under s. 182, I.P.C. **14 P.R. 1880 Cr.**

(8)—*Penal Code, ss. 415, 417, 511—Coolie recruiting on false pretences.*—A coolie recruiter induced the complainant to come to the depot promising him domestic service, and entered his name in the books of the depot. He wrote a letter to a coolie contractor in Calcutta offering the complainant as a coolie Subsequently, the accused, while the complainant was in the Railway station to fetch a parcel on his master's orders, bought a Railway ticket for Calcutta and tried to force him into the train, with a view to send him to Calcutta *en route* to Assam as a tea garden coolie. *Held*, that the acts of the accused amounted to an attempt to cheat. **9 C.W.N. 764=2 Cr. L.J. 422.**

(9)—*Penal Code, s. 417—Cheating—Giving false name and address to avoid prosecution.*—Where a person gives a false name and address to a Sanitary Inspector in order to shield himself from prosecution for an offence, he cannot be convicted of cheating. **Rat. Un. Cr. C. 635 =Cr. Rg. 10 of 1893.**

Cheating—continued.

——**2.—(False personation)**—*continued.*

(10)—*Penal Code, s. 415—Inducing another person to withdraw a charge by deceased.*—Where the accused promised to file a *razinama* and to withdraw his charge against the complainant's brother-in-law and others, without any intention of keeping up the promise when he made it, and the complainant was thereupon induced to withdraw his complaint against the accused, *held*, that the act of the complainant, so induced by the accused's deceit, should not be said to be one likely to cause damage or wrong to the complainant in body, mind, or reputation or property, within the meaning of the concluding words of s. 415, Penal Code. **1 Weir 477.**

(11)—*Penal Code, ss. 415 and 417—Cheating—Purchase of more than a particular allotted quantity of opium by giving false name and address—"Fraudulently," meaning of—Misjoinder of eleven charges—Accused pleading guilty and not applying for revision—Revision, whether necessary—Crim. Pro. Code (1898), ss. 233, 234, 439 and 537.*—An accused person, by giving a false name and falsely representing himself to be the resident of a particular place, induced the Resident Excise Officer, at the Government opium shop in that place, to sell him more opium than he would otherwise have done. *Held* (*Irwin, C.J., dissenting*) that, on the facts proved against the accused, his conduct was fraudulent, within the meaning of s. 415, and that he was guilty of cheating, under s. 417, Penal Code. On the question whether the trial of the accused was invalidated by misjoinder, in that eleven different transactions were lumped together in one charge, it was *held*, that there was illegal misjoinder, not curable by s. 537, Crim. Pro. Code, but that the conviction should not be set aside, as the accused had not personally applied for revision, as the accused pleaded guilty, and as no injustice seemed to have resulted. Sir James Stephen's analysis of the term "fraudulently," approved. **4 L.B.R. 315, F.B.=9 Cr. L.J. 15.**

(12)—*Penal Code, ss. 415 and 419—Cheating by false personation*—Kurta *inducing Collector to pay money due to family on false personation of minor members of joint family.*—The *kurta* of a joint Hindu family having applied to the Collector as representing the family, for payment of certain sum standing to their credit in the Treasury, the Collector made an order directing him to produce a power of attorney or to cause the other members to appear and admit his authority to sign on their behalf. The *kurta* and the other adult members of the family appeared before the Collector with two persons, who were falsely represented to be the minor members of the family and a receipt for money was signed by the adult members and the personators signed in the name of the minors. The money was paid over. *Held*, that no offence of cheating by personation had been committed as there was no intent to defraud the Collector. **32 C. 775=9 C.W.N. 807 =2 Cr. L.J. 368=1 C.L.J. 469.** (11 W.R. Cr. 24, *R.*) [*R.*, 2 C.L.J. 524].

Cheating—concluded.

——**2.—(False personation)**—*concluded.*

(13)—*Passing off girl for marriage as of high caste—Penal Code, ss. 373, 415, 416, 419.*—Two girls were bought by the prisoners on speculation, taken to a foreign and distant district, palmed off as women of much higher caste than they really were, and married to two Rajaputs after receiving the usual bonus ; *held* that the prisoners were guilty of cheating and false personation. **7 W.R. Cr. 55.**

(14)—*False representation of daughter of one person as daughter of another—Penal Code, s. 416.*—A person represented a girl to be the daughter of one woman, when she was, within his knowledge, the daughter of another woman, *held* that he was guilty of cheating by personation. **7 W.R. Cr. 51.**

(15)—*Penal Code, s. 416—Misrepresenting caste of the girl.*—The accused represented to the prosecutor that a girl was a Brahmin, and thereby induced him to part with his money in consideration of the marriage of the girl to his brother, when the girl really was of the Sudra caste ; *held* that he was guilty of cheating by false personation. **16 W.R. Cr. 42.**

(16)—*Penal Code, s. 416—Cheating by personation.*—To palm off a young woman as belonging to a caste different from the one to which she really belongs, with the object of obtaining money, amounts to cheating by personation. **A.W.N. 1882, 237.** (7 W.R. Cr. 55, *F.*)

(17)—*Cheating by false personation—Student entitled to concession tickets obtaining a pass on a certificate given to another student—Whether offence committed.*—Four students, who were entitled to travel at a reduced rate, were mentioned in a certificate which was properly signed by the proper authority and endorsed by the Railway Company. The accused, who was not one of the four, was also entitled to travel at the reduced rate, as a student, and there is no rule prohibiting the transfer of a student's ticket. On the presentation, by the accused, of the endorsed certificate containing the names of 4 persons eligible for concession tickets, the Railway Company issued a pass for 4 passenger tickets, and arrested the accused who was convicted. *Held* that the conviction was bad, as it cannot be assumed that the accused intended to use the pass for persons who were not entitled to travel at the reduced rate. **7 M.L.T. 201.**

See ABETMENT, 4 P.R. 1905 Cr.

Chemical Examiner's Report.

(1)—*Inquest report.*—Regulation XII of 1827, s. 52, having been repealed by (Bombay) Act VIII of 1867, an inquest report is not admissible in evidence. **6 B.H.C. Cr. 75.**

(2)—*Admissibility in evidence of.*—A document purporting to be a report under the hand of an "Additional Chemical Examiner" upon a matter or thing submitted to him for analysis and report cannot be received in evidence under s. 510 of Act X of 1882. **10 C. 1026.**

Chemical Examiner's Report—concluded.

(3)—*Whether Report is evidence—Production of original.*—The report of a Chemical Examiner is evidence in a criminal trial, if it bear the signature of the Examiner. The original should be produced. **6 B.L.R. App. 122=15 W.R. Cr. 49.**

(4)—*Crim. Pro. Code (1861), s. 370.*—The Chemical Examiner's report can be read and acted upon as evidence by Magistrates as well as Sessions Judges. **6 M.H.C. App. 11.**

—Report of Chemical Examiner, when admissible in evidence—*See* CRIM. PRO. CODE (1898), s. 510, 2 Weir 661.

Chewing betel.

—while being examined as a witness—*See* PENAL CODE, s. 228, 1 Weir 217.

Chhavi.

—*Chhavi, whether arms.*—The Arms Act has no exhaustive definition of the expression "arms," which, besides including the articles specified in the Act, may apply to other instruments of offence also. Any weapon or instrument possessed or carried for the purpose of offence or defence, but not as an article of domestic or agricultural utility, may be held to fall within the category of arms. A *chhavi*, if used for purposes of offence or defence, may fall within the category of arms. **16 P.R. 1900.**

Chief Constable.

See 1. CONSTABLE.
2. POLICE.

See BOM. ACT IV OF 1887, s. 6, Rat. Un. Cr. C. 825.

Chief Court.

See ACT XV OF 1903, s. 7, 36 P.W.R. 1908 Cr.

See BAIL, 19 P.W.R. 1908 Cr.=15 P.R. 1908 Cr=8 Cr. L.J. 89.

Chief Justice, Powers of.

—*Application to the Chief Justice to appoint another Bench to hear and determine case—Charter Act (24 and 25 Vic , c. 104), s. 14.*—Having appointed a Bench, under s. 14 of the Charter Act, to hear any particular case, the Chief Justice has no power to interfere after the disposal of the case by the Bench. **8 C. 63.** [*R.*, 14 C. 42, F.B.].

See TRANSFER OF CRIMINAL CASES, 8 C. 63.

Child.

See 1. ABANDONMENT OF CHILDREN.
2. CUSTODY OF CHILDREN.
3. MINORS.
4. PENAL CODE, s. 317.

Child—concluded.

(1)—*When fœtus is a child—S. 312, I.P.C.*—A *fœtus* not bigger than a man's finger, but having the shape of a child, is a child within the meaning of s. 318, I.P.C. **5 C.P.L.R. Cr. 21.**

—Duty of giving information as to birth of child—*See* BOM. ACT VI OF 1872, s. 72, Rat. Un. Cr. C. 370.

—Whether children are property—*See* CRIM. PRO. CODE (1898), s. 517, 1 Weir 348.

—Detention of children for purposes of conversion—*See* CRIM. PRO. CODE (1898), s. 552, 16 C. 487.

—Maintenance of unborn child—*See* MAINTENANCE, 3 N.W.P. 70; also, 2 Weir 618, 630.

—Murder of newly born—*See* MURDER, Rat. Un. Cr. C. 401.

—Starvation of infant child—Death caused thereby—*See* MURDER, A.W.N. 1883, 36.

See PENAL CODE, s. 304, A.W.N. 1893, 100.

See PENAL CODE, s. 318, 2 C.P.L.R. 153.

—Receiving stolen property from child thief—*See* STOLEN PROPERTY, 6 M. 373=1 Weir 469.

Child wife.

See PENAL CODE, ss. 304, 325, 328, 375, 18 C. 49.

Chittagong Hill Tracts Act.

See BEN. ACT XXII OF 1860.

Cholera.

—Power to interdict caste feast on the outbreak of cholera—*See* BOM. ACT VI OF 1873, s. 73, 14 B. 180.

Chowkidar.

See POLICE.

(1)—*Crim. Pro. Code (1898), s. 59—Village Chowkidar, whether a police officer—Village Chowkidari Act (Act I of 1892 B.C.), s. 13.*—A village chowkidar cannot be properly regarded as a police officer within the terms of s. 59, Crim. Pro. Code. **27 C. 366=4 C.W.N. 252.**

See ARREST, 27 C. 366=4 C.W.N. 252.

See CONFESSION, 2 C.W.N. 71.

See CRIM. PRO. CODE (1898), s. 56 (1), 10 C.W.N. 287=5 Cr. L.J. 201.

—Whether he is a police officer—*See* EVIDENCE ACT, s. 26, 9 C.W.N. 474=2 Cr. L.J. 255.

See PENAL CODE, s. 228, A.W.N. 1907, 94 =5 Cr. L.J. 277=29 A. 377.

See PENAL CODE, s. 225, 10 C.W.N. 287= 3 Cr. L.J. 201.

Christian Marriage Act.

See ACT XV OF 1872.

Circular Order.

Scope of.—Circular orders should not unduly limit the operation of any of the sections of the Crim. Pro. Code and any order so limiting their operation should be cancelled. **11 W.R. Cr. Cir. 3.**

Circular Order of High Court.

See HIGH COURT CIRCULAR.

Circumstantial Evidence.

See EVIDENCE.

—*Cases depending on,—Incriminating facts, nature of.*—It is a fundamental principle and one of universal application in cases depending on circumstantial evidence, that, in order to justify the inference of guilt, the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. **8 C.W.N. 278.**

City Land Revenue Act.

See BOM. ACT III OF 1876.

City Police Act.

See BOM. ACT IV OF 1902.

City Survey Act.

See BOM. ACT IV OF 1868.

Civil Court.

—Duty of Criminal Court to give effect to final judgment of Civil Court—*See* CRIM. PRO. CODE (1898), s. 476, 12 C.W.N. 1=6 C.L.J. 703.

Civil Courts, Bengal Act.

See BEN. ACT VI OF 1871.

Civil Suit.

—Pending civil suit—Criminal prosecution during such pendency—Stay of Criminal proceedings—*See* HIGH COURT, JURISDICTION OF, 30 M. 226=6 Cr. L.J. 131.

Civil Surgeon.

See PENAL CODE, s. 326, L.B.R. (1872—1892), 292.

Claim.

—Enquiry of—to property attached as belonging to the accused—*See* ATTACHMENT, L.B.R. (1893—1900), 324.

Clerk.

—Appointed by a Sub-Registrar, whether a public servant—*See* PENAL CODE, ss. 21 and 161, 32 C. 664=2 Cr. L.J. 512.

Cloths.

—Order for maintenance—Order for payment of cloths—*See* MAINTENANCE, 2 Weir 627 and 635.

Co-accused.

See 1. ACCOMPLICE.

2. ACCUSED PERSON.

3. APPROVER.

4. CONFESSION.

5. EVIDENCE ACT, ss. 30, 114, 133.

—*Evidence of co-accused pleading guilty, admissibility of.*—On behalf of the prosecution, an application was made that a conditional pardon might be tendered to the second accused. The Judge declined to consider the application, until the second accused had pleaded to the charges preferred against him. The second accused, then, pleaded guilty on some counts of the indictment, and his plea was recorded. The Judge then tendered a pardon to him, which was declared to be illegal, and he was then removed from the dock. *Held*, by the Full Bench, that, independently of the legality of the pardon, his evidence was admissible on the broad ground that, when he gave evidence, he was not in charge of the jury and no issue remained to be tried as between him and the Crown. **10 M.L.J. 147, F.B.**

See ACCUSED PERSON, 4 C.W.N. 560.

See CRIM. PRO. CODE (1898), s. 342, 3 Bom. L.R. 437.

—Evidence of—*See* EVIDENCE, 10 C.L.R. 553.

Coast Lights Act.

See BUR. ACT XIII OF 1867.

Coasting Vessels Act (Bombay).

See BOM. ACT XIX OF 1838.

Cobra.

—Exhibition of a cobra with unextracted fangs in public—*See* CULPABLE HOMICIDE NOT AMOUNTING TO MURDER, 5 C. 351=4 C. L.R. 580.

Cocaine.

See BOM. ACT V OF 1878, ss. 9, 13, 43, 43 (*b*), 8 Bom. L.R. 601, 12 Bom. L.R. 124.

Cock-fighting.

See 1. GAMBLING.

2. GAMING.

—*Spectators—Gambling Act (III of 1867), s. 13.*—Mere spectators at a cock-fighting on a public road are not liable to be punished as aiding and abetting an offence under Act III of 1867 (Gambling), s. 13. **L.B.R. (1872—1892), 163.**

Code of Civil Procedure.

See 1. ACT XXIII OF 1861.

2. ACT X OF 1877.

3. ACT XIV OF 1882.

4. ACT V OF 1908.

Code of Criminal Procedure (Amending Act).

See 1. ACT XV OF 1862.

2. ACT VIII OF 1869.

Coercion.

See PENAL CODE, s. 94, 14 B. 115.

Coffee Stealing Prevention Act.

See MAD. ACT VIII OF 1878.

Cognisable Offence.

(1)—*Cognisable offence—Complaint—Court Fees Act, VII of 1870, s. 18 (16).*—No stamp is necessary to petitions of complaint made to Magistrates of cognisable offences. **Rat. Un. Cr. C. 70.**

(2)—*Information of a cognizable and a non-cognizable offence—Police reporting the case as non-cognizable—Magistrate's acceptance of the report—Magistrate's subsequent order calling for charge-sheet from the Police for the cognizable offence—Illegality.*—Where, on an information having been lodged before the Police, charging the accused with a cognizable and a non-cognizable offence, the Police reports that the charge of the cognizable offence is false, and the Magistrate accepts the Police-report and passes orders accordingly, the Magistrate cannot subsequently order the Police to send up the charge-sheet for the cognizable offence, if there appears nothing in the Police-report or on the materials before the Magistrate to support a charge of such an offence. Where, in such a case, on the order of the Magistrate, the Police sends up a charge-sheet for the cognizable offence, and proceedings are commenced against the accused; *held* that the proceedings so taken are bad and ought to be quashed. **11 C.W.N. 832=6 Cr. L.J. 34.**

(3)—*Power of the police to arrest for a,—discretionary.*—The power of the police to arrest for a cognizable offence is discretionary. **L.B.R. (1893—1900), 390.**

See CRIM. PRO. CODE (1898), s. 154, U.B.R. (1893—1896), Vol. I, 24.

Cognisance of Offence.

(1)—*Crim. Pro. Code (1882), ss. 170, 191 (c)—Cognizance of offence by Magistrate on perusing Police Diary—Jurisdiction to try the offence.*—Where a Magistrate, enquiring into a charge against A, read certain statements in the Police Diary and, after examining some witnesses, issued warrants against B, C, D, and E, he must be deemed to have taken cognizance of the offence against B, C, D, and E, under cl. (*c*) of s. 191. The provisions of the last paragraph of that section applied to the case and they were entitled to ask that the case should be committed to the Court of Sessions. **Rat. Un. Cr. C. 951=Cr. Rg. 2 of 1898.**

(2)—*Crim. Pro. Code (1898), ss. 190 (1) (c) and 191—Application for transfer from file of Magistrate who had taken cognisance of case.*—After the institution of a complaint, the names of some more accused persons, which were not in the original complaint, were added by the

Cognisance of offence—concluded.

Public Prosecutor under instructions from the District Magistrate. The accused did not all appear before the Magistrate. *Held*, that the Magistrate could not act under s. 191, Crim. Pro. Code, for transferring it to some other Magistrate under him and that the application for transfer was premature. *Held*, also, that the case against the newly added accused was taken cognisance of by the District Magistrate under s. 190 (1) (*c*), Crim. Pro. Code, and that s. 191 applied to the case. Neither for the above reason, nor because the District Magistrate entertains a complaint in the face of a standing order in force that all complaints should be presented to the senior Magistrate of the district, nor again because the District Magistrate appoints a Public Prosecutor to conduct the case, can it be held that he has prejudged it, so as to entitle a party to claim its transfer to a Court outside the district. **14 Bur. L.R. 327=9 Cr. L.J. 64.**

See COMMITMENT TO SESSIONS COURT, A.W.N. 1907, 178=6 Cr. L.J. 7=2 S.L.R. 9 Cr.=10 Cr. L.J. 224.

See CRIM. PRO. CODE (1898), ss. 94, 96, 190 (*c*), 537, 12 C.W.N. 1075=8 Cr. L.J. 235.

See CRIM. PRO. CODE (1898), s. 190, 14 Bur. L.R. 250=4 L.B.R. 300.

—Cognizance of case by Magistrate on personal knowledge—*See* CRIM. PRO. CODE (1898), s. 190, 13 A. 345.

See CRIM. PRO. CODE (1898), ss. 190, 191, 351, 5 N.L.R. 113.

See CRIM. PRO. CODE (1898), ss. 190 (1) (*c*) and 191, 12 C.W.N. 438=7 Cr. L.J. 224.

See CRIM. PRO. CODE (1898), ss. 190, 192 and 254, 1 S L.R. 119 Cr.

See CRIM. PRO CODE (1898), s. 198, 11 O.C. 148=7 Cr. L.J. 457.

See MAGISTRATE, JURISDICTION OF, A.W.N. 1907, 93=5 Cr. L.J. 275.

See SANCTION TO PROSECUTE, 10 Bom. L.R. 1053.

Coin.

See 1. COUNTERFEITING COIN.

2. GAMBLING.

(1)—*Shah Jehan's coin.*—A coin of the reign of Shah Jehan is not a coin under s. 230, Penal Code. **A.W.N. 1906, 308=4 A.L.J. 43 =4 Cr. L.J. 453=29 A. 141.**

(2)—*Coin, not an instrument of gaming.*—A coin is not an instrument of gaming within the meaning of s. 11 of the Bombay Gambling Act (III of 1866). **6 B. 19**; 16 B. 283.

(3)—Coins are not instruments of gambling. **2 L.B.R. 60.**

—Coin, if instrument of gaming - *See* BEN. ACT II OF 1867, ss. 1 and 6, 5 C.W.N. 503.

See BOM. ACT III OF 1866, s. 11, Rat. Un. Cr. C. 75.

—Whether instruments of gaming—*See* BOM. ACT I OF 1890, s. 12, 16 B. 283, F.B.

Coin—concluded.

—Whether instruments of gaming—Seizure and forfeiture of—*See* BUR. ACT I OF 1899, ss. 6, 10 (*a*), 15 (2), 3 (*a*), L.B.R. (1893—1900), 547.

—Taking coins from land bought—*See* CRIMINAL MISAPPROPRIATION, Rat. Un. Cr. C. 8.

See PENAL CODE, ss. 230 and 420, A.W.N. 1906, 308=4 Cr. L.J. 453.

—Possession of coining instruments—*See* PENAL CODE, s. 235, 1 Weir 219.

—Delivery to another of coin with the knowledge of its counterfeitness—*See* PENAL CODE, s. 239, 1 Weir 221.

Collection of Debts on Successions Act.

See ACT XXVII OF 1860.

Collector.

(1)—*Collector, if a Court.*—A Collector acting under ss. 69 and 70 of the Bengal Tenancy Act is a "Court" within the meaning of s. 195 of the Code of Criminal Procedure. **17 C. 872.** [*R.*, 24 M. 121=2 Weir 170].

(2)—*Alteration of Register under the Land Registration Act.*—The action of a Collector in altering the register kept under the Land Registration Act for the mutation of names, by striking out the name of the registered owner and substituting that of another, without a proper proceeding or enquiry and without notice to the party whose name is struck out, condemned. **2 C.L.J. 555=10 C.W.N. 82=3 Cr. L.J. 169.**

(3)—*Power of Collector—Officer acting in two capacities — Crim. Pro. Code (1861), s. 168.*—A Collector, who entertains a charge, under s. 168 of the Code of Criminal Procedure, of an offence against any Court or public servant, should not try the case himself as a Magistrate, nor, unless under very exceptional circumstances, give evidence as a witness before himself as a Magistrate. **9 W.R. Cr. 13.**

See ACT XVIII of 1869, 2 A. 806.

See ACT II OF 1886, s. 25, 44 P.R. 1905 Cr. =187 P.L.R. 1905=3 Cr. L.J. 128.

—Acting under the Land Acquisition Act, whether a "Court"—Power of Collector to administer oath—*See* ACT I OF 1894, s. 53. 27 C. 820.

—Whether a Civil Court—*See* CRIM. PRO. CODE (1898), ss. 198, 195, 2 A. 533, F.B.

See SANCTION TO PROSECUTE, 10 A. 582, 7 B.H.C. Cr. 64, A.W.N. 1895, 121.

Collectorate Peadah.

See ASSAULT, 13 W.R. Cr. 49.

Commission.

See WITNESS.

(1)—*Commission for examination of witnesses outside jurisdiction.*—The High Court has no power to issue a commission for the examination of witnesses outside its jurisdiction. **5 B. 338.**

Commission—continued.

(2)—*Examination of witness on commission.*—An application to examine a witness for the prosecution by commission was refused by the High Court in the interests of the prisoner. **8 C. 896.** [*Compared*, 15 C.P.L.R. 66].

(3)—*Examination of witnesses in a foreign territory—Crim. Pro. Code (1872), s. 30*—A commission should not be issued for the examination of a witness in a foreign territory. **20 P.R. 1878 Cr.**

(4)—*High Court—Crim. Pro. Act, X of 1875, s. 76—Commission for taking evidence of public servant transferred to distant place.*—Where a Government servant, who had executed a recognizance to appear at an ensuing criminal Sessions, when called upon to give evidence, was transferred to a very distant place, before the date of the hearing of the case, and the Government, on his behalf, applied for a commission to take his evidence, on the ground that he could not, with due regard to the public interest, be present for the trial, *held*, that the application should be granted and the commission should be allowed. **6 B. 285.** [*R.*, 19 B. 749 ; *D.*, 24 C. 551].

(5)— *Crim. Pro. Code (1882), ss. 503 and 507—Scope of the sections—Meaning of the term "in the case."—Application for commission, when to be made—S. 33, Evidence Act.*—Ss. 503 and 507 should be construed distributively, and the word "case" in s. 507 means the case before the Court issuing the commission, and not any subsequent stage of it before another Court. Therefore, evidence taken under commission issued by the Chief Presidency Magistrate during the course of an enquiry before him cannot be admitted on the trial of the same case at the High Court Sessions under s. 507 of the Code. Nor would it be admissible under s. 33 of the Evidence Act, in a case where the only objection to obtaining witnesses' presence was on the ground of expense of attendance. [*F.*, 19 B. 749]. Although s. 503 may include any party to a proceeding, it is principally intended for the purposes of some witness other than the parties principally concerned, persons "whose presence could not be obtained without an amount of delay and expense, which, under the circumstances of the case, the Court considers unreasonable." An application for commission applied for by the prosecution, during the trial and after the jury had been sworn, was refused on the ground that the trial and commission could not go on together. **19 C. 113.** (6 A. 224, 6 C. 532, *R.*).

(6 and 7)—*Crim. Pro. Code (1882), ss. 503 to 507—Power of Presidency Magistrates—Power to issue commission for examination of witnesses residing within jurisdiction.*—Although it is doubtful whether a Presidency Magistrate has power to issue commissions for the examination of witnesses within his own jurisdiction, yet, there is nothing to prevent a Presidency Magistrate from examining a witness within his jurisdiction at some place other than the Court-house. **24 C. 551=1 C.W.N. 333.**

Commission—concluded.

(8)—*In criminal cases—Justification for its issue.*—Every witness must be produced at a trial, unless and until it is proved either to be actually impossible to produce him or to be so difficult to do so, that it is under the circumstances unreasonable to insist on his production. But petty inconveniences such as those to which a witness may be subjected by being summoned as a witness in a criminal case would not justify the issue of a commission, especially when a previous conviction depended for its proof solely and entirely upon expert evidence. **15 C.P.L.R. 66 Cr.**

(9)—*Commission for the examination of complainant on presenting the complaint, not regular—Crim. Pro. Code (1882), ss. 198, 200, 503, 537.*—In the preliminary stage of a criminal proceeding, a complainant is only a complainant, not a witness. A commission for his examination cannot, therefore, be issued under s. 503, which relates to the examination of witnesses only. When, on a complaint being presented on behalf of H.H. the Maharaja of Kashmir to the District Magistrate of Lahore, the latter issued, to the Resident at Kashmir, a commission for the examination of the complainant, *held* that the examination so taken was contrary to the provisions of ss. 198 and 200, Crim. Pro. Code, but that, as there was no doubt of the wish of His Highness to prosecute and the irregularity being a formal one, it was cured by the provisions of s. 537, Crim. Pro. Code. **10 P.R. 1896 Cr.**

—Examination of witnesses by—*See* CRIM. PRO. CODE (1898), ss. 503 (1 to 3), 505, 5 A. 92.

—Evidence taken on commission in Nepal—Admissibility—*See* EVIDENCE, 7 C.W.N. 635.

—Examination of witnesses on commission—*See* EVIDENCE ACT, s. 33, 6 A. 224, 19 B. 749.

See PARDANASHIN WOMAN, 4 C. 20=3 C. L.R. 93, 9 Cr. L.J. 249=1 S.L.R. 5 Cr.

See PENAL CODE, s. 174, 6 C.W.N. 927.

See REVISION, 24 C. 551=1 C.W.N. 333.

See WITNESS, 4 Ind. Cas. 400.

Commissioner.

—Commissioner to examine witnesses—His power to grant sanction—*See* SANCTION TO PROSECUTE, 11 C.W.N. 909=6 Cr. L.J. 160.

Commitment to Sessions Court.

See 1. CRIM. PRO. CODE (1898), ss. 206—220.

2. MAGISTRATE, JURISDICTION OF.

3. REVISION.

(1)—*Discretion as to commitment—Proper exercise of discretion.*—The power of commitment must be exercised judicially upon the evidence before the Court. **10 W.R. Cr. 25.**

Commitment to Sessions Court—continued.

(1-*a*)—*Commitment—Crim. Pro. Code (1882), ss. 207, 213, 215.*—A Magistrate should not send up, for trial by the Court of Sessions, cases which he himself has jurisdiction to dispose of, unless three be some good cause for sending them to the Court of Sessions, as for instance, if the Magistrate considers the punishment which he can award would be inadequate. However, the discretion which the Magistrate may exercise under s. 207, Crim. Pro. Code, 1882, when exercised by him, ought not to be lightly interfered with. **A.W.N. 1886, 256**

(2)—*Crim. Pro. Code (1898), s. 347—Scope—Power of commitment.*—S. 347, Crim. Pro. Code, 1898, empowers a Magistrate to commit at any stage of the proceedings, if it appears to him that the case is one which ought to be tried by the Court of Session or by the High Court. **Rat. Un. Cr. C. 975=Cr. Rg. 29 of 1898.** [*F.*, 12 C.W.N. 1014=8 Cr. L.J. 221].

(3)—*Crim. Pro. Code (1898), ss. 436, 526 and 226—Commitment without charge.*—A commitment may be made without a charge against the accused (*vide* s. 226, Crim. Pro. Code). **27 M. 54.**

(4)—*Crim. Pro. Code (1898), s. 215—Commitment to the Sessions, when can be made.*—The test which should be applied to decide whether a committal ought or ought not to be made on the facts is this—assuming that the whole of the evidence telling against the accused is true, is there a case which a Judge at the trial could leave to a jury? If the evidence is such that a Judge would have been bound to rule that there was no evidence on which a jury could convict, then, a committal ought not to be made. If there is any evidence which calls for an answer, however great the preponderance in favour of the prisoner may be, then the committal is proper. *Per Harrington, J.* Where the only grounds on which an accused person was committed to the Sessions for trial upon charges of abetment of offences under ss. 193, 196, 471, I.P.C., were (1) that a servant in the employ of the accused gave false evidence and produced forged documents at the trial of certain suits, (2) that the accused was present actively prosecuting those suits, (3) that the evidence, if believed, would have supported the accused's case, (4) that the accused had sometimes made collections and tested *jamabandies*, *held*, that it was not a fit case for commitment. **9 C.W.N. 829=2 Cr. L.J. 534.**

(5)—It is not necessary that the committing Magistrate should satisfy himself fully of the guilt of the accused before making a commitment. It is his duty to commit when the evidence for the prosecution is sufficient to make out a *prima facie* case against the accused, and he exercises a wrong discretion if he takes upon himself to discharge an accused in the face of evidence which might justify a conviction. **27 B. 84=4 Bom. L.R. 779.** [*F.*, 148 P.L.R. 1903; *R.*, 9 Bom.L.R. 225=5 Cr.L.J. 213, 14 P.R. 1908=30 P.W.R. 1908=8 Cr. L.J. 263, 10 P.R. 1909].

Commitment to Sessions Court—continued.

(6)—The Magistrate ought to commit, when the evidence is enough to put the party on his trial, and such a case obviously arises, when credible witnesses make statements which, if believed, would sustain a conviction. The weighing of their testimony with regard to improbabilities and apparent discrepancies is more properly the function of the Court having jurisdiction to try the case. **Rat. Un. Cr. C. 319.**

(7)—In a case committed for trial under s. 392, I.P.C., to the Court of the Judicial Commissioner of Sind, the examination of the witnesses disclosed many contradictions and inherent improbabilities and the jury returned a unanimous verdict of not guilty. The Court, holding that the case ought never to have been committed to the Sessions, remarked that "the charge was not of so serious a nature as to justify the Magistrate in avoiding its trial and committing the accused to the Sessions. It appears that the Magistrate deliberately shirked the responsibilities of his office, with the result that the two accused have been unnecessarily detained in custody for nearly three months, that valuable time has been wasted both of the gentlemen of the Jury and of the Court of Sessions, and that considerable avoidable expense has been caused to Government." **1 S.L.R. 103 Cr.**

(8)—*Crim. Pro. Code, s. 347-Cases which ought to be committed to Court of Sessions.*—Where the facts of the case showed that the accused threw his wife down and deliberately kicked her several times, on her body, thus inflicting injuries which caused her death, *held*, that such a case ought not to have been finally dealt with by the Magistrate of the first class, the accused being convicted of the offence of voluntarily causing hurt, but should have been committed to the Court of Sessions for trial on charges of culpable homicide and voluntarily causing grievous hurt. **Rat. Un. Cr. C. 382=Cr. Rg. 33 of 1888.**

(9)—*Committal to Sessions, when justified.*—Where there is evidence not obviously false, and on which, if it be accepted as reliable, a Court of Sessions might convict an accused person, the Magistrate is justified in sending up the case for trial, and, if the case is triable by a Court of Sessions only, he is bound to do so. **2 Weir 258=2 Weir 652.**

(10)—*Crim. Pro. Code (1898), ss. 213 (2) and 208—Committal proceedings—Sufficient ground for committal—Duty of a committing Magistrate.*—S. 213 (2), Crim. Pro. Code, is intended to provide for the cases in which the evidence recorded after a charge so changes the aspect of the case as to leave no reasonable doubt that a conviction is not sustainable. But that clause does not apply when the evidence for the defence merely casts some doubt on the case. "Sufficient ground" for committal is a *prima facie* case, and it still remains a sufficient ground, even if to some extent weakened—but not proved beyond reasonable doubt to be false—by the evidence for the defence. Under s. 208,

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the duty of a committing Magistrate in the first place is to take all the evidence tendered on both sides before framing a charge. **1 L.B.R. 348.**

(11)—*Crim. Pro.Code (1898), ss. 209, 210, 436—Committal to the Sessions, grounds for—Duty of Sessions Judge.*—Before committing an accused person to the Sessions Court, the Magistrate has to consider whether there are sufficient grounds for committing the accused and, among those grounds, may, properly, be placed the consideration whether, on the evidence before him, it is probable that a conviction will be arrived at. [*R.*, 12 C.W.N. 117 =6 C.L.J. 760=6 Cr. L.J. 406, 14 P.R. 1909 Cr.=30 P.W.R. 1908]. It is the duty of a Sessions Judge, in considering whether an accused person has been improperly discharged, within the terms of s. 436, Crim. Pro. Code, to consider all the grounds upon which such order of discharge has been passed, including a consideration of the evidence which has not been believed or held to be sufficient to establish a *prima facie* case. Then only can he pass an order for the commitment of the accused person or for a further inquiry. **7 C.W.N. 77.**

(12)—*Committing Magistrate, duty of.*—The duty of a committing officer is to ascertain whether, by the evidence of the prosecution, a *prima facie* case is made out against the accused. **3 N.W.P. 27.**

(13)—It is the duty of the committing Magistrate to place before the Sessions Judge all the evidence procurable. **L.B.R. (1872—1892), 538.**

(14)—*Duty of Magistrates in making commitments—Prolonged periods of detention to be avoided.*—The Magistrates should be careful to arrange their commitments with a view to the trials taking place at the earliest or next ensuing Session, in order to avoid the needless detention of accused persons for prolonged periods. Whenever a commitment is made, information should immediately be given to the Court of Session, through the Magistrate of the District by a letter. Prosecutors and witnesses should be bound over to appear at the next criminal Sessions. **2 W.R. Cr. Cir. 5.**

(15)—*Magistrates to be careful to send evidence to prove identity of body sent for post-mortem examination—Sessions Judge to insist on being furnished with satisfactory relevant evidence—Necessity for great care in bringing forward requisite evidence.*—When committing cases, Magistrates must take care to send up evidence to prove that a body sent to the hospital for *post-mortem* examination is really the body of the person referred to in the case under trial, or that an article analysed by the Chemical Examiner was actually the article sent to him for analysis in the case under trial. Sessions Judges must insist on being furnished with such evidence, and must not record either the Chemical Examiner's report, or the evidence of the Medical Officer until the connecting links requisite to render them admissible

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have been established. The police should use great care in bringing forward all evidence requisite to render relevant the evidence of the Medical Officer and the report of the Chemical Examiner. **L B.R. (1872—1892), 634.**

(16)—*Doubtful cases, commitment of.*—Where the ground of commitment in a case where the evidence was insufficient, was that the charge was a serious one and there was a certain amount of doubt regarding the innocence of the accused, *held*, that the Magistrate erred in law in committing the accused. **35 P.R. 1878 Cr.**

(17)—*Crim.Pro. Code (1898), ss. 190 and 191—Judicial discretion to be exercised by Magistrate before committing to Court of Sessions—Reasons must be good for commitment—Irregularity in Magistrate trying a case taken cognisance of by him* suo motu—*Commitment without reasons—Without framing a charge—Without a note of the offences.*—A Magistrate, in deciding whether he should, under s. 191, Crim. Pro. Code, commit the case to the Court of Sessions or transfer it to another Magistrate for trial, should exercise a judicial discretion. His decision will depend chiefly upon the question whether the punishment, which a Magistrate is competent to inflict in case of a conviction will be adequate or not. Where a Magistrate gives no such reasons for the commitment, but merely states that the pleader for the complainant wished the case to be committed, the Magistrate fails to exercise any judicial discretion at all when ordering the commitment, and the commitment is, therefore, liable to be quashed. A case having been begun by a Magistrate on a complaint filed against one of the accused, the Magistrate took cognisance against the other accused (during the course of the trial), under cl. (*c*) of s. 190, Crim. Pro. Code. Evidence was recorded against both the accused, without the second accused being informed that he was entitled to have the case tried in another Court. In spite of the objection for the trial before the same Magistrate who had taken cognisance *suo motu*, the Magistrate committed the case to the Court of Sessions, without even framing a charge against the accused or requiring them to give in a list of witnesses. Further, the reasons for commitment were contained in a short note in the diary of the case which contained no statement as to the offence for which the accused were committed. *Held*, that the Magistrate failed to exercise a judicial discretion in dealing with the case. **2 S.L.R. 9 Cr.=10 Cr. L.J. 224.**

(18)—*Crim. Pro. Code (1898), s. 210—Magistrate—Charge to be framed—Commitment when permissible—Sufficient grounds for commitment—District Magistrate ordering commitment to be made.*—S. 210 of the Code, 1898, requires that a charge should be framed and commitment made, only when "the Magistrate is satisfied that there are sufficient grounds for committing." The requirement, that the grounds for committing the case should be sufficient, must be taken as excluding all cases, in which the

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alleged grounds for commitment appear insufficient, whatever the reason of this insufficiency may be, and is not limited to a requirement for merely formal allegations, whether credible or not, as to the essentials of the alleged offence. A District Magistrate is not justified in calling on a subordinate Magistrate to commit a case, unless it can be shown that, if that Magistrate was not satisfied, as required by s. 210, he ought to have been satisfied, that is to say, it ought to appear that the Magistrate had no ground for discrediting the evidence adduced for the Crown, as well as that the evidence relates to facts sufficient to form the basis for a conviction. **9 Bom. L.R. 225=5 Cr. L.J. 213.**

(19)—*Crim. Pro. Code, Act X of 1872, ss. 193, 248, 342, 357—Commitment without evidence—Defence evidence.*—A commitment made, without taking any evidence on a preliminary inquiry, is illegal. S. 248 contemplates the examination of the accused, though ss. 193 and 242 do not render such examination imperatively necessary and, according to s. 357, the accused should be given an opportunity to adduce evidence on his behalf. **Rat. Un. Cr. C. 100=Cr. Rg. 10—1—1876.**

(19-*a*)—*Penal Code, s. 411—Proof of guilty knowledge.*—Where there is no clear proof that the accused knew the property to be stolen, a commitment for an offence under s. 411 of the Penal Code, is illegal. **A.W.N. 1884, 14.**

(20)—*Crim. Pro. Code (1872), s. 196—Committal—Drawing up of charge by Magistrate—Function of Magistrate.*—The drawing up of a charge must always follow the determination of a Magistrate to commit a case to the Court of Session, which determination duly expressed, the Magistrate becomes *functus officio* as to that matter. Where, therefore, a Magistrate first drew up a charge, directing the commitment of the accused, and afterwards taking further evidence, discharged them, the High Court *held* that the order of discharge was illegal and that the case should be committed for trial by the Court of Session. **Rat. Un. Cr. C. 161=Cr. Rg 6—4—1881.**

(21)—*Crim. Pro. Code (1882), ss. 215 and 436—Power of District Magistrate to order committal.*—The power to order a committal is conferred on the District Magistrate by s 436, Crim.Pro.Code,subject to the provision that the accused should have an opportunity of showing cause why the commitment should not be made. Where a Sub-Magistrate discharged an accused person, charged with offences cognisable exclusively by the Sessions Court, and the District Magistrate directed his committal to the Court of Sessions without calling upon him to show cause why he should not be committed, *held*, that the commitment by the District Magistrate was illegal and should be set aside. **6 M. 372=2 Weir 541.** [*R.*, Rat. Un. Cr. C. 588].

(22)—*Crim. Pro. Code (1882), s. 191, cl. (c)—Crim. Pro. Code (1898), ss. 190 and 191—Objection to the trial of a case by a Magistrate—Competency of the Magistrate to commit the case to Sessions.*—Where a valid objection is

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raised to the trial of a case by a particular Magistrate, he is not bound to transfer it to another Magistrate, but may elect to commit the case to the Court of Sessions. Such a course is perfectly legal both under s. 191 of the Code of 1882 and under ss. 190 and 191 of the Code of 1898. **22 M. 148=2 Weir 150.**

(23)—*Crim. Pro. Code (1898), ss. 215, 478—Commitment to Sessions by Civil or Revenue Courts—Powers of revision of High Court.*—When a Civil or Revenue Court acts with the powers of a Criminal Court under s. 478 and makes a commitment to a Court of Sessions, s. 215 authorises the High Court to quash such commitment on a point of law. **26 M. 139=2 Weir 197.**

(24)—*Crim. Pro. Code (1882), ss. 403, 436—Conviction by Magistrate for minor offence—Jurisdiction of Sessions Judge to order commitment for murder.*—Where an accused person appears to have committed culpable homicide, his conviction by a Magistrate for a minor offence does not prevent his trial for murder, etc. The Sessions Judge, if he thinks there is a *prima facie* case, may call on the accused to show cause why a commitment should not be ordered, and may, thereafter, order his commitment under s. 436 of the Crim. Pro. Code, if satisfied that there is sufficient cause for it. **Rat. Un. Cr. C. 337=Cr. Rg. 27 of 1887.**

(25)—*Crim. Pro. Code (1861), ss. 225, 359 and 425—Discharge by Subordinate Magistrate—Power of superior Magistrate to direct a committal.*—After a Subordinate Magistrate has discharged an accused person, after the preliminary enquiry, a superior Magistrate ought not to direct the latter to commit the accused to the Sessions on the same evidence. But he is not prevented from suggesting further enquiry in a case where he considers that the enquiry has been defective and not merely that the Subordinate Magistrate has arrived at an erroneous conclusion. The Sessions Judge is the only authority empowered by law to direct a committal. **4 M.H.C. App. 30.**

(26)—*Crim. Pro. Code (1882), s. 423—Offences not exclusively triable by Court of Sessions—Power of appellate Court to direct committal.*—Under s. 423, the power of an appellate Court to direct a committal to the Sessions Court is not confined only to cases exclusively triable by the Court of Sessions. Even in cases not exclusively triable by the Court of Sessions, the appellate Court has such power. **23 C. 350.** [*R.*, 27 C. 172, 17 C.P.L.R. 97].

(26-*a*)—*Offences triable respectively by Magistrate and by Sessions Court—Commitment on latter and trial on former.*—Where an accused is charged before a Magistrate of the first class with two offences, one of which he is competent to try and the other not, the proper course for him is to commit the accused for trial of both the offences, though there is nothing in the law to make it illegal for him to try the one he is competent to try. **A.W.N. 1883, 199.** [*R.*, 8 A. 291=A.W.N. 1886, 94].

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(27)—*Crim. Pro. Code (1882), ss. 531, 532—Commitment when could be quashed.*—A commitment is an order within s. 531, Crim. Pro. Code. The section must be read as complete in itself and not as in any way cut down or limited by the proviso contained in the latter part of s. 532. S. 531 applies solely to cases in which there is no jurisdiction by reason of the enquiry, trial or other proceeding being held in the wrong local area. S. 532 seems to refer to cases in which the Magistrate is competent to deal with the offence as having taken place within the local limits of his jurisdiction, but has no power to commit to the High Court or Court of Sessions either, because he is only a second-class Magistrate or for some reason other than that of local jurisdiction. Under s. 531, the commitment could not be quashed, unless a failure of justice would be caused by proceeding with the trial. **16 B. 200.** [*F.*, 17 M. 402=2 Weir 704=4 M.L.J. 196; *Appl.*, 17 A. 36; *Appr.*, 18 A. 350=16 A.W.N. 96; *R.*, 1 Weir 190=26 M. 640, 30 M. 94=4 Cr. L.J. 800=1 M.L.J. 345].

(28)—*Grounds for quashing commitment.*—A commitment should not be quashed on the ground that the Sessions Judge, on perusing the record, found that the offence committed was one triable by a Magistrate of the first class. **22 P.R. 1882 Cr.**

(29)—*Crim. Pro. Code (1882), s 215—Refusal to quash commitment.*—Where a Magistrate after enquiry had found reasons for committing for trial on the merits, the High Court declined to quash the acquittal. **Rat. Un. Cr. C. 718 = Cr. Rg. 43 of 1894.**

(29-*a*)—*Subsequent inquiry of Magistrate—Crim. Pro. Code, Act X of 1882, s. 215.*—Where some days after committing a case for trial at the Sessions Court, the Magistrate recorded that he had made further inquiry and found that he should not have made the commitment, *held* that this was no reason for quashing the commitment under s. 215 of the Crim. Pro. Code. **A.W.N. 1885, 53.**

(29-*b*)—*Crim. Pro. Code (1882), Ch. XXXV—Civil suit.*—The fact that a regular suit has been filed to establish the genuineness of a transaction is not sufficient to enable the High Court to quash a commitment regularly made by a Subordinate Judge to the Sessions Court, or to direct the trial to be adjourned pending the hearing of the Civil suit or appeal, therefrom. **Cr. Rg. 39 of 1893.**

(30)—Where a person was committed on a charge of using certain evidence known to be false, *held* that the fact that there was not any evidence to connect such person with the use of such false evidence was a defect in law, sufficient to justify the quashing of the commitment. **6 A. 98.**

(31)—*Quashing of commitment, after the accused had pleaded to the charge.*—Where the accused has been put upon his trial and has pleaded to the charge, he is entitled to have the trial proceeded with. The commitment cannot be quashed. **12 C.L.R. 120.**

(31-*a*)—*Commitment on charge of grievous hurt—Death of complainant-Case where commitment quashed.*—The accused was committed to the Sessions Judge for having caused grievous hurt to a *Chowkidar*, an offence punishable under s. 326, I.P.C. When the Court called the complainant to give evidence, it appeared that he was dead. The Sessions Judge being of opinion that, as there was reason to think that his death might have resulted from the hurt, reported the circumstances to the High Court in order that the commitment might be quashed, and a fresh enquiry ordered under ss. 302, 304, 324 and 326, I.P.C. *Held* that the Judge was right and that the commitment should be quashed. **A.W.N. 1883, 257**

(32)—*Quashing commitment—Powers of High Court—Crim. Pro. Code (1898), ss. 215, 438.*—The High Court will not enter into and discuss the nature of the evidence, before the trial has taken place, when the question before them for decision is whether a commitment should be set aside. **4 C.W.N. cxvi.** [*R.*, 1 S.L.R. 6].

(33)—Under the Crim. Pro. Code, 1861, the Chief Court alone has the power to cancel a commitment to the Court of Sessions. **24 P.R. 1867 Cr.**

(34)—Under s. 215, Crim. Pro. Code, a commitment once made by a competent Magistrate can only be quashed by the High Court and that on a point of law. The offences under ss. 413 and 411, Penal Code, being of the same nature, the fact that the evidence recorded does not justify a conviction under s. 413, Penal Code, is not a sufficient ground for quashing a commitment, under s. 215, Crim. Pro. Code, even though there is ample evidence to show that an offene under s. 411, I.P.C., has been committed. **1 L.B.R. 88.** (19 C. 190, *R.*).

(34-*a*)—*Commitment quashed only on point of law.*—With reference to s. 215 of the Code, a commitment once made under s. 213 can only be quashed on a point of law. **A.W.N. 1886, 256.**

(35)—A Magistrate is disqualified from dealing with any case, in the police investigation of which he has taken more than a formal part, and, unless he obtains the permission of the appellate Court, he is disqualified from committing a case for trial. If an accused objects on the ground that the Magistrate has taken an active part in the investigation, the proper course is to apply for leave to make a committal or transfer to some other Court. The High Court may quash a commitment by a Magistrate whether he was competent or not to make it. **2 L.B R. 209.**

(36)—*Power of Chief Court to direct commitment.*—The Chief Court alone could annul a conviction by a Magistrate and direct a commitment to the Sessions Court. **34 P.R. 1866 Cr.**

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(37)—*Commitment to Deputy Commissioner—Quashing commitment.*—Where A was committed to the Court of the Deputy Commissioner under s. 304, Penal Code, and the latter was not competent to send the case back to the committing Magistrate for a trial under s. 304-A, I.P.C., the Deputy Commissioner was directed by the Chief Court to try the case on the original commitment. **28 P.R. 1872 Cr.**

(38)—*Crim. Pro. Code (1898), s. 215—Absence of evidence to warrant a commitment.*—The absence of evidence to warrant a commitment is a point of law and may furnish a good ground for quashing the commitment. **5 C.W.N. 411.**

(39)—*Sessions case—Commitment to Deputy Commissioner.*—Under s. 445-B of Act VIII of 1869, the Deputy Commissioner could try a Sessions case committed to him by a Magistrate competent to commit to the Court of Sessions. **30 P.R. 1869 Cr.**

(39-*a*)—*Crim. Pro. Code, Act X of 1882, s. 423—Sessions Judge whether can order a commitment to his own Court.*—A Sessions Judge, to whom an appeal has been preferred by persons convicted by a Magistrate, cannot direct the commitment of them to his own Court for trial. **A.W.N. 1885, 297.**

(39-*b*)—*Crim. Pro. Code, Act X of 1872, s. 296—Sessions case—Powers of revision.*—A commitment made, under an order passed by a Sessions Judge in revision, directing such commitment in a judgment in another case in which the present accused had been discharged by the Magistrate, is illegal, since the Sessions Judge had no power to direct such a commitment. **A.W.N. 1882, 105.**

(40)—*Crim. Pro. Code (1898), ss. 209, 213, 215 and 436—Order of commitment, after order of discharge—Revisional powers of High Court.*—Where a Sessions Judge, under s. 436, ordered the commitment of an accused person, who had previously been discharged, under s. 209, by a Magistrate on the ground that the evidence was unreliable and insufficient, *held* that the High Court had authority to set aside the order of commitment on the merits of the case and that the order was bad and should be set aside. **7 C.W.N. 327.** [*F.*, 12 C.W.N. 177=6 Cr. L.J. 406=6 C.L.J. 760; *R.*, 30 M. 224=5 Cr. L.J. 100=16 M.L.J. 529].

(41)—*Commitment to the Court of Sessions ordered under s. 436 of Crim. Pro. Code—High Court's power to revise under s. 439—Preliminary inquiry into Sessions cases, Magistrate's power and duties in regard thereto—Crim. Pro. Code (1898), ss. 436, 439.*—It is not incompetent to a Magistrate holding a preliminary enquiry into Sessions cases to examine the credibility of the evidence adduced in the course of the enquiry. Such Magistrate should not commit the accused for trial in the Sessions Court, if he be of opinion that, notwithstanding direct evidence adduced against the accused, the prosecution case is improbable and the evidence is unreliable. The High Court has full jurisdiction under s. 439, Crim. Pro. Code, to revise a

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commitment order made under s. 436 on points of law as well as of facts. **12 C.W.N. 117=6 C.L.J. 760.** [*R.*, 3 M.L.T. 230=18 M.L.J. 57=7 Cr. L.J. 267=31 M. 133].

(42)—*Order for further enquiry and commitment passed simultaneously.*—Where the order of the Sessions Judge amounted to simultaneously directing further enquiry into the alleged offence and to ordering a commitment of the accused, *held* that the commitment was premature and illegal and must be set aside. **13 C. 121.**

(43)—*Discretion of Sessions Judge to commit discharged person.*—A Sessions Judge has a discretion to order or not to order the commitment to the Sessions Court of any accused person discharged by the Magistrate, with which the High Court will not interfere. **2 W.R. Cr. 44.**

(44)—*Crim. Pro. Code, Act V of 1898, ss. 215, 233—Wrong joint commitment—Procedure.*—The fact that a Magistrate has wrongly committed persons for a joint trial, while separate commitments should have been made, is not a sufficient reason to quash the commitment under s. 215 of the Crim. Pro. Code. The Sessions Judge can try the accused separately on amended charges. **A.W.N. 1900, 206.**

(45)—*Mode of commitment of European British subjects and Native subjects together charged with an offence.*—When a European British subject and a Native subject are together charged with an offence requiring the commitment of the former to the High Court for trial, the latter should not be committed to the High Court, also, but should, in the ordinary manner, be committed in the Sessions Court competent to try the offence. **5 W.R. Cr. Cir. 1.**

(46)—*Crim. Pro. Code (1898), ss. 208, 215—Commitment in the absence of accused.*—It is illegal to make a commitment in the absence of the accused. **5 C.W.N. 110.**

(47)—*Crim. Pro. Code, Act X of 1882, s. 537—Commitment by District Magistrate—Notice to accused by subordinate Magistrate.*—Where a District Magistrate, being of opinion that a person has been improperly discharged by a subordinate Magistrate, makes an order of commitment to the Sessions for trial, without notice to the accused person, the irregularity is cured under the provisions of s. 537 of the Crim. Pro. Code, if the subordinate Magistrate gives him an opportunity to show cause before committing him. **Rat. Un. Cr. C. 899.**

(48)—*Crim. Pro. Code, ss. 177, 531—Commitment to wrong Sessions Court.*—A commitment is an order of a criminal Court which cannot be set aside unless a failure of justice has been occasioned thereby. Where a case is committed to a Sessions Court having no territorial jurisdiction, the High Court, without setting aside

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the order of commitment, transferred it to the proper Sessions Court. **8 B. 312.** [*F.*, 16 B. 200, 18 A. 350, 2 Bom. L.R. 394; *D.*, 10 B. 274].

(49)—*Crim. Pro. Code (1872), s. 147—Commitment without jurisdiction.*—A commitment made by a Magistrate having no jurisdiction is no proper commitment, and no reference to the High Court is necessary to have it set aside. **11 C.L.R. 55.** [*Diss.*, 4 L.B.R. 49=6 Cr. L.J. 287].

(50)—In the crucial case of a commitment by a Magistrate without jurisdiction, the commitment is not to be quashed, unless the accused has been prejudiced. **2 Weir 258=7 M.H.C. App. 40.**

(51 and 52)—*Discharge without trial of accused duly committed.*—A Sessions Court cannot discharge without trial an accused duly committed, however probable it may be that an acquittal will result. **3 P.R. 1874 Cr.**

(53)—*Commitment without framing a charge after enquiry—Penal Code, s. 318.*—Where the District Magistrate, in directing a commitment, did not specify the charge and the committing Magistrate, without any enquiry, committed the accused on a charge under s. 318, Penal Code, *held*, that the commitment was not properly made, and that a fresh enquiry should be made by another Magistrate. **6 P.R. 1881 Cr.**

(54)—*Doubt as to competency of the committing officer to commit—Crim. Pro. Code (1882), s. 185.*—Where a doubt arises as to the competency of the committing officer to commit a case, s. 185 does not apply. The section applies only to cases where the doubt is regarding the Court by which the offence is to be enquired into or tried. **13 P.R. 1887 Cr.**

(55)—*Crim. Pro. Code (1898), ss. 337, 339—Revocation of pardon tendered to an approver and commitment to Sessions.*—An accused, who had an opportunity of cross-examining the prosecution witnesses, was tendered a pardon on condition of his making a true disclosure. After accepting that pardon, he refused to make any statement, saying that he knew nothing. The Magistrate revoked the pardon and committed him to the Court of Sessions. *Held*, that the commitment was perfectly legal. **29 A. 24=3 A.L.J. 615=A.W.N. 1906, 258.**

(56)—Where a pardon was tendered to A, who was accused of murder along with B before a Magistrate, and after the examination of A as a witness against B, the pardon was withdrawn by the Magistrate and both were committed for trial in the Sessions Court, *held* that the procedure was illegal under s. 337 of the Crim. Pro. Code, and that A should have been separately tried. **A.W.N. 1891, 182.**

(57)—*Crim. Pro. Code (1898), ss. 193 and 423 (1)—Sessions Court—Jurisdiction—Sessions Court has, as a rule, no authority to commit to itself.*—Except in cases, in which a Court of

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Session is expressly empowered to take cognizance of an offence as a Court of original jurisdiction, it has no power to do so, unless a commitment has been made by a Magistrate duly empowered in that behalf. **A.W.N. 1907, 178=6 Cr. L.J. 7.**

(58)—*Commitment, order for—Sessions Judge, jurisdiction of.*—The Sessions Court can only order commitment in cases exclusively triable by it. **5 N.W.P. 168.** [*Appr.*, 1 A. 413, F.B., 8 A. 14; *R.*, 7 N.W.P. 230; *D.*, 2 A. 570, 15 A. 205].

(59)—*Crim. Pro. Code (1882), ss. 423, 436, 439—Powers of Sessions Court, as appellate Court—Powers of commitment.*—The meaning of the sentence "or order him to be re-tried by a Court of competent jurisdiction subordinate to such appellate Court or committed for trial" in cl. (*b*) of s. 423 of Crim. Pro. Code, is as follows:—If, in an appeal from a conviction, the appellate Court find the accused person, who was triable only by a Magistrate of the first class, or by a Court of Sessions, has, by an oversight or under a misapprehension, been tried and convicted and sentenced by a Magistrate of the second class, the appellate Court may, in that case, reverse the finding and sentence and order the accused to be re-tried by a Magistrate of the first class, or by the Court of Sessions; and, in like manner, when the appellant, who was triable solely by the Court of Sessions has been tried, convicted and sentenced by a Magistrate of the first class, the Sessions Judge, in disposing of the appeal, is empowered to reverse the finding and sentence, and order the accused to be committed for trial. The appellate Court, referred to in s. 423 can, in an appeal from conviction, only order an accused person to be committed for trial, when it considers that the accused is triable exclusively by the Court of Sessions. **8 A. 14.** [*Overruled*, 15 A. 205=13 A.W.N. 105; *D.*, 2 Weir 481; *Diss.*, 16 B. 580=Rat. Un. Cr. C. 577, 16 P.R. 1895 Cr., 23 C. 350, L.B.R. (1893—1900), 238, 27 C. 172].

(60)—A Sessions Judge, sitting as a Court of appeal under s. 423 can. having reversed the sentence and finding of the lower Court, order the appellant to be committed for trial to the Court of Sessions. **15 A. 205.** [*F.*, 16 P.R. 1895 Cr.; *R.*, 27 C. 172, 7 C.W.N. 301, 17 C.P.L.R. 97].

(61)—*Crim. Pro. Code, ss. 436, 537—Power of Sessions Judge to commit to Sessions Court person discharged by Magistrate.*—In cases triable exclusively by a Court of Session, s. 436 empowers the Court of Session or District Magistrate to order a discharged person to be committed for trial by such Court. There is nothing in the section to show that, when such an order is made, the commitment thereupon must necessarily be made by the Magistrate who has discharged him, while the first proviso to it shows that it may be made by such Court or by the District Magistrate, according as the power under that section happens to be exercised

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by one or the other. The words "order him to be committed for trial" in s. 436 means "commit him for trial." It is competent, therefore, to the Court of Sessions in such a case to make the commitment itself. Assuming, however, that it is necessary for that Court to send its order to the Magistrate who has discharged the accused, for the latter to frame a charge and direct the accused to be tried on it by such Court, the omission by the Court to observe the formality is an irregularity on its part before the trial, and s. 537 applies. **10 B. 319.** [*Appr.*, 28 C. 397; *R.*, 31 M. 40=3 M.L.T. 25=7 Cr. L.J. 29].

(62)—*Crim. Pro. Code (1898), ss. 215, 436 and 439—Powers of Sessions Judge to order commitment—Powers of High Court to interfere.*—S. 215 refers only to a commitment actually made. It is open to the High Court to consider whether the Sessions Judge has or has not exercised a proper judicial discretion under s.436 in setting aside a Magistrate's order of discharge, and, for this purpose, the High Court may consider the facts as well as the questions of law involved. Though the High Court has this power, it will only exercise it, where it is manifest that the Sessions Judge's order is improper; *e.g.*, where there is no evidence to prove the offence charged, or where it is clear that the Court would not act on the evidence. **30 M. 224=16 M.L.J. 529=5 Cr. L.J. 100.**

(63)—*Crim. Pro. Code, ss. 44, 296—Discharge of accused person—Sessions Judge suggesting a revival of proceedings—Commitment*—Where, on the acquittal of an accused person charged under s. 417, I.P.C., the Sessions Judge forwarded the record to the District Magistrate, and suggested that he should direct the Subordinate Court to inquire into any offence, which the evidence on the record showed to have been committed, other than that in respect of which he was discharged, and the Magistrate committed the accused to the Sessions Court upon charges under ss. 363, 420, I.P.C., *held* that, as there was no "direction to commit" that is to say, to send the discharged person at once to the Sessions Court without further enquiry, the Sessions Judge's suggestions were not contrary to s. 296, Crim. Pro. Code, and the commitment could not be impeached. **2 A. 570.** [*R.*, 2 A.W.N. 105].

(64)—*Crim. Pro. Code (1872), ss. 196, 197—Commitment on a charge of adultery—Compounding and withdrawal of the offence.*—A commitment once made by a competent Magistrate can be quashed by the High Court only, and only on a point of law. Where, after the committal of a case of adultery to the Court of Sessions, the Magistrate discharged the accused, on the representation of the prosecutor that he wished to withdraw from the prosecution, the order of discharge was held to be bad. **4 A. 150.**

(65)—*Crim. Pro. Code (1861), ss. 171 and 273—Reference under s. 171—Trial by a Magistrate other than the Magistrate to whom the reference was made—Validity.*—In a case referred

Commitment to Sessions Court—continued.

to a Head Assistant Magistrate for investigation by a Small Cause Court Judge under s. 171, Crim. Pro. Code, an order of commitment by a Sub-Magistrate after investigation is not valid. **6 M.H.C. App. 41.**

(66)—*Crim. Pro. Code (1872), ss. 4, 296—Power of Sessions Judge to direct a committal.*—S. 296 read with the definition of "Sessions case" in s. 4 narrows the power of a Sessions Judge to direct a committal to cases which have been investigated previously to committal. **7 M.H.C. App. 27.**

(67)—*Crim. Pro. Code (1898), s. 436—District Magistrate acting under the section—Notice to accused—Power of District Magistrate to direct Sub-Divisional Magistrate to commit to Sessions.*—A District Magistrate, acting under s. 436, should give the accused an opportunity of showing cause before himself why a commitment should not be made. An opportunity given to show cause, before the Assistant Magistrate, cannot be regarded as a compliance with the law, though the Assistant Magistrate forwards a statement of the accused to the district Magistrate. Where the offence, with which an accused person is charged, is not one triable exclusively by the Court of Sessions, the District Magistrate has no power, under s. 436, to direct a Sub-Divisional Magistrate to commit the accused for trial to the Court of Sessions. **15 M.L.J 373=2 Cr. L.J. 774.**

(68)—*Crim. Pro. Code(1898), s. 215—Commitment to Sessions on a charge not triable exclusively by a Court of Sessions—Power of Sessions Judge to set it aside and refer it back to the Magistrate for trial—Powers of the High Court.*—Though the offence of theft in a building is not triable exclusively by a Court of Session, there is nothing to prevent such a Court from trying a person accused of such an offence and duly committed to it for trial. Such a committal can be set aside only by the High Court under s. 215 of the Code. The Sessions Judge has no power to set it aside and direct the Magistrate to try the case himself. **16 M.L.J. 525=5 Cr. L J. 99.**

(69)—*Joint indictment of two or more persons—Jurisdiction of Magistrate.*—When two or more persons are jointly indicted and the jurisdiction of the Magistrate is ousted in the case of one of them, the proper course is to commit both or all for trial before the Court of Sessions. **1 Weir 448.** [*F.*, 1 Weir 428; *R.*, 12 M. 54=2 Weir 23, 2 Weir 699=24 M. 675; *D.*, 1 Weir 429].

(69-*a*)—*Crim. Pro. Code, 1872, s. 75—European British subject charged with several offences one of which punishable with transportation for life—Commitment.*—Where a complaint of several offences was made against a European British subject, one of which was punishable with transportation for life, *held*, that under s. 75, Crim. Pro Code, 1872, the Magistrate should not have committed him to the Court of Session, but to the High Court. **A.W.N. 1881, 150.**

Commitment to Sessions Court—continued.

(70)—*European British Subject committing murder at Nari George—Commitment by political agent of Thal Chotiali to High Court.*—The Government of India Notification made the Political Agent at Thal Chotiali, an European British subject, a justice of the peace within the territories of His Highness the Khan of Khelat, and directed that the Court of the Agent of the Governor-General in Beluchistan, as the Court of Sessions, and the Chief Court of the Punjab as the High Court, should be the Courts to which the said justice of the peace should commit European British subjects for trial; an European British subject committing murder at Nari George was committed by the Political Agent of Thal Chotiali to the High Court. Nari George was situated within the Afghan District of Sibi assigned by the Amir to Her Majesty by the treaty of Gundamuk. *Held*, that as the place was not within the territories of H. H. the Khan of Kelat, the commitment was not in accordance with the provisions of the notification. The question whether Nari George was within, or beyond the limits of British India, need not be determined. **13 P.R. 1887 Cr.**

(71)—*Offence under s 121, I.P.C.—Commitment without complaint—Crim. Pro. Code (1882), ss. 196, 532, 537.*—A Magistrate or Sessions Court proceeding to try a person accused of an offence under s. 121, I.P.C., exceeds his jurisdiction, if he takes cognizance of such offence without a complaint authorized in the manner prescribed by s. 196, Crim. Pro. Code, and the defect is not cured by the provisions of s. 537, Crim. Pro. Code. A letter by the Government, after commitment, but before trial, sanctioning prosecution may be an authority to institute the complaint, but the letter itself is not a complaint. **16 P.R. 1890 Cr.** (9 B. 288, *Not F.*)

(72)—*Rape case committed to the Court of Deputy Commissioner—Direction by Chief Court for commitment to the Court of Commissioner.*—The Chief Court cancelled the commitment to the Deputy Commissioner of a case of rape, which was tried by the latter, under his powers under s. 36, Crim. Pro. Code, 1872, and directed the case to be committed to the Court of the Commissioner. **17 P.R. 1873 Cr.**

(73)—*Crim. Pro. Code (1898), s. 435 (4)—Refusal by Sessions Judge to order the committal of a person to Sessions—Power of District Magistrate to act* suo motu *and to order committal to Sessions.*—A Second Class Magistrate, after holding a preliminary inquiry into a charge of murder, acquitted the accused. The Sessions Judge, to whom a revision petition requesting him to direct the committal of the accused to the Sessions Court was presented, dismissed the revision petition holding that the Magistrate's reasons for discharging the accused were good. The District Magistrate subsequently took up the case *suo motu* and directed the committal of the accused to the Sessions. *Held* that, under s. 435 (4), Crim. Pro. Code, it was not competent to the District Magistrate to entertain an

Commitment to Sessions Court—continued.

application for the commitment being ordered when the Sessions Judge had refused such order. *Held*, also, that the District Magistrate could not act *suo motu* as the reason for the prohibition, *viz.*, the avoidance of a conflict between the orders of two District authorities having co-ordinate powers in the matter, would be equally applicable to cases where they act *suo motu*. **26 M. 477=2 Weir 542.**

(74)—*Crim. Pro. Code, Act X of 1882, s. 215—Commitment—Joinder of charges—Practice.*—The commitment for trial, in one and the same case, of some accused persons for robbery and some for receiving stolen property, is not illegal so as to be quashed by the High Court under s. 215 of the Crim. Pro. Code. The Sessions Judge can, if it seems advisable, separate the charges and try the accused separately. **Rat. Un. Cr. C. 915=Cr. Rg. 20 of 1897.**

(75)—*Charge of sedition—Commitment on evidence recorded before applying for sanction of the Government for the prosecution.*—Where, on a charge of sedition, the Magistrate recorded evidence for the purpose of ascertaining whether there were sufficient grounds for applying to the Government for sanction, he could not be justified in committing the accused to the Sessions, after obtaining sanction upon the evidence already recorded, without commencing the enquiry *de novo*. **28 P.R. 1882 Cr.**

(76)—*Trial of approver, who had not deposed truly, on a charge under s. 201, I.P.C., without commitment—Validity—Crim. Pro. Code (1882), ss. 193, 337, 339, 477* and *537.*—The trial of an approver, who in the opinion of the Sessions Judge, had not deposed truly, on a charge of an offence under s. 201, I.P.C., without a commitment by a Magistrate, is not authorised by s. 477 and is in direct contravention of the provisions of s. 193, Crim. Pro. Code. The absence of commitment being a default in substance, and not merely in form, is not cured by the provisions of s. 537. **42 P.R. 1884 Cr.**

(77)—*Discharge by Magistrate—Order of commitment by Sessions Judge—Omission to call on accused to show cause against such commitment.*—A Sessions Judge has no power to order the commitment of a person discharged by a Magistrate, without giving him an opportunity of showing cause against such commitment. **7 C. 662.** [*R.*, Rat. Un. Cr. C. 588, Rat. Un. Cr. C. 899].

(78)—*Committal after drawing up charge—Crim. Pro. Code (X of 1872), ss. 220, 221.*—S. 221 of the Crim. Pro. Code authorises a Magistrate, although a charge may have been drawn up, to stop further proceedings and commit for trial. Though the explanation to s. 220, Crim. Pro. Code, provides that, if a charge is drawn up, the prisoner must either be convicted or acquitted, the acquittal or conviction need not be by the same Magistrate that drew the charge. **3 C. 495=2 C.L.R. 2.**

Commitment to Sessions Court—continued.

(79)—*Joint commitment of several accused—Separate Sessions trial.*—The mere fact that persons are jointly committed to the Court of Sessions does not preclude the Sessions Judge from trying them separately. **22 P.R. 1881 Cr.**

(80)—*Cross cases of rioting—Joint commitment* —It is an incorrect principle to commit jointly persons concerned in a riot on opposite sides; the two opposing parties do not form a single unlawful assembly, because they have no common object. **22 P.R. 1881 Cr.**

(81)—*Fresh commitment ordered after commitment for trial—Order for commitment of persons not accused before Magistrate.*—A Sessions Judge is not competent, after commitment for trial, to direct a case of several accused persons, committed jointly, to be committed in two batches, including in the commitment two persons not previously committed. Neither the Sessions Judge, nor the Chief Court, has authority to direct proceedings to be commenced against persons not committed by, nor accused before, the Magistrate. **22 P.R. 1881 Cr.**

(82)—*Commitment to Court of Session—Release without trial.*—A person committed to stand his trial in a Court of Session was released by the Sessions Judge "without putting him on his trial and without taking his defence" on the ground that his complicity in the murder was entirely unproved and quite unlikely. *Held* that there was no provision of law justifying such a course, and that the only way in which the commitment could be disposed of was to proceed with the trial, and if the Government Prosecutor requested leave to withdraw the charge, or the evidence failed to sustain it, then, the Sessions Judge should have recorded a judgment of acquittal. The accused himself was entitled to claim such procedure as a protection against any future proceedings, and his release, without this precaution being taken, was wholly erroneous. **A.W.N. 1881, 60.**

See ACT IV OF 1871, s. 25, 16 B. 159.

—High Court's power to issue *Mandamus* to commit case to it—*See* ACT X OF 1875, s. 147, 2 C. 278, 9 C. 397.

—Charge under Registration Act—Whether Magistrate bound to commit it to Sessions—*See* ACT III OF 1877, s. 83, 10 W.R. Cr. 21=6 B.L.R. 693, note.

—Commitment for an offence under s. 9 of the Act to the Sessions—*See* ACT I OF 1878, s. 9, 19 A. 465.

See ACT IV OF 1879, ss. 45 and 46, Rat. Un. Cr. C. 458.

See BAIL, 13 C.W.N. 43=36 C. 166=9 Cr. L.J. 375=1 Ind. Cas. 738.

See CHARGE—ALTERATION OF CHARGE, A.W.N. 1882, 165.

Commitment to Sessions Court—continued.

See CONVICTION, Rat. Un. Cr. C. 413=Cr. Rg. 79 of 1888.

See CRIM. PRO. CODE (1872), ss. 297, 472, 2 A. 398.

See CRIM. PRO. CODE (1898), ss. 30, 34, 5 N.W.P. 219.

See CRIM. PRO. CODE (1898), ss. 164 and 350, L.B.R. (1893—1900), 52.

See CRIM. PRO. CODE, ss. 190(1)(*c*), 191, 21 A. 109.

See CRIM. PRO. CODE (1898), ss. 208, 212, 215, A.W.N. 1906, 306=4 Cr. L.J. 452=4 A.L.J. 44.

See CRIM. PRO. CODE (1898), ss. 208 and 347, 12 C.W.N. 1014=8 Cr. L.J. 221.

See CRIM. PRO. CODE (1898), s. 209, 148 P.L.R. 1903.

See CRIM. PRO. CODE (1898), ss. 209, 436, 24 M. 136=2 Weir 544.

See CRIM. PRO. CODE (1898), s. 210, 11 Bom. L.R. 18=5 M.L.T. 225=9 Cr. L.J. 163=1 Ind. Cas. 104.

—Framing of charge—Discharge of accused wrong—*See* CRIM. PRO. CODE (1898), s. 213, 2 L.B.R. 140.

See CRIM. PRO. CODE (1898), ss. 213, 215, 2 Weir 258.

See CRIM. PRO. CODE (1898), s. 215, A.W.N. 1906, 28=3 A.L.J. 14=3 Cr. L.J. 94=1 M.L.T. 61.

—When could be quashed—*See* CRIM. PRO. CODE (1898), s. 215, 3 Bom. L.R. 703, 2 Weir 262, 9 Cr. L.J. 250=1 S.L.R. 6 Cr.

See CRIM. PRO. CODE (1898), ss. 215, 436, 439, 16 M.L.J. 529.

See CRIM. PRO. CODE (1898), ss. 252, 436 and 437, 28 C. 211=5 C.W.N. 169.

See CRIM. PRO. CODE (1898), ss. 287, 288, 350 and 436, 3 M.L.T. 25=7 Cr. L.J. 29.

See CRIM. PRO. CODE (1898), ss. 337, 339, 3 A.L.J. 615=4 Cr. L.J. 142=A.W.N. 1906, 258=29 A. 24, 7 M.L.T. 121.

See CRIM. PRO. CODE (1898), ss. 346, 532, 12 C.W.N. 136.

See CRIM. PRO. CODE (1898), s. 347, 1 N.W.P. 307.

See CRIM. PRO. CODE (1898), s. 349, 1 L. B.R. 141, 1 M. 289=2 Weir 425, F.B.

See CRIM. PRO. CODE (1898), ss. 357, 537, 2 Weir 434.

See CRIM. PRO. CODE (1898), s. 423, except. 1 (*d*), 435 (1) to (3), 439 (1) to (4), 16 B. 580 =Rat. Un. Cr. C. 577.

See CRIM. PRO. CODE (1898), s. 423 (*b*) (1), 2 Weir 379.

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Commitment to Sessions Court—concluded.

See CRIM. PRO. CODE (1898), ss. 426, 439 (1 to 4), 440, 477, 2 A. 398.

See CRIM. PRO. CODE (1898), s. 436, 26 A. 564 = A.W.N. 1904, 125 = 1 A.L.J. 292.

See CRIM. PRO. CODE (1898), s. 438, 7 M. L.T. 186, 7 M.L.T. 187.

See CRIM. PRO. CODE (1898), ss. 438 (1), 436, 1 C.L.R. 93.

See CRIM. PRO. CODE (1898), ss. 476, 477, 4 B. 287.

See CRIM. PRO. CODE (1898), ss. 478, 195, 18 B. 581.

See CRIM. PRO. CODE (1898), ss. 531, 532 and 537, 17 M. 402 = 2 Weir 704 = 4 M.L.J. 196.

See CRIM. PRO. CODE (1898), ss. 532. 5, 3 A. 258.

See DEAF AND DUMB PERSON, 27 C. 368 = 4 C.W.N. 421.

See DEATH, 1 L.B.R. 259.

See DISCHARGE OF ACCUSED, 9 Cr.L.J. 366 = 1 Ind. Cas. 686.

See EUROPEAN BRITISH SUBJECT, 1 L.B.R. 275, 1 L.B.R. 158.

See EVIDENCE, 13 C. 121.

See EVIDENCE ACT, ss. 33, 157, 8 A. 672.

See FALSE CHARGE, 5 M.L.T. 269, F.B. = 32 M. 258, 6 A.L.J. 989.

See FALSE EVIDENCE, Rat. Un. Cr. C. 80.

See HIGH COURT, JURISDICTION OF, 9 B. 288, F.B., 6 C. 584 = 8 C.L.R. 265.

See JOINDER OF CHARGES, 26 M. 592 = 2 Weir 297, A.W.N. 1883, 39.

See JOINT TRIAL, A.W.N. 1881, 64, A.W. N. 1882 180, A.W.N. 1883, 158.

See JUDGE AND JURY, 18 M.L.J. 66 = 31 M. 127 = 3 M.L.T. 270 = 7 Cr. L.J. 325.

See JURISDICTION OF CRIMINAL COURTS, 18 A. 350, 5 C.P.L.R. Cr. 7, 5 C.P.L.R. 48.

See MAGISTRATE, DUTY OF, 1 Weir 288.

See PARDON, 3 M.L.T. 407 = 31 M. 272 = 8 Cr. L.J. 153.

—Joint inquiry prior to commitment—*See* PRELIMINARY INQUIRY, 7 Bom. L.R. 457 = 2 Cr. L.J. 432.

See REFERENCE, 7 N.W.P. 211.

See REVISION, 6 A. 40.

—Committing Magistrate whether subordinate to the Sessions Judge—*See* SANCTION TO PROSECUTE, 2 Weir 160.

See SENTENCE, 27 P.L.R. 1904.

See SESSIONS JUDGE, JURISDICTION OF, 3 N.W.P. 90, 4 N.W.P. 6, Rat. Un. Cr. C. 922, 4 C. 570 = 3 C.L.R. 599. 7 C. 662.

See TRIAL, Rat. Un. Cr. C. 830, F.B.

Common Assembly.

See UNLAWFUL ASSEMBLY.

Common gaming house.

See 1. GAMING.

2. GAMBLING.

3. GAMBLING ACTS.

See ACT XIII OF 1889, s. 66 (1) (*g*), 167 P.L.R. 1905 = 3 Cr. L.J. 78.

See BOM. ACT IV OF 1887, 5 Bom. L.R. 129, 6 Bom. L.R. 249.

See BOM. ACT IV OF 1887, ss. 4, 5 and 7, 7 Bom. L.R. 16 = 29 B. 226.

See BOM. ACT IV OF 1887, s. 6, 1 S.L.R. Cr. 64 = 8 Cr. L.J. 182.

See U.P. ACT III OF 1867, s. 1, 27 A. 567.

See CRIM. PRO. CODE (1898), ss. 102, 103. 3 L.B.R. 229 = 4 Cr. L.J. 390.

Common Intent.

See ABETMENT, A.W.N. 1887, 95.

See PENAL CODE, s. 34, U.B.R. 1907. Third Quarter, Penal Code, 5 = 7 Cr. L.J. 205 = 14 Bur. L.R. 264.

Common Object.

See UNLAWFUL ASSEMBLY.

See CHARGE—FORM OF CHARGE, 21 C. 827.

See CHARGE TO JURY—MISDIRECTION, 4 C.W.N. 196.

See GRIEVOUS HURT, Rat. Un. Cr. C. 14.

See MURDER, 1 Weir 296.

See PENAL CODE, ss. 34, 141, 142, 147 and 149, 11 Cr. L.J. 30 = 4 Ind. Cas. 700 = 6 M.L.T. 17.

See PENAL CODE, ss. 71, 224, 225, 1 Weir 34.

See PENAL CODE, ss. 148 and 149, 2 J.G. 7.

See PRIVATE DEFENCE, RIGHT OF, 12 C. W.N. 579 = 35 C. 384 = 7 Cr. L.J. 374, 8 C.L. J. 561.

See RIOTING, 8 C.L.J. 69 = 12 C.W.N. 944 = 8 Cr. L.J. 129, 5 M.L.T. 285, 3 C.W.N. 605.

Communication.

See DEFAMATION, 11 C.W.N. 390 = 5 Cr. L. J. 160.

Commutation of sentence.

See SENTENCE.

See SESSIONS JUDGE, JURISDICTION OF, Rat. Un. Cr. C. 144.

Company.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 21 C. 915.

Companies Act.

See ACT VI OF 1882.

Compartment.

See ACT IX OF 1890, s. 110, 24 B. 293=1 Bom. L.R. 688.

Compensation.

1.—GENERAL.

2.—COMPENSATION TO ACCUSED.

3.—COMPENSATION TO COMPLAINANT AND HIS RELATIVES.

——**1.—(General).**

See CRIM. PRO. CODE (1893), ss. 250, 545.

(1)—*To accused, when awardable—Case triable only by Sessions Court.*—Where a case ordinarily triable only by a Court of Session is tried by a Magistrate empowered under s. 30, Crim. Pro. Code, the Magistrate is not competent to award compensation. **26 P.R. 1902.** (14 P. R. 1902, *R.*).

(2)—*Crim. Pro. Code (1882), s. 250—Compensation when awardable.*—S. 250 of the Code authorizes the payment of compensation in cases where the accused has been acquitted under s. 245, after the whole of the evidence in the case has been recorded. **10 B. 199.**

(3)—*S. 250, Crim. Pro. Code*, can only be applied when the discharge or acquittal is legal. **1 L.B.R. 44.**

(4)—It is sufficient to support an award of compensation under s. 209, Crim. Pro. Code, 1872, if the complaint is frivolous or vexatious. The latter is a question of fact for the decision of the Magistrate by whom the complaint is investigated. **2 Weir 319.**

(5)—It is only upon an acquittal under s. 245, Crim. Pro. Code, 1882, after taking evidence for the prosecution or under s. 247, upon the default of the complainant to appear, that an order of compensation, under s. 250, can be made. An order awarding compensation by a Magistrate on refusal to allow the complainant to withdraw the prosecution is not a valid order. **14 P.R. 1884 Cr. and note** [*R.*, 12 P R. 1885 Cr. and 19 P.R. 1888 Cr.]

(6)—What the Code contemplates and directs is that, before making an order for the payment of compensation, the Magistrate shall record and consider any objection which the complainant may urge and shall state in writing, *in his order of discharge or acquittal*, his reasons for awarding the compensation. The order directing payment of compensation is to be embodied in the order of discharge or acquittal. The Code does not contemplate that a Magistrate shall acquit the accused and shall thereafter hold an informal inquiry for the purpose of satisfying himself whether the complaint was or was not frivolous or vexatious. **14 C.P.L.R. 37 Cr.**

(7)—An award of compensation to an accused person under s. 250 may be legal, where, on a complaint under s. 323, I.P.C., the Magistrate has proceeded under s. 352, and Chapter XX of Crim. Pro. Code. **31 P.R. 1886 Cr.**

***Compensation*—continued.**

——**1.—(General)**—*continued.*

(8)—Where a Magistrate ordered summons to issue to the accused on a charge for an offence under s. 323, I.P.C., but, after examining two witnesses for the prosecution, altered the charge to one for an offence under s. 352, and eventually acquitted the accused and awarded compensation, *held*, that the Magistrate was not competent to award compensation, as he could not apply the procedure prescribed in Chapter XX, Crim. Pro. Code, as the summons in the case was issued for an offence punishable with more than six months' imprisonment. **17 P.R. 1887 Cr.**

(9)—The complainant charged four persons with damaging his crops by pasturing sheep on them and with having forcibly rescued the sheep when he was taking them to the pound. The subordinate Magistrate trying the case dismissed the charge as untrue and vexatious, and, under s. 209, Crim. Pro. Code, 1872, awarded compensation to the accused persons. The District Magistrate, being of opinion that there was evidence to show that damage was caused to the complainant, and that he had valid reasons for charging the accused, reported the case to the High Court. The High Court agreed with the Magistrate in much of his estimate regarding the merits of the case, and *held* that, under the circumstances of the case, there was no sufficient justification for an order under s. 209. **A.W.N. 1881, 167.**

(10)—An order of compensation under s. 209 of the Crim. Pro. Code, 1872, cannot be made until all the evidence in support of the complaint is heard. Where a complaint is preferred by a person as the *karinda* of another and the offence falling within the scope of s. 209, Crim. Pro. Code, 1872, relates to the *karinda* himself and not the latter, no order for compensation can be made against the latter. **A.W.N. 1882, 116.**

(11)—An order for compensation can only be made upon an acquittal. **A.W.N. 1883, 257.**

(12)—It is not competent for a Magistrate to award compensation to the accused in a trial held under Chap. XVII, Crim. Pro. Code, 1872. **A.W.N. 1881, 161.**

(13)—*Crim. Pro. Code (1872), s. 209(=s. 250 of the Code of 1898)—Scope of the section.*—The special provisions of s. 209 are applicable only in the case of original trials under Chapter XVI of the Code. The award of compensation by the appellate Court is illegal. **2 Weir 314=8 M.H.C. App. 7.**

(14)—S. 250 applies only when a person is charged with an offence triable by a Magistrate. But where the accused is charged with an offence exclusively triable by a Court of Sessions, a Magistrate is not competent to award compensation. **2 Weir 315.**

(15)—S. 250 of the Crim. Pro. Code does not apply where the offence is not one to be dealt with under Ch. XX of the Code. **A. W.N. 1885, 45.**

Compensation—continued.

——1.—(General)—*continued.*

(16)—*Crim. Pro. Code (1872), s. 209—Compensation in warrant case.*—In a warrant case, no compensation can be awarded under s. 209, Crim. Pro. Code, 1872. **A.W.N. 1881, 154.** [*R.*, A.W.N. 1881, 161].

(17)—S. 250, Crim. Pro. Code, 1882, relates to summons cases and not to warrant cases. **A.W.N. 1883. 130.**

(18)—*Crim. Pro. Code (1898), s. 250—Scope of the section—Public Officers.*—The Legislature does not intend that public officers or departments should be exempted from the liability to make compensation for vexatious and frivolous complaints. **2 Weir 317.**

(19)—*Crim. Pro. Code (1898), s. 250—Complaint by public servant—Compensation.*—Where proceedings are instituted on the information of a public servant, and an officer subordinate to him gives evidence in the case, an order directing the latter to pay compensation to the accused is not proper. **2 Weir 318.**

(20)—*Crim. Pro. Code (1882), s. 250—Report of police constable—Acquittal of accused—Compensation.*—Where a case has been reported by a police constable, and the accused is acquitted, *held* that the Court is not competent to order the police constable to pay compensation to the accused. **A.W.N. 1883, 257.**

(21)—*Withdrawal of complaint in a compoundable case—Compensation.*—The withdrawal of the complaint under s. 248, Crim. Pro. Code, 1882, on the composition of the offence under s. 345, does not preclude the Magistrate from directing the complainant to pay compensation to the accused under s. 250, Crim. Pro. Code. **24 P.R. 1883 Cr.** [*R.*, 19 P.R. 1888 Cr.]

(22)—*Crim. Pro. Code (1872), ss. 209, 210—Case allowed to be withdrawn—Compensation to accused.—Held* that the order of a Magistrate, awarding compensation to the accused, under s. 209, Crim. Pro. Code, 1872, in a case which he had permitted to be withdrawn under s. 210, was illegal. **A.W.N. 1881, 155.**

(23)—*Acceptance of* razinama *withdrawing a complaint — Compensation.* — Where a Magistrate accepts a *razinama* so far as to stop the case against the accused, he should not treat the case as one dismissed on the merits and award compensation without giving the complainant an opportunity to prove his case. **56 P.R. 1887 Cr.**

(24)—*Cross complaints—Compensation to the accused in the one case and fining the complainant in the first case as the accused in the second—Validity.*—When two persons prefer cross complaints of assault, the Magistrate may dismiss the complaint of one of them awarding compensation to the other, and may also fine him in the cross case. It does not amount to fining twice for the same offence **26 P.R. 1869 Cr.**

Compensation—continued.

——1.—(General)—*continued.*

(25)—*Crim. Pro. Code, Act X of 1882, s. 250—Absence of complainant.*—Where, on the absence of the complainant at the hearing, a Magistrate dismissed a complaint, acquitted the accused and, holding the complaint to be of a frivolous nature, awarded compensation to the accused, *held* that the order was legal. **A.W.N. 1884, 115.**

(26)—*Crim. Pro. Code (1898), s. 250—Frivolous complaint—Jurisdiction—Complaint dismissed without issue of process.*—S. 250 is not applicable to a case in which a complaint is dismissed without any process being issued for the attendance of the person against whom such complaint is made. **A.W.N. 1906, 306 = 4 Cr. L.J. 452 = 29 A. 137.**

(27)—*Frivolous and vexatious complaint—Compensation.*—Where a Court awards compensation under the provisions of s. 250, Crim. Pro. Code, 1898, the person against whom such compensation is awarded may show cause, with reference to the evidence already recorded, why the complaint should not be held to be frivolous or vexatious, and why compensation should not be awarded ; but the section does not require that separate proceedings should be held and fresh evidence taken. **A.W.N. 1898, 198.**

(28)—Where a judicial officer from overanxiety for the due administration of justice in his Court makes a mistake in taking steps against parties, whose conduct appears to obstruct the course of justice, somewhat too hastily and without due circumspection, it is not to be presumed that he had acted vexatiously, in the sense of s. 270 of the Criminal Procedure Code, 1861, or otherwise than in perfect good faith, so as to justify an award of compensation to the person who was prosecuted by his directions. **15 W.R. 506.**

(29)—S. 270, Crim. Pro. Code, applies only to cases punishable only with fine or with imprisonment not exceeding six months. Compensation to the accused for a frivolous and vexatious complaint of hurt is not, therefore, awardable. **5 M.H.C. App. 40.**

(30)—Where a complainant prefers three charges of three distinct offences, two of which are offences triable under Ch. XV of the Code of Criminal Procedure, a Magistrate may award amends to the accused under s. 270 of the Code, if he considers the charge with reference to the cases under Ch. XV to have been vexatious. **13 W.R. Cr. 39.**

(31)—*To accused for frivolous or vexatious complaint—Death of accused.*—Where a Magistrate awarded compensation to an accused, under s. 560, Crim. Pro. Code, 1882, the complainant applied to the High Court, under ss. 495 and 439, Crim. Pro. Code, for revision of that order. *Held* that, as the accused had died, no order could be made, as none could be passed to the prejudice of a person who could not be served with a notice. **Cr. Rg. 6 of 1893 = Rat. Un. Cr. C. 634.**

Compensation—continued.

——**1.—(General)**—*continued.*

(32)—*Failure to substantiate charge—Committal of prosecutor for false evidence—Act XXV of 1861, s. 270—Act X of 1872, s. 209.*—When a prosecutor fails to substantiate his charge by making contradictory statements, the Magistrate, who tries the case under Ch. XV of the Criminal Procedure Code, can award compensation to the accused, although he commit the prosecutor to take his trial on a charge of giving false evidence. **6 B.L.R. 296=15 W.R. Cr. 9.** [*Appl.*, 22 C. 586; *R.*, 30 C. 123, F.B., 26 C. 191, 21 M. 237].

(33)—*Crim. Pro. Code (1882), s. 250—Case instituted on complaint—Compensation to accused.*—Where, upon a complaint to the police, the latter make an enquiry and send the case for trial, the case is not instituted "upon complaint" within the meaning of s. 250 of the Code. In such a case, therefore, the Magistrate is not competent to award compensation to the accused. **6 A. 96.** [*F.*, 7 M. 563].

(34)—*Crim. Pro. Code (1861), s. 270 (s. 250 of the Code of 1898)—Complaint against a person as being of a bad character—Compensation.*—A complaint made against any person that he is a person of bad character or repute is not a complaint of such a nature, that, if the Magistrate dismisses the complaint as frivolous or vexatious, he would be competent, under s. 270, Crim. Pro. Code, 1861, to award compensation from the complainant to the accused. **2 N.W. P. 447.**

(35)—*Crim. Pro. Code (1898), s. 250—Compensation order by an appellate Court—Illegal.*—The legislature intended that only the Magistrate, by whom a case is in the first instance heard, can pass an order under s. 250 of the Code. It would be inconvenient if, when the tribunal before which the case is heard finds a charge to be proved, an appellate tribunal, when reversing that finding, could pass an order for compensation on the ground that the accusation which was established in the Court below was either frivolous or vexatious. **3 A L.J. 382=A.W.N. 1903, 145=3 Cr. L.J. 441=28 A. 625.**

(36)—An order for compensation under s. 250 cannot be passed by an appellate Court. **3 Bom. L.R. 841.**

(37)—*Crim. Pro. Code (1898), ss. 250, 423 (1) (d)—Compensation for making a frivolous or vexatious complaint—Appellate Court's power to award—S. 423, sub-s. 1, cl. (d)—Power of the appellate Court under.*—An appellate Court can pass an order against the complainant, awarding compensation to the accused under s. 250, Crim. Pro Code. Such an order may very reasonably be regarded as a consequential order within the meaning of s. 423, sub-s. 1, cl. (*d*). **14 C.W.N. 212.**

(38)—*Crim. Pro. Code (1861), s. 270—Compensation on frivolous and vexatious complaints.*—Fines on complainants, as compensation to the accused on frivolous and vexatious complaints, are awardable only in cases triable by Magistrates, in which a summons on complaint shall ordinarily issue. **1 B.H.C. 181.**

Compensation—continued.

——**1.—(General)**—*continued.*

(39)—An order awarding compensation to the accused under s. 270, Crim. Pro. Code, 1861, can only be made in cases triable by Magistrates in which a summons on complaint shall ordinarily issue. **5 B.H.C. Cr. 12.**

(40)—*Crim. Pro. Code (1898), s. 250—Notice to accused imperative.*—An order, awarding compensation to be paid by the complainant to the accused under s. 250, Crim. Pro. Code, should not be passed without notice to the complainant and without considering any of the objections the complainant may have to urge. **2 S.L.R. 4 Cr.=10 Cr. L.J. 220.**

(41)—*Crim. Pro. Code (1898), ss. 250 (3), 422—Compensation, appeal against order granting—Notice to accused, necessity of.*—In cases of appeals under s. 250 (3), Crim. Pro. Code, which provides that there shall be an appeal from an order under that section, it is necessary to give notice of the appeal to the accused, as he is the party prejudiced, if the appeal be allowed and the order for compensation rescinded. **5 M.L.T. 262=9 Cr. L.J. 150=19 M.L.J. 130=1 Ind. Cas. 79=33 M. 89.**

(42)—*Crim. Pro. Code (1898), s. 250—Omission to comply with procedure—Illegality—Not an irregularity.*—Before making an order under s. 250, Crim. Pro. Code, the Magistrate is required to give the complainant an opportunity of objecting, and to record and consider such objections. It has been held repeatedly that the above procedure enjoined by s. 250 is imperative, and omission to comply with it is not merely an irregularity, but an illegality. **2 S.L.R. 14 Cr.=10 Cr. L.J. 229.**

(43)—*Crim. Pro Code (1898), s. 250—Frivolous or vexatious*—Ejusdem generis—*False complaint not frivolous or vexatious.—Held*, that the word "vexatious" in s. 250 of the Code must be read as *ejusdem generis* with "frivolous." Both the words apply to that class of cases in which the aid of the law has been heedlessly invoked. And, therefore, where a Magistrate holds the complaint to be false or needless, he cannot award compensation under this section. **9 Cr. L.J. 255=1 S.L.R. 12 Cr.**

(44)—*Crim. Pro. Code (1898), s. 250—False charge—Vexatious—Compensation—Discretion of trying Magistrate.—Held*, that the words "frivolous" or "vaxatious" used in s. 250 are not used *ejusdem generis*, and where a Magistrate holds that a complaint is not only false but vexatious, he has a discretion to award compensation, if he is of opinion that public policy does not necessitate the sanctioning of a prosecution against the complainant. **9 Cr.L.J. 268, F.B.=1 S.L.R. 28 Cr.**

(45)—*Crim. Pro. Code (1898), ss. 250, 438—Penal Code, s. 497—Adultery—Discharge of accused by Magistrate not competent to try—Compensation—Illegality—Reference under s. 438, Crim. Pro. Code—Grounds of reference to be stated.*—A Magistrate, by whom a charge under s. 497, Penal Code, is not triable, but

Compensation—continued.

——**1.—(General)**—*continued.*

who enquires into a charge of adultery and discharges the accused on the ground that no case is made out against him, cannot award compensation to the accused under s. 250, Crim. Pro. Code. A reference to the High Court under s. 438, Crim. Pro. Code, should contain a brief abstract of the case and the grounds of the reference. **9 Cr.L.J. 502=2 Ind. Cas. 159.**

(46)—*Crim. Pro. Code (1898), s. 250—Award of compensation by Divisional First Class Magistrate—Powers of revision by District Magistrate—Jurisdiction—Revision by District Magistrate of an order of discharge—Procedure.*—The District Magistrate has no power to revise the order of a subordinate first-class Magistrate awarding compensation under s. 250, Crim. Pro. Code. Where a District Magistrate is asked to revise an order of a Divisional Magistrate discharging an accused person, and at the same time directing the complainant to pay compensation to the accused under s. 250, Crim. Pro. Code, the proper course for the District Magistrate to adopt is either to decline to interfere, or, if he thinks interference necessary, to refer the matter to the High Court, which can deal both with the order of discharge and with the order for the payment of compensation. **4 Ind. Cas. 399.**

(47)—*Crim. Pro. Code (1898), s. 250—Order for compensation—Power of revision by Sessions Judge.*—The Sessions Judge has no power to interfere in revision with an order of compensation passed by a First Class Magistrate, under the provisions of s. 250. **7 Bom. L.R. 998=3 Cr. L.J. 88.**

(48)—*Crim. Pro. Code (1898), s. 250—False and vexatious complaint—Order of compensation—The order passed at the same time as the order of discharge.*—A Magistrate, in discharging an accused, recorded, at the same time that he ordered the discharge, his conclusion that the case was one in which, subject to any objection that the complainant might urge against the direction, the complainant ought to be ordered to pay compensation for making a frivolous and vexatious complaint. He, then, as required by s. 250 (*a*) of the Code, recorded the complainant's objection, and added, under cl. (*b*) of the section, to his order of discharge, a direction that the complainant should pay compensation: *Held*, the procedure adopted by the Magistrate was a sufficient compliance with the law as enacted in s. 250. **8 Bom. L.R. 847 =4 Cr. L.J. 423.**

(49)—*Crim. Pro. Code (1898), ss. 250 and 345—False or vexatious charge—Compounding of offences—Procedure.*—An enquiry as to whether a charge is not frivolous or vexatious, under s. 250 of the Crim. Pro. Code, can only be instituted for the purpose of deciding whether compensation should be paid to the accused person. Proceedings under s. 250 are inapplicable where the accused person has himself, by

Compensation—continued.

——**1.—(General)**—*continued.*

agreement with the prosecutor, arrived at a settlement, and been a party to the compounding of the offence. **10 Bom. L.R. 1056=9 Cr. L.J. 186.**

(50)—*Crim. Pro. Code (1882), ss. 248, 250—Withdrawal of complaint—Acquittal—Compensation.*—Since s. 250 of the Crim. Pro. Code, applies only to acquittals under s. 245 or s. 247 of the Code, compensation cannot be awarded in a case of acquittal under s. 248 on the withdrawal of a complaint. **Rat. Un. Cr. C. 462= Cr. Rg. 21 of 1889.**

(51)—*Crim. Pro. Code (1898), s. 250—Dismissal of complaint as false and vexatious—Order for compensation, whether valid—Penal Code, s. 211.*—Where a Magistrate dismissed a complaint as false and vexatious, on finding that the complainant, with intent to cause injury to the accused, instituted the proceedings against him, knowing that there was no just and lawful ground for such proceeding or charge, and passed an order for compensation to be given to the accused, *held*, that the Magistrate did not exercise a proper discretion in awarding the compensation and that the Magistrate would be at liberty, if he was so advised, to institute proceedings under s. 211, Penal Code. **29 C. 479.** [*R.*, 27 M. 59; *Diss.*, 15 C.P.L.R. 194].

(52)—*Awardable by order of discharge or acquittal.*—It is the plain direction of the law that the award of compensation shall be made by the order of discharge or acquittal. After the completion of the order of discharge or acquittal, the Magistrate is *functus officio*, and he cannot re-open the case to pass an order under s. 250, Crim. Pro. Code. **L.B.R. (1893—1900), 528.**

(53)—*Order of compensation to accused—Absence of complainant when Magistrate passes order acquitting accused—Procedure—Crim. Pro. Code (1898), s. 250.*—Where a Magistrate intends to award compensation under s. 250, Crim. Pro. Code, 1898, his proper procedure is to stay delivery of judgment till the complainant has stated his objections under s. 250 and the Magistrate has recorded his reasons. If the accused are in custody and the Magistrate intends to acquit them, but is unable to pass an order of acquittal because of the absence of the complainant, they should be released on their own recognizances till the requirements of s. 250 are complied with. **L.B.R. (1893—1900), 565.** (L.B.R., 1893—1900, 528, *R.*)

(54)—*Crim. Pro. Code (1898), s. 250—Scope of the section—Compensation—Order against a police officer.*—S. 250 is limited to cases instituted by complaints as defined in the Code or on information given to a police officer or to a Magistrate. A Magistrate has no power to order a police officer, prosecuting a person in his capacity, as such, to pay compensation. **7 C.W.N. 206.**

Compensation—continued.

——**1.**—**(General)**—*continued.*

(55)—S. 250 is inapplicable to the case of a complaint lodged by a police officer acting as such. **5 C.W.N. 370.**

(56)—An accusation, made to a police officer, who takes action upon it and lays the matter before the Magistrate with a charge sheet, cannot be said to be a case instituted upon complaint. In such a case, the Magistrate has no power tc award compensation under s. 250, Crim. Pro. Code. **7 M. 563.**

(57)—*Crim. Pro. Code (1898), s. 250—Vexatious complaint—Compensation to the accused, order for—Reasons, sufficiency of.*—A Magistrate, in ordering the complainant to pay compensation to the accused under s. 250, on the ground that the complainant's case is vexatious, should state his reasons why he thinks the complaint to be vexatious and should also state in his judgment the facts of the case with a criticism of the incidents involved in it. The statement that, in his opinion, the prosecution evidence is highly unsatisfactory and that, upon the evidence and the written statement and documents, he has no hesitation in saying that the case is vexatious is not sufficient. **10 C.W.N. 544=3 Cr. L.J. 390.**

(58)—*Crim. Pro. Code (1882), s. 250—Frivolous complaint of illegal seizure of cattle—Cattle Trespass Act (I of 1871).*—The illegal seizure of cattle under colour of Act I of 1871 is not constituted an offence under that Act or otherwise, and, therefore, a Magistrate is not competent to award compensation under s. 250, Crim. Pro. Code, to the accused on a frivolous and vexatious complaint in respect of such alleged illegal seizure. **9 M. 102=2 Weir 315.** [*F.*, 13 C. 304, 23 C. 248, 18 A. 353=16 A.W.N. 98]

(59)—*Crim. Pro. Code (1882), ss. 250 and 262—Applicability of s. 250 to summons cases.*—S. 262 renders applicable, in the case of summons cases, tried summarily, all the provisions of s. 250, and in all cases, whether tried summarily or not, in which a Magistrate acquits and is also of opinion that the complaint was frivolous or vexatious, it is open to him to award compensation. **11 M. 142=2 Weir 314.** [*R.*, U.B.R. (1906), 3rd Qr., Crim. Pro. Code, 51].

(60)—*Crim. Pro. Code (1898), s. 250—Order for compensation to an accused person against whom a frivolous or vexatious accusation was instituted—Case instituted on information to a village Magistrate—Discharge of accused—Validity of order for compensation.*—Where a complaint was made to a village Magistrate, who sent a report to the police and the police investigated the case and submitted a charge sheet to the Taluq Magistrate, *held*, that an order for compensation to be paid to the accused on his being discharged was not validly made, inasmuch as information was not given to the Magistrate, as the word is used in s. 250, the village Magistrate not being a Magistrate within the meaning of that section. **25 M. 667=2 Weir 318.**

Compensation—continued.

——**1.**—**(General)**—*continued.*

(61)—*Crim. Pro. Code (1898), s. 250—Order for compensation—Discretion of Magistrate.*—The question whether the discretion given by s. 250 has been rightly exercised must always depend upon the facts of the particular case. If the false charge is of such a nature that a prosecution is necessary on the grounds of public policy, it may well be that a Magistrate would exercise his discretion wrongly, if, instead of sanctioning a prosecution, he awarded compensation. If the faise charge is one which does not render it necessary on the grounds of public policy that a prosecution should be sanctioned, a Magistrate, who makes an order for compensation, cannot be said to exercise his discretion wrongly. **27 M. 59=2 Weir 313.** [*F.*, 1 S.L.R. 28 Cr.]

(62)—*Crim. Pro. Code (1898), ss. 250 (3), 422—Compensation, appeal against order granting—Notice to accused, necessity of.*—In cases of appeals under s. 250 (3), Crim. Pro. Code, which provides that there shall be an appeal from an order under that section, it is necessary to give notice of the appeal to the accused, as he is the party prejudiced, if the appeal be allowed and the order for compensation rescinded. **5 M. L.T. 262=9 Cr. L.J. 150=19 M.L.J. 130=1 Ind. Cas. 79.**

(63)—*Crim. Pro. Code (1898), s. 250—Non-Compliance with the provisions of s. 250—Order for compensation.*—Where a Magistrate does not comply with the provisions of proviso (*a*) to cl. (1) of s. 250, the order under s. 250, awarding compensation, cannot be validly made. **2 Weir. 310.**

(64)—*Crim. Pro. Code (1872), ss. 203 and 209 (=s. 250 of the Code of 1898)—Complaint of offence triable as warrant case—Validity of trying the case as summons case—Discharge of the accused—Award of compensation.*—S. 203 of the Code enables a Magistrate, if, after further examination of the complainant, he ascertains that the offence is not properly described either in the complaint or in the summons, to convict the accused on any other charge proved by the facts, provided it was triable as a summons case. Where the complaint and examination of the complainant and the evidence offered for the prosecution showed that the offences committed by the accused were, if any, criminal trespass, voluntarily causing hurt, and abetment of causing hurt, *held*, that the Magistrate had no power to try the case as a summons case, and to award compensation under s. 209 after discharging the accused. **6 M. 316.** [*R.*, 5 A.W.N. 45.]

(65)—*Crim. Pro. Code (Act V of 1898), s. 250—Compensation to accused—Restitution on cancellation of order.*—When compensation awarded to an accused under s. 250 of the Crim. Pro. Code has been paid by the complainant and the order awarding it has been subsequently set aside, the compensation may be recovered under s. 547 of the Code. **2 P.L.R. 1904.** (12 P.R. 1885 Cr., 19 A. 112, *F.*; 2 P.R. 1889 Cr. and 14 P.R. 1902 Cr., *R.*).

Compensation—continued.

—— **1.—(General)**—*continued.*

(66)—*Crim. Pro. Code (Act V of 1898), s. 250—Compensation for frivolous complaint—Offence—Proceedings under s. 107, Code of Criminal Procedure.*—A Magistrate is not competent, under s. 250, Crim. Pro. Code, to award compensation to a person against whom proceedings under s. 107, Crim. Pro. Code, are dropped, the proceedings not being a case in which a person is accused of an offence. **9 P.L.R. 1903.**

(67)—*Compensation under s. 270, Crim. Pro. Code (1861) and under a special cause.*—Compensation is awarded both under s. 270, Crim. Pro. Code, and under a special law (*e.g.*, Cattle Trespass Act). **1 P.R. 1872 Cr.**

(68)—*Complaints under special law—Crim. Pro. Code (1861), s. 270.*—S. 270 of the Code of Criminal Procedure does not apply to complaints under a special law, but only to complaints punishable under the Penal Code with imprisonment for a period not exceeding six months. **14 W.R. Cr. 36.**

(69)—*Crim. Pro. Code (1898), s. 250—Award of compensation and its reasons must be contained in order of discharge.*—In this case a Magistrate, after discharging the accused while the complainants were absent, procured their attendance subsequently and made an order awarding compensation to the accused. *Held*, that the order was unlawful as the Magistrate had no power to pass such an order after the discharge of the accused, s. 250 of the Code requiring that the order awarding compensation with the reasons for the same must be contained in the order of discharge. The Magistrate ought to have simply adjourned the case, without discharging the accused, with a view to procure the complainant's attendance and to ask them to show cause against paying compensation and passed final orders in the case subsequent to those steps. **57 P.R. 1905 Cr. = 181 P.L.R. 1905 = 3 Cr. L.J. 123.**

(70)—*Crim. Pro. Code (1898), ss. 250 and 431—Compensation—Death of person applying in revision against order to pay compensation—Abatement of application—Whether his legal representatives can conduct application.*—Where compensation has been awarded under s. 250, Crim. Pro. Code, and an application for revision against this order has been made, pending which the petitioner dies, the application does not abate also, but can be prosecuted by his legal representatives. **24 P.R. 1908 Cr. = 9 Cr. L.J. 103.**

(71)—*Improper order for compensation.*—A *Karkun*, attached to the establishment of a Subordinate Court, reported to the Sub-Judge of an obstruction to the execution of a writ of attachment of property, and the latter sent the case to a First Class Magistrate. The persons alleged to have obstructed the *Karkun* were acquitted, and the *Karkun* was ordered to pay compensation to the accused. *Held*, that the order for compensation was not proper, as the Sub-Judge and not the *Karkun* should be regarded as the complainant. **1 B. 175.** [*D.*, Rat. Un. Cr. C. 309].

Compensation – continued.

——**1.—(General)**—*continued.*

(72)—*Crim. Pro. Code, Act X of 1872, s. 209—Acquittal—Compensation.*—The provisions of s. 209 of the Crim. Pro. Code, as to the award of compensation on the dismissal of a complaint, do not apply to an adjudication of acquittal. **Rat. Un. Cr. C. 83.**

(73)—*Crim. Pro. Code, Act X of 1882, ss. 250, 242—Acquittal—Condition for compensation.*—The word "acquitted" in s. 250 of the Crim. Pro. Code, implies that there has been at least an inquiry to the extent required by s. 242 of the Code. Where the Magistrate dismisses a complaint and acquits the accused for the non-appearance of the complainant, no order for compensation can be made. **A.W.N. 1891, 63.**

(74)—*Crim. Pro. Code (1861), s. 44—Order for compensation—Form*—Where two persons were charged with theft and purchasing stolen property respectively, and the former was convicted and the latter was discharged on the ground that he had no guilty knowledge, *held*, that the Magistrate was not competent to seize from the thief the money he had with him and to pay it to the second accused as part of the purchase-money paid by him. **4 M.H.C. App. 28.**

(75)—The award of compensation, referred to in s. 44 of the Code of Criminal Procedure, should be a part of the sentence and order made upon a conviction for an offence of the nature specified therein, and it should be found upon a statement of loss, damage or expenses, as the case may be, ascertained at the trial. **11 W.R. Cr. 53.**

(76)—*Act I of 1871 (Cattle Trespass), s. 20—Complaint of illegal seizure of cattle—Compensation to accused, whether can be ordered—Crim. Pro. Code (1882), ss. 4 (a) and 250.*—The illegal seizure of cattle is not an offence within the meaning of the Crim. Pro. Code, and the order for compensation to the accused, under s. 250 of the Code, cannot be made. **9 M. 374 = 2 Weir 315.** [*F.*, 23 C. 248; *R.*, 18 A. 353 = 16 A.W.N. 98, 23 C. 442].

(77)—*Security proceedings.*—Proceedings under s. 107, Crim. Pro. Code, are not in confirmity with the requirements of s. 250, Crim. Pro. Code. **33 P.R. 1902 Cr.** (15 A. 365, *F.*).

(78)—Under s. 560, Crim. Pro. Code, 1882, the Court is not competent to award compensation on the dismissal of a complaint under s. 107, Crim. Pro. Code. **4 P.R. 1896.**

(79)—To a final order passed under s. 119, Crim. Pro. Code, s. 250, Crim. Pro. Code, does not apply. **37 P.R. 1884 Cr.**

Compensation—continued.

——1.—(General)—*continued.*

(80)—The provisions of s. 560, Crim. Pro. Code, are not applicable to an application under s. 107, such proceedings not being a case in which a person is "accused of an offence." **16 P.R. 1893 Cr.,** 4 P.R. 1896 Cr.

(81)—*Frivolous complaints—Compensation to accused—Crim. Pro. Code (1861), Chapter XV.*—Compensation for frivolous complaint could only be awarded in trials under Chapter XV of Act XXV of 1861. **14 P.R. 1866 Cr.** 27 P.R. 1866 Cr., 6 P.R. 1869 Cr. and 28 P.R. 1870 Cr.

(82)—*Complaint by master on behalf of his servant.*—Where, on behalf of the servants, the master makes a complaint, *held*, that the Magistrate should not, on dismissing the complaint, order compensation to be paid to the accused. **24 P.R. 1869 Cr.**

(83)—*To the police officer for his efforts in a case.*—It is illegal to order payment of part of the fine, imposed under Act III of 1867, to be made to a police officer for his efforts in the case. **2 P.R. 1870 Cr.**

(84)—*Illegal order awarding compensation—Revisional powers of Chief Court.*—The power of the Chief Court, as a Court of revision, to set aside illegal orders awarding compensation includes the power to direct repayment of the money paid as compensation. **12 P.R 1885 Cr.** (14 P R. 1884 Cr., *R.*).

(85)—*Sanction to prosecute and awarding compensation.*—Although there is nothing in the Code, which makes it illegal for a Magistrate both to award compensation to the accused and also to direct or sanction the prosecution of the complainant for bringing a false charge, yet, a Magistrate, who adopts such course, would be exercising his discretion improperly. **26 C. 181.** [*R.*, 18 P.R. 1901 Cr. = 100 P.L.R. 1901, 30 C. 123, 15 C.P.L.R. 194, 18 P.R. 1903 Cr. = 156 P.L.R. 1903, 6 P.R. 1904 Cr.].

(86)—A Magistrate is competent to order the prosecution of the complainant under s. 211, I.P.C., as well as award compensation to the accused under s. 250, Cr. P.C. **6 P.R. 1904, F.B., Cr.**

(87)—There is nothing in the terms of s. 250 of the Code of Criminal Procedure to justify the conclusion that a Magistrate, who grants sanction to prosecute for offences punishable under ss. 211 and 193 of the Penal Code, is *ipso facto* debarred from also granting compensation to the person falsely accused. **100 P.L.R. 1901.** (21 M. 237, *F.*; 22 C. 586, 26 C. 181, not *F.*).

(88)—*Held* that a Magistrate, by granting, or by expressing an intention to grant, sanction to prosecute the complainant under s. 211. Indian Penal Code, is not precluded from awarding, under s. 250, Crim. Pro. Code. reasonable compensation to the accused. **30 P.W.R. 1907 Cr. = 7 Cr. L.J. 231.**

Compensation—continued.

——1.—(General)—*continued.*

(89)—*Acquittal of accused—Order for compensation—Validity.*—Compensation under s. 209 of the Code of 1872 may be awarded, though the accused has been tried and is acquitted under s. 211, Crim. Pro. Code. The first accused was charged under s. 24, Cattle Trespass Act, with having rescued a cow from the possession of the complainant who was conveying it to a village pound to be impounded, and he was further charged, along with the second and third accused, with using criminal force to the complainant on the same occasion. The first accused was convicted on both the charges, but the second and third accused were acquitted under s. 211, and the complainant was ordered to pay compensation. *Held*, that the Magistrate was competent to pass the order for compensation, as a complaint may be well-founded as regards some of the accused, and yet vexatious and frivolous as regards others. **5 M. 381 = 2 Weir 316.** [*F.*, 10 B. 199].

(90)—An order to pay compensation may be added to an acquittal order made under s. 211 of the Crim. Pro. Code. **6 C. 581.**

(91)—An award, under s. 270, Crim. Pro. Code. 1861, will not bar proceedings against the complainant under s. 211, Penal Code. **2 Weir 311.**

(92)—*Imprisonment in default of payment of.*—A complainant, who has been ordered to pay compensation, cannot be ordered to undergo a sentence of imprisonment, in default of payment. **13 P.R. 1896 Cr.** (22 C. 586 and 18 A. 96, *F.*).

(93)—*Crim. Pro. Code, Act X of 1882, ss. 560, 386, 387—Compensation—Imprisonment.*—S. 560 of the Crim. Pro. Code, 1882, does not empower a Magistrate to award imprisonment in the order for payment of the compensation. It provides a procedure for the levy of the payment, *viz.*, that for levy of a fine under ss. 386, 387. It is only when the compensation cannot be recovered that the Magistrate is empowered to award imprisonment. **Rat. Un. Cr. C. 611 = Cr. Rg. 32 of 1892.**

(94)—*Crim. Pro. Code (1882), s. 560—Imprisonment in default of payment of compensation.*—An order for imprisonment in default of payment of compensation is illegal. **22 C. 586.** [*F.*, 13 P.R. 1896 Cr.].

(95)—Compensation awarded under s. 560, Crim. Pro. Code, 1882, is recoverable as if it were a fine. But a Magistrate is not authorised, immediately on ordering a complainant to pay compensation, to direct that he should in default be sentenced to imprisonment. Before imprisonment is awarded, an attempt must have been made to recover the money in the manner prescribed by s. 386, Crim. Pro. Code. **18 A. 96.** [*F.*, 19 A. 73].

(96)—*Imprisonment in default—Validity of sentence.*—An order of imprisonment in default of payment of compensation is not authorised by s. 250, Crim. Pro. Code, 1898. **14 P. R. 1902 Cr.** (13 P.R. 1896, *F.*)

Compensation—continued.

——**1.—(General)**—*continued.*

(97)—*Imprisonment in default of payment of part of—Proportion to maximum term—Crim. Pro. Code (1882), s. 560.*—When compensation awarded under s. 560, Crim. Pro. Code, 1882, can only be partly recovered, the person ordered to pay compensation is not liable, on account of the unrecovered part of the compensation, to the maximum term of imprisonment prescribed by that section, *viz.*, one month, but is only liable to a part of a month, regulated by the proportion which the unrecovered part of the compensation bears to the whole compensation awarded. **L.B.R. (1893—1900), 320.**

(98)—*Crim. Pro. Code (1882), s. 560—Order for compensation—Case instituted on information given by a Police Officer—Imprisonment in default of payment of compensation.*—The operation of s. 560 is restricted to cases instituted by "complaint" as defined by this Code or upon information given to a Police Officer or to a Magistrate." It is clear that it will not apply to a case instituted on a Police report or on information given by a Police Officer. *Held*, that an order passed by a Deputy Magistrate under the provisions of s. 560 of the Code, directing a Police constable, who had arrested and charged a carter with an offence under cl. 3, s. 34 of Act V of 1861, and who had failed to prove such charge, to pay the carter Rs. 20 as compensation or undergo simple imprisonment for a fortnight, was illegal. [*F.*, 22 B. 934, 5 C.W.N. 370; *R.*, U.B.R. (1897-1901), 68, Cr.]. It is extremely doubtful whether a Magistrate has, under the section, any jurisdiction to make an order for imprisonment in default of payment of the compensation. Anyhow, the order for imprisonment could only be made, if the compensation could not be realised by distress, and it is illegal to make such an order, until some attempt has been made to levy the amount of the compensation. **21 C. 979.** [*F.*, 22 C. 586; *R.*, 2 Weir 321=26 M. 127].

(99)—S. 250 does not permit a Magistrate, who has passed an order directing the complainant to give compensation to the accused, forthwith to add to his order that, in default of payment of compensation, imprisonment for a certain term shall be undergone. The law requires that an attempt should be made to realise the amount, and if it be not recovered, an order of imprisonment may be passed in default. **5 C.W.N. 213.**

(100)—The compensation which the Court is empowered to give under s. 250 is not a fine, but is in the nature of damages for malicious prosecution, although it is made recoverable in a summary manner as if it were a fine. An imprisonment cannot be ordered on intimation by the person directed to pay compensation that he is unable to pay it. **26 M. 127=2 Weir 321.**

(101)—Imprisonment can only be awarded on failure to recover a fine. An order awarding imprisonment in default of payment of compensation is, therefore, not valid. **2 Weir 320.**

(102)—A sentence of imprisonment awarded in default of payment of compensation is not warranted by law. The law prescribes that the compensation may be levied as a fine, but it does not say that imprisonment may be awarded in default of payment. The ordinary mode of levying fines is laid down in s. 386, Crim. Pro. Code. **22 C. 139.** [*R.*, 3 L.B.R. 32, 2 Weir 320].

(103)—It is only if the compensation awarded under s. 250 of the Code of Criminal Procedure cannot be recovered that imprisonment can be awarded, but the Magistrate may, if he thinks fit to do so, take action under s. 388 (2) of the Code. **17 C.P.L.R. 104.**

(104)—A Magistrate should not direct a complainant to pay compensation, under s. 250 of the Code, and at the same time make an order of imprisonment in default. The proper procedure is to recover the fine, in the first instance, under ss. 386 and 387 of the Code, and, if it is not found to be recoverable, the Magistrate can order imprisonment under the proviso to s. 250. **3 L.B.R. 32.**

(105)—*Crim. Pro. Code (1898), s. 250—Compensation for frivolous and vexatious accusation—Objection against awarding it—Imprisonment in default.*—A Magistrate should record and consider any objection which the complainant might urge against the making of an order for compensation, and a failure to do so makes the order bad in law. [*R.*, U.B.R. 1906, 3rd Qr., Crim. Pro. Code, 51=5 Cr. L.J. 298]. Imprisonment in default of payment of compensation cannot be awarded, unless it is found that the payment of the compensation cannot be enforced by legal process. **5 C.W.N. 214.**

(106)—*Crim. Pro. Code (1861), s. 294—Imprisonment of sureties.*—S. 294 makes no provision for the sureties being imprisoned. **4 M.H.C. App. 68.**

(107)—*Crim. Pro. Code, Act X of 1882, s. 250—Compensation—Fine.*—Where a complaint is thrown out as false, the Magistrate can order compensation to be paid by the complainant to the accused, but cannot impose a fine on the complainant and order a portion thereof to be paid to the accused. **A.W.N. 1885, 44.**

(108)—*Award of—Crim Pro. Code (1898), s. 560*—Compensation cannot be awarded, under s. 560, in cases in which there has been a dismissal of the complaint without issue of process for compelling the attendance of the accused. **8 P.R. 1897 Cr.; 14 P.R. 1897 Cr.**

(109)—A Magistrate has no jurisdiction to award compensation under s. 560 in cases triable exclusively by a Court of Session. **Rat. Un. Cr. C. 961=Cr. Rg. 14 of 1898.**

Compensation—continued.

——**1.—(General)**—*continued.*

(110)—Before directing a complainant to pay compensation, the Magistrate should comply with provisos (*a*) and (*b*) of s. 560, which are imperative, and the complainant ought to be given an opportunity to show cause against it. **Rat. Un. Cr. C. 725=Cr. Rg. 53 of 1894.**

(111)—*When awardable and from whom to be levied—Crim. Pro. Code (1882), s. 560—Penal Code, s. 366.*—Compensation can only be given under s. 560 of the Crim. Pro. Code, 1882, when the complaint is of an offence *triable by a Magistrate.* An offence under s. 366, Penal Code, is not triable by a Magistrate. Compensation can only be recovered from the person upon whose complaint or information the accusation was made, and not from a person who did not institute proceedings, but was examined as a witness. **L.B.R. (1893—1900), 443.**

(112)—*Crim. Pro. Code (1882), s. 560—Charge on several counts—Acquittal on one and conviction on another—Compensation to accused.*—Where a person charged under ss. 352 and 379, Penal Code, was convicted under s. 352, being discharged under s. 379, and the Magistrate ordered the complainant under s. 560, Crim. Pro. Code, to pay compensation for the accused, *held*, that the order directing the complainant to pay compensation should be set aside, as s. 560 could only operate when there was a complete discharge or acquittal. **24 C. 53=1 C.W.N. 17.**

(113)—*Crim. Pro. Code (1882), s. 560—Complaint by police—Compensation to the accused.*—An order for the payment of compensation to the accused, under s. 560, Crim. Pro. Code, is not legal when the complainant is a police officer. **22 B. 934.**

(114)—*Crim. Pro. Code (1882), s. 560—Wrongful seizure of cattle--Compensation—Cattle Trespass Act, I of 1871, s. 20.*—A wrongful seizure of cattle is not made punishable under any law. Therefore, a complaint of the illegal seizure of cattle is not a complaint of an offence within the meaning of the Code, and s. 560 is not applicable. Compensation to the persons against whom the complaint is made cannot, therefore, be awarded. **18 A. 353.**

(115)—*Crim. Pro. Code (1882), s. 560—Compensation on a complaint under s. 110, Crim. Pro. Code.*—S. 560 contemplates information and accusation of an offence, and provides compensation for a person who has been discharged or acquitted of such offence, the accusation against him being held frivolous or vexatious. Compensation cannot be granted to a person respecting whom a rule issued under s. 110 has been discharged, as he is not charged with any offence. **15 A. 365.** [*F.*, 25 B. 48, 33 P.R. 1902 Cr.; *R.*, 131 P.L.R. 1905=42 P.R. 1905 Cr.].

(116)—*Crim. Pro. Code (1882), s. 560—Order for compensation to the accused—Subsequent order to prosecute the complainant under s. 211, Penal Code, and his witnesses under s. 193,*

Compensation—continued.

——**1.—(General)**—*continued.*

Penal Code, validity of.—There is nothing in the terms of s. 560, Crim. Pro. Code, to justify the conclusion that a Magistrate, who grants sanction to prosecute for offences punishable under ss. 221 and 193, Indian Penal Code, is *ipso facto* debarred from also granting compensation under s. 560 to the person falsely charged. Where a Magistrate acquitting the accused of the charge of theft directed the complainant to pay compensation to the accused and subsequently granted sanction to prosecute the complainant under s. 211 and his witnesses under s. 193, Penal Code, *held*, that the order granting sanction was not illegal on the ground of the previous order for compensation. **21 M. 237=2 Weir 312.** [*F.*, 15 C.P.L.R. 194; *R.*, 100 P.L.R. 1901=18 P.R. 1901 Cr., 27 M. 59, 26 A. 512=1 A.L.J. 234=A.W.N. 1904, 116].

(117)—*Crim. Pro. Code (1861), s. 44 (s. 545 of the Code of 1898)—Compensation to innocent purchaser of stolen property out of fine.*—Compensation cannot be awarded to an innocent purchaser of stolen property out of the fine imposed upon the accused, the thief. **2 Weir 715=7 M.H.C. App. 13.** [*F.*, 2 Weir 716].

(118)—It is not lawful to direct payment of part of the fine imposed on a person convicted of theft as compensation to an innocent purchaser of stolen property. The sale to the purchaser is not the offence complained of within the meaning of s. 308. **6 M. 286=2 Weir 716.** [*F.*, 2 Weir 716].

(119)—*Crim. Pro. Code (1882), s. 560—Showing cause--Award of compensation—Death of accused—Revision by High Court.*—Before ordering compensation to be paid to an accused person under s. 560 of the Crim. Pro. Code, the Magistrate should call on the complainant to show cause.

(120)—*Setting aside of order for payment of compensation—Refund, how enforced.*—Where an order for payment of compensation has been set aside by an appellate Court or the Court of Revision, the refund of compensation can be enforced under s. 547, Crim. Pro. Code, as if it were a fine. **29 P.R. 1903 Cr.** (12 P.R. 1885 Cr., 19 A. 112, *F*; 2 P.R. 1889 Cr.. *Not F.*)

(121)—*Compensation in false cases of theft.*—Compensation is not awardable in false cases of theft. **3 W.R. Cr. 70.** 1 W.R. Cr. 1, 2 W.R. Cr. 57, 7 W.R. Cr. 40, 7 W.R. Cr. 12, 6 W.R. Cr. 55, 18 W.R. Cr. 6, **But** *see* 23 W.R. Cr. 17.

(122)—Where the offence complained of is theft, the offence being one not referred to in Ch. XX of the Crim. Pro. Code, s. 250 does not apply, and no order for compensation can be made. **A.W.N. 1885, 258.**

(123)—*In cases of defamation.*—Compensation is not awardable in cases of defamation. **1 W.R. Cr. 6.**

Compensation—continued.

——**1.—(General)**—*continued.*

(124)—*House-breaking.*—Compensation cannot be awarded in a case of house-breaking by night. **7 W.R. Cr. 12.**

(125)—*Wrongful confinement.*—Compensation cannot be awarded in a case of wrongful confinement. **7 W.R. Cr. 11.**

(126)—*Mischief—House-trespass.*—The section did not apply to cases of mischief committed on land and house-breaking by night, though both contain an element of criminal trespass to which s. 270, Crim. Pro. Code, does apply. **8 W.R. Cr. 54.**

(127)—*Fine—Crim. Pro. Code (1861), Ch. XIV.*—A fine cannot be awarded as compensation in a case falling under Ch. XIV of the Code of Criminal Procedure, 1861. **3 W.R. Cr. 60.**

(128)—*Penal Code, s. 374.*—Compensation is awardable only in cases under Ch. XV of the Crim. Pro. Code, and, therefore, not in a case under s. 374 of the Penal Code. **5W.R. Cr. 1.**

(129)—*Recovery of amount when not paid—Distress warrant—Crim. Pro. Code (1872), s. 209.*—A Magistrate in making an order for compensation is bound, if the amount be not paid, to proceed to the recovery of it by distress and sale of the moveables of the person ordered to pay; but, if such person admits he has no goods, and thereby waives the right to have the amount levied by distress, the Magistrate may proceed to imprison him in the civil jail. The warrant of distress cannot have currency simultaneously with the imprisonment. **23 W.R. Cr. 65.**

(130)—*Alteration of charge to bring offence under Ch. XV of Crim. Pro. Code (1861).*—Where a Magistrate is dealing with a charge which he has the power to dispose of finally under Ch. XV of the Code of Criminal Procedure, although the charge, as originally laid, fell under Ch. XIV, he has a discretion to inflict a fine under s. 270 of that Code. **10 W.R. Cr. 49.**

(131)—*Failure to prove case—Crim. Pro. Code (1861), s. 270.*—The High Court refused to interfere with the order of a Magistrate fining complainants under s. 270 of the Code of Criminal Procedure, when it appeared, after due enquiry by the Magistrate, that the complainants laid claim to large *jummas* in a *chur*, without possessing any documents to prove their rights. **11 W.R. Cr. 10.**

(132)—*Amount of compensation—Crim. Pro. Code (1861), s. 270.*—Since the passing of Act VIII of 1869, it is competent to a Magistrate, under s. 270, in a case in which more than one person has been accused, to awrd campensation not exceeding Rs. 50 to each person. **14 W.R. Cr. 75.**

(133)—*Amount of compensation.*—Rs. 50 is the measure of compensation awardable from any complainant, irrespective of the number of accused persons. **8 W.R. Cr. 54.**

Compensation—continued.

——**1.—(General)**—*concluded.*

(134)—*Crim. Pro. Code, Act V of 1898, s. 250—Compensation—Procedure.*—A Magistrate, having come to the conclusion that a complaint was frivolous or vexatious, after acquitting the accused, ordered the complainant at the end of the judgment to show cause why an order for compensation should not be made. The complainant appeared on a subsequent day to show cause, but an order under s. 250 of the Crim. Pro. Code was eventually made. *Held* that this was not quite a regular procedure, but that the irregularity was waived and that the High Court could not interfere with the order in revision. **A.W.N. 1905, 214 = 2 Cr. L.J. 523.**

(135)—*Crim. Pro. Code, Act X of 1882, s. 560, cl. 1—Successor in office—Jurisdiction—Compensation.*—Where an order for compensation under s. 560 of the Crim. Pro. Code was made by a Magistrate who succeeded in office the Magistrate who had tried the case and had directed the complainant to show cause why such order should not be made, *held* that he acted without jurisdiction. **A.W.N. 1892, 58.**

(136)—"*Taken into account*"—*Crim. Pro. Code (1872), s. 308.*—The expression "taken into account" in the Code of Criminal Procedure, s. 308, means that the compensation awarded by the Magistrate is to be taken into consideration by the Court in a subsequent civil suit, not that it is to be afterwards deducted from the damages awarded. **22 W.R. 336.**

——**2.—(To accused).**

See CRIM. PRO. CODE (1898), s. 250.

(1)—*Compensation to accused, nature of.*—The award of compensation is by way of amends to the accused and should not be credited to the Government. **102 P.R. 1866 Cr.; 1 P.R. 1869 Cr.**

(2)—Compensation may be awarded to an accused person on the dismissal of the complaint, on the ground of its being frivolous and vexatious, although the complaint is not one of an offence under the Penal Code. **4 N.W.P. 94.**

(3)—*Crim. Pro. Code (1861), s. 270—Compensation.*—Compensation can be awarded under s. 270, Crim. Pro. Code, 1861, only when a complaint of an offence triable by a Magistrate under Ch. XV is dismissed. **6 M.H.C. App. 49.**

(4)—*Crim. Pro. Code (1898), s. 250—Compensation.*—To justify the award of compensation under s. 250, the Magistrate himself must acquit the accused under s. 245 or s. 247; but where a case is compounded under s. 345, the composition in itself has the effect of an acquittal; neither in that case nor in the case of an acquittal recorded by the Magistrate under s. 248, can compensation be legally awarded. **19 P.R. 1888 Cr.** (24 P.R. 1882 Cr.; 14 P.R. 1884 Cr., *R.*).

Compensation—continued.

——**2.—(To accused)**—*continued.*

(5)—Only in cases where the complaint is dismissed, and not in cases where the complaint is allowed to be withdrawn, can the accused be compensated. **26 P.R. 1870 Cr.;** 16 P.R. 1871 Cr.

(6)—*Complaint against several accused—Dismissal of complaint as against one—Compensation.*—A Magistrate is competent, in a complaint against several persons, to award compensation to one of them, when he dismisses the complaint against him as vexatious. **15 P.R. 1877 Cr.**

(7)—*To accused—His right to be heard in proceeding relating to compensation.*—An accused person to whom payment of compensation has been ordered has no right to be heard in a proceeding relating merely to the order of compensation, as he is not "an accused person" within the meaning of s. 439. **14 P.R. 1888 Cr.**

(8)—*Compensation to accused—Power to award compensation without hearing evidence.—Held* that it was not competent to the Magistrate to order compensation to the accused under s. 270, Act XXV of 1861, without hearing evidence. **2 B.L.R. S.N. 15=10 W.R. Cr. 61.**

(9)—*Order for, appeal by complainant from—Necessity of notice to the accused and the public prosecutor.*—In this case, an order of a Magistrate awarding compensation to the accused was reversed, on the appeal preferred by the complainant, without notice either to the accused or to the Public Prosecutor. *Held*, on revision, setting aside the said order of the appellate Court, though there is no express provision directing that notice should be given to the accused in such a case, yet, on the principle *audi alteram partem*, the accused should be given notice of the appeal so as to afford him an opportunity of supporting the order passed in his favour. Also, according to the letter of the law, notice should also be given to the officer, if any, appointed by the Local Government referred to in s. 422 of the Crim. Pro. Code. The safer course in such an appeal, therefore, unless it be summarily rejected, is to give notice to both the accused and the officer referred to. **29 M. 187=3 Cr. L. J. 452.**

(10)—*Crim. Pro. Code (1861), s. 270 (s. 250 of the Code of 1898)—Compensation, award of—Right of civil suit.*—The compensation which a Magistrate, who dismisses a complaint as frivolous or vexatious, is empowered in his discretion to award to an accused person, does not deprive the latter of any right of suit in the Civil Court which he may possess. **2 N.W.P. 58.**

(11)—*Crim. Pro. Code (1861), s. 270 (s. 250 of the Code of 1898)—Compensation, nature of, and how to be realised.*—A Magistrate dismissing a complaint can award to the accused a sum not exceeding Rs. 50, as compensation. He cannot exceed that amount and he cannot

Compensation—continued.

——**2.—(To accused)**—*continued.*

impose it as a fine otherwise than in compensation. He cannot directly sentence the complainant to imprisonment in default of payment. The amount awarded is recoverable by distress and sale of the complainant's property, and in default of such distress, by imprisonment of the complainant in the civil jail for any time not exceeding 30 days, unless it shall be sooner paid. **2 N.W.P. 430.** [*R.*, 21 C. 979].

(12)—*Crim. Pro. Code (1872), s. 209 (s. 250 of the Code of 1898)—Order for compensation—Award of, after hearing defence witnesses.*—If the Magistrate finds that the complaint is frivolous or vexatious, he may dismiss the complaint, and, in his discretion, may, by his order of dismissal, award compensation. Where, owing to the exaggerated statement of the complainant or some such cause, the Magistrate is not able to detect the frivolous or vexatious character of the complaint, he may award compensation after hearing the evidence for the defence. **2 Weir 316.**

(13)—*Award of—To accused—Recovery of amount paid as compensation.*—Where, under the orders of an Inspector of the Railway Police, on the report of the Railway constable, the accused was charged, tried and discharged by the Magistrate, and awarded compensation to be paid by the constable, *held*, that the order for compensation was not a valid order, as he was not the complainant. The Code of 1872 had no provisions for recovering the amount paid away to the accused as compensation, when the order of payment is set aside. **16 P.R. 1879 Cr.**

(14)—*False case.*—A Magistrate is competent to order the complainant to pay compensation to the accused in a case which is wilfully false. as such a case is necessarily vexatious. **18 P.R. 1903 Cr.**

(15)— A Magistrate is not precluded from awarding compensation to the accused, merely because he finds that the complaint is false. **15 C.P.L.R. 194.** (26 C. 181, 29 C. 479, *disapproved*; 21 M. 237, *approved*).

(16)—Compensation to the accused may be awarded under s. 250 of the Crim. Pro. Code in a case found to be false by the trying Magistrate. **156 P.L.R. 1903.** (28 C. 251, 4 Bom. L.R. 645, *Diss.*; 26 C. 181, *R.*)

(17)—The provisions of s. 250, Crim. Pro. Code, apply only to cases where the charge is frivolous or vexatious; they do not apply where the charge is false. **4 Bom. L.R. 645.** [*Diss.*, 156 P.L.R. 1903; *D.*, 5 Bom. L.R. 128].

(18)—S. 250, Crim. Pro. Code, contemplates a case where the accusation is false; a charge that is false must also be vexatious, though it may not be frivolous as well. **5 Bom. L.R. 128.**

(19)—*Held* by the Full Bench (Prinsep, C.J., *dissenting*) :—Where an accusation is frivolous or vexatious, the fact of its being false as well cannot disentitle the accused to compensation

Compensation—continued.

——**2.—(To accused)**—*concluded.*

under s. 250. An order for the payment of compensation, therefore, can be made in a case, which is false as well as frivolous or vexatious. **30 C. 123=6 C.W.N. 799, F.B.** (28 C. 251, *Over.*) [*F.*, 5 Bom. L.R. 128, A.W.N. 1904, 116=26 A. 512, 30 P.W.R. 1907 Cr.]

(20)—*Crim. Pro. Code (1882), s. 250—False complaint by Municipal servant, who had the sanction of the Municipality to prosecute—Compensation.*—The accused was charged under the sanction of a District Municipality, and on a complaint made by a Municipal peon, with the offence of casing herself within the Municipal limits in a prohibited place. The Magistrate, who tried the case, acquitted the accused and ordered the complainant, under s. 250 of the Crim. Pro. Code, to pay the accused Re. 1 only as compensation. The District Magistrate, on the authority of *Keshav Lakshman* (1 B. 175, 177) referred the case to the High Court for reversal of the order of compensation. *Held*, that the case differed from the one cited, as there the complaint was preferred by a Judge acting judicially. An executive body cannot authorize a servant to prefer a wrongful complaint and so screen the complainant from a legal penalty. **Rat. Un. Cr. C. 309=Cr. Rg. 61 of 1886.**

(21)—*Crim. Pro. Code (1872), s. 209 (s. 250 of the Code of 1898)—False complaint, whether vexatious.*—A false complaint is also a vexatious complaint. **2 Weir 313.**

(22)—*False complaint—Award of compensation—Crim. Pro. Code (1882), s. 250—Cattle Trespass Act, 1871, s. 20.*—A Magistrate cannot award compensation under s. 250 of the Crim. Pro. Code, to be paid to the accused in a frivolous and vexatious complaint, under s. 20 of the Cattle Trespass Act of illegal seizure of cattle. **13 C. 304.** [*R.*, 18 A. 353=16 A.W.N. 98].

——**3.— (To complainant and his relatives).**

See CRIM. PRO. CODE (1898), s. 545.

(1)—*Crim. Pro. Code (1882), s. 545—Compensation out of fine imposed upon the accused—When awardable.*—A Magistrate, acting under s. 545 of the Crim. Pro. Code, cannot, in awarding compensation out of the fine imposed upon the accused, order the payment of the sum to the complainant which he might have given to the accused for bribing others. **Rat. Un. Cr. C. 373=Cr. Rg. 21 of 1888.**

(2)—S. 545, Crim. Pro. Code, does not empower a Court to award compensation for alleged offences other than those which form the subject of enquiry in the case in which the order is made, still less for offences of which the accused is acquitted. **Rat. Un. Cr. C. 407=Cr. Rg. 72 of 1888.**

(3)—Under s. 545, Crim. Pro. Code, 1882, an award of compensation cannot be made in addition to the fine imposed, but must be made payable out of the fine itself. **Rat. Un. Cr. C. 196.**

Compensation—continued.

——**3.—(To complainant and his relatives)**—*continued.*

(4)—Under s. 545, payment of compensation can only be ordered out of the fine recovered; and it is not competent to a Magistrate to award compensation in addition to the fine imposed upon the accused. **5 Bom. L.R. 976.**

(5)—S. 545 deals with expenses incurred in the prosecution and with compensation for injury only. Compensation cannot, therefore, be granted for loss occasioned to the complainant on account of his inability to go on with his field work on account of the prosecution of the accused. **22 B. 438.**

(6)—If compensation is to be awarded to the complainant, the Magistrate should state explicitly under what section of the Code the award was made and for what purpose. *Held* also, that an order that the accused is to pay besides the fine "all the expenses which the complainant has been put to" is illegal. **U.B.R. (1897—1901), Vol. I, 347.**

(7)—In cases where the complainant can recover damages in a civil action, he can be compensated under s. 308, Crim. Pro. Code, 1872. In order that an accused person may have an opportunity to contest both the liability to, and the amount of, compensation, the Court should state the specific ground on which the compensation is claimed and awarded. **10 P.R. 1878 Cr.**

(8)—Compensation to the complainant is only awardable in cases where he has suffered pecuniary loss, or some special pecuniary damage, or incurred expenses in prosecuting. **77 P.R. 1866 Cr.**

(9 and 10)—Where loss has been occasioned to the complainant by the accused stealing his property, it is competent to the Magistrate to award compensation to the complainant out of the fine levied on the accused, besides ordering the stolen property to be restored to the complainant. **5 B.H.C. Cr. 41.**

(11)—An appellate Court cannot award as compensation any portion of a fine imposed on a convict by the trying Court, when the latter had refused to award it. **Rat. Un. Cr. C. 39.**

(12)—*Nature of compensation—Loss to person injured—Damages.*—The compensation awarded, under s. 44 of the Code of Criminal Procedure, 1861, corresponds to damages awarded in civil proceedings. **5 W.R. Cr. 76.**

(13)—*Crim. Pro. Code, s. 545—Compensation, when no fine is imposed.*—Where the accused is discharged without the imposition of any fine, an order for payment of compensation cannot be legally passed under s. 545, Crim. Pro. Code. **22 B. 717.**

(14)—*To complainant—Power to order refund, when afterwards remitted—Powers of High Court—Revision.*—There is no provision in the Crim. Pro. Code, under which an accused person can obtain a summary order from the

Compensation—continued.

——3.—(To complainant and his relatives) *—continued.*

Criminal Courts directing the refund of a fine paid as compensation to the complainant, but which has been subsequently remitted by a superior Court. **2 P.R. 1889 Cr.** [*Contra*, 12 P.R. 1885 Cr. and 29 P.R. 1903 Cr.].

(15)—*Crim. Pro. Code (1882), s. 545—Order for removal of fishing stakes—Obstructions to Fair Ways Act, XVI of 1881—Penal Code, s. 283—Compensation to the complainant.*—The accused was ordered by the Superintendent of the Coast Guard Service to remove certain fishing stakes, and was convicted under s. 283, I.P.C., for failing to comply with that order, and sentenced to pay a fine of Rs. 20, of which Rs. 15 were awarded as compensation to the complainant, the Coast Guard, to cover the expenses of removing the stakes: *Held* that the case, not having been dealt with under the Obstruction to Fair Ways Act, the order of compensation was illegal, the same not coming within the terms of s. 545, Crim. Pro. Code. **Rat. Un. Cr. C. 241 = Cr. Rg. 8 of 1886.**

(16)—*To whom awardable.*—It is awardable only to the person who suffered from the offence, and not to his relations. **89 P.R. 1866 Cr.**

(17)—Compensation can only be awarded to the person who has suffered from the accused's act and not to his relatives. **97 P.R. 1876; 25 P.R. 1868 Cr.**

(18)—*Heirs of person suffering by offence—Crim. Pro. Code (1861), s. 44.*—Compensation, under s. 44 of the Code of Criminal Procedure, 1861, cannot be awarded to the heirs of a person who has been killed. **10 W.R. Cr. 39.**

(19)—*Compensation for mother of deceased on conviction for hurt—Crim. Pro. Code (1882), s. 545.*—The mother of a deceased person, who had not incurred any expense in conducting the prosecution, could not recover out of the fine imposed upon the accused convicted for hurt, any compensation. **6 P.R. 1890 Cr.**

(20)—*Crim. Pro. Code (1882), s 545—Compensation to the widow of a man whose death is caused by a negligent act.*—Compensation cannot be given by a Magistrate to the widow of the person, whose death was caused by the accused's negligent act. out of the fine imposed on him, on being convicted under s. 304-A of the Penal Code. **21 M. 74, F.B. = 2 Weir 719.** [*F.*, 17 P.R. 1898 Cr., F.B., 16 C.P.L.R. 180].

(21)—Where a person convicted, under s. 304-A of the Penal Code, was sentenced to pay a fine and was ordered that the whole amount of fine, if recovered, be paid to the widow of the deceased as compensation, *held*, that the award of compensation to the widow was not legal under s. 545, Crim. Pro. Code. **12 M. 352 = 2 Weir 719.** [*F.*, Rat. Un. Cr. C. 763, 21 M. 74 = 2 Weir 719, F.B., 16 C.P.L.R. 180; *Diss.*, 17 P.R. 1898 Cr., F.B].

Compensation—continued.

——3.—(To complainant and his relatives) *—continued.*

(22)—It is not competent to a Judge to award, in case of the death of complainant compensation to the widow of the deceased out of the fine imposed upon the accused. **Rat. Un. Cr. C. 763 = Cr. Rg. 26 of 1895.**

(23)—An award of compensation to the widow of a person, whose death was caused by falling into a pit dug by the accused, out of the fine imposed on the accused is illegal under s. 44 of the Crim. Pro. Code, 1861. **7 B.H.C. Cr. 73.** [*R.*, 5 C.P.L.R. Cr. 45, 16 C.P.L.R. 180].

(24)—It is competent to the Court, under s. 545, Crim. Pro. Code, to award part of the fine imposed under s. 304, I.P.C., for the offence of culpable homicide not amounting to murder, to the widow of the person killed. **17 P.R. 1898 Cr., F.B.** (12 M. 352, 21 M. 74, F.B., *Not F.*)

(25 and 26)—*Conviction under s. 304-A, I.P.C.—Compensation to the relatives of the deceased—Act XIII of 1855.*—The award of compensation to the relatives of the deceased, under Act XIII of 1855, on the conviction of the accused who caused the death under s. 304-A, I.P.C., is illegal. **7 P.R. 1877 Cr.**

(27)—*Compensation to husband whose wife is enticed away.*—Compensation may be awarded to a husband whose wife has been enticed away with criminal intent. **10 P.R. 1878 Cr.; 14 P.R. 1878 Cr.**

(28)—*Award of, under s. 545—What the order should state.*—In an award of compensation to a complainant under s. 545 of Crim. Pro. Code, 1882, the two cls. (*a*) and (*b*) of that section should be borne in mind, and it should be clearly stated in the order whether the payment out of the fine is intended to defray the expenses properly incurred in the prosecution, or to make compensation for the injury caused by the offence committed, such as would be recoverable by a civil suit. **U.B.R. (1892—1896), Vol. I, 290.**

(29)—*Acquittal after trial of charges—Crim. Pro. Code (1872), ss. 209, 211.*—Where a formal charge has been drawn up and the accused tried and acquitted, no compensation can be awarded to the accused under s. 209 in such a case. **22 W.R. Cr. 12.**

(30)—*Dismissal in default of appearance.*—In a case where a Magistrate dismissed a complaint in default, and fined the complainant under s. 270, the fine was remitted and ordered to be refunded. **17 W.R. Cr. 6.**

(31)—*Crim. Pro. Code, Act X of 1882, ss. 247, 250—Absence of complainant—Appeal from order for compensation—Act IV of 1891.*—Where a Third Class Magistrate, after examining the complainant in a case under ss. 352, 426 of the Penal Code, acquitted the accused under s. 247 of the Crim. Pro. Code, and made an order for compensation under s. 250 on account of the non-appearance of the complainant on the adjourned date, *held*, that both the orders were

Compensation—continued.

——**3.—(To complainant and his relatives)** —*continued.*

illegal. No appeal lay, before Act IV of 1891 came into force, from an order of compensation, under s. 250, to the District Magistrate. **A.W.N. 1891, 120.**

(32)—*Crim. Pro. Code (1898), s. 545 (1) (b) —Compensation paid out of fine—Amount to be awarded—Expense incurred in prosecution—Compensation for injury caused by the offence.* —Where the accused was convicted of illegally demanding and receiving money, under s. 21 (*e*) of the Fisheries Act, and was fined three times the amount of the illegal receipts, and the Magistrate directed the whole of the fine to be paid to the persons from whom the accused had taken money: *Held*, as the prosecution was instituted, without complaint, on the report of an official, and as the persons aggrieved, had not incurred any expense in the prosecution, except the expense of attending Court as witnesses and had not suffered any injury beyond the loss of the sums paid to the accused, the amounts awarded, as compensation, were considerably in excess of the amounts to be awarded under cl. (*b*) of s. 545 (1). **5 L.B.R. 50=2 Ind. Cas. 542.**

(33)—*Award of compensation out of fines in petty cases--Crim. Pro. Code (1882), s. 545.*—It is improper to award, out of the fine imposed, compensation to complainants in petty cases, where no damage of any kind to occasion pecuniary loss has been sustained. S. 545, Crim. Pro. Code, provides that such payment is to be made where substantial compensation is recoverable by civil suit. **L.B.R. (1872—1892), 538.**

(34)—*Crim. Pro. Code, Act XXV of 1861, s. 44—Loss or damage—Compensation.*—Where there is no proof that any loss or special damage has been caused to the complainant by the hurt inflicted by the accused, *held* that an order for compensation is illegal. **3 B.H.C. Cr. 43.**

(35)—*Cattle Trespass Act, I of 1871, s. 22—Fine in addition to compensation.*—S. 22 does not provide for a fine in addition to compensation. **1 Weir 710=7 M.H.C. App. 24.**

(36)—*Bodily pain suffered by complainant—Compensation.*—Bodily pain suffered from the administration of poison is not an injury that can be compensated by money. The question of compensating a complainant out of fine depends upon whether the loss, injury or damage has been occasioned by the offence, which can be appraised in money. **12 P.R. 1876 Cr.**

See ACT XIII OF 1859, Rat. Un. Cr. C. 617=Cr. Rg. 40 of 1892, Rat. Un. Cr. C. 625.

—To accused for dismissal of complaint.—*See* ACT XIII OF 1859, 4 M.H.C. App. 67=1 Weir 698.

—For loss or injury caused by offence—*See* ACT VII OF 1870, 21 M. 305=2 Weir 222, 7 M. 345.

See ACT VII OF 1870, s. 31, U.B.R. (1892—1896), Vol, I, 7.

Compensation—concluded.

——**3.—(To complainant and his relatives)** —*concluded.*

See ACT I OF 1871, ss. 8, 20, 22, 23 C. 442.

—In cases of illegal seizure of cattle—*See* ACT I OF 1871, ss. 21 and 23, L.B.R. (1872—1892), 515.

See ACT I OF 1871, s. 22, 3 N.W.P. 200, 14 C. 175, 27 C. 992=5 C.W.N. 32, 2 C.L.R. 507, 11 M. 359=1 Weir 712, 36 P.R. 1878 Cr., 37 P.R. 1898 Cr., 5 P.R. 1880 Cr., 25 P.R. 1878 Cr.

See ACT I OF 1871, s. 23, 22 P.R. 1886 Cr.

See ACT I OF 1871, s. 24, 1 P.R. 1872 Cr.

—In addition to imprisonment—*See* ACT VII OF 1878, ss. 41 (Rules 21 and 26), 25, 5 Bom. L.R. 126.

—Order of, where person not really the complainant—*See* ACT IV OF 1891, 20 C. 481.

See BOM. ACT II OF 1868, s. 14, Rat. Un. Cr. C. 688.

See APPEAL, 3 N.W.P. 200, 9 C.P.L.R. 27 Cr.

See COMPOUNDING OFFENCE, Rat. Un. Cr. C. 700, Rat. Un. Cr. C. 957.

See CRIM. PRO. CODE (1898), ss. 4 (*o*), 250, 29 M. 517.

See CRIM. PRO. CODE (1898), ss. 28, 30, 250, 139 P.L.R. 1902.

—Power of Magistrate to award compensation for damages to party's crops in disputes about land—*See* CRIM. PRO. CODE (1898), ss. 145 and 148, 32 C. 602=9 C.W.N. 862=2 Cr. L.J. 552.

See CRIM. PRO. CODE (1898), ss. 488, 250, 6 M.L.T. 261.

—Compensation to innocent alienee of stolen property—*See* CRIM. PRO. CODE (1898), ss. 519, 545, 2 Weir 671, 672.

See CRIM. PRO. CODE (1898), s. 542, 2 Weir 717.

See CRIM. PRO. CODE (1898), s. 547, Rat. Un. Cr. C. 213.

—Order of single Judge of the High Court regarding compensation under s. 545, Crim. Pro. Code—*See* LETTERS PATENT, 1 Weir 788-B.

See MAGISTRATE, JURISDICTION OF, 3 P.R. 1906 Cr.=84 P.L.R. 1906=4 Cr. L.J. 36.

See NEGLIGENCE, 5 C.P.L.R. 45 Cr.

See PENAL CODE, ss. 304-A, 336—338, 114, 13 C.W.N. 362=36 C. 502=9 C.L.J. 204.

See SANCTION TO PROSECUTE, 22 C. 586.

See STOLEN PROPERTY, 3 Bom. L.R. 449 and 764.

See SUMMARY TRIAL, U.B.R. (1906), Crim. Pro. Code, 51=5 Cr. L.J. 298.

Complainant.

See COMPLAINT.

(1)—*Complaint by whom to be made.*—Any person having knowledge of the commission of an offence may set the law in motion by complaint, even though he is not personally injured or affected by the offence, unless that power is expressly restricted. When the offence is against the public interest, the truth of the complaint *and the amount of the evidence* of crime it discloses are alone considered. Such a complaint ought not to be dismissed on the ground that the complainant has suffered no personal injury and that he is a mere instrument. **13 B. 600.** [*F.*, 16 A.W.N. 149=19 A. 64, 18 A. 465; *R.*, 21 B. 536, 1 S.L.R. 88=8 Cr.L.J. 213].

(2)—*Crim. Pro. Code (1861), s. 360—Who is a complainant.*—The complainant, intended by s. 360, Crim. Pro. Code, 1861, must be a person who makes a complaint before a Magistrate in order to the issuing of a summons or warrant against any person. A person who, merely as an informer, telegraphed to a Magistrate that a murder had been committed, and, when the case had been dismissed for want of proof, petitioned the Sessions Judge to call for the proceedings and order further enquiry, could not be considered as a complainant and need not be examined. **5 B.H.C. Cr. 85.**

(3)—*Complaint filed—Summons not taken for appearance of accused—Duty of Magistrate.*—A complainant, by omitting to take out a summons, cannot keep a case hanging over a man for an indefinite time. The summons is merely a means of procuring attendance, but if the accused appears of his own accord without a summons, he is entitled to require that the complaint shall either be proceeded with or dismissed. **26 B. 552=4 Bom. L.R. 276.**

(4)—*Crim. Pro. Code (1898), s. 248—Magistrate taking cognisance of case on police report made on complaint—Right of complainant to withdraw the case.*—Where a Magistrate had taken cognisance of a case against certain persons under ss. 143 and 504, Penal Code, upon the report of the police, made in consequence of a complaint made to them, *held*, that the Magistrate was not competent to allow the complainant to withdraw the case, inasmuch as there was no complaint in the case, the Magistrate taking cognisance of the case upon the police report. **23 M. 626=2 Weir 310.**

(5)—*Crim. Pro. Code(1861), s. 269—Dismissal of complaint for default before commencement of trial.*—An order dismissing the complaint, on the non-appearance of the complainant, passed before the commencement of the trial, amounts to a discharge without trial, and does not bar a fresh complaint. **4 M.H.C. App. 8.**

(6)—*Recognisance by witnesses and complainant.*—A Subordinate Magistrate has no power to take recognisances from the witnesses and the complainant to appear on a certain day before a Magistrate with co-ordinate jurisdiction. **4 M.H.C. App. 17.**

Complainant—concluded.

(7)—*Crim. Pro. Code (1861), s. 259—Complaint of criminal misappropriation—Dismissal for default.*—S. 259 of the Code of 1861 applies only to cases which fall within Chap. XV of the Crim. Pro. Code. The offence of criminal misappropriation being triable according to the provisions of Chap. XIV, the Magistrate has no power to dismiss a complaint of such offence for the non-appearance of the complainant. **4 M.H.C. App. 41.**

See ACT X OF 1873, ss. 8 to 11, 13 B. 389.

See BIGAMY, 10 B. 340.

See CHEATING, 7 C.L.J. 375=12 C.W.N. 750=7 Cr.L.J. 342.

See COMPENSATION, 1 B. 175.

—Right of complainant to conduct case by counsel—*See* COUNSEL, 11 B.H.C. 102.

See CRIM. PRO. CODE (1898), s. 198, 11 O.C. 148=7 Cr.L.J. 457.

See CRIM. PRO. CODE (1898), s. 199, 3 S. L.R. 15 Cr.=9 Cr. L.J. 450=1 Ind. Cas. 941, 1 S.L.R. 72 Cr.=8 Cr. L.J. 190.

—Institution of criminal proceedings before Police—Proceedings turning out unfounded—Prosecution of complainant—*See* CRIM. PRO. CODE (1898), s. 203, 33 C. 1=10 C.W.N. 158 =2 C.L.J. 228.

See FALSE EVIDENCE, 4 N.W.P. 6.

See MAGISTRATE, JURISDICTION OF, 10 C. 17=13 C.L.R. 408.

See PENAL CODE, s. 174, 13 B. 600.

See SANCTION TO PROSECUTE, 7 C.L.J. 49=7 Cr. L.J. 10=35 C. 141=2 M.L.T. 500, 2 B. 653.

Complaint.

1.—WHAT IS, AND WHO SHOULD INSTITUTE.

2.—INSTITUTION OF COMPLAINT—PRELIMINARIES.

3.—PROCEDURE ON RECEIPT OF COMPLAINTS.

4.—DISMISSAL OF COMPLAINT.

5.—WITHDRAWAL AND REVIVAL OF COMPLAINTS.

See COMPLAINANT.

See FALSE CHARGE.

See REVIVAL OF COMPLAINT.

See CRIM. PRO. CODE (1898), ss. 200 to 203.

——1.—(What is, and who should institute).

(1)—*Crim. Pro. Code (1898), ss. 4 and 199—Meaning of "complaint" as used in s. 199.*—The word "complaint" referred to in s. 199, Crim. Pro. Code, means a "complaint" as defined by s. 4 (*h*) of the same Code. **30 C. 910, F.B.=8 C.W.N. 17.**

Complaint – continued.

——**1.—(What is, and who should institute)** —*continued.*

(2) – *Crim. Pro. Code, Act X of 1882, ss. 199, 200—Complaint—Meaning.*—The word " complaint" in s. 199 of the Crim. Pro. Code, must be taken as including not only a written complaint, but also the examination of the complainant under s. 200. Thus, where the written complaint only suggested an offence under s. 498 but the complainant's examination made out such an offence, *held* that the Magistrate had jurisdiction to try for that offence. **Rat. Un. Cr. C. 584=Cr. Rg. 44 of 1891.**

(3)—*Crim. Pro. Code, Act X of 1882, s. 4 (a) —Report made by village officer in executive capacity, whether a complaint.*—The report by a village police officer in his executive capacity is not a complaint within the meaning of s. 4 (*h*) of the Crim. Pro. Code. **Rat. Un. Cr. C. 554= Cr. Rg. 29 of 1891.**

(4)—*Report to the police—Cognizable offence —Code of Criminal Procedure, s 199—Jurisdiction.*—A report to the police of a cognizable offence is not a 'complaint' under s. 199, Crim. Pro. Code, 1898. **17 C.P.L.R. 105.**

(5)—*Crim. Pro. Code (1882), s. 191—False charge—Application for enquiry to Magistrate —"Complaint."*—Where the Police, making enquiries upon an information laid before them, reported a case as false, an application by the informant to the Magistrate for the investigation of the case and for summoning his witnesses would be a complaint within the meaning of s. 191 of the Crim. Pro. Code, which should be enquired into by the Magistrate. The Magistrate could not avoid the responsibility of making the enquiry by accepting the conclusion of the police on the subject. **14 C. 707, F.B.** [*F.*, 5 C.W.N. 254; *Affirmed*, 35 C. 141=7 Cr.L.J. 10=7 C.L.J. 49; *R.*, 8 C.W.N. 17].

(6)—*Crim. Pro. Code (1882), ss. 4, 191, 200 and 537*—Yadast *from a Revenue officer to a third class Magistrate, containing allegations against a person.*—Where a Tahsildar sent a *yadast* to a third class Magistrate containing allegations against a person that he had failed to obey the summons issued to him and requesting the Magistrate to take action, *held*, that the *yadast* was a complaint of facts constituting an offence, punishable under s. 174, Penal Code, and the omission to examine the Tahsildar under s. 200 was only an error of procedure, which was cured by s. 537, Crim. Pro. Code. **11 M. 443=2 Weir 238.** [*R.*, P.L.R. 1900, 63].

(7)—*Complaint under Punjab Municipal Act, s. 109.*—A document addressed by the Municipal Committee of the Punjab to a Deputy Commissioner to institute a prosecution under the Punjab Municipal Act, s. 186, and endorsed by the Deputy Commissioner, is not a complaint. **1 P.R. 1892 Cr.**

(8)—*House-trespass with intent to commit adultery—Complaint by husband.*—A charge of

Complaint—continued.

——**1.—(What is, and who should institute)** —*continued.*

house-trespass with intent to commit adultery can be entertained without a complaint by the husband or by the person under whose care the woman is. **2 P.R. 1877 Cr.**

(9)—*Complaint to police of rape—Charge of adultery.*—Where the complainant informed the police that the accused had committed rape upon his wife, but the police reported that the case was one of adultery and the complainant, therefore, stated that he wished to proceed against the accused for adultery, *held*, that there was no complaint, as required by s. 478, Crim. Pro. Code, 1872. **10 P.R. 1883 Cr.** (3 P.R. 1882 Cr., *R.*)

(10)—*Complaint preferred through counsel.*—Where the complainant only complained of an offence under s. 498, I.P.C., but the counsel for the complainant, on the day of the appearance of the accused, preferred a complaint, signed by him only, under s. 497, I.P.C., and the Magistrate discharged the accused as to the first offence, but committed him to the Session on the second offence, *held*, that, as there was no formal complaint by the complainant himself, the commitment was not proper. **11 P. R. 1872 Cr.**

(11)—*Application for maintenance*—An application for an order of maintenance is not a complaint of an offence. **13 P.R. 1885 Cr.**

(12)—*Defamation—Complaint by party defamed.*—Where the accused, a petition-writer, wrote in a memorandum of appeal defamatory statements about the lower Court, and the appellate Court directed a Subordinate Magistrate to enquire into the matter, and the latter convicted the accused of an offence under s. 500, I.P.C., *held*, that the conviction was illegal, as there was no complaint within the meaning of s. 142, Crim. Pro. Code. **15 P.R. 1878 Cr.**

(13)—*Investigation on information received without any complaint—Right to examine witnesses on oath—False evidence* —Where, on information received demi-officially from the Secretariat regarding the publication of a certain pamphlet, the District Magistrate commenced an enquiry under s. 202, and placed the witnesses on oath, *held*, that, as there was no complaint as required by s. 202, Crim. Pro. Code, the Magistrate was not competent to administer oath to the accused, and they, if they had given false evidence, were not liable to be convicted under s. 193, I.P.C. **15 P.R. 1894 Cr.**

(14)—*Prosecution for an offence under s. 121, I.P.C.*—A letter by the Local Government awarding sanction for prosecution is not a complaint, although it may be an authority to make a complaint. A Court taking cognizance of an offence without the authority required by s. 196, Crim. Pro. Code, acts without jurisdiction, and the defect is not cured by s. 537, Crim. Pro. Code. **16 P.R. 1890 Cr.**

Complaint—continued.

——1.—(What is, and who should institute) *—continued.*

(15)—*Complaint to police of adultery—Conviction without a formal charge before the Magistrate by the husband.*—The police, on a complaint made by the husband, arrested the accused who was committing adultery with his wife. The accused was charged and convicted of an offence under s. 497, I.P.C., the husband being entered as the complainant in the police *chalan* and giving evidence against the accused. *Held*, that the absence of a formal complaint by the husband was merely an irregularity to which the provisions of s. 283, Crim. Pro. Code, 1872, applied. **17 P.R. 1881 Cr.**

(16)—*Defamation of wife—Complaint by husband.*—A complaint made by the husband of a woman alleged to have been defamed, and not by the woman herself, is a sufficient compliance with the provisions of s. 142, Crim. Pro. Code. **20 P.R. 1882 Cr.**

(17)—*Resolution of Municipal Committee under s. 186, Punjab Municipal Act (1891)* —A mere resolution of the Municipal Committee, on which some person authorised by the Committee could have framed a complaint, but on which no complaint was framed, and where no complainant appeared before the Magistrate, was held not to be a complaint, and a conviction upon such basis was set aside by the High Court. **20 P.R. 1894 Cr.**

(18)—*What is a sufficient complaint.*—A complainant need only state the facts upon which he relies, and it is the Magistrate that has to decide whether any and what offence has been committed. If the facts, as stated, disclose an offence punishable under s. 498, I.P.C., the Magistrate cannot act except upon the complaint of the husband, or of some one having charge of the wife on behalf of the husband. **23 P.R. 1895 Cr.**

(19)—*Competency of master to complain of an assault on his servant.*—A master is not competent to lodge a complaint for an assault upon his servant. **24 P.R. 1869 Cr.**

(20)—*Crim. Pro. Code (1882), s. 202—Scope.*—S. 202 applies only to a case where there is a "complaint" as distinguished from a mere "information," and further applies only to those cases where the Magistrate is not satisfied as to the truth of the complaint. **24 P.R. 1888 Cr.**

(21)—*Offence under s. 211, I.P.C., complained—Framing of charge under s. 500, I.P.C.*—Where a complaint alleged that the accused, with a view to injure the complainant's reputation, had brought a false charge that he had poisoned his daughter-in-law, and charged the accused under s. 211, I.P.C., *held* that, having regard to the substance of the complaint, the Magistrate could frame a charge under s. 500, I.P.C., notwithstanding the provisions of s. 198, Cr. Pro. Code. **24 P.R. 1884 Cr.**

Complaint—continued.

——1.—(What is, and who should institute) *—continued.*

(22)—*Taking cognizance on suggestion of police officer.*—Where a police officer informed a Magistrate that the accused injured the crops of the people of a certain village, and the Magistrate acting on his suggestion issued summons to the accused, whereupon the police held an investigation and the accused, who had been previously arrested and released on bail, were subsequently finally *chalaned*, *held*, that none of the conditions required by s. 191, Crim. Pro. Code, had been fulfilled, and that the accused had been prejudiced by the irregular procedure of the Magistrate. **24 P R. 1894 Cr.**

(23)—*Sanction granted to one—Complaint by another.*—Where a person to whom a sanction has been granted to prosecute another for an offence under s. 193, I.P.C., has not availed himself of it, the Court can take cognizance of the case on the complaint of any other person. **27 P.R. 1902 Cr.** (12 M. 47, *F.*; 4 C. 712, 8 C. 435, *R.*).

(24)—*Trial without complaint.*—Where, on a complaint of assault to a Magistrate of the First Class, the Magistrate finding that the facts disclosed an affray, in which the complainant also was implicated, put him on his trial, *held* that his trial, without a formal complaint, was not legal. **34 P.R. 1870 Cr.**

(25)—*Private prosecution, distinguished from—Crim. Pro. Code (1882), ss. 195 and 476—Preliminary enquiry.*—Where the District Magistrate acting on his own motion proceeds under s. 476, Crim. Pro. Code, his written order to a Magistrate to try the case will amount to a complaint. Sanction to prosecute for making a false charge is granted under s. 195, Crim. Pro. Code, to some person who applies for it and the prosecution is then a private prosecution. The preliminary enquiry held under s. 476 is not judicial. **L.B.R. (1893—1900), 388.**

(26)—*Crim. Pro. Code (1898), ss. 4, cl. (h), 190. 191—Cognizance of offence by Magistrate—Complaint.*—Where a petition of complaint was filed by certain persons that the accused were interfering with persons who came to sell cattle and had assaulted them as well as the complainants; *held*, that the complaint was a complaint within the definition of the term as contained in s. 4, cl. (*h*). The Magistrate acting upon this complaint acted under cl. (*a*) and not under cl. (*c*) of s. 190. S. 191 of the Code had no application to this case. **2 Ind. Cas. 453.**

(27)—*Power to refer to subordinate officers—Case originating with District Magistrate—Crim. Pro. Code (1861), s. 68.*—A case originating with a Magistrate of the District must, under s. 68 of the Code of Criminal Procedure, be disposed of by the Magistrate himself, and cannot be referred to a Subordinate Magistrate. **9 W.R. Cr. 70; 19 W.R. Cr. 30.**

Complaint—continued.

——1.—**(What is, and who should institute)** *—concluded.*

(28)—*Non-compliance with provisions of Code—Crim. Pro. Code (Act XXV of 1861), ss. 66, 67—Act VIII of 1869, s. 66 (b)—Act X of 1872, ss. 144, 147 and 49.*—The Magistrate of a district, before whom a complaint had been made, without complying with the provisions of s. 66 of Act XXV of 1861, sent the petition to be disposed of by a Deputy Magistrate, not authorized to receive complaints without reference from the District Magistrate, and the Deputy Magistrate tried and convicted the offender. *Held, per Kemp, J.*, that non-compliance with the provisions of s. 66 of Act XXV of 1861, made the subsequent proceedings void; *per Ainslie, J.*, that the order sending the petition to the Deputy Magistrate for disposal gave the latter officer power to receive the complaint under s. 66 (*b*) of Act VIII of 1869, and that the subsequent proceedings were, therefore, valid. **8 B.L.R. 19.**

(29)—*Non-compliance with provisions of Code.*—A Magistrate of a district, before whom a complaint had been made, without complying with the provisions of s. 66, Act XXV of 1861, sent the petition to be disposed of by a Deputy Magistrate; and when the Deputy Magistrate had proceeded to some extent with the case, the Magistrate took it up and tried it himself. *Held* that non-compliance with the provisions of s. 66 made the subsequent proceedings void. **7 B.L.R. 513=16 W.R. Cr. 40.** [*F.*, 8 B.L.R. 19, 4 N.W.P. 88; *Expl.*, 18 W.R. Cr. 18].

(30)—*Jurisdiction of*—A Magistrate may recall an order which he finds to be wrong, and substitute any other which he may think right under the law. **12 W.R. Cr. 40.**

(31)—*Postponement for further evidence.*—Where the charge was one under s. 347 of the Penal Code, and the evidence of the prosecutor and other evidence had been taken, and the case postponed for the evidence of further witnesses which was considered necessary by the Magistrate, and they failed to appear, an order by the Magistrate dismissing the case for want of sufficient evidence was held to be legal. **7 B.L.R. 9, note=12 W.R. Cr. 27.** [*D.*, 15 W.R. Cr. 53].

(32)—*Omission to examine complaint—Act XXV of 1861, ss. 66 and 273—Act X of 1872, ss. 144 and 44—Reference by District Magistrate to Subordinate Magistrate.*—A District Magistrate is not bound, on receipt of a complaint, to examine the complainant under s. 66 of Act XXV of 1861 before referring the complaint to a Subordinate Magistrate for disposal. The examination of the complainant by the Magistrate to whom the case has been referred is sufficient. **9 B.L.R. F.B. 146; 18 W.R. Cr. 18.** (14 W.R. Cr. 1, *F.*; 16 W.R. Cr. 40, *D.*).

Complaint—continued.

——2.—**(Institution of complaint—Preliminaries).**

(1)—*Crim. Pro. Code (1882), ss. 203, 537—Written complaint—Attestation by oath.*—Where the deposition in the shape of a complaint is made orally or in writing, and when it is sworn to by the complainant, though he is not examined on oath, the provisions of s. 203 are sufficiently satisfied. Even if this is doubted, s. 537 will be applicable to such cases. **9 A. 666.** [*F.*, 4 Bom. L.R. 609; *Diss.*, 18 A. 221=16 A. W.N. 35].

(2) *Crim. Pro. Code (1882), s. 198—Charge of defamation not made in complaint—Subsequent adding of it on examination of complainant.*—Where a complaint contained only charges under ss. 352, 504, I.P.C., but not a charge under s. 500, I.P.C., *held*, that a charge of defamation, having regard to the provisions of s. 198, Crim. Pro. Code, could not, subsequent to the presentation of the complaint, be added by the Magistrate on statements made by the complainant in his evidence whether of his own accord, or with reference to suggestions made by the Magistrate. **10 A. 39.** [*R.*, Rat. Un. Cr. C. 584].

(3)—*Crim. Pro. Code (1882), s. 191 (c)—Complaint of an offence, by whom to be made.*—A Magistrate can take cognizance of an offence, under s. 191 (*c*), upon the complaint of any member of the public acquainted with the facts of the case. The complaint need not necessarily be by the aggrieved person, except in those cases where it is so restricted by the Code. **18 A. 465.**

(4)—*Complaint, making of—Effect.*—When a complaint is made, the proceedings have been instituted and the prosecution has commenced, the reception of the complaint being a stage of the judicial proceeding towards conviction. **2 B. 481.** [*R.*, 28 B. 226=5 Bom. L.R. 940].

(5)—*Crim. Pro. Code (1861), s. 23 (d)—Competency to issue warrants.*—Where a Magistrate, other than a District Magistrate or a Magistrate in charge of a Division, entertained a case against the accused without any complaint having been preferred to him or any report made to him by the Police, *held* that the Magistrate was not competent to entertain the complaint or to issue warrants. **3 N.W.P. 317.**

(6)—*Conviction without complaint—Railway Act XVIII of 1854.*—Where a Magistrate convicted a person of an offence under the Railway Act without any sworn complaint before him and acting only on a private note from a Railway officer, *held* that the conviction was illegal. **4 B.H.C. Cr. 4.**

(7)—*Crim. Pro. Code (1861), ss. 66, 179, 248, 257—Voluntary appearance by accused to answer a charge—Complaints when not necessary.*—When the accused appears voluntarily to answer a charge, the want of a summons or of a complaint in order to the issuing of a summons becomes immaterial. Taking a complaint and issuing a summons thereon are not ministerial

Complaint—continued.

——2.—**(Institution of Complaint—Preliminaries)**—*continued.*

acts, but are judicial acts. When a case is sent under ss. 168, 169, or 170, Crim. Pro. Code, 1861, and a Magistrate, to whom the case is sent by the Court, himself investigates it, no complaint is necessary, nor is it necessary when the Court itself holds an investigation, nor where the accused is lawfully apprehended by the police without a warrant and duly brought before the Magistrate. **5 B.H.C. Cr. 29.**

(8)—*Crim. Pro. Code, Act XXV of 1861, s. 434—Complaint if necessary—What records to call for.*—In order to the exercise of the powers given by s. 434 to the Sessions Judge, it is not necessary that any complaint should be preferred to him. In calling for records under the above section, the Sessions Judge can call for the proceedings of the Subordinate Magistrate which have been called for and examined by the District Magistrate. **Rat. Un. Cr. C. 55=Cr. Rg. 28—8—1871.**

(9)—*Crim. Pro. Code (1882), s. 198—Complaint of defamation of a female—Complaint to be made by herself.*—In case of the defamation of a female, it is she herself, and not a mere male relative, who should make a complaint under s. 198 of the Crim. Pro. Code. **Rat. Un. Cr. C. 327=Cr. Rg. 14 of 1887.**

(10)—*Crim. Pro. Code (1872), s. 142—Offence under s. 494, I.P.C., cognizance of.*—Where a complaint was made against a party, apparently, of taking or keeping the complainant's wife away from him, and the accused, against whom no complaint in the proper sense of the term had been made by the prosecutor, was charged under s. 494 of the Indian Penal Code, *held*, that the Magistrate had not acted without jurisdiction, inasmuch as he had not acted *suo motu*, but upon the motion of the prosecutor **1 C.L.R. 523.** [*Appr.*, 25 A. 209=23 A.W.N. 7 ; *R.*, 26 C. 336].

(11)—*Crim. Pro. Code (1898), s. 190 (1) (c)—Jurisdiction to implead a person not charged as accused.*—Where a Magistrate has taken cognisance of an offence, on the case having been duly referred to him by a superior Magistrate, he has the power, although he is not specially empowered under s. 190 (1) (*c*), to implead a person not before the Court and issue process against him and try him. **4 C.W.N. 367.** [*F.*, 32 P.R. 1904 Cr.=68 P.L.R. 1904].

(12)—*Crim. Pro. Code (1898), ss. 200, 202—Complaint by Government Pleader without personal knowledge.*—Where proceedings were commenced on the complaint of the Government Pleader who had no personal knowledge of the matters contained in the proceedings, *held*, that there was no complaint properly so called on which a judicial inquiry can be based. **11 C.W.N. 170=5 Cr. L.J. 13.**

(13)—*Crim. Pro. Code (1871), ss. 67, 468 (ss. 203, 195 of the Code of 1898)—Delay in presenting the accused after receipt of sanction—Refusal to entertain the complaint.*—Where the complainant could give no satisfactory explanation of his delay in coming forward to prosecute for more than three months after sanction had been given, *held*, that the Magistrate was justified in refusing to entertain the complaint. **2 Weir 154=6 M.H.C. App. 15.**

(14)—*Complaint of forgery of document—Pending civil suit.*—It is desirable that criminal proceedings on a charge of forgery should be postponed, until the decision of a suit in which the genuineness of the document is in dispute, if such suit is pending. **2 Weir 260.**

(15)—*Enticing away a married woman, complaint of—Trial for bigamy, validity of.*—Preferring a complaint is an essential condition of the Magistrate's jurisdiction to enquire into and try an offence falling under Chapter XX, I.P.C., and the extent of the jurisdiction so founded is limited to offences covered by the facts complained of. Where the complaint is one for an offence under s. 498, Penal Code, the Magistrate cannot convict the accused of an offence under s. 494, I.P.C. **5 P.R. 1879 Cr.**

(16)—*Power to entertain complaints on police report.*—A third class Magistrate, authorised to receive complaints under s. 23 (*a*) (2), Crim. Pro. Code, 1872, is competent to entertain complaints on the report of a police officer. **27 P.R. 1873 Cr.**

(17) *Report of police officer—Crim. Pro. Code (Act XXV of 1861), s. 68—Act X of 1872, s. 142—Knowledge—Report of police—Interference of High Court.*—S. 68 of the Criminal Procedure Code applies only to cases in which the private individual injured or aggrieved does not come forward to make a formal complaint. That section is intended for the purpose of enabling a Magistrate to take care that justice may be vindicated, notwithstanding that the persons individually aggrieved are unwilling or unable to prosecute ; and, even in such cases, the jurisdiction to arrest requires, for its foundation, knowledge of the fact of an offence having been committed and that knowledge must be either personal or derived from testimony legally given. The report of the police, or any statement which falls short of an actual formal complaint, or of a statement made on oath, is not sufficient in law to give a Magistrate jurisdiction to issue his warrant. In this case, although the Magistrate had acted illegally before evidence was recorded, and had shown a want of discretion in some of the stages, the High Court refused to quash the Magistrate's order directing the prisoners to be put upon their defence, on the ground that the order had been made by a competent officer after hearing evidence, which was judicially received and recorded. **5 B.L.R. 274=13 W.R. Cr. 27** [*Appl.*, 13 B. 600, 14 W.R. Cr. 41 ; *R.*, 19 W.R. Cr. 4 ; *F.*, 10 C.W.N. 775].

(18)—*Act XXV of 1861, s. 68—Private information.*—A belief, founded on private and

Complaint—continued.

——2.—(Institution of Complaint—Preliminaries)—*continued.*

anonymous information, is not knowledge within the meaning of s. 68 of the Criminal Procedure Code. **4 B.L.R. Ap. 1=13 W.R. Cr. 1.** [*R.*, 6 M. 63, 18 A. 380; *F.*, 10 C.W.N. 775, 20 W.R. Cr. 23].

(19)—*Petition of third person—Crim. Pro. Code (1872), s. 205—Magistrate entertaining petition by third party.*—Certain parties having complained in the Magistrate's Court of assault or ill-usage by the order of one whom they called their zamindar, with a view to making them pay enhanced rent, both the complainants and the accused were absent when the case was called on for hearing. As the Magistrate was about to dismiss the complaint, a third party appeared and alleged that the complaint had been made with the connivance of the accused for the purpose of fabricating evidence of his right or title to the *mouzah*, where the complainants lived. Thereupon, the Magistrate compelled the complainants to appear, took down the evidence of some of them, received a counter-complaint from the third party above mentioned, and convicted the complainants under the Penal Code, s. 193, and sentenced them to imprisonment. *Held* that the Magistrate ought not to have entertained the third party's petition, or compelled the complainants to go on with their case : and that, under the circumstances, the evidence given was not judicial evidence. **24 W.R. Cr. 32.**

(20)—*Power of Magistrate-Information of third person.*—It is open to a Magistrate to take cognizance of a case on the information of a third person without any complaint by the party injured. **6 W.R. Cr. 3.**

(21)—*Extra-judicial knowledge of Magistrate—Crim. Pro. Code (1861), s. 68—Summons without complaint.*—The power which a Magistrate, in charge of the division of a district, has to issue a summons without any complaint is not affected by the circumstance that the offence with which the accused was charged came to the knowledge of the Magistrate otherwise than through a petition which was presented against the accused. **11 W.R. Cr. 1.**

(22)—*Previous enquiry—Crim. Pro. Code (1872), s. 146.*—The previous enquiry provided for by s. 146 before a complaint is taken up ought not to be made after the accused has been brought before the Court under a warrant. **21 W.R. Cr. 44.**

(23)—*Case irregularly sent by Civil Court—Investigation without complaint—Crim. Pro. Code (1861), s. 68.*—Although a Civil Court would be acting irregularly in sending to the Magistrate for investigation a case of using or attempting to use false evidence when no suit was pending in that Court, yet as the Court had given its sanction to the prosecution of the offence, *held* that it was in the competency of the Magistrate, under s. 68 of the Code

Complaint—continued.

——2.—(Institution of Complaint—Preliminaries)—*continued.*

of Criminal Procedure, even without a charge or complaint, to proceed to investigate, and, if necessary, to commit for trial to the Sessions Court. **8 W.R. Cr. 9.**

(24)—*Case referred by Civil Court—Crim. Pro. Code, s. 273—Power to refer.*—The various modes in which civil proceedings can be instituted under the Code of Criminal Procedure pointed out. **12 W.R. Cr. 49.**

(25)—*Irregularity in recording complaint—Complaint not reduced to writing-Act X of 1872, ss. 144, 44 and 283—Crim. Pro. Code (Act XXV of 1861), ss. 66, 273, 426 and 439—Irregularity in commencing proceedings.*—Under s. 66 of the Code of Criminal Procedure, the examination of the prosecutor should be reduced to writing and signed by him. When a complaint is made before a Magistrate, but not reduced to writing, he cannot, under s. 273 of the Code of Criminal Procedure, refer the case to a Deputy Magistrate for trial. Ss. 426 and 439, Crim. Pro. Code, 1861, do not apply to a case where the prosecution is not commenced by a complaint, as directed in the Code. A conviction with such irregularity cannot stand good, merely because the amount of punishment would have been the same if proper proceedings had been instituted. **3 B.L.R. A. Cr. 67.**

(26)—*Authorization to proceed with case—Form of complaint, irregularity or defect in.*—A Court of Session is competent to proceed to the trial of a prisoner brought before it upon a charge by a Magistrate authorized to make a commitment, though the complaint or authorization be contained only in a letter, from the Judge of that Court to the Magistrate of the District, sent with the record of the case, notwithstanding an irregularity or defect of form in recording the complaint. The complaint or authorization of the Court before which, or against the authority of which, an offence mentioned in Ch. XI of the Code of Criminal Procedure is alleged to have been committed is a sufficient warrant for the commencement of criminal proceedings. **5 B.L.R., F.B., 660. 14 W.R. Cr. 34.**

(27)—*Omission to examine complainant.*—It is an error for the Deputy Magistrate to summon the parties charged, before examining the complainant. **W.R. 1864 Cr. 73.**

(28)—*Offence charged under particular section of Penal Code—Power of Magistrate to apply any other section applicable.*—A Magistrate is not bound to adhere to any particular section of the law which may be mentioned by a complainant in his complaint, but may apply any section which he thinks applicable to the case, so long as the parties are not misled and the proper procedure is observed. **12 W.R. Cr. 40.**

Complaint—continued.

——2.—(Institution of Complaint—Preliminaries)—*concluded.*

(29)—*Complaint not reduced to writing or signed.*—On receipt of a petition from the complainant, the Magistrate, without examining him and reducing his examination to writing and obtaining a signature thereto, or appending his own signature as Magistrate, referred the petition to a Deputy Magistrate for trial. The Deputy Magistrate tried and convicted the accused. On a reference from the Sessions Judge, on the ground that the proceedings were irregular under s. 66, Act XXV of 1861, and that, therefore, the order of the Deputy Magistrate was without jurisdiction, *held* that the petition was sufficient, and that the Magistrate was justified in making over the petition to a Deputy Magistrate, who had the full powers of a Magistrate for enquiry and trial. **5 B.L.R. 160=14 W.R. Cr. 1.**

——3.—(Procedure on receipt of complaints).

(1)—*Crim. Pro. Code (1882), s. 200—Examination of the complainant—Duty of Magistrate.*—On receiving a complaint in a summons case, the Magistrate should examine the complainant on oath and should reduce the substance of the examination (or have it reduced) to writing. It is not a sufficient compliance with the requirements of the section to merely call upon the complainant to swear to the complaint as it was filed and to sign it. The substance of the examination, which is by law required to be reduced to writing, must be distinct from the complaint. **18 A. 221.** [*R.*, 6 Bom. L.R. 662].

(2)—A Magistrate is bound to hear a complaint on its being duly presented to him. It is not competent to him either to refuse to take cognizance or to postpone its investigation *sine die* on the ground of a non-existent civil proceeding. **Rat. Un. Cr. C. 206.**

(3)—Where a complaint is made before a Magistrate, he is bound to examine the complainant on oath and then to proceed according to law. Where a complaint was filed regarding the conduct of a Government Officer, the Magistrate called for a report from the officer concerned, and feeling satisfied with it, rejected the complaint. *Held* that the action of the Magistrate in calling for a report was not proper, and that, in any case, he ought to have heard the complainant and his witnesses before acting upon any statement made by the person complained against. **Rat. Un. Cr. C. 954=Cr. Rg. 6 of 1898.**

(4)—*Crim. Pro. Code (1882), ss. 200, 202, 203.*—Upon the receipt of a complaint, it is the duty of a Magistrate to examine the complainant on oath. Although it is competent for him to dismiss the complaint under s. 203, he can only do so after examining the complainant as required by s. 200. If an investigation into the subject-matter of the complaint is necessary, it should be conducted by the Magistrate himself, or by some properly qualified officer. It it not a proper procedure to

Complaint—continued.

——3.—(Procedure on Receipt of Complaints)—*continued.*

call on the person complained against to submit a report as to the truth or otherwise of the allegations made against him. **3 C.W.N. 17.**

(5)—Where a Magistrate has not disposed of a case under s. 203, Crim. Pro. Code, 1882, but has issued a summons to the complainant's witnesses, he is not at liberty to stop the case whenever he likes, but is bound to examine the witnesses tendered by the complainant before acquitting the accused. An acquittal of the accused on a consideration of the complainant's statement alone is not legal. **20 M. 388=2 Weir 251.**

(6)—Until a Magistrate has at least examined the complainant, he is not in a position to exercise the discretionary power given by s. 67 to issue process or dismiss the complaint. **4 M.H.C. 162.**

(7)—*Powers of District Magistrate to send case for trial by Subordinate Magistrate.*—The omission of a District Magistrate to reduce to writing the examination of the complainant on a complaint directly preferred to him, before he refers it to a Subordinate Magistrate for disposal, is an illegality which vitiates all the proceedings taken subsequently. **4 N.W.P. 88.**

(8)—*Crim. Pro. Code (1882), ss. 155, 202, 203—Duty of Magistrate on receiving complaint--Reference to Police.*—It is not a proper course for a Magistrate, when a complaint is made before him of an offence of which he has cognizance, to refer the complainant to a police officer. He is bound, when the circumstances giving jurisdiction exist, to receive the complaint, and to deal with it according to law. A different course would foster abuses and defeat the purpose of the law, which is to give to the persons, who have been injured, an access to justice independent of the police. **12 B. 161.**

(9)—*Crim. Pro. Code (1882), ss. 202 and 350—Power of Magistrate to refer a case that had been partially heard by his predecessor to Police.*—Where a Magistrate, accepting a complaint, issued process upon it and examined certain witnesses for the prosecution, his successor in office would not be entitled to ignore what the former had done and to refer the case to the police for inquiry and report. He could, under s. 350, Crim. Pro. Code, 1882, re-commence the inquiry, but the inquiry referred by that section would, under s. 4, not include a reference to the police such as the original Magistrate might direct. **9 M. 282=2 Weir 243.** [*R.*, 14 P.R. 1903 Cr.=175 P.L.R. 1903].

(10)—*Crim. Pro. Code (1882), s. 202—Power of Magistrate to send cases to police for inquiry.*—A Magistrate is empowered, under s. 202, to send a case for inquiry by the police only when he distrusts the truth of the complaint. The section also requires the Magistrate to give his reasons. Great caution should be shown in

Complaint—continued.

——**3.—(Procedure on Receipt of Complaints)**—*continued.*

sending, for investigation by the police, charges against members of that force. In such cases, it would generally be better that inquiry should be prosecuted by a Magistrate. **20 M. 387=2 Weir 240.** [*F.*, 22 A.W.N. 195].

(11)—*Crim. Pro. Code (1898), ss. 4, 196. 287 and 537—Police officer making a complaint—Validity of such complaint—Informality in complaints—Report of police officer—Prosecuting Inspector—Charge defective in stating offence committed under s. 124-A, Penal Code—Effect—"Swaraj" and "Boycott."*—What s. 196, Crim. Pro. Code, requires is, that the complaint should be made upon authority from the Local Government. There is nothing in s. 196, Crim. Pro. Code, to warrant the construction that the actual complaint must be expressly authorised by the Local Government. The only question which the Court has to consider with reference to that section is, "Is the complaint, which I am asked to entertain, a complaint made by the order or under the authority of the Government?" A complaint is none the less a complaint, because it is put in by a police officer. The report of a police officer must be some statement made in connection with, or, at least, under colour of, the duty of the maker as a police officer. It is not the duty of a Prosecuting Inspector to make reports of offences to Magistrates under s. 124-A. Penal Code. Where a complaint did not set out the speeches or the alleged seditious words, which were the subject-matter of the subsequent charge, there is no informality in it. The complaint is not intended to give information to the accused. Even if it were defective, in that it might not have set out the dates of the speeches and the nature of the alleged seditious matter, it would, at most, be an irregularity within s. 537 (*a*) of the Crim. Pro. Code. Notwithstanding the omission of the particulars which a charge ought to contain, should the accused in fact be not misled by the omission, and the omission did not occasion a failure of justice, the High Court, as a Court of appeal, will not reverse a conviction on the bare ground of the irregularity. The notes of police officers used for the purpose of refreshing their memory, in accordance with which they gave their evidence, may be allowed to become part of the record of the case. Where there is a series of speeches or lectures on one topic, all delivered within a short period of time, one may be considered for the purpose of throwing light on the real meaning and intent of another, and on the state of mind of the speaker with reference to the object-matter of the other speeches—a principle recognised in illustration (*e*) to s. 14, Evidence Act, and acted on in cases of prosecutions for sedition in all the other High Courts in India. A statement made by an accused person to the Superintendent of a District Jail, with the request that it might be placed on the record, and so placed, was held to be admissible

Complaint—continued.

——**3.—(Procedure on Receipt of Complaints)**—*continued.*

in evidence under s. 287, Crim. Pro. Code, as evidence of an intention relevant to a charge under s. 124-A, Penal Code. The word "*Swaraj*" must, in trying to ascertain whether the language used by an accused person is seditious, be construed with reference to his speech as a whole and not with reference to isolated passages taken apart from their context. The speech in the particular case, judging it on the evidence, actually adduced, was held to mean not only the exclusion of the present Government, but also to urge, if necessary, the use of force in order that that end might be attained. With reference to the term "Boycott," their Lordships observed that it was scarcely necessary to say that language, advising a strike of workmen, or the boycott of foreign goods, was not in itself seditious, however misguided or mischievous such advice might be. **5 M.L.T. 1=32 M. 3=9 Cr.L.J. 108=1 Ind. Cas. 22.**

(12)—*Crim. Pro. Code, Act XXV of 1861, s. 169—Jurisdiction of District Magistrate to transfer case sent to him.*—The Magistrate of a District, to whom a case has been sent by a Munsiff for prosecution, has no power to refer the case to a Full Power Magistrate, and the latter has no jurisdiction to try the case without a complaint. **N.B.**—In connection with the same case, a letter was sent by the High Court to the Magistrate to inform him that a Magistrate can try a case in which the accused has been legally arrested by the police without a warrant. **4 B.H.C. Cr. 30.** [*Expl.*, Rat. Un. Cr. C. 8; *R.*, 5 B.H.C. Cr. 29, 5 B.H.C. 69.]

(13)—*Crim. Pro. Code, Act XXV of 1861, s. 276—Sub-Magistrate's power to refer.*—A Subordinate Magistrate, who has no jurisdiction to try a case, has no power to refer it to a Full Power Magistrate, and the latter cannot try the case without a complaint being made to him. **4 B.H.C. Cr. 34.** [*Expl.*, Rat. Un. Cr. C. 8; *R.*, 5 B.H.C. Cr. 29].

(14)—*Stamp Act X of 1862, s. 3—Absence of complainant—Memorandum by Collector—Crim. Pro. Code (1861), s. 69.*—In the absence of a complaint, as required by s. 66, Crim. Pro. Code, either by the Collector or any person duly authorised on his behalf, a conviction and sentence under s. 3 of Act X of 1862, is not sustainable. A memorandum under the signature of the Collector cannot be accepted in the place of a complaint so as to authorise the issuing of a complaint. **5 B.H.C. Cr. 48.**

(15)—*Crim. Pro. Code (1861), s. 250—Trial for offence different from the one complained of.*—If a Magistrate, to whom a proper complaint has been made, finds on the evidence, that an offence different from the one expressly charged has been committed, he has power to enquire and proceed against the accused with regard to such other offence. **5 B.H.C. Cr. 100.** [*R.*, 11 C.P.L.R. 9 Cr.].

Complaint—continued.

——3.—(Procedure on Receipt of Complaints) *—continued.*

(16)—*Conviction for an offence different from that complained of, validity of.*—Where a Magistrate disbelieved a complaint as originally framed, and drew fresh charges of wrongful confinement and assault, and convicted the accused without giving them an opportunity of properly defending themselves, and the Sessions Judge, on appeal, went even further and disbelieved the case both as originally made, as also the one made out by the Magistrate, and yet convicted the accused on a charge of assault, *held*, that that was not the proper way of dealing with the case and the accused ought not to have been convicted of an offence which did not form the subject-matter of the complaint, specially when all other matters relating to the event were found to be false or not proved. **5 C.W.N. 296.**

(17)—*Crim. Pro. Code (1861), ss. 66-A and 155—Report of police officer—Complaint on oath —Warrant case.*—In cases in which the police might not arrest without a warrant, a warrant cannot be legally issued except on a complaint on oath. Where the Magistrate is empowered to act on such complaint or on the report of a police officer (s. 66-A of the Crim. Pro. Code), the report thus referred to does not mean any communication from the police officer, but a formal report drawn up under s. 155 of the Crim. Pro Code, in cases in which the police may arrest without warrant. **8 B.H.C. Cr. 113.** [*Appr.*, U.B R. (1892 to 1896), 28, 3 Bom. L.R.568; *R.*, 10 B.H.C. Cr. 70, 26 B. 150, F.B., 2 L.B.R., 146, F.B.]

(18)—*Crim. Pro. Code (1898), s. 254—Complaint of defamation—Further charge of criminal force made in course of deposition by complainant—Conviction for criminal force.*—The accused was tried at one trial for defamation and for using criminal force. He was in the first place charged with defamation, but the complainant, in the course of her deposition, further charged him with using criminal force. The Magistrate tried him jointly for both the offences, acquitted him of the former offence, but convicted him of using criminal force. *Held*, that the Magistrate's procedure was legal, inasmuch as the allegation made by the complainant constituted a fresh complaint of another offence and the accused had had an opportunity of meeting the fresh accusation. **3 Bom. L.R. 675.**

(19)—*Court Fees Act VII of 1870, s. 31—Non-cognisable offence—Complaint—Conviction—Refund.*—Where a complaint of a non-cognisable offence results in a conviction, the stamp duty on the complaint can be refunded. **Rat. Un. Cr. C. 79 = Cr. Rg. 27—11—1873.**

(20)—*Crim. Pro. Code (1882), s. 191, receipt of complaint under—Proceedings by Magistrate —"May take cognisance of" meaning of.*—The use of the term "may take cognisance of an offence" in s. 191 of the Crim. Pro. Code, does

Complaint—continued.

——3.—(Procedure on Receipt of Complaints) *—continued.*

not make it optional with a Magistrate to hear a complaint, but refers to the action of the Magistrate in taking cognisance of an offence in either of the specified courses in which the facts constituting the offence may be brought to his notice. He is bound to examine the complainant and can then either issue summons to the accused, or order an enquiry under s. 202, or dismiss the complaint under s. 203. **13 C. 334.** [*F.*, 4 O.C. 127].

(21)—*Crim Pro. Code (1898), ss. 190, 191—Cognisance of a case taken upon an anonymous communication—Transfer.*—Where cognizance of a case is taken upon an anonymous communication, and not upon a complaint or police report, the accused are, under the provisions of s. 191, entitled to claim that the case should be tried by a Magistrate other than the one who has taken cognizance of the case under cl. (*c*) of s. 190. **3 C.W.N. 65.**

(22)—*Crim. Pro. Code (1898), ss. 202, 203 and 476—Referring of a case triable by Court of Session to a subordinate Magistrate of second class—Order for the prosecution of the complainant on report from the Magistrate.*—On the complaint of a case triable by a Court of Session, the District Magistrate made over the enquiry to a subordinate Magistrate with second class powers, and the District Magistrate, on receiving a report that the complaint was false, ordered the prosecution of the complainant for an offence under s. 211, I.P.C. *Held*, that the subordinate Magistrate had no jurisdiction in the case, that the District Magistrate could not make over the case to any other Magistrate without having previously examined the complainant and that the enquiry ordered would not come either under s. 202 or under s. 203, and that the order for the prosecution of the complainant, was, therefore, illegal. **4 C.W.N. 305.** [*R.*, 33 C. 1=10 C.W.N. 158=2 C.L.J. 228].

(23)—*Crim. Pro. Code (1898), s. 190, cl. (c)—Deputy Commissioner, as Magistrate and Revenue Officer—Trial of a revenue case by him —Revisional powers of High Court.*—Where a Deputy Commissioner, who, as a Revenue Officer, is entitled to complain regarding an offence against the public revenue, himself instituted proceedings, that is to say, proceeded, as a Magistrate, to take cognisance of a revenue offence, and directed that the trial should be held by one of the Magistrates subordinate to him, *held*, that the action of the Deputy Commissioner cannot be regarded as other than that of a Magistrate acting judicially, and, as such, his order was subject to revision by the High Court. **4 C.W.N. 825.**

(24)—*Penal Code, s. 451—House-trespass for purpose of carrying on an intrigue with prosecutor's wife—Refusal by husband to so charge him, effect of.*—A person was charged with house-trespass by night and admitted that he

Complaint—continued.

——3.—(Procedure on Receipt of Complaints) *—concluded.*

was there for the purpose of carrying on an intrigue with the prosecutor's wife. The complainant, the husband, refused to charge the accused with having entered the house to commit the offence of adultery, but founded his complaint solely on the entry having been with intent to commit theft, which was found to be false. The Deputy Magistrate dismissed the charge on the ground that the husband refused to lay a complaint of house-trespass with intent to commit adultery. *Held*, that the Magistrate was right, under the circumstances, in refusing to convict the accused of a charge which the husband refused to make, although he had the power to so convict him. **1 Weir 532=5 M.H. C. App. 5.** [*F.*, 16 C.P.L.R. 182].

(25)—*Crim. Pro. Code (1861), Chap. III, s. 144 (s. 200 of the Code of 1898)—Complaint of petty theft to Magistrate—Jurisdiction to refer the complainant to the heads of the village.*—Where a complaint is made to a subordinate Magistrate, he is bound to proceed under s. 144 (s. 200 of the Code of 1898) and dispose of the complaint according to law. The mere fact that the complaint is also cognisable by the head of the village does not affect the competency of the Magistrate, nor can he decline to exercise his jurisdiction. **2 Weir 22=2 Weir 237=7 M.H.C. App. 31.**

(26)—*Complaint of offence under s. 354, I.P.C.—Conviction for rape—Setting aside of conviction.*—Where on the complaint of an offence under s. 354, I.P.C., but subsequently altered to one of attempt to commit rape, the Magistrate convicted the accused of an attempt to commit adultery, the conviction was set aside in revision by the Chief Court, as there was no complaint by a person competent to complain under the provisions of s. 498. **3 P.R. 1882 Cr.**

(27)—*Trial without complaint.*—A Magistrate, who is neither a Magistrate of the District, nor a Divisional Magistrate, is not competent to take cognizance of an offence in the absence of a formal complaint. **10 P.R. 1870 Cr.**

(28)—*Written record only legal proof of terms of complaint—Policeman's report of complaint not sufficient proof—Production of the document, if procurable to be insisted on—Crim. Pro. Code (1882), s. 154—Evidence Act, s. 91.*—Having regard to the provisions of s. 154, Code of Criminal Procedure, and s. 91, Evidence Act, the only legal proof of the terms of a complaint of a cognizable offence to the police is the written record of the same, excepting where secondary evidence of its contents is admissible. It would be most unsafe if, in cases under s. 211, Penal Code, a policeman's report of what a complaint contained could be accepted as sufficient proof of its contents, without insisting on the production of the document itself, if it were in any way procurable. **L.B.R. (1872—1892), 572.**

Complaint—continued.

——4.—(Dismissal of Complaint).

(1)—*Dismissal of complaint—Crim. Pro. Code (1882), ss. 200 to 203.*—A Magistrate can dismiss a complaint only in three cases, (1) if he, upon the statement of the complainant (*i.e.*, the complaint) finds no offence has been committed; (2) if he distrusts the truth of the statement; and (3) if, after further enquiry, he holds there is not sufficient ground for proceeding. A complaint ought not to be dismissed on the ground (1) that the Magistrate believed the complainant had no personal grounds to complain and (2) because he believed him to be used as a tool by others in bringing forward the complaint. **13 B. 600.** (14 C. 141, *F.*).

(2)—S. 203 gives very large powers to the Magistrate to dismiss a complaint without issuing a process at all against the accused persons, but certain conditions are laid down in the chapter in which the section occurs, and those conditions must be strictly fulfilled in making an order under the section. A Magistrate may dismiss a complaint under the section on any one of the three grounds, *viz.*:—(1) if he, upon the statement of the complainant, reduced to writing under s. 200, finds that no offence has been committed; (2) if he distrusts the statement made by the complainant and (3) if he distrusts that statement, but his distrust is not sufficiently strong to warrant him to act upon it, he may direct further inquiry as provided in s. 200. In any case, he is bound to record his reasons for dismissing the complaint, for, if that is not done, it would be impossible for the High Court to consider whether the discretion vested in the Magistrate, under s. 203, has been properly exercised. **14 C. 141.** [*F.*, 13 B. 600].

(3)—A Magistrate cannot dismiss a complaint under s. 203 until he has examined the complainant. In exercising his discretionary power of summary dismissal of the complaint, the Magistrate should not allow himself to be influenced by considerations altogether apart from the facts adduced by the complainant in support of the charge, nor by a consideration of the motive by which the complainant is actuated. What he has to consider is whether there is *prima facie* evidence of a criminal offence which, in his judgment, calls upon the alleged offender to answer. The expression "sufficient ground" in s. 203 points exclusively to the facts which the complainant brings to the knowledge of the Magistrate, and to their establishing a *prima facie* trustworthy case against the accused. **13 B. 590, F.B.** [*F.*, Rat. Un. Cr. C. 549, Rat. Un. Cr. C. 562; *R.*, 13 B. 600, Rat. Un. Cr. C. 669, Rat. Un. Cr. C. 786, 9 Bom. L.R. 742].

(4)—S. 147, Crim. Pro. Code, 1872, is explicit that the Magistrate must examine the complainant before dismissing his complaint. Where a Magistrate has the complaint with him, he can only legitimately dispose of it, either by himself pursuing the procedure pointed out by

Complaint—continued.

——4.—(Dismissal of Complaint)—*continued.*

s. 147, or by transferring the complaint to some Subordinate Magistrate to dispose of it according to law. A reference to a Subordinate Magistrate for his opinion, and the opinion of the officer that the charge is not true, will not discharge the Magistrate from examining the complainant. **4 C.L.R. 534.**

(5)—*Crim. Pro. Code (1861), s. 193—Dismissal of complaint—Practice.*—Before dismissing a complaint under s. 193 of the Crim. Pro. Code, a Magistrate should examine all the witnesses called for the complainant. **Rat. Un. Cr. C. 21=Cr. Rg. 8—9—1869.**

(6)—Where a Subordinate Magistrate, first class, dismissed a complaint against a person who, though previously convicted twice, persisted in committing house-trespass, the District Magistrate cannot interfere with the order as the offence is not one of the nature specified in s. 435, Crim. Pro. Code. If a complaint is preferred before the latter in such a case, he may either try the case himself or send it to a Subordinate Magistrate. **Rat. Un. Cr. C. 28.**

(7)—A complaint should not be dismissed without giving the complainant the necessary opportunity of being heard. **Rat. Un. Cr. C. 365=Cr. Rg. 12 of 1888.**

(8)—*Crim. Pro. Code (1898), ss. 202 and 203—Dismissal of complaint under s. 203, effect of.*—The dismissal of a complaint, after hearing the complainant and after considering the results of an investigation ordered under s. 202, amounts to a legal determination of the complaint. **6 C.W.N. 295.**

(9)—*Crim. Pro. Code (1898), ss. 160, 202 and 203—Dismissal of complaint without following the procedure prescribed by ss. 202 and 203.*—Where, on the complaint of an offence, the Deputy Magistrate, having examined the complainant, put the case before the Deputy Commissioner, who dismissed the complaint without examining the complainant, *held*, that the order of dismissal was wrong. **9 C.W.N. 199=2 Cr. L.J. 51.**

(10)—*Crim. Pro. Code (1898), s. 202—Dismissal of complaint—Reasons.*—The reasons for dismissing a complaint should be based on inferences or facts arising from or disclosed by (1) the complaint; (2) the examination of the complainant; (3) the investigation, if any, made under the powers conferred by s. 202 of the Crim. Pro. Code. This provides a wide field. Anything outside it is extra-judicial and must be discarded. **9 Bom. L.R. 742=6 Cr. L.J. 85.**

(11)—*Crim. Pro. Code (1898), s. 203—Complaint—Order of dismissal—Grounds not recorded—Police report containing reasons—Sufficiency.*—Where a Magistrate dismisses a complaint under s. 203, Crim. Pro Code, merely stating that he agrees with the police report, without recording his reasons for dismissal and

Complaint—continued.

——4.—(Dismissal of Complaint)—*continued.*

without even making the police report part of his order. *Held*, that the order was improper and ought to be set aside. **7 M.L.T. 175.**

(12)—*Dismissal of complaint after enquiry—Powers of Sessions Judge to interfere—Crim. Pro. Code (1861), ss. 67, 180, 435.*—The words "dismissed without enquiry," in s. 435 of the Code of 1861, refer to a complaint which the Magistrate has, under s. 67, dismissed without making the enquiry he is empowered to make under s. 180. If a complaint has not been dismissed without enquiry, the Sessions Judge has no power to interfere. **3 N.W.P. 261.**

(13)—*Crim. Pro. Code (1872), s. 147—Order for re-enquiry—Powers of Sessions Judge.*—A Sessions Judge has power to direct a Magistrate to enquire into a complaint dismissed by him under s. 147 of the Code. **7 M.H.C. App. 16.**

(14)—*False complaint—Discretion of Magistrate.*—If a Magistrate considers a complaint false and groundless, he is not bound to issue a summons or warrant. The law invests him with a discretion, which it is incumbent on him to exercise, so as to prevent the evil of allowing legal process to be made subservient to the gratification of malice or revenge. At the same time, the Magistrate should always take the examination of the complainant. **3 N.W.P. 272.**

(15)—*Crim. Pro. Code (1882), s. 247—Dismissal of complaint for default.*—Where a Magistrate, to whom a case had been transferred, called the case on the day fixed by his predecessor for the trial, without any communication to the parties, and dismissed it under s. 247, for default of the complainant, but it was found that the complainant and his witnesses, though they did not attend that Court, were present in another Court in the same Court house, not having been informed of the particular Court to which the case had been transferred, *held* that, under the circumstances of the case, the provisions of s. 247 had not been properly applied. **13 C.L.R. 303.**

(16)—Cases instituted and tried under Ch. XIV cannot be struck off the file at the request of the complainant or for want of prosecution on his part. **3 N.W.P. 341.**

(17)—The dismissal of a complaint for the non-appearance of the complainant on the date to which the hearing has been adjourned is illegal, if the order of adjournment has not been made in the hearing and presence of the parties. **8 M.H.C. App. 5.**

(18)—*Crim. Pro. Code, s. 200—Presentation of complaint by* Mukhtyar—*Dismissal.*—Where a complaint is presented by a woman's *mukhtyar*, the Magistrate can dismiss it, since he has no opportunity of examining the complainant as required by s. 200 of the Crim, Pro. Code. **Rat. Un. Cr. C. 625=Cr. Rg. 51 of 1892.**

Complaint—continued.

——**4.**—(**Dismissal of Complaint**)—*continued.*

(19)—*Crim. Pro. Code (1898), ss. 247, 437—Dismissal of complaint on default of complainant—Effect of, on an absent accused.*—A dismissal of the complaint under s. 247 for the complainant's default and the acquittal of one of the accused, terminates also the case against the other accused, whose attendance could not be obtained and against whom the trial did not proceed, nor can the order under s. 247 be set aside under s. 437. **4 C.W.N. 346.** [*F.*, 7 C. W.N. 711; *D.*, 10 C.W.N. 1031=4 Cr. L.J. 173=7 C.L.J. 249].

(20)—*Crim. Pro. Code (1872), s. 220—Order dismiss ingcomplaint--Acquittal.*—The dismissal of a complaint under s. 220 amounts to an acquittal. **5 C.L R. 359.**

(21)—*Discharge, whether amounts to acquittal—Re-opening of complaint—Crim. Pro. Code (1861), s. 250*—A discharge under s. 250 of the Code of 1861 does not amount to an acquittal where there has been no enquiry at all, the case is still stronger, and it cannot, therefore, be said that a complaint could not be re-opened. **4 N.W.P. 23.**

(22)—*Crim. Pro. Code, ss. 202, 203 and 476—Duty of Magistrate on receiving a complaint—Necessity for examination and dismissal of complaint.*—A complainant must be examined by the Magistrate who receives the complaint, or by some Magistrate to whom he has transferred the case. When a complainant has been examined, he is entitled to have the person accused brought before the Magistrate, and it is only when the Magistrate has reason not to believe the truth of the complaint from his examination that this can be properly refused and an investigation held. [*F.*, 4 O.C. 127; *R.*, 10 C.W.N. 158=33 C. 1=2 C.L.J. 228.] A District Magistrate on a report by the Police to the effect that a complaint was false, was asked by the complainant to try the complaint, but, instead of examining the complaint, referred the complaint to the Deputy Magistrate for judicial enquiry or report. The latter, after examining the complainant and his witnesses, reported that the complaint was false. *Held*, that an order under s. 476, ordering the complainant to be prosecuted under s. 211, Penal Code, was not validly made, inasmuch as the order was not properly passed on judicial proceedings before him, and as the case before the District Magistrate had never been tried out and never been dismissed on evidence recorded by him or obtained by him in the manner directed by s. 202. *Held*, further, that the mere examination of the complainant by the District Magistrate without hearing his witnesses and without dismissing the complaint and without the judicial trial which the complainant asked for and was entitled to, would not justify an order under s. 476 directing the prosecution of the complainant under s. 211, Penal Code. **27 C. 921.** [*F.*, 4 O.C. 127; *D.*, 6 C.W.N. 295].

Complaint—continued.

——**4.**—(**Dismissa! of Complaint**)—*continued.*

(23)—*Crim. Pro. Code, ss. 247, 369 and 432—Dismissal for default of a case under s. 420, I.P.C.*—A dismissal for default of a case under s. 420, I.P.C., for the non-appearance of the complainant, is bad, inasmuch as it amounts to an application, to a warrant case, of the procedure prescribed by s. 247, Crim. Pro. Code, in respect of summons cases only. **4 C.W.N. 26.**

(24)—*Crim. Pro. Code (1898), s. 437—Issue of warrants—Further proceedings not taken—Discharge—Further enquiry on police report.*—Where after the issue of warrants against certain persons, the Magistrate does not think it necessary to proceed further, the termination of the proceedings against them is in effect an order of discharge. Where no proceedings were taken against certain persons mentioned in a police report by a Sub-Divisional Magistrate, although other persons were tried and convicted of the same offence, *held* that the Sub-Divisional Magistrate was competent to take proceedings against them on the police report, and, although he was subordinate to the District Magistrate, it would not be proper to the latter to pass an order directing proceedings to be taken against them, unless he had withdrawn the whole matter to his own Court. **4 C.W.N. 242.** [*R.*, 30 C. 449, 32 C. 783=9 C.W.N. 810=2 Cr. L.J. 524; *construed*, 3 Cr. L.J. 209=3 C.L.J. 87].

(25)—*Crim. Pro. Code, s. 259—Complaint of grievous hurt—Dismissal for want of prosecution.*—A Sub-Magistrate has no power to dismiss a complaint of grievous hurt on the ground that the complainant refused to proceed with the prosecution. **Rat. Un. Cr. C. 23=Cr. Rg. 20—9—1869.**

(26)—*Dismissal of complaint—Offence committed six years ago—Malice of complainant.*—That the complainant was actuated by malicious feeling against the accused or that the offence was committed six years ago, is no sufficient reason for dismissing a complaint. There is no limiting the time for prosecutions for offences. **Rat. Un. Cr. C. 549=Cr. Rg. 24 of 1891.** (13 B. 593, *R.*).

(27)—*Dismissal of complaint—Prospect of raising other religious disputes—Legality.*—It is not competent to a Magistrate to refuse to take up a complaint or to dismiss it summarily on the ground that, if the complaint was entertained, it would tend to bring numerous other complaints and stir up old religious ill-feelings. **Rat, Un. Cr. C. 562.**

(28)—*Crim. Pro. Code (1872), ss. 205 and 361—Failure of complainant to pay fees for summoning of witnesses—Dismissal of complaint, validity of.*—When a complainant is required to pay fees for summoning witnesses under s. 361, and fails to do so, the Magistrate must deal with the case on such evidence as he may have before him, but not dismiss the complaint. **5 M. 160=2 Weir 305.**

Complaint—continued.

——**4.—(Dismissal of Complaint)**—*continued.*

(29)—*Crim.Pro.Code (1882),s. 247—Acquittal of accused for default of prosecutor.*—A Magistrate, before acquitting an accused person under s. 247 for the complainant's default of appearance, is not bound to wait till his Court is about to close for the day. **7 M. 356=2 Weir 309.**

(30)—*Dismissal for non-appearance of complainant, without proper exercise of discretion —Crim. Pro. Code (1872), s. 205—Acquittal.—See* **24 W.R. Cr. 64.**

(31)—*Crim. Pro. Code (1882), s. 246—Dismissal of complaint made by a police charge-sheet.*—Where a complaint is made by a police charge-sheet, it is not necessary to examine the complainant before dismissing the complaint. **2 Weir 246.**

(32)—*Dismissal of complaint on Police report —Omission to give complainant opportunity to prove case.—See* **17 W.R. Cr. 2.**

(33)—*Grounds for dismissal of—Order for further inquiry—Notice to the accused, not essential—Crim. Pro. Code (1898), ss. 203 and 437.*—Where a complaint had been dismissed under s. 203 of the Code of Criminal Procedure, *held*, that the Sessions Judge was not bound to issue notice to the accused before ordering further inquiry under s. 437, Code of Criminal Procedure. *Held*, further, that a person bringing a complaint in a criminal Court is entitled to produce evidence in support of it subject only to two conditions, *viz.*, (*a*) that the facts alleged constitute an offence and (*b*) that there are no circumstances apparent on the examination of the complainant, such as to justify the Court in coming to the conclusion that the complaint is false. **11 O.C. 261.**

(34)—*Penal Code, ss. 497 and 498—Complaint dismissed as evidence did not disclose offence of abduction.*—Where a complaint of abduction under s. 498, Penal Code, was dismissed on the ground that the evidence disclosed the offence of adultery, leaving the complainant to bring a fresh complaint under s. 497, Penal Code, *held* that the Magistrate erred in law and that, until the evidence of the witnesses named for the prosecution was taken an order of discharge should not generally be made. **17 P.R. 1874 Cr.**

(35)—*Crim. Pro. Code (1872), s. 215—Discharge, without examining all the prosecution witnesses.*—An accused person shall not be discharged unless the Magistrate has examined all the witnesses named for the prosecution. **2 A. 447: 4 M. 329; 8 M.H.C. App. 5; 23 W.R. Cr. 9.** [*F.*, 2 A.W.N. 179].

(36)—*Examination of complainant's witnesses —Crim. Pro. Code (1861), s. 67.*—Where the Crim. Pro. Code makes it necessary for a Magistrate, before dismissing a charge, to examine both the complainant and his witnesses, it supposes that there has been already a *prima facie* case made out; and where the complainant makes

Complaint—continued.

——**4.—(Dismissal of Complaint)**—*continued.*

out such a *prima facie* case, the Magistrate is bound first to examine all the complainant's witnesses before dismissing the charge; but where there is clearly no *prima facie* case established, the Magistrate is justified in acting under s. 67 of the Crim. Pro. Code, 1861, and in dismissing the case at once. **16 W.R. Cr. 39. 24 W.R. Cr. 62.**

(37)—*Examination of complainant's witnesses —Crim. Pro. Code (1869), ss. 193, 249—Power of Magistrate—See* **16 W.R. Cr. 48.** 20 W.R. Cr. 59.

(38)—*Examination of complainant's witness—Recording reasons—Charge under s. 211, Penal Code—Dismissal of complaint—See* **13 W.R. Cr. 37.** 25 W.R. Cr. 10, 2 C.L.R. 389.

(39)—*Power to dismiss case—Irregularity in dismissal—Transfer of case by Magistrate to Deputy Magistrate.*—S. T. brought a charge of theft against B. before a Magistrate. The case was made over to the Deputy Magistrate, on whose suggestion the Magistrate ordered that there should be a police enquiry. The Police Superintendent reported that, in his opinion, the charge was false, and that the plaintiff should be summoned for bringing a false charge; and the Magistrate, while declaring that he would not encourage charges of "false complaint," said that the injured party might swear an information if she chose. S. T. then petitioned to be allowed to call witnesses in support of her charge of theft, and objected to the police proceedings. The Magistrate recorded the following order:—"The case has been dismissed, and the accused, Mrs. B, has received permission to prosecute the woman S. T. for making a false charge; the present petition may be put in defence in that case." *Held* that the order of the Magistrate must be quashed—(1) because he had no jurisdiction, the case having been made over to the Deputy Magistrate; (2) because the order above was not a judicial dismissal of the case. Case remanded for trial of the original charge as brought by S. T. **3 B.L.R. App. 151.**

(40)—*Failure to show in Magistrate's opinion any criminal offence—Act XXV of 1861, s. 180—Act X of 1872, s. 146—Powers of a Magistrate.*—The accused was charged before a Deputy Magistrate with an offence under s. 431, Penal Code. The Deputy Magistrate examined the complainant, took bail from the accused, but refused to examine the complainant's witnesses, although present, and delayed the investigation unnecessarily for a long time. The Magistrate of the district then called for the proceedings, and, having looked at them, considered that there was no case for the interference of the Criminal Courts, and discharged the prisoner, although he was present and under bail. *Held* that the Magistrate was not only competent, but bound to discharge the prisoner, if his conclusion that no offence was made out was correct; but *held*, also, that the Magistrate's conclusion was

Complaint— continued.

——**4.—(Dismissal of Complaint)**—*continued.*

wrong, and that the act complained of, if true, did amount to an offence under s. 431 of the Penal Code; therefore, the Magistrate's order was set aside, and further enquiry ordered. **11 B.L.R. App. 6=14 W.R. Cr. 63.**

(41)—*Examination of complainant—Interference by High Court—Act X of 1872, ss. 144, 147, 295 and 296—Act XXV of 1861, s. 434.*—Where a Magistrate had examined the complainant under s. 56 of Act XXV of 1861, and dismissed the complaint under s. 67, *held* that the High Court would not interfere under s. 434. **2 B.L.R.S.N. 6=10 W.R. Cr. 49.**

(42)—*Examination of complainant—Crim. Pro. Code (Act XXV of 1861), s. 67—Act X of 1872, s. 147—Dismissal without enquiry.*—Where a District Magistrate removed a case from the file of the Joint Magistrate to his own, after complaint had been made and warrants issued by the Joint Magistrate upon the footing of the complaint, and thereupon suspended the warrant and dismissed the complaint without hearing it in due course of procedure, *held* that it was an improper proceeding; he ought to have proceeded with the case from the stage at which it was when he removed it. **10 B.L.R. App. 26=19 W.R. Cr. 28.**

(43)—*Preliminaries to dismissal—Recording evidence of compiainant—Act XXV of 1861, ss. 66 and 180—Dismissal of complaint without recording evidence—Act X of 1872, ss. 144 and 140.*—A charged B before a Magistrate for wrongful confinement of her brother. Previous to the petition to the Magistrate, the charge had been investigated by the police, and reported to be false. The Magistrate without recording the complaint under s. 66 of the Code of Criminal Procedure, sent for the police papers, and under s. 180 of the same Code dismissed the case. *Held* that the proceedings were illegal; that the Magistrate was bound, under s. 66 of the Code of Criminal Procedure, to record the examination of the complainant before he could, under s. 180, dismiss the complaint. **3 B.L.R.A. Cr. 53.** *See, also,* 8 W.R. Cr. 12=7 W.R. Cr. 47, 7 W.R. Cr. 45, 3 C.W.N. 17. (16 W.R. Cr. 68, *contra*).

(44)—But s. 180, Crim. Pro. Code, 1861, applied to cases under Chap. XIV of the Code by force of s. 249 of Act VIII of 1869, and a Magistrate might dismiss a complaint under that chapter without calling evidence if he thought there was no sufficient ground for proceeding under it. **16 W.R. Cr. 44.**

(45)—*Hearing evidence—Dismissal without hearing evidence—Crim. Pro. Code (Act XXV of 1861), s. 270—Act X of 1872, s. 209.*—On the day fixed for hearing a complaint of trespass and assault made against three persons named, the complainant appeared with his witnesses, and the defendants also appeared; and on one of them being found to be a child of eight years of age, the Magistrate dismissed the case without taking any evidence. *Held*, the

Complaint—continued.

——**4.—(Dismissal of Complaint)**—*continued.*

Magistrate was in error, and should not have dismissed the case, merely because one defendant was a child. He should have followed the procedure laid down in ss. 265 and 266. **2 B.L.R. S.N. 15=10 W.R. Cr. 61.**

(46)—*Hearing evidence—Dismissal without hearing evidence.*—A Magistrate ought to hear evidence in support of a charge before dismissing the complaint. A bare assertion by an accused, charged with committing theft of a proprietary right in the alleged stolen property, is no reason for a Magistrate to refuse to entertain the charge of theft. **7 B.L.R. App. 55=16 W.R. Cr. 18.** [*Expl.*, 16 W.R. Cr. 68; *R*, 33 C. 410=10 C.W.N. 276=4 C.L.J. 102].

(47)—*Dismissal after hearing evidence—Further proceedings—Acquittal—Crim. Pro. Code (1872), s. 147.*—The further proceedings allowed by the Code of Criminal Procedure, s. 147, can only be taken in cases where the complainant has been alone heard, and not where he has had the advantage of having his witnesses heard. In the latter case, a dismissal would amount to a verdict of acquittal against the accused parties, and render a second trial on the facts impossible. **24 W.R. Cr. 75.**

(48)—*Non-appearance of complainant.*—The non appearance of the complainant, on the day to which the hearing had been duly adjourned, may be a good ground for dismissing the complaint under s. 208, Crim. Pro. Code, 1872. The fact that the complainant and his witnesses have been examined and that their further attendance was not necessary, makes no difference. **22 W.R. Cr. 40.**

(49)—The charge of obstructing a road by repairing it without leave may be dismissed for the non-appearance of the complainant. **7 W.R. Cr. 31.**

(50)—The accused may be discharged although the prosecution witnesses be present, if the complainant be absent and the Magistrate thinks it unnecessary to carry on the enquiry in the absence of the complainant. **11 W.R. Cr. 39.**

(51)—*Illegal adjournment—Dismissal for default.*—A Magistrate cannot dismiss a case for default on the ground of the non-appearance of the complainant on a day to which no legal adjournment was made. **16 W.R. Cr. 68.**

(52)—*Crim. Pro. Code, Act X of 1882, s. 247—Dismissal of complaint for non-appearance—Effect.*—Where a complaint of mischief and trespass is dismissed for the non-appearance of the complainant, it amounts to an acquittal, and the Magistrate cannot proceed on another complaint for substantially the same offence. **A.W.N. 1885, 43.**

(53)—*Crim. Pro. Code (1882), ss. 244, 245—Acquittal without examination of complainant*

Complaint—continued.

——**4.—(Dismissal of Complaint)**—*continued.*

—A Magistrate cannot acquit an accused person without examining the complainant and his witnesses. **Rat. Un. Cr. C. 539 = Cr. Rg. 11 of 1891.**

(54)—*Crim. Pro. Code, Act X of 1882, ss. 200, 202—Investigation—Dismissal of complaint.*—The complainant preferred charges under ss. 161, 342 and 417 of the Penal Code against some Police officers. The Magistrate sent the case for investigation by the Police and dismissed it as false, on the receipt of the Police report, without examining the complainant. *Held* that the Magistrate had no authority to dismiss the complaint without following strictly the procedure laid down in Chap. XVI of the Crim. Pro. Code. **A.W.N. 1884, 47.**

(55)—*Crim. Pro. Code (1872), ss 147, 298—Dismissal of complaint—Fresh complaint.*—There is nothing in the law to prevent a Magistrate from entertaining a second complaint, when the first complaint has been dismissed under s 147, Crim. Pro. Code. **A.W.N. 1881, 68.**

(56)—*Crim. Pro. Code (1872), ss. 144, 146, 147—Dismissal of complaint, on report by subordinate officer, without examining the complainant.*—On a complaint of extortion, the Magistrate directed the Tahsildar to make an enquiry. On receiving a report from the Tahsildar that the evidence was weak, the Magistrate dismissed the complaint without recording the statement of the complainant on oath or, apparently, examining him. The High Court set aside the order, and directed him to examine the complainant and dispose of the charge according to law; observing that it was not apparent why the case was referred to the Tahsildar for enquiry, and that the provisions of s. 146, Crim. Pro. Code, 1872, should not be put in force without discrimination. **A.W.N. 1881, 23.**

(57)—*Discharge of accused.*—In answer to a reference from a Sessions Judge, the High Court held that, in a case where the accused has been duly summoned or arrested under a warrant, and is present to meet any charge, and the complainant and his witnesses negligently fail to appear against him, if it be not shown to the Magistrate that the case is one in which he ought to adjourn the enquiry under s. 224, Code of Criminal Procedure, the accused person ought to be discharged; but, also, *held* that the question did not arise under the circumstances of the case, and the case must go back to the Magistrate for investigation. **7 B.L.R. 7; 15 W R. Cr. 53.** 7 B.L.R. 8, note, 7 B.L.R. 9 note, 10 W.R. Cr. 31.

(58)—*Crim. Pro. Code (1861), s. 67—Discretion of Magistrate.*—A Magistrate can, in his discretion, dismiss a complaint under s. 67, Crim. Pro. Code, 1861; and he is under no obligation to go further. **10 W.R. Cr. 50; 17 W.R. Cr. 8.**

(59)—Where a Magistrate dismissed a case in the exercise of a judicial discretion, such

Complaint—continued.

——**4.—(Dismissal of Complaint)**—*concluded.*

dismissal has, under s. 212, Crim. Pro. Code, 1872, the effect of an acquittal. **19 W.R. Cr. 52.** *See, also,* 23 W.R. Cr. 63.

(60)—The dismissal of a case in which a summons issues in the first instance amounts to an acquittal of the accused. Hence, no further proceedings in respect of the same act can be taken under a different charge. **25 W.R. Cr. 63.**

(61)—*Acquittal without regular trial—Power of Deputy Magistrate—Crim. Pro. Code (1861), s. 250.*—A Deputy Magistrate cannot acquit a prisoner of an offence under Ch. XIV of the Crim. Pro. Code, 1861, for which the prisoner had not been put upon his trial, by him. **9 W.R. Cr. 15.**

(62)—*Evidence disclosing another offence than that charged—Duty of Magistrate.*—A Magistrate cannot dismiss a case, if, in the course of his investigation, he finds that another offence than the one charged has been committed. It is his duty to adjudicate on the original charge. **8 W.R. Cr. 82.**

(63)—*Complaint not having been laid by the most responsible person.*—A complaint cannot be dismissed on the ground that the complaint ought to have been laid by a more responsible person. **18 W.R. Cr. 55.**

(64)—*Delay in making charge—Want of material evidence—Effect—Dismissal of complaint.* *See* **18 W.R. Cr. 75**

(65)—*Adultery—Dismissal of complaint without examining wife or without issuing process for other witnesses—Fresh enquiry.*—The dismissal of a complaint of adultery without examining the wife in the presence of her husband, the complainant, and without issuing process to compel the attendance of certain witnesses named by him is a material error necessitating a fresh enquiry. **1 J.G. 24.**

(66)—*Charge of theft.*—A charge of theft should be enquired into before deciding it to be false or taking steps under s. 211, Penal Code. **16 W.R. Cr. 77.**

(67)—*Want of sanction to prosecute.*—When a Magistrate dismisses a complaint of offences under ss. 182 and 500, I.P.C., for want of sanction to prosecute, his order does not amount to an acquittal and he is bound to entertain a fresh complaint of the same offences, if made after obtaining sanction. **Cr. Rg. 38 of 1896.**

(68)—*Summons, right to—Duty of Magistrate.*—It is not competent to a Magistrate to refuse to issue a summons to a complainant, even in a case in which the charge might have been laid with the Police in the first instance. He must examine the complainant on oath and pass orders in the case. **14 W.R. Cr. 36.**

See COMPOUNDING OFFENCE, 1 B. 64.

See CRIM. PRO. CODE (1898), ss. 202, 435, 1, 2, 3, Rat. Un. Cr. C. 669.

See SANCTION TO PROSECUTE, 2 P.R. 1907 Cr. = 5 Cr. L.J. 491 = 49 P.L.R. 1907 = 18 P.W.R. 1907 Cr. = 6 Cr. L.J. 258, 9 C.L.R. 267.

Complaint—continued.

—**5.—(Withdrawal and Revival of Complaints).**

See COMPOUNDING OFFENCE.

(1)—*Withdrawal of complaint—Act XXV of 1861, s. 270—Act X of 1872, s. 210.*—Offences punishable under the Penal Code with more than six months' imprisonment are not triable under Ch. XV of the Code of Criminal Procedure, and consequently do not fall within the provisions of s. 271 of that Code. **4 B.L.R. F.B. 41=12 W.R. Cr. 59.**

(2)—*Withdrawal of complaint and obligation of Magistrate to hear it—Effect of withdrawal—Acquittal.*—The withdrawal of a complaint by a complainant operates as an acquittal, and the High Court cannot entertain the matter at all, except upon an application duly made with sanction of the Government. **19 W.R. Cr. 55.**

(3)—*Complaint once instituted—Duty of Magistrate.*—Where once a complaint of a non-compoundable offence is before a Magistrate, he is bound to make a complete enquiry, and to see that the accused, if guilty, is brought to punishment. **22 W.R. Cr. 83.**

(4)—*Duty of Magistrate—Remedy by civil suit.*—If a complaint is duly made before a Magistrate, and the act imputed appears to amount to an offence and there is a *prima facie* reason to suppose the accusation true, the Magistrate is bound to proceed, though he may consider a civil suit more applicable. **8 W.R. Cr. 65.**

(5)—Where there is a *prima facie* case made out, a Magistrate should send for the witnesses, and not, merely on the strength of the police report, reject the complainant's petition and refer him to the Civil Court. **9 W.R. Cr. 21.**

(6)—A complaint properly made should be investigated, even if the case be one in which a civil action will lie. **10 W.R. Cr. 40.** 20 W.R. Cr. 60.

(7)—The High Court would not interfere with an order of a Magistrate, in a complaint of theft, because it appeared to him, after making enquiries from the police, before whom the complaint was in the first instance brought, that the complaint was one in respect of which only a suit in the Civil Court should be brought. **11 W.R. Cr. 54.**

(8)—*Penal Code, s. 498—Withdrawal of complaint—Crim. Pro. Code (1861), s. 271.*—A complaint under s. 498, I.P.C., could not be withdrawn under s. 271, Crim. Pro. Code, 1861. But the husband, the complainant, could stay proceedings against the accused by declining to offer any evidence. **8 P.R. 1871.**

(9)—*Withdrawal of a complaint of adultery.*—The power to permit the withdrawal of complaints is confined to cases falling for disposal under Ch. XV of the Crim. Pro. Code, 1861. Therefore a Magistrate is not competent to allow the withdrawal of a complaint of adultery. **2 N.W.P. 234.**

Complaint—continued.

—**5.—(Withdrawal and Revival of Complaints)**—*continued.*

(10)—*Crim. Pro. Code, s. 147—Revival of complaint.*—On a complaint of enticing away a married woman, a non-cognizable offence, and of theft, cognizable offence, being made to a Police officer, he enquired into the offence of theft only, scarcely noticing the allegation as to the enticing away of the woman, and reported to a Magistrate that no such offence was even *prima facie* made out. The Magistrate, thereupon, directed him to strike off the offence complained of from the list of reported offences. *Held* that this was no bar to the taking up of and proceeding with a fresh complaint of enticing away a married woman, inasmuch as there was no dismissal of the complaint in respect of that offence. **5 B. 405.**

(11)—*Second complaint—First, dismissed summarily—Whether second, barred.*—A Magistrate is not precluded from taking up a complaint on the facts on which a similar complaint had been summarily dismissed on a former occasion, and, if it is shown that the complainant has some grounds for his complaint, the Magistrate should admit it. **5 A.L.J. 137=A.W.N. 1908, 67=7 Cr.L.J. 297.**

(12)—*Crim. Pro. Code (1861), Ch. XIV—Dismissal of complaint for default—Fresh complaint.*—In cases triable under Chapter XIV, where a Magistrate, on account of the non-appearance of the complainant or for any other sufficient cause, is satisfied that the charge cannot be sustained, he may dismiss the complaint. The dismissal will not bar the complaint being again entertained. **6 M.H.C. App. 8.**

(13)—*Crim. Pro. Code (1882), ss. 203 and 537—Dismissal of complaint—Fresh complaint without setting aside the order of discharge.*—Where a complaint is dismissed under s. 203, no fresh proceedings upon a new complaint on the same facts can be taken unless the order of dismissal is set aside in the manner provided by s. 203 by a competent authority. If such proceedings are instituted without setting aside the order of dismissal, the defect cannot be cured by s. 537 of the Code. **23 C. 983=1 C.W.N. 57.** [*F.*, 24 C. 286=1 C.W.N. 185, 22 A. 106, 28 M. 255=2 Weir 247-A; *Approved*, 1 C.W.N. 370=24 C. 528; *R.*, 2 C.W.N. 290, 28 C. 652, F.B., 25 M. 61=2 Weir 271, P.C., 9 P.R. 1902 Cr.=50 P.L.R. 1902; *D.*, 28 C. 211=5 C.W.N. 169, 2 Weir 251=24 M. 337, 2 Weir 325-A.=28 M. 310; *Diss.*, 2 L.B.R. 27, 1 N.L.R. 18, 16 M.L.J. 79=1 M.L.T. 31=29 M. 126, F.B.]

(14)—When a complaint is dismissed under s. 203, the Magistrate has no jurisdiction to revive the proceedings upon a fresh complaint on the same facts, so long as the order of dismissal is not set aside by a competent authority under s. 437 of the Code. **24 C. 286=1 C.W.N. 185.** [*F.*, 2 C.W.N. 290, 19 A.W.N. 211 =22 A. 106, 2 Weir 247-A=28 M. 255; *R.*, 28 C. 652, 9 P.R. 1902 Cr.=50 P.L.R. 1902;

Complaint—continued.

——5.—(Withdrawal and Revival of Complaints)—*continued.*

D., 2 Weir 251=24 M. 337, 2 Weir 325-A=28 M. 310; *Diss.*, 2 L.B.R. 27, 1 N.L.R. 18, 16 M.L.J. 79=1 M.L.J. 31=29 M. 126].

(15)—Where a complaint is dismissed under s. 203 for the default of the complainant, the Magistrate cannot, on a subsequent appearance of the complainant, restore the case to the file and proceed to try the case. Before any fresh proceedings can be taken, the order of dismissal should be set aside by a competent authority. **3 C.W.N. 760.** [*R.*, 2 L.B.R. 27].

(16)—*Crim. Pro. Code (1882), ss. 202, 203, 437—Dismissal of complaint—Power to revive proceedings.*—On a complaint being presented, the Magistrate took the statement of the complainant, recorded it briefly and called for a report from the Police on the matter, without asking him if he had any witnesses to call. On receipt of the report, the Magistrate dismissed the complaint. He did not record any reasons for distrusting the truth of the complaint, nor did he direct a local investigation to be made by a Police Officer for the purpose of ascertaining the truth or falsehood of the complaint. *Held*, that the Magistrate did not comply with the provisions of s. 202, and that he ought not, merely on the report of the Police, to have dismissed the complaint under s. 203. *Held*, also, that, when the Magistrate, who had dismissed the complaint, ordered a further enquiry, on receiving the complainant's second petition, he did not act contrary to any provision of the law; and that, considering the circumstances under which the complaint had been dismissed, a further enquiry was necessary. **9 A. 85.** [*F.*, 1 N.L.R. 18. 29 M. 126, F.B.=1 M.L.T. 31=16 M.L.J. 79; *R.*, 28 C. 211=5 C.W N. 169, 9 P.R. 1902 Cr.=50 P.L.R. 1902, 2 L.B.R. 27; *D.*, 23 C. 983, 22 A. 106; *Diss.*, 28 C. 652].

(17) *Crim. Pro. Code, s. 203—Dismissal of complaint—Power to re-open the matter.*—It is utterly contrary to sound principles that one Magistrate of co-ordinate jurisdiction should, in effect and substance, deal with, as if it were an appeal or matter for revision, a complaint which has already been dismissed by a competent tribunal of co-ordinate authority. **22 A. 106.** [*F.*, 28 M.255=2 Weir 247-A=2 Cr. L.J. 752; *R.*, 28 C. 652, F.B., 1 N.L.R. 18, 26 P.W.R. 1908 Cr.=8 Cr. L.J. 249; *D.*, 24 M. 337=2 Weir 251, 16 M.L.J. 79=1 M.L.T. 31 =29 M. 126=3 Cr. L.J. 274, 29 A. 7=3 A.L.J. 562=A.W.N. 1906, 245, 5 A.L.J. 137=A.W.N. 1908, 67=7 Cr. L.J. 297; *Diss.*, 2 L.B.R. 27].

(18) *Crim. Pro. Code (1882), ss. 4, 203 and 437—Revival of proceeding by a successor in office.*—Where an order of a Magistrate is a judicial and not an executive order and is one dismissing a complaint, it is not competent to the successor in office to set aside such order of his predecessor. **2 C.W.N. 290** [*R.*, 2 L.B.R. 27].

Complaint—continued.

——5.—(Withdrawal and Revival of Complaints)—*continued.*

(19)—*Charter Act—High Court's power to revise an order, reviving a complaint after discharge.*—The High Court has ample power, under the Charter, if not under the Code, to revise an order reviving a complaint after discharge. **1 C.W.N. 49.** [*F.*, 6 C.L.J. 705=6 Cr. L.J. 490; *Appl.*, 28 C. 709; *R.*, 27 C. 126 =3 C.W.N. 601].

(20)—*Crim. Pro. Code (1882), ss. 253, 403, 423, 439—Warrant case—Discharge—Revival of complaint—Power of Presidency Magistrate—Power of High Court to direct further enquiry or order retrial.*—An order of discharge under s. 253 does not, in a warrant case, operate as an acquittal, and is no bar under s. 403 to the retrial of any person so discharged. But a stipendiary Presidency Magistrate or any other Magistrate of co-ordinate authority has no power to sit as it were on appeal from the order of an Honorary Presidency Magistrate or other Magistrate of co-ordinate jurisdiction and to direct the issue of fresh process, notwithstanding that, upon a consideration of the same materials, the latter has dismissed the summons and discharged the accused. [*R.*, 28 C. 652, 9 P.R. 1902 Cr.=50 P.L.R. 1902; *D.*, 2 L.B.R. 27; *Diss.*, 28 C. 211.]—Under s. 439, read with s. 423, and possibly also under the Charters, it is open to the High Court to set aside such order of discharge, as is mentioned above and direct a retrial or further enquiry. **24 C. 528=1 C.W.N. 370.**

(21)—*Crim. Pro. Code (1898), ss. 195, 528—Case pending before a Court—Power of superior Court to withdraw it or to grant sanction.*—When no final order has been made by a Magistrate in a case pending before him, a superior Magistrate, who has transferred the case to the former's file, has no authority to pass an order of dismissal, nor to grant sanction for the prosecution of the complainant. **3 C.W.N. 490.**

(22)—*Crim. Pro. Code (1882), ss. 259, 369 and 439—Discharge of accused in a warrant case—Power of Presidency Magistrate to revive the case.*—Where a Presidency Magistrate has discharged the accused under s. 259, he has no jurisdiction to revive the case, much less to transfer it. **4 C.W.N. 46.** [*Diss.*, 28 C. 652= 5 C.W.N. 457].

(23)—*Crim. Pro. Code (1872), s. 210—Withdrawal of complaint—Penal Code, ss. 352 and 323.*—Where a person complained that he had been seized by the hands and legs and thrown on the ground, stopped, thumbed, and stiffened on the chest by three persons, one of whom gave a knife to another with directions to stab the complainant, *held*, that the complaint was one of voluntary hurt, and that the Magistrate was wrong in treating the complaint as of criminal force, and in allowing it to be withdrawn. **5 M. 378.**

(24)—*Withdrawal of complaint—Compounding of offences—Revival of complaint.*—When a

Complaint—continued.

——**5.—(Withdrawal and Revival of Complaints)**—*continued.*

compoundable offence has been compromised and the complaint withdrawn, the complaint may be revived, if it appear that the compromise was the result of a promise on the part of the accused which he failed to fulfil. **94 P.L.R. 1904.**

See ABETMENT, 4 P.R. 1888 Cr.

See ACT XIII OF 1859, ss. 1 and 2 (1), U.B.R. 1909, 2nd Qr., W.B. of C. Act, 1.

See ACT I OF 1871, s. 21, 5 Bom. L.R. 205.

—Dismissal of, for default after partial hearing by Presidency Magistrate—Institution of fresh proceedings—*See* ACT IV OF 1877, s. 124, 6 C. 523=8 C.L.R. 106.

—Report by Superintendent of Vaccination, if a complaint—*See* ACT XIII OF 1880, s. 18, 6 Cr. L.J. 124=4 L.B.R. 12.

See ACT I OF 1894, ss. 9 and 10, 27 C. 985=5 C.W.N. 131.

See ACT XII OF 1896, 9 P.R. 1897 Cr., 22 P.R. 1900 Cr., 8 P.R. 1901 Cr.

See ACT VI OF 1898, ss. 61, 72, 10 C.W.N. 1029=4 C.L.J. 170.

See BOM. ACT III OF 1888, ss. 68, 231, 471, 517, Rat. Un. Cr. C. 987.

See PUNJAB ACT XX OF 1891, s. 186, 2 P. R. 1892 Cr., and 3 P.R. 1892 Cr.

—To police—*See* COMPENSATION, 7 M. 563.

See COMPENSATION, 15 C.P.L.R. Cr. 194, 2 N.W.P. 447.

See COMPLAINANT, 23 M. 626=1 Weir 310.

—Complaint by Civil Court—*See* COURT FEES, 5 B.H.C. Cr. 104.

See CRIM. PRO. CODE (1898), s. 4, A.W.N. 1904, 266, 33 C. 1=10 C.W.N. 158=2 C.L.J. 228, 5 C.W.N. 106.

See CRIM. PRO. CODE (1898), ss. 4 and 190, 1 L.B.R. 58, 6 C.W.N. 926.

See CRIM. PRO. CODE (1898), ss 4 and 195, 30 C. 285 and 30 C. 415.

See CRIM. PRO. CODE (1898), s. 190, 14 Bur. L.R. 250=4 L.B.R. 300, 21 A. 109, U.B.R. (1902—1903), Crim. Pro. 21, 6 Cr. L.J. 25, 4 O.C. 127, 3 C.L.J. 8=3 Cr. L.J. 209.

See CRIM. PRO. CODE (1898), ss. 190, 192 and 254, 1 S.L.R. 119 Cr.

—Complaint in the form of police report—*See* CRIM. PRO. CODE (1898), ss. 190 (1) (*b*) and 203, 2 Weir 246.

—Power of Magistrate to refuse to initiate proceedings in cases initiated by Police report—*See* CRIM. PRO. CODE (1898), ss. 190, 253, 1 A.L.J. 609.

Complaint—continued.

——**5.—(Withdrawal and Revival of Complaints)**—*continued.*

See CRIM. PRO. CODE (1898), s. 195 (*b*), 30 A. 52=A.W.N. (1907), 288=4 A.L.J. 790=6 Cr. L.J. 396.

See CRIM. PRO. CODE (1898), ss. 197, 527 and 177, 4 L.B.R. 265=8 Cr. L.J. 70.

—Bigamy, charge of—Persons competent to complain—*See* CRIM. PRO. CODE (1898), s. 198, 25 A. 132=A.W.N. 1902, 198.

See CRIM. PRO. CODE (1898), s. 198, 25 A. 209=A.W.N. 1903, 7.

—By husband in charge of adultery—*See* CRIM. PRO. CODE (1898), s. 199, 5 A. 233.

See CRIM. PRO. CODE (1898), ss. 199, 238, 27 M. 61=2 Weir 236.

See CRIM. PRO. CODE (1898), ss. 200 and 202, 11 C.W.N. 170.

See CRIM. PRO. CODE (1898), ss. 200, 203, 204, 10 C.W.N. 1086=4 Cr. L.J. 213.

See CRIM. PRO. CODE (1898), s. 202, 19 P.R. 1894 Cr.

—Dismissal of—*See* CRIM. PRO. CODE (1898), ss. 202, 203, 33 P.R. 1887 Cr.

—Whether a dismissal of complaint, evidence of want of reasonable cause for prosecution—*See* CRIM. PRO. CODE (1898), s. 203, S. C. 294, Oudh.

See CRIM. PRO. CODE (1898), s. 353, Rat. Un. Cr. C. 24.

See CRIM. PRO. CODE (1898), s. 403 (1), 6 A.L.J. 262=9 Cr. L.J. 526=31 A. 317=2 Ind. Cas. 219.

See CRIM. PRO. CODE (1898), ss. 423, 435, 439, 27 C. 126=3 C.W.N. 601.

See CRIM. PRO. CODE (1898), ss.435 (1 to 3), 426, 439 (1 to 4) and 440, 4 C. 647.

See CRIM. PRO. CODE (1898), ss. 476, 195, 4 M.L.T. 404=32 M. 49=19 M.L.J. 42=9 Cr. L.J. 41, F.B.

See CRIM. PRO. CODE (1898), ss. 488, 250, 6 M.L.T. 261.

See CRIM. PRO. CODE (1898), s. 545 (2), 4 Bom. L.R. 877.

See CROSS COMPLAINANTS, 2 J.G. 35.

See DISMISSAL OF COMPLAINT, Colm. Dig. Cr. 91 of 1877, 1 L.B.R. 125.

See FALSE CHARGE, 6 C. 496=7 C.L.R. 467, 5 A. 387, 4 C.L.R. 134=7 C.L.R. 382, 3 S.L.R. 189.

—First complaint—Second complaint by a different person—Same acts—*See* MAGISTRATE, JURISDICTION OF, 3 A.L.J. 562=4 Cr.L.J. 59 =A.W.N. 1906, 245=29 A. 7.

See MAGISTRATE, JURISDICTION OF, 17 C. P.L.R. 105, 27 C. 798.

Complaint—concluded.

——5.—**(Withdrawal and Revival of Complaints)**—*concluded.*

See MAINTENANCE, 168 P.L.R. 1903.

See PENAL CODE, s. 182, 6 A.L.J. 236=9 Cr. L.J. 518.

See PENAL CODE, ss. 182 and 211, 4 N.L.R. 136.

See PENAL CODE, s. 211, 29 A. 587=A.W.N. 1907, 195=4 A.L.J. 471=6 Cr. L.J. 42.

See RAPE, 29 C. 415=6 C.W.N. 677.

See REVISION, 3 L.B.R. 234, F.B.

—Distinction between complaint by private individuals and complaint by Courts—*See* SANCTION TO PROSECUTE, 13 B. 109.

See SANCTION TO PROSECUTE, 2 C.L.J. 619 =10 C.W.N. 222=3 Cr.L.J. 112=27 C. 452=4 C.W.N. 594, 7 Cr. L.J. 10=35 C. 141=2 M.L. T. 500, 13 M. 144, 9 C.P.L.R. Cr. 27, 6 O.C. 1, 2 P.W.R. Cr. 1909=9 Cr. L.J. 152=37 P.L. R. 1909=1 Ind. Cas. 93, 8 P.R. 1908 Cr.=15 P.W.R. 1908 Cr.=149 P.L.R. 1908=7 Cr. L.J. 353, 1 L.B.R. 286.

Compounding Offence.

See COMPLAINT—WITHDRAWAL AND REVIVAL OF COMPLAINT.

See CRIM. PRO. CODE (1898), s. 345.

(1)—*Conviction set aside on appeal—Liberty to compound when retrial ordered—No sanction of Court necessary.*—Where the accused is charged with an offence which is compoundable, and is convicted by the Magistrate, but, on appeal, the conviction is set aside and a retrial ordered. *Held*, that it is open to the complainant and the accused to compound the case, in the same manner in which a case may be compounded before conviction by the Magistrate. *Held*, further that it was not necessary in this case, to apply to the Court for permission to compound. **3 A.L.J. 523=A. W.N. 1906, 200=4 Cr. L.J. 35.**

(2)—*Penal Code, s. 214—Crim. Pro. Code (1872), s. 210.*—Whenever the words "voluntarily," "intentionally," "fraudulently," "dishonestly," or others, whose definition involves a particular intention, enter along with a specified act into the description of an offence, the offence, not being one "irrespective of the intention," is not one which the exception to s. 214 by itself allows to be compounded without the parties incurring the penalties prescribed by that and the next preceding section. The offence, to admit of compromise, must be one in this sense irrespective of the intention; and it must be one for which a civil action may be brought at the option of the person injured, instead of criminal proceedings. The offence of voluntarily causing grevious hurt cannot legally be compounded. **1 B. 147.**

(3)—*What offences are not compoundable.*—Offences punishable under any law other than the Penal Code are not compoundable. (*Vide* last tabular statement in sch. ii, Crim. Pro. Code).. **S.C. 78, Oudh.**

Compounding Offence—continued.

(4)—*Compounding of offences—Test.*—The compoundability of an offence charged is the sole or decisive test for determining the class of offences which concern individuals only, as distinguished from those which have reference to the interests of the State. **6 Bom. L.R. 73.**

(5)—*Crim. Pro. Code (1882), s. 345—Compoundable offences.*—The general principle of the law of England that felonies and serious misdemeanours shall not be compounded is embodied in s. 345, Crim. Pro. Code, which says that no offence not mentioned in the section shall be compounded; and neither that of culpable homicide, nor that defined in s. 304-A is mentioned there. The Magistrate should find upon the evidence whether the accused should be discharged or charged with an offence, and should decide that only a compoundable offence had been proved before he allows compounding. **Rat. Un. Cr. C. 699=Cr. Rg. 28 of 1894.** [*R.*, 1 L.B.R. 349].

(6)—*Crim. Pro. Code (1872), s. 188—Charge of adultery—Compounding of the offence—Penal Code, s. 497.*—Where, after the conviction by a Sessions Judge of a person charged with adultery, and during the pendency of the appeal in the High Court, the complainant, who had taken his wife back to live with him, had asked the High Court to be allowed to compound the offence, *held*, that the sanction for compounding could not be given at that stage of the proceeding. **2 A. 339.**

(7)—*Withdrawal of a complaint of adultery.*—The power to permit the withdrawal of complaints is confined to cases falling for disposal under Ch. XV of the Crim. Pro. Code, 1861. Therefore, a Magistrate is not competent to allow the withdrawal of a complaint of adultery. **2 N.W.P 234.**

(8)—*Compounding offence--Kidnapping.*--The offence of kidnapping can be lawfully compounded. **22 W.R. Cr. 26.**

(9)—*Wrongful restraint.*—The offence of wrongfully restraining another may be lawfully compounded. **7 W.R. 33.**

(10)—*Compromise--Assault resulting in intentional grievous hurt.*—Although an assault may be compromised, an assault which results in the intentional infliction of grievous hurt cannot be compromised. **6 N.W.P. 302.** [*F.*, 1 B. 147].

(11)—*Crim. Pro. Code, Act X of 1872, s. 345—Compounding of offence of hurt—Grievous hurt—Subsequent complaint.*—Where an offence which, at the time of the complaint, was believed to have caused only simple hurt, was compounded, and subsequently the complainant applied to have the case taken on file again on the ground that the offence had turned out to be one of grievous hurt and therefore non-compoundable, *held* that the first compounding was legal. **A.W.N. 1884, 13.**

(12)—*Crim. Pro. Code, s. 213, et seq.—Compounding of warrant case—Dismissal—Revival of proceeding.*—The dismissal of a warrant

Compounding Offence—continued.

case—falling under the provision of s. 213, *et seq*, of the Code of Criminal Procedure, 1872, which is not therefore compoundable,—on the parties coming to an amicable settlement regarding the matter in dispute, amounts to a discharge. There could, therefore, be no bar to the renewal of the proceedings, if that should otherwise be thought necessary. Housebreaking in order to commit theft is not an offence which, according to s. 214, I.P.C., can be legally compounded, and a withdrawal from the prosecution in such a case has not, according to s. 188, Crim. Pro. Code, 1872, the effect of an acquittal. Such a withdrawal cannot, therefore, affect the revival of the prosecution. **1 B. 64.** [*F.*, Rat. Un. Cr. C. 330, Rat. Un. Cr. C. 391; *Appr.*, 16 M.L.J. 79=1 M.L.T. 31=29 M. 126; *R.*, 10 B. 131, 5 C.W.N. 457=28 C. 652].

(13)—*Guarantee on condition of not taking criminal proceedings—Compounding felony.*—A man, to whom a civil debt is due, may take securities for that debt from his debtor, even though the debt arises out of a criminal offence and he threatens to prosecute for that offence, provided he does not, in consideration of such securities, agree not to prosecute. He must not, however, by stifling a prosecution obtain a guarantee from third parties. **11 B. 566.**

(14)—*Crim. Pro. Code (1898), s. 345—Compounding offence of mischief done to private property of village Mahar.*—The accused was charged under s. 427, I.P.C., with having caused damage to the complainant's property. The Magistrate refused to allow the offence to be compounded, because the damage was done to a village Mahar, and, therefore, could not be treated as damage affecting only a private person, as Mahars had duties to perform in connection with the village. *Held* that the offence was compoundable, as the damage was caused to harvested crops, which were the private property of the complainant. The fact that the complainant was a village Mahar would not make his personal property, the property of the public or even of the Mahar community generally. **22 B. 889.**

(15)—*Charge of adultery—Withdrawal of charge by husband—Revisional powers of High Court.*—Where in the case against the accused who was charged with adultery which was withdrawn by the husband of the woman, the Assistant Sessions Judge ordered the accused to be discharged, *held*, that the High Court would not be exercising its discretion properly in interfering in the matter. **5 B.H.C. Cr. 27.**

(16)—*Crim. Pro. Code (1872), s. 188—Withdrawal of offence under s. 323, Penal Code.*—The offence of voluntarily causing hurt is one which may be lawfully compounded and, therefore, withdrawal from the prosecution in such a case is permissible under s. 188, Crim. Pro. Code. **10 B.H.C. 68.** [*Disappr.*, 1 B. 147.]

(17)—*Crim. Pro. Code, s. 345—Compounding offences—Offence under s. 148, Penal Code.*—In a case before a Magistrate, the evidence

Compounding Offence—continued.

disclosed an offence under s. 148, I.P.C. The complainant subsequently applied to withdraw the case on the ground that some of his witnesses had turned around. The Magistrate allowed the offence to be compounded under s. 345, Crim. Pro. Code. *Held*, that the Magistrate acted without jurisdiction in allowing the compounding of a non-compoundable offence. **4 Bom. L.R. 718.**

(18)—*Crim. Pro. Code (1882), s. 345—Compoundable offences—Penal Code, s. 323.*—The offence punishable under s. 323, I.P.C., is, by s. 345, Crim. Pro. Code (1882), compoundable irrespective of the permission of the Court. **A.W.N. 1886, 167.**

(19)—*Penal Code, ss. 323, 353—Crim. Pro. Code, Act X of 1882, s. 345—Compounding.*—Where a person is prosecuted for offences under ss. 323 and 353 of the Penal Code and the complainant applies to have the case under s. 323 struck off, the Magistrate should allow the composition and proceed only in respect of the other offence. **A.W.N. 1884, 256.**

(20)—*Crim. Pro. Code (1882), s. 345—Compoundable offences—Penal Code, ss. 323, 342.*—The offences punishable under ss. 323 and 342, I.P.C., are compoundable under s. 345, Crim. Pro. Code. **A.W.N. 1883, 245.**

(21)—*Counter-cases under ss. 342, 353—Penal Code—Evidence in both cases taken together—Evidence of accused—Compounding.*—In a case where there were counter-charges between the parties of offences under ss. 342 and 353 of the I.P.C., the Magistrate took evidence in both cases, without having come to a decision in either case, and eventually allowed the charges to be compounded: *Held* that the Magistrate's procedure in hearing the two counter-charges before coming to a decision in either was not illegal, but that he should not have taken the evidence of an accused person on oath against the persons accused by him until the case against himself had been disposed of; and that the order of compounding should be reversed. **Rat. Un. Cr. C. 331=Cr. Rg. 22 of 1887.**

(22)—*Crim. Pro. Code (1882), ss. 345, 560—Compounding of offences—Compensation.*—Where an offence is compounded under s. 345, it is incompetent to a Magistrate to award compensation under s. 560, Crim. Pro. Code. In a case where there is neither a discharge nor an acquittal, but only a composition, s. 560 does not apply so as to enable the Magistrate to award compensation to the accused. **Rat. Un. Cr. C. 700=Cr. Rg. 29 of 1894.**

(23)—Although the composition of an offence under s. 345 has the effect of an acquittal yet, it is not an acquittal so as to bring the case within the provisions of s. 560, Crim. Pro. Code. The Magistrate is not, therefore, competent to award compensation to the accused. **Rat. Un. Cr. C. 957=Cr. Rg. 8 of 1898.**

Compounding Offence—continued.

(24)—*Penal Code, s. 214, excep.*—It is not every compromise of a criminal prosecution out of Court which is a breach of the positive law. **8 C. 24.**

(25)—*Jurisdiction of Magistrate to record compromise order—Ss. 248, 259 and 437, Crim. Pro. Code.*—The mere fact of the accused having been sent by the Police would not prevent an offence (under s. 448 of the Penal Code), which is legally compoundable, from being compromised; and a District Magistrate, relying upon ss. 248 and 259, Crim. Pro. Code, and professing to act under s. 437, would not be warranted in setting aside an order of compromise recorded by a Deputy Magistrate of the first class under such circumstances. Ss. 248 and 259 have no bearing at all upon the case. **10 C. 551.**

(26)—*Penal Code, s. 211--Compounding of the original charge—Charge against the complainant under s. 211 of the Code.*—The compounding of the original charge is not a conclusive answer to the charge made against the complainant under s. 211, Penal Code. **11 C. 79.**

(27 and 28)—*Crim. Pro. Code (1882), s. 345—Compounding offences—Burden of proof—Effect of compounding.*—Where an accused person charged with an offence, under s. 341, Penal Code, pleaded the compounding of the charge as a bar to the jurisdiction of the Magistrate, *held* that, having regard to the fact that the accused person was a European and the complainants were ignorant coolies, and that the Police had a hand in the compounding of the offence, the burden of proving the validity of the composition lay with the accused and that he had not sufficiently discharged that burden. *Per* Prinsep, J:—The compounding of an offence signifies that the person, against whom the offence has been committed, has received some gratification, not necessarily of a pecuniary character, to act as an inducement for his desiring to abstain from a prosecution, and the law provides that a composition would have the effect of an acquittal. In the case mentioned above, it was for the accused, who raised an objection to the jurisdiction of the Magistrate, to show that there was a composition valid in law. *Per* Trevelyan, J:—Compounding an offence is more than a mere promise to withdraw a prosecution. It supposes an arrangement by which the parties have settled their differences, and, in the more usual acceptance of the term, implies that the prosecution has received some consideration or gratification for dropping the prosecution. Although the provisions of the Contract Act may not apply, the proof of the arrangement must be similar to that which the Court requires for the proof of any agreement which is in issue. Unless it appears that the parties were free from influence of every kind and were aware fully of their respective rights, it would be impossible to give effect to a so-called arrangement or composition. **21 C. 103.**

(29)—If, in the case of a compoundable offence, the complainant intimates to the Court that he has compounded it and desires to withdraw the complaint, the order passed by the Magistrate allowing the withdrawal is in respect to the *offence* and not solely in regard to the *person* actually under trial at the time. In so providing, the law contemplates that all the accused persons should be under trial at the same time before a judicial officer, unless in some exceptional circumstances such as their absconding, or sickness, or some such reason, the attendance of some of them cannot be obtained. **7 C.W.N. 176.**

(30)—*Penal Code, ss. 213, 214, 406—Compounding offences.*—The offence of criminal breach of trust, being one into which the element of dishonesty enters, cannot, under the terms of ss. 213 and 214, I.P.C., be lawfully compounded. **6 C.L.R. 392.**

(31)—*Crim. Pro. Code (1898), s. 345—Filing of petition of compromise—Duty of Magistrate—Withdrawal of compromise.*—Where, on the filing of a petition of compromise, in respect of a compoundable offence, the Magistrate examines the complainant and satisfies himself as to her understanding the same, it is his duty to accept the compromise and to dismiss the case or acquit the accused. He is wrong in ordering the petition to be put up with the record. Where a *bona fide* petition of compromise withdrawing a case has been filed, the complainant cannot subsequently withdraw the compromise and insist upon the case being tried. **3 C.W.N. 322.**

(32)—*Crim. Pro. Code (1898), s. 345—Petition of withdrawal or compromise—Duty of Magistrate.*—A Magistrate should make an order either granting or refusing an application for withdrawal or compromise. He is not competent to order the petition to be filed for consideration with the evidence in the case. Where a petition is put in to compound a compoundable offence, it is the duty of the Magistrate to allow the parties to compound the offence and to acquit the accused. **3 C.W.N. 548.**

(33)—*Crim. Pro. Code (1872), s. 188—Compoundable offences—Enticing away a married woman and criminal breach of trust.*—The offences of enticing away a married woman with a criminal intent and of criminal breach of trust are not offences which may lawfully be compounded. **1 M. 191.**

(34)—*Compounding of offences, nature of—Civil action for damages, effect of.*—Compounding imports a corrupt agreement to stifle a prosecution or to forbear prosecuting, and it is, on this account, against the policy of the law to allow offences to be compounded. The bringing of a civil action does not import that any corrupt agreement has been entered into or that forbearance from criminal proceedings has been corruptly purchased. The institution of a suit is not inconsistent with the intention eventually to have recourse to criminal proceedings. **3 M. 6.** [*R.*, 4 M. 410].

S. N. DAR, B. A. LL. B.,
Vakil High Court,

Compounding Offence—continued.

(35)—*Penal Code, s. 404—Compounding of the offence.*—An offence under s. 404, Penal Code, is not one of the class of offences that may be compounded. **7 M.H.C. App. 34.**

(36)—*Compounding of offences for a consideration.*—A consideration that proceeds upon the withdrawal of criminal proceedings that have been instituted is illegal as being opposed to public policy and as amounting to the stifling of the prosecution. **4 M.L.J. 106.**

(37)—*Crim. Pro. Code (1882) s. 345—Compounding of offences—Persons competent.*—By s. 345, the only person who can compound the offence of hurt is the person to whom the hurt is caused. The widow of the person to whom the hurt was caused cannot compound the offence. **2 Weir 418.**

(38)—*Crim. Pro. Code (1898), s. 345—Compromise of compoundable offences—Conviction, validity of.*—Where the parties have compromised an offence compoundable under s. 345, and have filed the petition of compromise, the Magistrate is not competent to convict the accused. **2 Weir 418.**

(39)—*Alteration of conviction from non-compoundable offence to compoundable offence.*—A person convicted by a Magistrate of a non-compoundable offence was on appeal acquitted of that offence, but convicted of a compoundable offence, for which he had not been tried by the Magistrate *Held*, that the accused should not have been convicted of the offence without any opportunity having been given him to effect, if possible, a composition of the offence. **3 O.C. 314.**

(40)—*Lawful composition.*—Although a lawful composition may be effected within the scope s. 345, Crim. Pro. Code, 1882, without the passing of any consideration or gratification, there must be some arrangement between the parties settling their differences. When the accused denied the charge and did not even allege that there had been any composition between him and the complainant, nor had the complainant uttered a word which would be construed into an admission that he had compounded the offence, *held*, that there had been no composition of the offence. **9 P.R. 1896 Cr.**

(41)—*Crim. Pro. Code (1898), s. 345—Penal Code, s. 147—Rioting—Magistrate allowing the offence to be compounded—Reasons for so allowing—Order* ultra vires.—A Magistrate has no jurisdiction to allow a non-compoundable offence to be compounded, on the ground that it would probably be better for the complainant to do so, that the accused also wished for the compromise, and that it was probable that the case might in the end turn out to be a compoundable offence. Such an order is *ultra vires*. The offence of rioting under s. 147, Indian Penal Code, being an offence against the public tranquility, primarily concerns the state more than the individual; and that is probably one reason why it was not made a compoundable offence. **11 P.R. 1907 Cr.=34 P.W.R. 1907=47 P.L.R. 1908.**

Compounding Offence—continued.

(42)—*Competency of minor to compound offence.*—The effect of s. 345, Crim. Pro. Code, read with s. 3 of the Indian Majority Act, 1875, is that a person under the age of 18 years cannot lawfully compound the offences declared to be compoundable by the first portion of the former section. **17 P.R. 1891 Cr.**

(43)—*Crim. Pro. Code (1898), s. 345—Compounding an offence—Accused pleading not guilty—Compromise valid—Intervention of respectable persons.*—In a case, wherein the accused does not plead guilty, and the matter is settled by respectable persons and a compromise entered into, the Court is not concerned to inquire into the nature or value of the consideration; and if the complainant considers that his grievance is redressed, by the fact of respectable persons intervening, even though he may not have received any money payment or even a direct apology from the accused, the complainant is at full liberty to compound the prosecution. **2 S.L.R. 16 Cr.=10 Cr. L.J. 228.**

(44)—*Duty of Magistrate before allowing composition—Penal Code, ss. 324, 325—Crim. Pro. Code (1898), s. 345.*—Before allowing composition of an offence alleged to fall under s. 325, Penal Code, a Magistrate should take sufficient evidence to satisfy himself that the offence really falls under that section and that the case is one in which composition may fitly be allowed. When allowing composition under s. 345 (2) of the Crim. Pro. Code, the Magistrate should briefly state his reasons for granting sanction in order that, if any appeal is preferred, the High Court may be in a position to judge whether discretion has been properly exercised. In a case falling under s. 324 or 325, Penal Code, the Magistrate should take into consideration all the circumstances of the case and should bear in mind that such an offence is punishable not only for the satisfaction of the injured person, but also to protect society by deterring others from committing similar offences. The degree of prevalence of such offences at any particular place or time may fitly be considered in determining whether composition should or should not be allowed. **1 L.B.R 349.** [Rat. Un. Cr. C. 699, *R.*]

(45)—*Crim. Pro. Code (1882), ss. 345 and 403—Composition of offence under Magisterial sanction—Whether improper discharge.*—S. 345 of the Crim. Pro. Code gives no authority for the composition of an offence under s. 325 of the Penal Code. The composition of such an offence is not a composition of an offence under s. 345 of the Crim. Pro. Code, and there is nothing in s. 345, or in any other part of the Crim. Pro. Code, to give such a composition the effect of an acquittal. There is thus nothing in s. 403 of the Crim. Pro. Code to prevent a District Magistrate from treating any such composition under Magisterial sanction as an improper discharge. **L.B.R. (1893—1900), 240.**

(46)—*Option of Magistrate to allow composition—Penal Code, ss. 324, 334—Crim. Pro.*

Compounding Offence—concluded.

Code, s. 345.—Where a Magistrate finds that a case is not one under s. 324, Penal Code, as sent by the police, and decides to charge the accused under s. 334, the offence becomes compoundable by the person to whom the hurt is caused, and the Court has no option but to allow it to be compounded. S. 334 is inapplicable to a case where an accused person throws a stone at a police constable and hits another person causing hurt. **L.B.R. (1893—1900), 485.**

(47)—*Non-compoundable offence—Duty of Magistrate—Compromise.*—If a Magistrate considers that on the facts alleged a non-compoundable offence has been committed, it is his duty to decline to recognise any compromise and to proceed with the case. **2 Weir 151.** [*D.*, 1 L.B.R. 86].

(48)—*Compounding after committal—Effect of, on committal.*—A committal once made of an accused person by a Magistrate to the Sessions, cannot be annulled by his allowing the prosecutor to file a compromise. **2 W.R. Cr. 57.**

See BREACH OF TRUST, 30 P.R. 1879 Cr.

See COMMITMENT TO SESSIONS COURT, **1 A. 150.**

See COMPENSATION, 10 Bom. L.R. 1056=9 Cr. L.J. 186.

See COMPLAINT, 94 P.L.R. 1904.

See CRIM. PRO. CODE (1898), s. 345, U.B. R. (1892—1896), Vol. I, 42, 6 A.L.J. 882.

See CRIM. PRO. CODE (1898), s. 345. (1 to 4, 6, 7), Rat. Un. Cr. C. 519=Cr. Rg. 4—9—1890.

—After conviction—*See* CRIM. PRO. CODE (1898), ss. 345 (*d*), 439, 67 P.L.R. 1904.

See ENTICING AWAY MARRIED WOMAN, 22 P.L.R. 1910 Cr.

See GRIEVOUS HURT, 19 P.R. 1902 Cr.

See PENAL CODE, s. 214, 14 M. 400=1 Weir 195=1 M.L.J. 163, 3 A. 283.

—When grievous hurt is compoundable—*See* PENAL CODE, ss. 335 and 338, S.C. 74, Oudh.

See REVISION, 7 A.L.J. 103.

See WITHDRAWAL OF PROSECUTION, Rat. Un. Cr. C. 330=Cr. Rg. 20 of 1887.

Compromise.

—*Compromise by lawful guardian.*—A compromise by the lawful guardian of a minor acting *bona fide* for his benefit, cannot be set aside even at his instance, except on proof of fraud, and the subsequent extravagance or misconduct of the guardian could not revive an obligation which was once lawfully satisfied. **2 Weir 630.**

See CRIM. PRO. CODE (1898), s. 345, 6 A L. J. 882.

See EVIDENCE, 25 C. 736=2 C.W.N. 484.

—Compromise of maintenance claim—Duty of Magistrate—*See* MAINTENANCE, 2 Weir 629, 630, 631.

Compulsory Labour Act.

See MAD. ACT I OF 1858.

Concealment of Birth.

See PENAL CODE, s. 318, 1 Weir 334=4 M. H.C. App. 63.

Concubinage.

See PROSTITUTION.

See MAINTENANCE, 2 Weir 641.

Confession.

1.—GENERAL.

2.—CONFESSIONS MADE TO POLICE OFFICERS.

3.—CONFESSIONS TO MAGISTRATES—RECORD OF CONFESSIONS.

4.—CONFESSIONS OBTAINED BY INDUCEMENT, THREAT, ETC.

5.—RETRACTED CONFESSIONS.

6.—CONFESSIONS BY CO-ACCUSED.

7.—MISCELLANEOUS.

See ACCOMPLICE.

See ACCUSED.

See APPROVER.

See ADMISSION.

See CRIM. PRO. CODE (1898), ss. 164, 364.

See EVIDENCE ACT, ss. 17—31.

See PARDON.

See PLEA OF GUILTY.

——**1.—(General).**

(1)—*Evidence Act, s. 26—Confession, definition of—Admissibility in evidence.*—A 'confession' is 'an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed the crime.' So, an incriminating statement, which falls short of an absolute confession, but from which the inference of guilt follows, is a 'confession.' Such a statement, if made by the accused while in police custody, ought to be excluded from consideration as inadmissible in evidence. **51 P.L.R. 1905=2 Cr. L.J. 230.**

(2)—*Evidence Act, ss. 24, 25, 26, 30—"Confession," meaning of the term.*—The word "confession," as used in the sections of the Evidence Act relating to confessions, should not be construed as including a mere inculpatory admission which falls short of being an admission of guilt. A statement by a person who admits that he witnessed the perpetration of a crime, but denies having participated in it, and alleges that he protested against it, does not, therefore, amount to a confession. **7 A. 646.**

(3)—*General cases—Voluntary confession—Effect.*—A voluntary and genuine confession is legal and sufficient proof of guilt. **7 W.R. Cr. 41.**

Confession—continued.

——**1.—(General)**—*continued.*

(4)—*Confession distinguished from admission.*—All the admissions of an accused person are not, in the eye of the law, confessions. It is also impossible to hold that admissions only mean statements made by parties to civil proceedings, and that they do not include statements of accused persons in criminal proceedings. A confession may be defined as "an admission made at any time by a person charged with an offence, stating or suggesting the inference that he committed the offence."

When the statement, taken by itself, does not suggest the inference of guilt, in relation to the particular charge, it is not a confession. To ascertain, whether a certain statement, made by an accused person, is an admission only, or amounts to a confession, a reference must always be made to the terms of that statement. [*See*, also, ADMISSION]. **16 P.R. 1886 Cr.**

(5)—*Confession by persons charged with theft, used against accused charged with concealment of stolen property.*—Where a Magistrate used against an accused person, charged with assisting in the concealment or disposal of stolen property, confessions made by others tried for theft, *held*, that the confessions were not admissible under s. 30, Evidence Act, against the first, who was not charged with the same offence. **31 P.R. 1885 Cr.**

(6)—*Information by accused to the Police—Discovery of property—Admissibility of such information—Evidence Act, s. 27.*—Where the accused gave certain information to the Police and in consequence of which certain property was discovered, *held*, that such information could be proved, although it was given while the accused was in police custody and though they were present when the search caused by their information was made. **30 P.R. 1885 Cr.**

(7)—*To be regarded with caution.*—A plea of guilty, no less than a confession, must be regarded with caution. **47 P.R. 1866 Cr.**

(8)—Where the proof in a case is limited to a confession made by an accused person, it is essential that too much stress should not be laid upon it. **31 P.R. 1867 Cr.**

(9)—A Judge, who is to decide whether a confession is admissible in evidence or should be rejected, should exercise all necessary caution and vigilance, before admitting as voluntary, any confession tendered in evidence. But, in coming to a decision on this point, a Court should govern itself by the law and principles which regulate the procedure and adjudication in a Court of Justice and should not be influenced by conjecture or preconceived prejudice in recording what should be a decision based upon reasoned conclusions from the evidence adduced. A subsequent, interested, irresponsible and unsupported allegation of misconduct on the part of the police should not be taken as sufficient to remove from consideration

Confession—continued.

——**1.—(General)**—*continued.*

altogether a confession duly recorded by a Magistrate under the safeguards enjoined by the Legislature. **L.B.R. (1893—1900), 145.**

(10)—*To be taken as a whole.*—Unless the prosecution can show that any part of the confession of an accused person, so far as it exculpates him, is untrue or violently improbable, it is not fair to act on it so much as to incriminate him, omitting all that which goes to explain his own conduct and diminish the gravity of his offence. The only fair method is to take the confession as a whole. **L.B.R. (1872—1892), 324 and 327.**

(11)—*Per Jardine, J.*—Where an accused person makes a confession, the confession is evidence in his favour as well as against him, and must be taken as a whole.—*Per Candy, J.*—A confession must be taken as a whole and considered along with the admitted facts of the case, and the accused must be judged by his whole conduct. The Court is at liberty to disregard any self-exculpatory statements contained in the confession, which it disbelieves. **15 B. 452.**

(12)—Where a confession contains extenuating as well as incriminating matter, the extenuating portion must be taken into consideration no less than the incriminating portion, except when there is evidence to contradict it. **4 P.R. 1872 Cr.**

(13)—A prosecutor is not to be allowed to give in evidence part of a confession made by a prisoner, but it must be put in proof as a whole, so that the jury in the one case, and the Judge and the assessors in the other, may have the fullest means of testing its accuracy and forming their opinion as to whether the whole or part, and what portion of it, can be believed. For example, if one passage in a statement made by a prisoner standing by itself amounts to an admission of guilt, it is not alone to be regarded, if there are passages qualifying or contradicting it. A confession ought not to be rejected merely because there has been in the confession a false statement on a material point. **A.W.N. 1883, 148.**

(14)—A prisoner's confession must be taken in its entirety. **8 W.R. Cr. 38; 25 W.R. Cr. 15; 25 W.R. Cr. 23.**

(15)—*Statement of accused inconsistent with each other.*—The ordinary rule of takin gconfessions as a whole and giving the accused (in the absence of other evidence against him) the benefit of any circumstance that may appear in his favour therefrom, cannot apply to confessions which are diametrically opposed to each other; but only where the more favourable view is absolutely inconsistent with the general tenor of the confession. **24 W.R. Cr. 80.**

(16)—*Confessions of prisoner in one case evidence in another*—The confessions of the prisoner in one case in which he was convicted cannot be used against him in another case, unless

Confession—continued.

——**1.—(General)**—*continued.*

they are deposed to an oath, either by the person who took them down, or by some one else who heard them. **10 W.R. Cr. 56.**

(17)—*Confessions to Magistrate—Sufficiency of confession—Corroborative denial of statement in Sessions Court.*—The properly attested confession of a prisoner before a Magistrate is sufficient for his conviction without corroborative evidence, although there is a subsequent denial before the Sessions Court. **12 W.R. Cr. 49.**

(18)—*Inconsistent statements, credibility of.*—The words actually used by an accused, who is said to have confessed, ought to be ascertained. The Court should not accept merely the conclusions at which the witnesses, deposing to a confession, themselves arrived from the answers which the accused gave to the questions put by them. Where an accused person makes two distinct statements,—the one amounting to a confession of guilt, the other repudiating guilt,—if the one statement is taken against the accused, the other also must be taken, for what it is worth in his favour. The Court ought to weigh well the relative credibility of the two statements before it accepts the one in preference to the other. **10 B.L.R. 332.**

(19)—*Husband and wife only living together—Death of wife—Cause of death not ascertained—Presumption against husband.*—*Held*, that, where the accused's own confession is the only evidence against him, accounting for the commission of the crime with which he is charged, it must be accepted, in so far as it is not inconsistent with reason and other surrounding circumstances. *Held*, also, upon the above principle, that, where A and his wife only were living together, and the death of his wife occurs at his house, and the circumstances relating to her death are absolutely unknown, and A does not admit that he has killed her, the dissatisfaction of A with her and his ill-treatment of her, as well as his attempt to dispose of her body, are not sufficient to bring home the offence of murder to him, but, in the absence of exculpating circumstances, which he has to prove, he can be found guilty of culpable homicide, not amounting to murder. **19 P.W.R. 1907=6 Cr. L.J. 260.**

(20)—*S. 27, Evidence Act—Discovery arising out of confession.*—An accused person, while in the custody of the police, made a full confession, that he had murdered a boy, to the police and the *lambardars* and offered to point out the spot where he had concealed the body. He subsequently took the police and the *lambardars* to the place, and examined the body himself, which was identified as that of the missing boy. *Held* that the fact discovered being the boy's body lying buried in the place shown, and the information received from the accused (which related distinctly to that fact) being that the accused offered to show where the body lay buried, the information that the accused had killed the boy did

Confession—continued.

——**1.—(General)**—*continued.*

not distinctly relate "to the discovery of the body within the meaning of s. 27, Evidence Act, and was not, therefore, admissible. **28 P.R. 1894 Cr.** (14 B. 260, *F.*; 15 P.R. 1885 Cr. and 30 P.R. 1885 Cr., *R.*).

(21)—*Confession—Admissibility and value as evidence—Practice.*—Under ordinary circumstances, a confession cannot be accepted as sufficient for a conviction, unless it is supported by material facts established independently of the confession itself. Experience shows that unfounded confessions are not infrequently made from one motive or another natural to humanity and that consequently the Courts have to be on their guard against being led astray by such deceptions. It is, therefore, the practice in general to require some support for a confession and reasonable consistency with the surrounding circumstances about which there is no doubt. **U.B.R. (1897—1901), Vol. I, 152.**

(22)—*Confession, how construed.*—Where people are so ignorant, as Burmans are, of the most elementary legal principles, it is extremely dangerous to accept an admission as a plea of guilty without the closest scrutiny of the meaning of the acknowledgment. **U.B.R. (1897—1901), Vol. I, 72.** (U.B.R., 1897—1901, Vol. I, 78, *R.*).

(23)—*Essentials of, to be admissible against the accused—Retracted confessions.*—To use a confession as evidence against the accused, the Court must be satisfied (i) that it is voluntary and (ii) that it is substantially true. Moreover, it is a general rule of practice not to act upon retracted confessions, unless they are corroborated on material points by credible independent evidence. **2 S.L.R. Cr. 34=10 Cr. L.J. 200.**

(24)—*Statements made by suspected persons.*—It is unsafe to implicitly rely on statements made by men who knew themselves to be under a suspicion, and to whom it is represented that their only hope of escape consists in telling a story by which each may throw the blame chiefly on the other, while the corroborative evidence, which, coming after the disclosures, is necessarily of a questionable nature when it follows closely on conventional lines. **4 P.R. 1903 Cr.** (13 B. 493, 20 A. 529, 5 P.R. 1899 Cr., 24 P.R. 1902 Cr., *R.*)

(25)—*Conviction not to be based upon bare confession.*—Notwithstanding that the law sanctions the conviction of an accused person upon a bare confession, it is not yet an approved practice to solely rely upon it ordinarily. **3 P.R. 1868 Cr.**

(26)—*Accomplice—Confession—Corroboration.*—The accused was convicted of offences under ss. 392, 109 and 411 of the Indian Penal Code. The case against the accused rested (1) on the confession of a co-accused; (2) on his confession before a *lambardar* and (3) on his production of stolen property. It was proved that there was enmity between the accused and

Confession—continued.

——**1.**—**(General)**—*continued.*

the *lambardar*, who took an active part in the investigation, and the confession before him was made in the presence of the Deputy Inspector of Police. The property found was such as could not be identified. *Held*, that the confession made by the accused was inadmissible in evidence and the other evidence against him was insufficient and that he must be acquitted. **11 P.L R. 1904.**

(27)—*Case depending on circumstantial evidence—Confession.*—Where a case depends upon circumstantial evidence, it is usual to find a confession to bolster up such evidence. Courts should attach little importance to such a confession. **9 C.W.N. 474=2 Cr. L.J. 255.**

(28)—*Accused's statement, admissibility of.*—The mere absence of the questions in a prisoner's statement does not render it inadmissible. **12 C.L.R. 120.**

(29)—*Crim. Pro. Code (1882), s. 344—Remand after confession—Validity.*—Where the accused had already made a confession and produced an article stolen from the boy, who was alleged to have been murdered, he could not be remanded "in order to get from him a confessional statement." **2 Weir 414.**

(30)—*Confession, made at the close of a trial, nature of.*—A confessional statement made at the close of the trial is not a plea of guilty, upon which the Sessions Judge can record a finding without taking the verdict of the jury. After the prisoner has claimed to be tried, all the evidence, whether the statements of the witnesses or the admission of the prisoner, should be laid before the jury. **2 Weir 334.**

(31)—*Nature of confession made voluntarily—Admissibility and value of.*—Where a confession appears to be made voluntarily and to be a true and probable one from the circumstantial evidence in the case, it may be accepted as true. **Rat. Un. Cr. C. 867.**

(32)—Where a confession is deliberately and voluntarily made in a manner inconsistent with any suspicion of oppression or improper inducement, and it is amply sufficient to prove the guilt of the accused, it may be accepted as conclusive in itself without further corroboration. **Rat. Un. Cr. C. 463=Cr. Rg. 22 of 1889.**

(33)—*Admissibility of—Judge to decide its voluntariness — Jury to decide whether it is true or false — Crim. Pro. Code (Act V of 1898), s. 298.*—The question whether a confession was voluntarily made or not has to be decided by the Judge himself for the purpose of admitting it in, or excluding it from, the evidence in the case. If the Judge finds it was voluntarily made and was not caused by any threat or inducement, he must admit it in evidence; once it is so admitted, it is for the jury to say whether it is true or not. **11 Bom. L.R. 332=2 Ind. Cas. 517.**

Confession—continued.

——**1.**—**(General)**—*continued.*

(34)—*Confession—Evidentiary value.*— The test for appreciating the evidence of witnesses cannot appropriately be applied in estimating the value to be attached to a confession. The statements of an accused person are not subject to an examination on oath compelling his attention to accuracy in details. The credence given to such statements when they are voluntary, rests upon the improbability of an accused person deliberately adhering to a self-criminatory statement which is substantially false. And thus variations in detail are of less importance in considering the effect of a confession, than they would be in considering a deposition incriminating a person other than the deponent. **6 Bom. L.R. 773.**

(35)—*Proof of confession—Language foreign to Magistrate.*—Where the confession of a prisoner is made in a language foreign to the recording Magistrate, and is interpreted to him by some person who is not an official interpreter, such confession cannot be regarded as properly proved by the testimony of the Magistrate which is only hearsay evidence. The signature of the accused in the translated record of confession is no evidence of its correctness, when there is no proof of the record having been accurately translated to the prisoner. **Rat. Un. Cr. C. 855=Cr. Rg. 22 of 1896.**

(36)—*Confession of mere presence at a murder.*—A confession by an accused of his mere presence at a murder as a neutral onlooker is not, in the absence of any other evidence, sufficient to convict him of murder. **Rat. Un. Cr. C. 771=Cr. Rg. 35 of 1895.**

(37)—*Confession—Question as to admissibility.*—Where a confession was objected to on the ground that it was improperly received in evidence by the lower Court, the High Court declined to disturb the discretion exercised by the lower Court, on the grounds that the objections now advanced could well have been advanced before the lower Court, and that there was nothing improper, on the facts of the case, in the lower Court's admitting the confessions. **Rat. Un. Cr. C. 163.** [*Appl.*, 32 B 111=9 Bom. L.R. 789=9 Cr. L.J. 164=2 M.L.T. 414].

(38)—*Evidence Act—Confession by an accused of abetment only—Admissibility against co-accused.*—The confession of an accused is not admissible against another accused where it amounts only to a confession of abetting the principal offence charged against him and the other. **Rat. Un. Cr. C. 153.**

(39)—*Confession—Plea of torture urged in appeal—Record—Procedure—Inquiry directed by High Court as to how the confession was obtained.*—Where the accused, who had been convicted chiefly on confessions made by them before the Magistrate, asked in appeal that an enquiry be made whether the confessions were voluntary or caused by undue influence on the part of the police, *held*, that the record by the

Confession—continued.

——**1.—(General)**—*concluded.*

Magistrate that he had warned the accused that it was optional with them to answer the questions or not, though conclusive as to the fact of such warning, did not preclude the necessity for the inquiry prayed for. It is a grave error in law and procedure to refuse to make such inquiry. [*R.*, Rat. Un. Cr. C. 254, 242, 245, 25 B. 168].

(40)—Where the Crown did not object to the order made by the High Court, in directing the inquiry above referred to, to take a statement on solemn affirmation from the accused, *held*, that the objection as to the illegality of such an order could not be taken after it was made. **8 B.H.C. Cr. 126.**

(41)—*Crim. Pro. Code, Acts XXV of 1861 and VIII of 1869, ss. 203, 209, 211—Statements on conditional pardon—Admissibility in evidence—Act II of 1855, s. 32.*—A voluntary statement given by an accused person on conditional pardon is admissible in evidence against him under s. 32 of Act II of 1855. S. 203 of the Crim. Pro. Code does not prohibit the admission of such evidence, having regard to ss. 209 and 211, Crim. Pro. Code, 1861. **8 B.H.C. Cr. 103.**

(42)—*Crim. Pro. Code, Act X of 1882, s. 298—Evidence Act I of 1872, s. 24—Confession—Duty of Sessions Judge.*—It is the duty of the Sessions Judge to decide whether a retracted confession is admissible under s. 24 of the Evidence Act. Where none of the disabling circumstances referred to in that section exists, the jury should be directed that the confession may be presumed to be admissible. The statement that "the mere fact of the withdrawal suggests that the confession was obtained in an improper manner" is too broad to be correct law. **Rat. Un. Cr. C. 842 = Cr. Rg. 12 of 1896.**

(43)—*Evidence Act I of 1872, s. 24—Confession—Acquittal by jury.*—Where it was not shown that a confession was induced by illegal pressure, and the confession was also borne out by other evidence, the High Court agreed with the Sessions Judge in convicting the accused, differing from the jury, who held him not to be guilty. **11 B.H.C. 137.** [*F.*, 19 B. 728, 25 B. 168; *R.*, Rat. Un. Cr. C. 245, 719, 842].

(44)—*Confession, when not voluntarily made, admissibility of.*—The admitted ill-usage,—*viz.*, the unjustifiable violence used to the accused for his arrest, illegal detention of the accused in police custody for more than twenty-four hours after his arrest, and the marks on his person,—was *held* to have vitiated the voluntary character of his confession, which was, therefore, not admitted in evidence. **1 Bom. L.R. 357.**

(45)—*Magistrate recording confession.*—A Magistrate recording a confession under s. 164, Crim. Pro. Code, is other than the Magistrate who has jurisdiction in the case. **3 J.G. 2.**

Confession—continued.

——**2.—(Confessions made to Police Officers).**

(1)—*Confession to police officer, admissibility of.*—Where a police officer read over to the accused the statements which he (the police officer) had taken from others and then told him "I know the whole thing now," and the accused, thereupon, made a statement, in consequence of which he was arrested and his confession was duly recorded, *held* that the confession recorded under these circumstances was free and voluntary and was perfectly admissible in evidence. **3 Bom. L.R. 404.**

(2)—*Confession irrelevant under s. 24, Evidence Act, whether rendered relevant by s. 27.*—S. 27 does not qualify the prohibition contained in s. 24, Evidence Act, where the confession is illegally induced by a police officer; a confession, irrelevant under s. 24, does not become provable by reason of a fact being discovered in consequence of information received from the accused, while in police custody. **15 P.R. 1885 Cr.**

(3)—*Corroboration of, extorted by the police—Effect of defective enquiry and trial upon, of co-accused—Inadmissibility of confession made before the police—Evidence Act, ss. 24, 25, 26 and 30.*—When there is no judicial proof of the guilt of an accused person, it is illegal to rely upon an unreliable or suspicious confession, or a confession which is open to grave suspicion of having been produced by ill-treatment of the police. *Held*, further, that, when an accused person makes two criminating statements, one before a Magistrate and another before a Police officer, it is very essential to compare them and to try and ascertain why there occurred a change and which of them was the true one, with a view to testing the value of the confession before the Magistrate, the other being, of course, inadmissible for any other purpose whatever as made to the police. **21 P.W.R. 1907 Cr. = 6 Cr. L.J. 266.**

(4)—*To a police officer—Evidence Act, s. 25—Act II of 1880 (Burma Rural Police).*—A confession to a village headman or *gaung*, appointed under the Burma Rural Police Act, is inadmissible under s. 25 of the Evidence Act. **L.B.R. (1872—1892), 479.**

(5)—*Confession to* ywathugyi *whether relevant—Evidence Act, s. 25—"Police officer," construction of the term.*—A confession made to a *ywathugyi* should not be admitted in evidence. He is the head of the rural police and has police duties to perform. He is, to all intents and purposes, a police officer though he may not be so designated. The material point is, not whether he is called a police officer, but whether he discharges the duties of a police officer. The spirit of the Law and not merely the letter of the law is to be considered. The term "police officer" in s. 25 of the Evidence Act is not to be read in a technical sense, but in its more comprehensive and popular meaning." **L.B.R. (1893—1900), 22.** (1 C. 207, *F.*),

Confession—continued.

——2.—**(Confessions made to Police Officers)** —*continued.*

(6)—*Evidence Act, s. 25—"Confession," definition of—Confession made to a police.*—A confession is an admission made at any time by a person charged with a crime, stating, or suggesting the inference, that he committed that crime. Not only statements which amount to a direct acknowledgment of guilt are confessions, but also inculpatory statements which, although they fall short of being actual admissions of guilt, yet suggest an inference of guilt and from which an inference of guilt follows. The factor determining whether a statement amounts to a confession or not is, not the motive of the party making it, but the fact that it leads to an inference of guilt. Statements made to the police by accused persons as to the ownership of property, which is the subject-matter of the proceedings against them, are inadmissible as evidence against them at the trial for the offence with which they are charged. **5 L.B.R. 131.**

(7)—*Accused in police custody—Incriminating statement.*—Where an accused person promised, while in police custody, to restore the stolen property, *held*, that the promise was an incriminating statement suggesting the inference that the accused participated in the commission of the offence, and, therefore, a confession irrelevant under ss. 25 and 26, Evidence Act. **20 P.R. 1905=51 P.L.R. 1905=2 Cr L.J. 230.** (2 C.W N. 702, 14 B. 260, F.B., 10 C. 1022, *F.*).

(8)—*Evidence Act I of 1872, s. 27—Statements made by prisoners in police custody leading to discovery of facts—Admissibility in evidence.*—The reasonable construction of s. 27, which provides for the admissibility of information, whether it amounts to a confession or not, made by prisoners whilst in custody of a police officer, whereby certain facts are discovered, is that in addition to the fact discovered, so much of the information as was the immediate cause of its discovery is legal evidence. The test is "was the fact discovered by reason of the information, and how much of the information was the immediate cause of the fact discovered, and as such a relevant fact." **12 M. 153=2 Weir 738.** [*F.*, 14 B. 260, F. B.; *R.*, U.B.R. 1906, 3rd Qr., Evidence, 3, 31 M. 127=3 M.L.T. 270=18 M.L.J. 66].

(9)—*Evidence Act, s. 25—Evidence—Confession—Incriminating statements made before police.*—An incriminating statement, made by an accused person to the police, when nothing is discovered in consequence of it, cannot be admitted in evidence against him. **111 P.L.R. 1906=4 Cr. L.J. 177=16 P.R. 1906 Cr.**

(10)—*Scope of ss. 164 and 162—Crim. Pro. Code (1882).*—The object of police proceedings is to collect information as a preliminary step to the production of evidence in a judicial proceeding against an accused person. For this

Confession—continued.

——2.—**(Confessions made to Police Officers)** —*continued.*

purpose, any person may be examined, and any statement may be reduced to writing by the police, (with the exception specified in the proviso to s. 162) and can be evidence against the accused. To these provisions, s. 164 seems to be supplementary. **2 P.R. 1893 Cr.**

(11)—*Confession inadmissible if owing to police interference.*—Where the confession of an accused person conflicted with the medical evidence in the case and was probably induced by the police, the Chief Court declined to confirm a capital sentence based upon it. **3 P.R. 1867 Cr.**

(12)—A confession made to a police officer is not relevant against an accused person. **3 P.R. 1868 Cr.**

(13)—*Admission made by accused after inducement by police—Admissibility.—Per Smyth. J.*—Notwithstanding the fact that s. 24, Evidence Act, is in terms applicable only to "confessions," which are distinguished in the Act from a mere admission, yet, reading it with s. 27 of the Act, and s. 120, Crim. Pro. Code, 1872, the intention of the Legislature was to reject as inadmissible an admission, made by an accused person on the strength of a promise made by a police officer making the enquiry, that such person would get off, if he made a disclosure, unless, when the admission resulted in the discovery of some fact, and then only in so far as it related to the fact discovered thereby. *Per* Elsmie, J. (*contra*):—Nothing in the Crim. Pro. Code or the Evidence Act was held to exist necessarily rendering inadmissible such an admission, when it does not amount to a confession, however illegal or improper the conduct of the police might have been in inducing the admission. **8 P.R. 1882 Cr.**

(14)—*Evidence Act, s. 25—Confession made before Village Munsiff—Village Cess Act (Madras Act IV of 1864), s. 7.*—A Village Munsiff is not a police officer and a confession made to him is, therefore, admissible in evidence under s. 25 of Evidence Act. **7 M. 287=2 Weir 735.** [*R.*, 17 B. 495, 1 L.B.R. 65].

(15)—*Statement by prisoner to police constable—Admissibility in evidence—Evidence Act (I of 1872), s. 30—Confession of co-prisoner.*—The statement given by a prisoner to a police constable is not admissible in evidence. A conviction based solely upon the evidence of a co-prisoner is bad in law. **1 M. 163=2 Weir 740.** [*R.*, L.B.R. (1893—1900), 368].

(16)—*Evidence Act, ss. 25 and 26—Reasons for exclusion of confession made to a police officer—Confession to* Chowkidar.—The reason why the law in ss. 25 and 26 jealously excludes a confession made by an accused, whilst in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, is that there is room for apprehension that a police officer, who is armed with large powers over

Confession—continued.

——2.—(Confessions made to Police Officers) —*continued.*

accused persons, may unwillingly excite terror in their minds and extort false and involuntary confessions; and his duty to investigate criminal cases and to detect offenders and bring them to justice may make him feel tempted to obtain confessions from accused persons by threat, promise, or other improper influence.

(17)—S. 25 is not to be read as if it ran, "no confession made to a police officer investigating the case." The section excludes confessions to a police officer under any circumstances. It is immaterial whether such police officer be the officer investigating the case or not. **1 C.L.R. 21.** [*Appl.*, 26 C. 569=3 C.W.N. 393; *D.*, 6 C. 530=7 C.L.R. 541].

(18)—S. 25 of the Evidence Act, which declares that no confession made to a police officer shall be proved as against a person accused of any offence, applies to every police officer, and should not be restricted to officers of the regular Police Force. Therefore, the section is applicable to a confession made to a village *chowkidar*. **26 C. 569=3 C.W.N. 393.**

(19)—The prohibition laid down in ss. 25 and 26, must be strictly applied, and any relaxation of it in accordance with the proviso to s. 27 should be sparingly admitted, and only to the extent of so much of the accused's statement as directly and distinctly relates to the fact alleged to have been discovered in consequence of it. Where a person accused of murder produced a knife and gave it to a police officer, saying that he had committed the murder with it, and also informed the police, that he threw the deceased's anklets at the scene of murder and pointed them out to the police, at the place of the murder, *held*, that the statement with respect to the knife was merely a confession to a police officer, and the other statement was also inadmissible, as the anklets were not discovered in consequence of what he had said, for, on the contrary, the accused himself went with the police and pointed out the spot where they were lying. **4 A. 198.** [*F.*, 10 B. 595=Rat. Un. Cr. C. 285; *R.*, 6 A. 509, F.B., 11 C. 635, 12 M. 153=2 Weir 739, 2 L.B.R. 168; *Diss.*, 14 B. 260. F.B., 25 C. 413].

(20)—*Evidence Act, s. 27—Statements made by accused to the police while in police custody—Information leading to discovery of fact.*—*Per* Wilkins, J.—As a general rule, a confession made to a police officer is not admissible in evidence. But s. 27 of the Evidence Act makes admissible so much of the accused's statements to the police as led to the discovery of the stolen property. When more of an accused's statements to a police officer than the law will strictly justify is recorded, and there is ample evidence on the record, apart from that, against him, the accused cannot be said to be prejudiced by the recording of a little more of the statements than the law strictly justifies. *Per* Bannerjee, J.—Where the statement of an accused person is a necessary

Confession—continued.

——2.—(Confessions made to Police Officers) —*continued.*

preliminary to the fact discovered, it is admissible under s. 27 of the Evidence Act, the question whether the statement is sufficient to enable the police to make the discovery by themselves or is only of such a nature as to require the further assistance of the accused to enable them to discover the fact being immaterial. **25 C. 413=2 C.W.N. 257.** [*R.*, U.B.R. 1906, 3rd Quarter, Evidence, 3].

(21)—(1) *Held by the Full Bench* (*Mahmood, J., dissenting*):—S. 27 of the Evidence Act is a proviso not only to s. 26, but also to s. 25. Therefore, so much of a confession made to a police officer, relating distinctly to facts thereby discovered, is admissible under s. 27. *Per Mahmood, J, contra*:—S. 27 cannot be regarded as governing the general rule laid down in s. 25, but only that contained in s. 26. The confession contemplated by s. 27 must, therefore, have been made to some person other than a police officer. (2) *Per Straight, C.J.*:—Where a statement is being detailed by a constable as having been made by an accused, in consequence of which he discovered a certain fact or facts, the strictest precision should be enjoined on the witness, so that there may be no room for mistake or misunderstanding. S. 27 is not intended to let in a confession generally, but only such particular part of it as set the person to whom it was made in motion, and led to his ascertaining the fact or facts of which he gives evidence. (3) *Confessions in India, their nature.* The reason for the frequent retractation of confessions in India is that the average Indian policeman, with the desire to satisfy his superiors before, and the terms of the Police Acts and Rules behind him, is not likely to be over-nice in the methods he adopts to make a short cut to the elucidation of a difficult case by getting a suspected person to confess. **6 A. 509, F.B.** [*F.*, 11 C. 635. 4 L.B.R. 116; *R.*, 10 B. 595=Rat. Un. Cr. C. 285, 14 B. 260, F.B., 2 L.B.R. 168; *R.*, Rat. Un. Cr. C. 245 and 254].

(22)—*Confession to police officer—Evidence Act, 1872, s. 27—Scope—Facts leading to discovery already known to another police officer.*—No judicial officer, dealing with the provisions of s. 27 of the Evidence Act, should allow one word more to be deposed to by a police officer detailing a statement, made to him by an accused, in consequence of which he discovered a fact, than is absolutely necessary to show how the fact that was discovered is connected with the accused, so as in itself to be a relevant fact against him. S. 27, Evidence Act, was not intended to let in a confession generally, but only such particular parts of it as set the person, to whom it was made, in motion, and led to his ascertaining the fact or facts of which he gives evidence. (6 A. 509, *F*; 4 A. 198, *Diss.*) [*F.*, 12 M. 153=2 Weir 738, 14 B. 260, F.B., P.L.R. 1900, 56, U.B.R. 1906, 3rd Qr., Evidence, 3]. It would be most dangerous to extend the provisions of s. 27 of the Evidence

Confession—continued.

——2.—(Confessions made to Police Officers) —*continued.*

Act and allow a police officer, who is investigating a case, to prove an information, received from a person accused of an offence in the custody of a police officer, on the ground that a material fact was thereby discovered by him, when the fact was already known to another police officer. **11 C. 635.** [*R.*, 25 C. 413].

(23)—*Incriminating statements made to a police officer—Admissibility in evidence.*—A police officer examined for the prosecution stated in the course of cross-examination, that, when he arrested the prisoner, he said to the former that some Chinamen, at the time of the occurrence, came out with hatchets. In re-examination, the policeman substituted the words "at the time," for the words "at the time of the occurrence." On being asked if the prisoner had explained "what time," the policeman answered that the prisoner said "at the time I struck the deceased." *Held* that the statement of the prisoner that Chinamen came out with hatchets at the time when he struck the deceased would not be admissible in evidence, as it was an incriminating statement made to a police officer by an accused person in custody. **10 C. 1022.** [*F.*, 4 Cr. L.J. 177 =16 P.R. 1906 Cr.=111 P.L.R. 1906; *R.*, L. B.R. (1893—1900), 42, 20 P.R. 1905 Cr.=51 P.L.R. 1905].

(24)—*Admission to police officer before arrest —Admissibility.*—An admission to a police officer made by an accused before arrest is admissible in evidence. **6 C. 530=7 C.L.R. 541.** [*R.*, L.B.R. (1893—1900), 42, 3 N.L.R. 51].

(25)—*Evidence Act, s. 27—Discovery of property through confession of one accused—Competency to ask another accused to produce same property after replacing it in the place.*—Where the police succeed in discovering property in consequence of information received from an accused, it is not competent to the police to re-place the property in the place where it was discovered, and to ask the other accused to produce the property, because there is no further "discovery" under s. 27, Evidence Act, as against the other accused. **2 Bom. L.R. 1089.**

(26)—*Evidence Act, s. 26 - Custody of police officer—Confession.*—The custody of the keeper of a jail in a native state was held not to be the custody of a police officer, merely because his subordinates, the warders of the jail, were members of the police force of the State. In the absence of any suggestion of a close custody of the prisoner inside the jail, such as may possibly occur when a prisoner is watched and guarded there by the police officer investigating the offence, it is wrong to hold that s. 26, Evidence Act, precluded such a jailor from giving evidence of what the prisoners told him. **20 B. 795.** [*R.*, 2 C.W.N. 71].

(27)—*Evidence Act, ss. 25, 26—Confession made to police officer.*—A statement made by an

Confession—continued.

——2.—(Confessions made to Police Officers) —*continued.*

accused person, while in the custody of the police, if it is an admission of a criminating circumstance, is not admissible in evidence. **19 B. 363.** [*F.*, 4 Cr. L.J. 177=16 P.R. 1906 Cr.=111 P.L.R. 1906].

(28)—A confession made to a police officer cannot be used in evidence against the accused. **A.W.N. 1883, 188.**

(29)—The accused was convicted of an offence under s. 412, I.P.C. The evidence for the prosecution consisted of certain confessions made to the police and the circumstance that the accused found some stolen cloth for the police while in police custody. *Held* that the confession was inadmissible under s. 25, Evidence Act, and the circumstance mentioned did not justify his conviction under the section. **A.W.N. 1883, 126.**

(30)—S. 27 of the Evidence Act cannot be regarded as governing the general rule laid down in s. 25 or s. 24, but only that contained in s. 26. All statements made by a prisoner which can be regarded as confessions made to a police officer are absolutely inadmissible, though they may have led to discovery such as is contemplated by s. 27. **A.W.N. 1882, 225.** [*Diss.*, 6 A. 509=A.W.N. 1884, 229].

(31)—*Confession to police officers—Information as to offence charged—Evidence Act, ss. 26, 27—Confessions of persons charged—Information as to offence—See* **24 W.R. Cr. 36.**

(32)—*Evidence Act, ss. 25 and 26—Confession, while in the custody of a* chowkidar.—A village *chowkidar*, not being a police officer, a confession made by an accused person, while in his custody, is admissible in evidence. **2 C.W.N. 71.** [*Diss.*, 2 C.W.N. 637].

(33)—*Evidence Act I of 1872, ss. 25, 26—Admissibility of statements made to the police.* —Statements made by accused persons to police officers, embodying what may be understood as confessions are not wholly inadmissible in evidence, but may be received and applied as far as they prove merely corroborative circumstances and not an absolute confession of guilt. *Per Stuart, C.J.* The intention of the Legislature was, by ss. 25, 26 of the Evidence Act, to render confessions absolutely inadmissible as proof, unless made in the immediate presence of the Magistrate. The exception in s. 27 should be sparingly applied. **A.W.N. 1882, 21=4 A. 198.**

(34)—*Evidence Act, ss. 25, 26—Confession made to police patel, admissibility of.*—The term "Police Officer" in ss. 25 and 26, Evidence Act, should be read not in any strict technical sense, but according to its more comprehensive and popular meaning. A police patel is a police officer within the meaning of those sections. A confession made to a police patel is, therefore, inadmissible in evidence. **17 B. 485.** [*D.*, **2 C.W.N. 71, 1 L.B.R. 65**].

Confession—continued.

——2.—(Confessions made to Police Officers) *—continued.*

(35)—*Evidence Act, ss. 8, 25, 26, 27—Scope of s. 8—The section how affected by ss. 25 and 26—Confession of guilt to police officer—Confession leading to discovery of fact.*—S. 8, so far as it admits a statement as included in the word "conduct" must be read in connection with ss. 25 and 26, and cannot admit a statement, as part of the evidence, which would be shut by those sections. Statements made by a prisoner while in the custody of the Police, are not admissible under s. 8, Expl. 1, as evidence of conduct. [*F.*, Rat. Un. Cr. C. 833; *Appl.*, 20 B. 215; *R.*, Rat. Un. Cr. C. 829.] A confession of guilt, or an admission of a criminating circumstance, or a statement suggesting an inference of guilt, made to a Police officer, while in his custody, should be rejected. [*R.*, 2 L. B.R. 168, 20 P.R. 1905 Cr. = 51 P.L.R. 1905 = 2 Cr. L.J. 230, P.W.R. 1906 Cr. 2 = 4 Cr. L.J. 177 = 16 P.R. 1906 Cr. = 111 P.L.R. 1906; *D.*, 5 Bom. L.R. 312]. Where it was clear that it was upon the information, which an accused person gave to the Police, that they accompanied him to the spot where the stolen property was disinterred by him, and it was equally clear that, but for that information, the property would not have been discovered, it was *held* to be in accordance with the ordinary use of such terms to say that the discovery of the property was the consequence of the information; it set the police in motion, the immediate consequence being that the police asked the accused to show them the spot, and accompanied him there; but such a proceeding on the part of the police was with the view to the discovery of the property, and was the natural consequence of the information they had received from him and so connected it with the final result, *viz.*, the discovery of the property as a *causa causans*. Whether the statement made by the accused is of such a detailed description as to enable the police themselves to discover the property, or only of such a nature as to require his assistance in discovering the exact spot where the property is, it cannot prevent the statement from being admissible under s. 27. In both cases, there is the guarantee afforded by the discovery of the property for the correctness of the accused's statement, which is presumably the ground of the admission of the exception to the general rule. The distinction, therefore, appears to be without substance. In regard to the extent of the words "thereby discovered," some assistance may be derived from the tests applied by the Courts in dealing with proximate and remote causes of damage, that is, whether what followed was the natural and reasonable result of the defendant's action. Only so much of the information as distinctly leads to the discovery is admissible under the section. Where an accused person, charged with dishonestly receiving stolen property, on being asked by the police, in the course of their investigation, where the property was, stated that he had kept it and buried it in the fields, and stated the fact and the circumstances of the burial showing that he had received the property and had come by it dishonestly, and suggesting the inference that he was guilty, his statement was *held* to be a confession within the meaning of ss. 24 to 30. The statement that he had buried the property, which led to the discovery of the property was admissible under s. 27, but the statement that he had kept the property, not being necessarily connected with the fact discovered, was inadmissible under s. 27. **14 B. 260, F.B.** [*F.*, 25 C. 413; *R.*, 28 P.R. 1894 Cr., 5 Cr. L.J. 300 = U.B.R. (1906), 3rd Qr., Evidence, 3, 2 S.L.R. 27 Cr. = 9 Cr. L.J. 267].

Confession—continued.

——2.—(Confessions made to Police Officers) *—continued.*

(36)—S. 27 does not apply to a case in which the discovery is not made by the police on the information given to them by the accused, but the accused themselves produce property alleged to have been stolen. In such a case, only the fact of production of the property may be proved, but not the accompanying confession made to the police. **10 B. 595.** [*D.*, 14 B. 260, F.B.].

(37)—*Confession made to police officer, admissibility of—Crim. Pro. Code (1882), ss. 517, 523.*—"Confession" in s. 25, Evidence Act, as in s. 24, means a confession made by an accused person, which it is proposed to prove against him to establish an offence. For such a purpose, a confession might be inadmissible which, yet, for other purposes, would be admissible under s. 18 against the person who made it (s. 21), in his character of one setting up an interest in property, the object of litigation, or judicial enquiry and disposal. Where an order has to be made under s. 523, the Magistrate may, in the enquiry, proceed on such evidence as is available, and make an order for handing property to the person he thinks entitled. This does not conclude the right of any man. As the real owner may proceed against the holder of the articles or for damages as for conversion, the High Court would not interfere. **9 B. 131.** [*R.*, Rat. Un. Cr. C. 365, 19 B. 668].

(38)—*Evidence Act, ss. 25, 26—Statements made to police officers by accused in self-exculpation—Admissibility as evidence against the accused.*—Where an accused person makes a statement to a police officer, while in his custody, not as a confession of guilt but as a self-exculpatory statement, it comes properly within the rule of exclusion, if it amounts to an admission of a criminating circumstance. **6 B. 34.** [*F.*, Rat. Un. Cr. C. 488, 19 B. 363, 111 P.L.R 1906 = 16 P.R. 1906 = P W.R. 1906, p. 3 = 4 Cr. L.J. 177; *R.*, 14 B. 260, F.B., 19 B. 749, 2 C.W.N. 702; *D.*, 5 Bom. L.R. 312.].

(39)—*Evidence Act, s. 25—Confessions to police not to be proved against maker, but may be proved on behalf of co-accused—Separate trial.*—S. 25 only provides that no confession made

Confession—continued.

——**2.—(Confessions made to Police Officers)** —*concluded.*

to a police officer shall be proved as against a person accused of any offence. It does not preclude the Counsel for one accused person, on his client's behalf, asking questions to prove a confession made to the police by another accused person, tried jointly with him ; such a confession is not to be treated or received as evidence against the person making it, but simply as evidence on behalf of the other. The Judge should instruct the jury accordingly. Unless the law were so, the accused person on trial with the confessing party might be considerably prejudiced by the exclusion of that evidence. Although it may be difficult for a jury to give the co-accused the benefit of such evidence and not to permit it to prejudice their minds against the confessing party, the Court is not to presume that the jury will disobey the directions of the Judge (whose duty is to instruct them as to the law), when he tells them, as he should do, that the confession made to a police officer is not to be treated as evidence against the accused who made it. That accused would have the protection of the direction, whereas, if the confession were wholly excluded, the co-accused might suffer serious injury and would be absolutely helpless. The value of the confession as a circumstance in his favour may be great or small. That is a matter to be weighed by the jury. [*R.*, 25 B. 168]. Where a Judge, on perusing the depositions before trial, perceives that a confession, made to a police officer by one of the accused persons jointly tried, is likely to be offered in evidence on behalf of another accused, it would be an important matter for his consideration, whether it would not be desirable to direct the jury that the accused persons should be separately tried. **2 B. 61.**

(40)—*Crim. Pro. Code (1872), ss. 122, 193, 346 —Crim. Pro. Code (1882), ss. 342, 364—Confessions to an investigating officer.*—Where the accused, being brought up by the police before the Magistrate, made a statement before him, and on the next day the same Magistrate examined the witnesses for the prosecution and committed the accused to the Sessions, *held*, that the statement by the accused, having been made before a Magistrate competent to hold, and who was actually then holding, the preliminary enquiry, with a view to committing the accused for trial before the Sessions, should be regarded as falling within s. 193 of the Code of 1872, or s. 342 of the Code of 1882, and as such, governed by the reservations contained in s. 346 of the Code of 1872, or s. 364 of the Code of 1882. **5 A. 253.**

——**3.—(Confessions to Magistrates—Admissibility—Record of Confessions).**

(1)—*Evidence of confession, how to be recorded.*—When witnesses depose to some statement having been made to them by the accused, the Judge should require each and all of those witnesses, as nearly as possible, to give the

Confession—continued.

——**3.—(Confessions to Magistrates—Admissibility—Record of Confessions)** —*continued.*

precise words alleged to have been used in the first person, and should record them in as accurate English equivalent as he is able. **A.W.N. 1883, 12.**

(2)—*Confession—Magistrate—Practice.*—Magistrates recording confessions and thereon ordering remand of the persons making them, should, on all occasions, be most careful to ascertain how long such persons have been under the influence of the police and, in recording their reasons for the remand, should set forth all the information they are able to obtain on the subject. **A.W.N. 1885, 59, F.B.**

(3)—*Evidence Act, ss. 24, 25, 26, 29—Confession to Magistrate before action taken—Crim. Pro. Code (1882), ss. 164, 364, 533.*—A confession was made to the Court, three weeks before the commencement of any enquiry and any evidence had been taken. The confessor stated to the Magistrate that he confessed voluntarily. The memorandum required by s. 164, Crim. Pro. Code, 1882, was attached to the confession. *Held* that the confession was not excluded by s. 25, Evidence Act, and that s. 26, and the latter part of s. 29, appear to point to a confession such as this being taken cognizance of. *Held by Stuart, C.J.*, that the confession was admissible though not taken in the manner directed by ss. 164 and 364, Crim. Pro. Code. *Held by Straight, J.*, that it was very doubtful, whether the statement, having been taken at a wrong stage of the case, was not altogether inadmissible, but that, if that defect was cured by s. 533, the Court would hesitate to hold that the accused was not prejudiced by the Magistrate's action. **A.W.N. 1883, 238.** [*R.*, A.W.N. 1883, 243].

(4)—*Crim. Pro. Code, Act X of 1882, ss. 164, 342, 364—Statement of accused.*—S. 164 of the Crim. Pro. Code does not apply to any statement of the accused taken by the Magistrate holding the inquiry. S. 342 does not seem to apply to statements offered by the accused, but only to answers to questions put by the Magistrate. A Magistrate may record a statement of the former kind made at the commencement of the inquiry, but he should be very careful in doing so since it is usually one of confession, and since the accused comes fresh from the hands of the police. **A.W.N. 1884, 84.**

(5)—*Crim. Pro. Code (1882), ss. 164, 342, 364, 533—Confession taken by committing Magistrate not signed by accused.*—Where statements made by the accused persons to the committing Magistrate were not signed by them. *Held per Stuart, C.J.*, that the confessions were not absolutely inadmissible, and it could not be said that they cannot be looked to at all and made evidence to any effect whatever. *Per Straight, J.*—The committing Magistrate did not follow the directions of s. 364, by requiring the accused to sign the statements made by

Confession—continued.

——3.—(Confessions to Magistrates—Admissibility—Record of Confessions)—*continued.*

them in his Court. This he ought to have done, and his failure in that respect rendered them inadmissible in the Sessions Court until the defect had been cured in manner provided by s. 533. The rules laid down in s. 364 should be strictly observed, and they are applicable alike to confessions taken before enquiry or trial under s. 164, and examinations of accused under s. 342. **A.W.N. 1883, 243.**

(6)—*Crim. Pro. Code, Act X of 1882, ss. 364, 533—Confession—No signature of accused—Admissibility.*—Where a Magistrate, who took down the confession of the accused ostensibly under s. 364 of the Crim. Pro. Code, did not take the signature of the accused, but gave evidence in the Sessions Court as to the genuineness of the confession, *held* that s. 533 of the Crim. Pro. Code, applied and that the confession was admissible in evidence. **A.W.N. 1896, 161.**

(7)—*Admissibility of confession reduced to writing by a Magistrate—Proof of.*—Where a document containing a confession is signed by the accused or owned by him to be correct, it cannot be rejected simply by reason of its not being attested by the accused or by the Magistrate, or of there being no certificate or memorandum, or of questions and answers not being recorded, when the examination had been taken in the form of questions and answers. But, if the document is not signed by the accused or owned by him to be correct after it was shown or read over to him, the document may not be relevant against him, but might be used under s. 159, Evidence Act, to refresh the Magistrate's memory regarding the statement of the accused. *Absence of formalities, effect of.*—Where the confession of an accused was reduced to writing by a Magistrate in accordance with the provisions of ss. 122 and 364, Crim. Pro. Code, the absence of the formalities prescribed by the sections was held to be matters which affected the weight and the value of the document as evidence, and not valid objections to its relevancy as an admission by the accused. **21 P.R. 1881 Cr.**

(8)—*Crim. Pro. Code, Act V of 1898, s. 364—Statement of accused—Certificate of statement—Court's handwriting.*—It is sufficient if the certificate attesting the statement of an accused person, under s. 364 of the Crim. Pro. Code, is signed by the presiding officer of the Court. The whole of it need not be in the Court's handwriting. **A.W.N. 1900, 203.** (8 W.R. Cr. 55, *F.*).

(9)—*Confessions to Magistrate—Confession taken by Magistrate other than the one investigating the case—Certificate of Magistrate—Crim. Pro. Code (1872), s. 122.*—S. 122 of the Code of Criminal Procedure, which requires a Magistrate to certify on a confession his belief that it was voluntarily made, does not apply to the case of a confession taken by a Magistrate who is actually investigating the case

Confession—continued.

——3.—(Confessions to Magistrates—Admissibility—Record of Confessions)—*continued.*

and examining the witnesses preparatory to commitment, but to a case where some other Magistrate takes a confession and forwards it to the Magistrate by whom the case is enquired into or tried. **23 W.R. Cr. 16.**

(10)—*Confessions to Magistrate—Statement made to Magistrate—Crim. Pro. Code (1861), s. 109.*—It is only when properly made to the Magistrate that the confession can be used as evidence against the prisoner. The mere standing by of the Magistrate when the confession is being made to the police is not sufficient. **12 W.R. Cr. 82.**

(11)—*Irregular recording of confession—Admissibility—Crim. Pro. Code (1882), s. 533.*—The point upon which evidence is to be taken under s. 533, Crim. Pro. Code, 1882, is that the accused duly made the statement recorded under s. 164 or 364, as the case may be, (*i.e.*), that the accused did actually make the statement recorded as his statement. It seems sufficient to show that the statement or examination recorded, though not in exact conformity with the provisions of s. 164, or 364, Crim. Pro. Code, does accurately represent in substance the statement of the accused person. If no error injurious to the accused in his defence in the merits is disclosed the document becomes admissible, subject to all just exceptions as to its admissibility under the Evidence Act, except one under s. 91. **52 P.R. 1887 Cr.**

(12)—Confessions in the recording of which all the formalities required by law were neglected are inadmissible in evidence. **2 J.G. 19.**

(13)—A confession not recorded according to the provisions of Act X of 1872, s. 346, is inadmissible in evidence. **24 W.R. Cr. 29; 24 W.R. Cr. 42.**

(14)—*Crim. Pro. Code, Act X of 1882, ss. 164, 364, 533—Record of confession—Regularity.*—Where a Magistrate recorded the confession of an accused person in English in the narrative form, though the confession was made in the form of question and answer, and afterwards translated it into the vernacular to the accused who admitted it to be correct, *held* that there was no irregularity in the manner of the record so as to render the confession inadmissible. **A.W.N. 1892, 60.** [*R.*, 21 B. 495].

(15)—*Crim. Pro. Code, Act X of 1882, ss. 164, 364— Confession— Record— Legality.*—A Magistrate recorded the confession of the accused in his private house on a close holiday. Since he could not get the service of any one to write Hindustani, he recorded the confession in English, translated it in Urdu to the accused who admitted it to be correct. Each of the accused was also examined as to the voluntary and uninfluenced character of the confession. *Held* that the confession was properly recorded

Confession—continued.

——3.—(Confessions to Magistrates—Admissibility—Record of Confessions)—*continued.*

in accordance with the provisions of ss. 164 and 364 of the Crim. Pro. Code, and that it was admissible in evidence. **A.W.N. 1891, 55.** [*R.*, 21 B. 495].

(16 and 17)—*Crim. Pro. Code, Act XXV of 1861, s. 149—Magistrate—Making of confession to one not having jurisdiction—Practice.*—The word "Magistrate" in s. 149 of the Crim. Pro. Code, means "any Magistrate" and not merely "the Magistrate having jurisdiction." It is not generally desirable, however, that a prisoner should be taken for confession before a Magistrate not having jurisdiction to try him, but such a confession is legally admissible when duly proved. **7 B.H.C. Cr. 56.** [*R.*, 10 B.H.C. 166, Rat. Un. Cr. C. 254, 468].

(18)—*To Magistrates—Crim. Pro. Code, s. 163—Evidence Act, s. 24.*—Where a Magistrate told the accused, that, if he made a full confession in regard to certain property he was charged with having stolen, the Court would take this into consideration in awarding punishment, and the accused then confessed, relying on the above mentioned promise, *held* that, having regard to s. 163, Crim. Pro. Code, 1882, and to s. 24 of the Evidence Act, the confession could not be admitted as evidence against the accused. **L.B.R. (1872—1892), 289.** (10 C. 775, *F.*)

(19)—Certain accused persons were sent before a Magistrate to have their statements or confessions recorded. They were warned by the Magistrate, before they made their statements, "not to expect any advantage or disadvantage, therefrom." *Held*, that the confessions made by the accused after this warning had been given to them were entirely inadmissible in evidence. **A.W.N. 1906, 75 = 3 Cr. L.J. 324.**

(20)—*S. 150 of Act XXV of 1861 (s. 27 of Evidence Act)—Confession not made in the presence of Magistrate, when admissible.*—In order to render a confession not made in the presence of a Magistrate admissible in evidence, the fact discovered by it must be one which, of its own force, independently of the confession, would be admissible in evidence. **2 Weir 735 = 3 M.H.C. 318.**

(21)—*Confession—Magistrate—Custody of police—Practice.*—The omission of the Magistrate, before whom a confession is made, to record the circumstance that the accused was not then in the custody of the police cannot invalidate the confession. The Sessions Judge, to whom the case is committed, may, if he thought it necessary, call for evidence to satisfy himself that the confession was voluntarily made. **Rat. Un. Cr. C. 534 = Cr. Rg. 3 of 1891.**

(22)—*Before Magistrate of a Native State—Admissibility of, as evidence in trial in British India—Evidence Act, s. 26.*—A confession made by a prisoner voluntarily before a Magistrate

Confession—continued.

——3.—(Confessions to Magistrates—Admissibility—Record of Confessions)—*continued.*

in a Native territory and recorded by him, under s. 164 of the Code of Criminal Procedure, is admissible in evidence in a trial in British India, although such confession was subsequently retracted in the Courts of the committing Magistrate and of Session. **8 P.R. 1907 Cr. = 33 P.W.R. 1907 = 6 Cr. L.J. 337 = 46 P.L.R. 1908.**

(23)—*Made to the Magistrate of a Native State and written down by his Munshi—Admissibility of, in British Courts—Irregularity, if can be cured—Crim. Pro. Code (1898), ss. 164, 364 and 533—Evidence Act (1872), s. 26.*—A confession made to a Magistrate in a Native State is admissible in evidence in a trial in British India, if it is duly recorded in proceedings under, and in the manner required by, the Code of Criminal Procedure. Such a confession is none the less admissible merely because the provisions of the Code have not been in every respect strictly observed, provided that the accused had not thereby been prejudiced on the merits of the case, and that the fact that the accused made the statement is proved by evidence. The mere fact that the statement was actually written, not by the Magistrate himself, but by the Munshi, does not in any way injure the accused as to his defence on the merits. But it must be admitted that a confession so recorded is not entitled to the same weight as a confession recorded by a British Magistrate in strict compliance with the terms of the Code, and Courts should certainly hesitate to convict the accused upon such a confession standing alone. Although the terms of ss. 164 and 364, Crim. Pro. Code, are to be strictly observed, *i.e.*, by the Magistrate actually taking down the confession himself, such a defect can be cured by examining the Magistrate as provided for in s. 533. **2 P.R. 1909 = 7 P.W.R. 1909 = 1 Ind. Cas. 444.**

(24)—*Evidence Act, s. 26—Confession made to Magistrate in Native State.*—The words "police officer" and "Magistrate" in s. 26 include the police officers and Magistrates of a Native State as well as those of British India. A limitation which would exclude the use, in British Indian Courts, of a confession made by a person, while in police custody, to a Magistrate in England or in a foreign country, does not appear to have been intended by the section. A confession made by a prisoner, while in police custody, to a first-class Magistrate in the Native State of Muli in Kathiawar, and duly recorded by him in the manner provided by the Crim. Pro. Code, 1882, was *held* admissible in evidence under s. 26. **22 B. 235.** [*F.*, Rat. Un. Cr. C. 855, 8 P.R. 1907 Cr. = 33 P.W.R. 1907 Cr. = 46 P.L.R. 1908 = 6 Cr. L.J. 377.]

(25)—*Evidence Act, ss. 74, 80—Confessions made before a Judicial Officer in a Native State—Admissibility in British Courts.*—Person charged with dacoity in a place partly in the Gwalior State and partly in British territory

Confession—continued.

——**3.—(Confessions to Magistrates—Admissibility—Record of Confessions)**—*continued.*

made statements to a Magistrate of the Gwalior State. Each statement had at the foot of it the following certificate in the hand of that Magistrate :—I believe that the confession was made without coercion or threat and it was made in my presence and to my hearing. The person making it having heard it read out to him stated it as correct, and that it contained a full and true account of the statement made by him. Each statement bore also a mark by way of signature of the person making it. *Held*, that the records made by the Magistrate of the confessions were admissible under s. 80 of the Evidence Act, probably under s. 74 of that Act, and that there was nothing in law to prevent a confession being proved, no matter when or where made, against the man who made it, provided it was not under circumstances which, under the Courts, would render it inadmissible. **12 A. 595.** [*F.*, 22 B. 235, 8 P.R. 1907=33 P.W.R. 1907 Cr.=46 P.L.R. 1908=6 Cr. L.J. 377 ; *R.*, Rat. Un. Cr. C. 855].

(26)—*Crim. Pro. Code (1882), ss. 164, 209, 342, 355 to 364—Mode of recording the confessional statement.*—Where statements are recorded by a Magistrate, in the course of an investigation under Chap. XIV of the Code, the provisions of s. 164 must be observed. They should be recorded in the manner prescribed for recording evidence, and confessions must be recorded in the manner provided by s. 363. Ss. 355 to 363 relate only to the mode of recording the statement of witnesses, while s. 364 deals with all statements made by accused persons, whether amounting to confessions or not. The reason that s. 164 provides only for the recording of that class of statements of an accused which are or purport to be confessions, is, that the section relates to a stage of the case, *viz.*, the Police investigation stage, at which statements of the accused, which do not amount to confessions, and which are elicited by examination, are not intended to be obtained. Ss. 209 and 342, which are the only provisions of the Code authorising the examination of the accused, clearly show that the object of such examination is not to obtain criminating statements from the accused, but is only to enable him to explain circumstances appearing against him. It is, therefore, improper to attempt to make an accused person, before any evidence is required, confess his guilt and admit facts that may go to incriminate him. [*R.*, 20 P.R. 1905=51 P.L.R. 1905=2 Cr. L.J. 230, 4 N.L.R. 163.] Confessions are inadmissible, when the appended certificate does not show that they were voluntarily made or that the Magistrate inquired whether they were so made. Statements made by accused persons before the case reached the stage at which the examination of the accused is authorised, if they do not amount to confessions, are inadmissible. [*F.*, 8 C.W.N. 22 ; *D.*, 18 C.W.N. 197.] The rule laid down in s. 21 of the Evidence Act must be taken subject to the special provisiou, relating to confessions and statements of accused persons, enacted in ss. 24, 25 and 26, Evidence Act, and ss. 164 and 364, Crim. Pro. Code. Under s. 533, Crim. Pro. Code, 1882, when a confession or other statement of an accused person is duly made in accordance with the provision of the law, but in the recording of which those provisions have not been fully complied with, oral evidence is admissible to prove that the confession or other statement was duly made. The defect which the section is intended to cure is not one of substance but of form only. **2 C.W.N. 702.** [*R.*, U.B.R. 1903, 1st Qr., Crim. Pro. Code, 16.]

(27)—*Confessions—Proof—Record of—Practice.*—The Courts, being well aware of the safeguards with which the law expressly surrounds the action of the Police, are bound to approach confessions in the same spirit as the Legislature, and to remember that the intended safeguards would become little better than pitfalls. The practice of taking prisoners before Magistrates not having jurisdiction in the case, for the purpose of getting confessions, is not generally desirable. It is still more objectionable to send prisoners before different Magistrates, each of whom would have imperfect knowledge of the matter from only taking one or two examinations. **Rat. Un. Cr. C. 254.**

(28)—Where an accused makes a confession before one Magistrate and again confesses before the committing Magistrate, it is not open to the latter to read to the accused his statement before the former Magistrate and to ask him if it was true ; in such cases, it is very desirable to test the value of statements made on different occasions by taking them fully and in detail, and seeing in what respects they agree and in what particulars they differ. **Rat. Un. Cr. C. 153.**

(29)—A Magistrate who recorded, under s. 164, Crim. Pro. Code, the confession of the accused, instead of first satisfying himself that the accused was about to make a confession voluntarily, recorded the confession and then, at the end of it, put one comprehensive question as to the nature of the confession ; *Held* that the Magistrate had not complied with the provisions of s. 164, Crim. Pro. Code, which clearly denotes that the Magistrate should not proceed to record any confession unless he first had reason to believe that the person was about to make it voluntarily, and that he should, therefore, have begun by enquiring into that point. **1 Bom. L.R. 357.**

(30)—*Crim. Pro. Code (1898), s. 164 (3)—Confession—Record of confession.*—The word, 'record,' in s. 164, cl. (3) of the Code, must necessarily mean "making a part of judicial record," and not merely writing out. **8 Bom. L.R. 950=5 Cr. L.J. 4.**

Confession—continued.

——**3.--(Confessions to Magistrates—Admissibility—Record of Confessions)**—*continued.*

(31)--*Crim. Pro. Code, ss. 164, 533—Confession made in* Marathi *recorded in English.*--A Magistrate, in recording a confession, put questions to the accused in *Marathi*, and the accused gave his answers in *Marathi*; but the Magistrate recorded the statement in English. It appeared that the answers were correctly recorded, that, after the examination was concluded, the Magistrate read it out sentence by sentence and the Sheristadar translated it into *Marathi* and the accused then admitted it was correct. *Held*, that, having regard to the provisions of s. 533, Crim. Pro. Code, the statement was admissible in evidence, and the error did not prejudice the accused as to his defence on the merits. **4 Bom. L.R. 785.**

(32)—*Evidence Act, s. 24 — Confession—Omission to observe the formalities prescribed by ss. 122 and 346, Crim. Pro. Code (1872).*—A confession does not become unworthy of consideration, merely because the memoranda required by law to be attached thereto, have not been written in the exact form prescribed. **3 A. 338.** [*R.*, 23 B. 221].

(33)—*Magistrate himself to record.*—The recording of confessions should be made by Magistrates with their own hands. **20 W.R. Cr. Cir. 7.**

(34)--*Crim. Pro. Code (1872), ss. 122 and 346—Recording of confession—Omission to take it in writing with required formalities.*—An omission by a Magistrate to take a confession in writing with the formalities prescribed by s. 346, although irregular, does not make the confessions absolutely inadmissible in evidence. If necessary, evidence might be taken to show that such a confession had been duly recorded. **2 M. 5=2 Weir 123.** [*R.*, 4 B. 15, 23 B. 221].

(35)—*Record of confessions freely made—Defective recording of confessions.*—A confession freely made to a Magistrate and recorded under s. 164 is admissible in evidence. It would not become inadmissible, if the Magistrate thought proper, or if it so happened that he was the only Magistrate, to take the case and commit it to the Sessions Court. A confession, although it is not properly recorded, because the Magistrate has not signed the record as well as the verification as required by law, is admissible in evidence, on the evidence of the Magistrate. The Code of 1898 has placed both the statement of an accused recorded in an investigation and during a judicial inquiry on the same footing, in regard to the means of providing a remedy for a defect in recording such a statement. **3 C.W.N. 387.**

(36)—*Recording of confession--Admissibility of unrecorded confession—Crim. Pro. Code (1898), s. 164.*—S. 164 of the Crim. Pro. Code requires that a confession made to a Magistrate in the course of an investigation shall be recorded in a particular manner, and that, if not so recorded, no evidence of it can be received. **2 L.B.R. 19.** (17 C. 862, *F.*).

Confession--continued.

——**3.—(Confessions to Magistrates—Admissibility—Record of Confessions)**—*continued.*

(37)—The essential requirements of s. 164, Crim. Pro. Code, are that the Magistrate should, before recording the confession, question the accused, and, upon so questioning him, form the belief that the confession to be recorded is made voluntarily, and that the record made by the Magistrate should contain a full and true account of the statement made by the accused. If, in the case of a confession purporting to be recorded under s. 164, it is found that any of the provisions of that section are not complied with, the point on which s. 533 requires the Court to take evidence is, whether the confession was made in accordance with the imperative requirements of s. 164. Under s. 533, even oral evidence of the terms of the confession would be admissible, but the section does not apply to a confession made to a Magistrate and not recorded by him in any way. **2 L.B.R. 317.**

(38)—*Recording of—by Magistrates.*—A confession to a Magistrate before the Magisterial enquiry commenced consisted of two portions, in one of which there was a note which certified that the statement above recorded was read over to, and admitted by, the accused to be correct, but was not signed by him. The other portion contained a different account wherein the accused denied his guilt. The entire statement contained a certificate and was in accordance with s. 364, Crim. Pro. Code, 1882. *Held*, that the first portion was admissible in evidence, subject to all just exceptions under s. 24, Evidence Act, or otherwise, as an accurate record of a statement made by an accused person before the Magistrate, if the Magistrate should depose that the record was a statement recorded by him and admitted by the accused to be correct and that the absence of the signature of the accused from the record was no bar to its reception. **36 P.R. 1887 Cr., F.B.**

(39)—*Mode of taking evidence of a confession.*—A Judge, in taking down the evidence of a witness to a confession, alleged to have been made by an accused person, should insist upon the witness stating the actual words used by the accused; the witness's idea of the import of those words not being sufficient. **22 P.R. 1885 Cr.**

(40)—*Duly recorded confession, when could be rejected.*—A confession duly recorded under s. 164, Crim. Pro. Code, may be liable to be rejected under s. 24, Evidence Act, if any ground of exclusion specified in the section is made to appear, although, at the time of record, it appeared to be a voluntary confession. The fact of its being voluntarily made is a circumstance to be taken into account, of which the accused may be reasonably expected to give a satisfactory explanation. **51 P.R. 1887 Cr.**

(41)—*Prisoner sent to Magistrate for recording his confession—Corroboration.*—A confession made by a prisoner, who is sent before a

Confession—continued.

——3.—(Confessions to Magistrates—Admissibility—Record of Confessions)—*continued.*

Magistrate by the police only for the purpose of having it recorded, differs little from a confession made to the police. Where such a confession was retracted at the preliminary enquiry and was uncorroborated, a conviction could not be sustained. **21 P.R. 1869 Cr.**

(42)—*Record of—in form of question and answer—Evidence Act, s. 80.*—So far as s. 80, Evidence Act, is concerned, the Court is bound to make the presumptions specified in that section in respect of the document purporting to be a confession of the accused. The fact that questions are put to an accused person making a confession does not render that confession inadmissible on the ground that it was not duly taken. The Court has full power to consider whether the questions are such as may properly be put to the accused in the circumstances, and to exclude it from consideration, if it is of opinion that the questions are improper. **1 L.B.R. 340, F.B.**

(43)—*Necessity for accurate report of—Information leading to discovery.*—Where two persons are being tried, it is not a proper course to allow a witness to say "they said this," or "they said that." It is not at all likely that both the persons should speak at once, and it is the right of each of them to have the witness required to depose as nearly as possible to the exact words he individually used. Where a statement is being detailed by a constable as having been made by an accused in consequence of which he discovered a certain fact or certain facts, the strictest precision should be enjoined on the witness, so that there may be no room for mistake or misunderstanding. **4 L.B.R. 116=7 Cr. L.J. 82.**

(44)—*Police improperly inducing accused to confess—Examination of accused by Magistrate with respect to such confession—Object of examination—Crim. Pro. Code (1898), ss. 287, 342—Accused pointing out places where offence was committed—No discovery—Evidence as to it inadmissible—Evidence Act (I of 1872), ss. 24, 25 and 27.*—Where an accused person was induced by the police to make a confession of having taken part in the commission of an offence, and the committing Magistrate admitted it in evidence and examined the accused with respect to it and the accused admitted it. *Held*, that the accused being examined about a confession which was not admissible in evidence, the questions and the answers to them could not be said to be duly recorded, as the questions were such as were not allowed by the law to be put, and that the answers to those questions were not admissible in evidence against the accused. *Held*, also, the confession being admitted in evidence through the medium of those answers, the confession was inadmissible in evidence. The examination of an accused person under s. 342, Crim. Pro. Code, *duly recorded* by or before the committing Magistrate, can be tendered by the prosecutor, and read as evidence, under s. 287, Crim. Pro. Code. The examination of an accused person is for the purpose of enabling him to explain any circumstances appearing in evidence against him, and not for the purpose of filling up a gap for the prosecution. Remarks made on the effect of an accused's pointing out to the police the places where certain acts were committed. Where a confession was held, by the Court below, to be corroborated by the accused having pointed out to the police the places where certain acts were committed. *Held*, that evidence regarding it was not admissible, under s. 27 of the Evidence Act, because no fact was discovered in consequence of the information given by the accused. The fact that a discovery was made in consequence of information received by the police from an accused person is admissible, and so much of the information given by the accused, as led to such discovery, would be admissible. But a statement by the accused to the police that certain property had been stolen would not be admissible, as such statement is not connected directly with the discovery, where there is nothing else to connect the property discovered with the offence. **4 L.B.R. 244=8 Cr. L.J. 62 =14 Bur. L.R. 233.**

(45)—*Irregularity in recording confession—Admissibility.*—A confession, which had the certificate required by s. 122, Crim. Pro. Code, duly attached, and which was signed by the accused, but which was not recorded in the manner prescribed by s. 346, Crim. Pro. Code, nor certified that it contained in full the statement made by the accused, though it contained a statement by the accused that it had been correctly recorded, was held to be admissible in evidence and to be proved by its production. **20 P.R. 1881 Cr.**

(46)—*By accused persons—Duty of Magistrate—Crim. Pro. Code (1898), ss. 164, 364.*—When a prisoner is brought before a Magistrate to make a confession, it is the duty of the Magistrate to question him with a view to discover whether he confesses voluntarily and this questioning must be in pursuance of a real endeavour to find out the object of it. Unless the Magistrate has made a real and substantial enquiry as to the voluntary nature of a confession, a confession even before him is inadmissible in evidence. **4 Cr.L.J. 198=3 L.B.R. 173.**

(47)—*Confession by prisoner—Attestation—Magistrate's powers—Crim. Pro. Code (1872), ss. 324, 346.*—The record of confession, upon which a prisoner is convicted, need not be attested by the Magistrate, trying the accused, as required by s. 346 of the Crim. Pro. Code (of 1872). It is not even necessary for the Magistrate to record any "confession," since he is competent, on the admission of the prisoner, to sentence him without any further record (s. 324). **3 C. 756=2 C.L.R. 317.**

(48)—*Crim. Pro. Code (1872), ss. 122, 346—Defective confession—Admissibility of secondary evidence.*—The defect of a prisoner's confession

Confession—continued.

——3.—(Confessions to Magistrates—Admissibility—Record of Confessions)—*continued.*

not having been recorded according to s. 346 of the Crim. Pro. Code (of 1872) could not be cured by the evidence of the recording officer that the confession was actually made. The express provision made to meet the case of an imperfect record of examination of a prisoner, in the course of a preliminary enquiry, cannot be made applicable to the case of an imperfect record of a confession. **4 C. 696=4 C.L R. 137.** (10 Bom. H.C.R. 166, F.B., *F.*) [*Cons.*, 6 C.L.R. 289; *Dist.*, 5 C. 954; *R.*, 5 C.L.R. 238, U.B.R. (1892—1896), 16].

(49)—*Record of confession—Crim. Pro. Code (X of 1872), ss. 122, 193, 346.*—S. 122 of the Crim. Pro. Code (of 1872) contemplates and provides for cases in which confessions are recorded by a Magistrate other than the one by whom the case is enquired into or tried. [*Dist.*, 5 C. 958.] A confession recorded by a Magistrate, having jurisdiction, is to be treated as an examination under s. 193 of the Crim. Pro. Code (of 1872), notwithstanding that the prisoner may have been brought before the Magistrate before the conclusion of the Police investigation. The provisions of the last paragraph of s. 346 of the Crim. Pro. Code apply to such a confession. **5 C. 954=6 C.L.R. 297, F.B.** [*F.*, 5 A. 253=2 A.W.N. 25; *R.*, Rat. Un. Cr. C. 254, 3 C.W.N. 387, U.B.R. (1892—1896), Vol, I, 16].

(50)—*Defective confession—Cure of defect—Record of evidence by Sessions Judge—Crim. Pro. Code (X of 1872), ss. 122 and 346—Deposition by recording Magistrate before committing Magistrate—Evidence in Sessions Court.*—The defect of a confession recorded by a Magistrate under s. 122 of the Crim. Pro. Code, who omitted to record the certificate required by s. 346, can be cured, if at all, only on the Sessions Judge taking evidence that the accused made the statement. A deposition by the Magistrate, who recorded a defective confession, made before the committing Magistrate to the effect that the accused did make the statement will not be evidence of the fact in the Sessions Court; except where the recording Magistrate's presence at the Sessions Court cannot be obtained without unreasonable delay or expense, the Sessions Judge himself must examine the recording Magistrate. **5 C. 958=6 C.L.R. 353.**

(51)—*Record of confession of accused in narrative form—Effect of the error on admissibility in evidence—Crim. Pro. Code (Act X of 1872), s. 346—English memorandum.*—The fact of the confession of an accused person having been recorded in a narrative form, and not in the form of questions and answers as required by s. 346 of the Code, would not affect its admissibility in evidence, if the accused had not been prejudiced by the error. **8 C. 616.** (8 C. 618, note, *R.*). [*R.*, 23 B. 221, 4 Bom. L.R. 785].

Confession—continued.

——3.—(Confessions to Magistrates—Admissibility—Record of Confessions)—*continued.*

(52)—A confession recorded by a clerk, under s. 164 of the Code, in the presenee of a Magistrate, in the form of a narrative and without the questions being recorded, would not be illegal, if the accused was not prejudiced by it. The same would be the case as regards a confession taken, under s. 364, while the case was being heard before the Magistrate, and recorded in a narrative form. [*R.*, 21 B. 495, U.B.R. (1897-1901), Vol. I, 47, 4 Bom. L.R. 785]. It is not necessary that an English memorandum as required by s. 364, para 3, should be made in respect of a confession under s. 164. **14 C. 539.**

(53)—*Statement recorded by Magistrate—Admissibility in evidence—Inducement to confess—Evidence Act, s. 24.*—A statement by an accused recorded by a Magistrate, after a verbal warning from the Magistrate to the accused to the effect that what he (the accused) was going to say would be evidence against him and that he must speak the truth, was held inadmissible in evidence, such warning being calculated to hold out an inducement to the accused to confess. **10 C. 775.** [*R.*, L.B.R. (1872—1892), 289].

(54)—*Crim. Pro. Code, ss. 164, 364, 533—Applicability to Police in town of Calcutta—Statements made by accused in custody of police recorded by a Magistrate—Irregular recording—Admissibility.*—Chapter XIV of the Crim. Pro. Code, except s. 155, does not apply to the Police in the town of Calcutta. Therefore, neither s. 164, nor, as a necessary consequence, s. 364 or s. 533 applies to a statement made by a person in custody, to a Magistrate in Calcutta, in the course of an investigation, made by the Police in the town of Calcutta, into the circumstances of a crime committed in Calcutta. Where a statement of the kind mentioned above was recorded by a Magistrate, while the accused was in the custody of the police, in English, the accused, who spoke and understood English, sometimes answering in English and sometimes in Bengali, *held*, that the statement was admissible, on the evidence of the Magistrate, under ss. 21 and 26 of the Evidence Act. [*F.*, 21 B. 495]. *Obiter* :—The provisions of s. 164, read with s. 264 of the Code, would not be complied with, when answers are made by an accused person in one language and written down in another, unless it is shown that it was impracticable to write them in the language in which they were spoken. The Court had very grave doubts whether the defect could be cured under s. 533 of the Code. **15 C. 595, F.B.**. [*R.*, 17 C. 862, L.B.R. (1893—1900), 70; *Diss.*, 8 C.P. L.R. 21 (Crim.); 21 B. 495; 16 C.P.L.R. 122].

(55)—*Crim. Pro. Code, ss. 164, 364 and 533—Scope of s. 533—Confession not recorded in the language in which it is given—Admissibility in evidence.*—The section would only come into operation when a confession or other statement of an accused person, recorded under s. 164 or s. 364, was tendered, but a confession

Confession—continued.

——3.—(Confcssions to Magistrates—Admissibility—Record of Confessions)—*contd.*

recorded in direct violation of those sections would not be one recorded under them. S. 533 is intended to provide a remedy against omissions to sign the confession and the certificates and to certify all the facts required to be certified. The provisions of s. 164 read with s. 364 are imperative as to the language in which a confession is to be recorded, and s. 533 does not contemplate or provide for any non-compliance with the law in this respect. It is clear from ss. 164 and 364 that the confession is to be recorded in the language in which it was made, or, if that is not practicable, in the language of the Court or English. It would be for the prosecution to establish the impracticability, if any existed. **17 C. 862.** [*F.*, 2 C.W.N. 702, 2 L.B.R. 19; *R.*, L.B.R. (1893—1900), 70, 8 C. P.L.R. 21 Cr., U.B.R. 1903, 1st Quarter, Crim. Pro. Code, 13, 16 C.P.L.R. 122; *D.*, 22 C. 817; *Diss.*, 18 C. 549, 21 B. 495, 23 B. 221].

(56)—*Crim. Pro. Code (1882), ss. 164, 364 and 533—Confession not rendered in language in which it was given, but rendered in Court language—Knowledge of the Magistrate of language in which confession was given—Presumption.*—A confession made in Hindustani, in the presence of a Sub-Divisional Magistrate who was a Mahomedan gentleman, was recorded by the court officer in Bengalee, which was the language of the Court and a memorandum, as required by law, was made by the Magistrate himself in English. It was contended that, because the Magistrate was a Mahomedan, he must be presumed to have sufficient acquaintance with Urdu to enable him to record a statement in that language. *Held*, that, in the absence of any evidence to the contrary, it should be presumed that the proceedings of the Magistrate were conducted in accordance with law and that, in the absence of anything to show that it was practicable for the officers of the Court to record the statement in Urdu, it should be taken that the Magistrate found it impracticable to do so, and adopted the alternative course allowed by law, namely, to have it recorded in the Court language. Bengalee. **18 C. 549.** [*R.*, 21 B. 495, 23 B. 221, 10 O.C. 112].

(57)—*Crim. Pro. Code (1882), s. 364—Recording statement of accused by a Magistrate—Proper procedure.*—Where a statement made by an accused person in Manipuri and communicated in Bengali to the Magistrate was recorded in English by the Magistrate, and there was also a record in Manipuri, and both records differed, *held*, that the Manipuri document should be regarded as the proper record and the only evidence in the case. If the Manipuri statement had not been made, the Magistrate would not have strictly complied with the provisions of s. 364 of the Code in recording the statement in English. **21 C. 642.**

(58)—*Crim. Pro. Code (1882), s. 364—Confession recorded in a language different from that in which it was given—Admissibility.*—Where a confession of an accused given in Bengali was recorded by the committing Magistrate in English and the Magistrate, in his evidence before the Sessions Court, deposed that he could not write Bengali well and that he had no *mohurrir* at the time when the confession was recorded, *held* that the confession so recorded was admissible in evidence. **22 C. 817.** [*R.*, 21 B. 495].

(59)—*Crim. Pro. Code (1872), ss. 122, 346—Defect in confession.*—A defect in a confession taken under s. 122 of the Code cannot be remedied by evidence taken at the Sessions, as can be done in the case of the examination of a prisoner under s. 346. **5 C.L.R. 209.**

(60)—*Certificate of recording Magistrate, value of—Confession, admissibility of—Evidence Act (I of 1872), s. 84—Conspiracy, conviction for.*—A Court of appeal is not precluded from inquiring into the nature of a confession, to see whether it was voluntary or not, because the recording Magistrate attached at its foot the memorandum prescribed in s. 164 of the Code. It is a duty clearly incumbent on the Court of appeal, where the spontaneity and voluntary nature of the confession is impugned. A Magistrate before recording a confession had the following conversation with the accused:—"Do you know who I am?—Yes. Any statement you make will be of your own free will. You are under no compulsion—I understand." *Held*, there was no compliance either with the letter or the spirit of the law as laid down in s. 164 of the Crim. Pro. Code. When it appeared that an accused person was illegally confined in solitary confinement for about a fortnight, that the police had access to him, that pressure was brought to bear upon him through his father, mother and brother, that the desirability of a confession was pressed upon him by the District Magistrate as a means of saving himself and his relatives from threatened pains and penalties, that his father was illegally arrested and detained in *hajut* for a long time without any charge, that he then made a confession which was recorded without legal precautions and in the immediate presence of an officer who was the head of the police and was officially and personally interested in the case and who put incriminating questions to the accused and helped in amplifying the confession, and finally that the confession was retracted as soon as the accused was produced in Court: *Held*, such confession was not voluntary and not admissible in evidence. Where it appeared that an accused person was in police custody from the 7th to the 15th August, that from the 31st July he had been in jail, part of the time in solitary confinement, that he was confronted with another accused, who, he was told, had made a confession, that, during the recording of the confession, questions were put to him from a police report by another Magistrate who was present, that

Confession—continued.

——3.—(Confessions to Magistrates—Admissibility—Record of Confessions)—*contd.*

the confession contained evidently false statements and that it was retracted as soon as the accused was produced in Court: *Held*, the confession was not voluntary and was not admissible in evidence. There is no warrant or justification for the intervention of a third party as the questioner, directly or indirectly, of a confessing prisoner. It is highly irregular for a Magistrate recording a confession to obtain from the police a report of what the accused is alleged to have stated to them, before he begins to record the confession. A conviction for conspiracy cannot stand, when the charge against the other alleged conspirators has failed. It is highly irregular for a Court Inspector, a police officer appointed to conduct prosecutions, to take away and retain with him petitions filed in the case. When a bomb was found in a *baitakkhanaghar* in a house to which all the members of the family had access, it could not be held that any particular member was in possession of the bomb. **9 C.L. J. 663=13 C.W.N. 861=2 Ind. Cas. 681.**

(61)—*Crim. Pro. Code (1898), s. 164—Confessions, recording of—Admissibility—Evidence Act, s. 80—Confessions made to police officer.*—A confession recorded by a Magistrate during the course of a police investigation without a certificate, as required by s. 164, cannot be admitted under s. 80, without proof of its having been made. A confession made to a police officer cannot be proved against an accused person, and the officer should not be allowed to say that the accused person confessed to him, even though the terms of the confession are not allowed to be proved. **7 C.W.N. 220.**

(62)—*Record of, to be accompanied by English translation.*—When confessions of accused persons, made before a Magistrate, form part of the evidence against the persons committed for trial to the Court of Session, they should be accompanied by translations into English fairly written out. **18 W.R. Cr. Cir. 9.**

(63)—*Crim. Pro. Code (1882), ss. 164, 364 and 533—Confession not recorded properly—Examination by Magistrate of accused person regarding such confessions—Admissibility—Evidence Act (I of 1872), ss. 80 and 91.*—Certain *Mapillas*, suspected of being concerned in a murder, made statements to a Magistrate, who was acting under the provisions of the *Mapilla* Act, and they were recorded in English, although given in Malayalam, and were neither signed by the prisoner, nor certified by the Magistrate; subsequently, when there was no evidence on the record against the accused, the Magistrate examined them as to those statements, and the prisoners admitted that they had made such statements. In the Sessions Court, the statements which were subsequently retracted were sought to be admitted by the evidence of the Deputy Magistrate. *Held*, that the statements were not admissible. **9 M. 224 =2 Weir 125.** [*F.*, 8 C.W.N. 22; *R.*, 2 C.W. N. 702].

Confession—continued.

——3.—(Confessions to Magistrates—Admissibility—Record of Confessions)—*contd.*

(64)—*Crim. Pro. Code (1882), ss. 164 and 533—Confession not conforming with provisions of s. 164.*—The provisions of s. 164 are imperative, and s. 533 will not render a confession admissible, where no attempt at all has been made to conform to its provision. *Per* Parker, J. **9 M. 224=2 Weir 125.** [*F.*, 23 B. 221; *R.*, 2 C. W.N. 702, 17 C. 862, L.B.R. (1893—1900), 70, 4 Bom. L.R. 785; *D.*, 21 B. 495].

(65)—*Confessions — Uncertified statements made by accused—Admissibility in evidence—Confession caused by inducement.*— The accused was convicted of the murder of a boy committed on the 22nd June, 1901. The question in this case was, whether the incriminating statements made by the accused were admissible in evidence as confessions. On the 28th June, his house was searched without any result and he was formally arrested on the 29th. On the 1st July, he was taken to a Magistrate at Jhelum with a view to obtaining a remand and on the 4th July to the Tahsildar of Jhelum, a Magistrate of the second class, who recorded a statement made by him which amounted to a confession of actively abetting the murder by holding the legs of the deceased while he was strangled by another person, who afterwards cut the deceased's throat. This confession was supplemented by two uncertified statements. On the 5th July, the accused produced bangles worn by the deceased from a hole near a tomb after trying two other holes without finding the bangles in them. On the 10th July, the accused stated that the bangles shown to him were not the bangles worn by the boy and that the *Lambardar* had asked him to take them out from the hole for pardon having been tendered to him and told him that it would be better for him to do so. The confession was retracted on the 24th July before the committing Magistrate. *Held*, that the uncertified statements were rightly excluded by the Lower Court from evidence and that the certified confession was also not admissible in evidence as the Court was not satisfied that inducements were not offered to the accused to make it. **7 P.L.R. 1902.**

(66)—*Refusal to record confession on suspicion of insanity.*—A Magistrate is not justified in refusing to record the statement of an accused person under s. 164, Crim. Pro. Code, 1882, on a mere suspicion of insanity. Although such a statement may contain an admission of guilt, it may, subsequently, be useful to the accused as evidence that he was not in his right mind. **3 P.R. 1894 Cr.**

(67)—*Confession not recorded in language in which it was made—Admissibility.*—Where a confession made in Urdu was recorded by the Magistrate, who knew both English and Urdu well, in English and the Magistrate deposed that the confession was taken down sentence by sentence, and was interpreted by himself to the accused who admitted its correctness, *held*,

Confession—continued.

——3.—(Confessions to Magistrates—Admissibility—Record of Confessions)—*continued.*

that the accused had not been prejudiced by the defect which was, therefore, cured by s. 533. *Held*, further, that such a defect could be cured by the statement on oath of the Magistrate who had recorded the confession. **7 P.R. 1899 Cr.**

(68)—*Record of—Crim. Pro. Code (1898), ss. 364 and 533.*—A Magistrate recorded an English translation of the confession made in his presence by an accused in the *Chhatisgarhi* language; on examination as a witness during a Sessions trial, he deposed that he had recorded every single question he asked and every answer thereto, that he had read out the record so taken to the accused translating each English sentence into its *Chhatisgarhi* equivalent, and that the accused acknowledged the record to be correct. *Held*, that the Sessions Judge ought not to reject the record of such a confession as irrelevant, on the ground that s. 533, Crim. Pro. Code, covered only cases where a statement had been "recorded," and that a translation of the said statement cannot be deemed to be any "record" at all. *Held*, further, s. 533 was to be liberally interpreted and that its amendment showed that neither s. 164 nor s. 364, Crim. Pro. Code, prevented oral evidence being taken to show the statement to have been duly made. On general principles, there is no reason why a translation should be regarded as no record. **16 C.P.L.R. 122.** (9 C. 455, *approved*; 23 B. 221, 15 C. 595, 17 C. 862, 13 C.P.L.R. 107, *R.*)

(69)—*Record of.*—If confessions and other incriminating statements made by the accused in preliminary enquiries are to be recorded, the Magistrate should record whether the accused have been brought from police custody or fom jail and whether the police officers, who made the enquiry, were present in Court while the accused were making their statements. The Magistrate should also be careful of the interests of the accused as he would be of those of the prosecution. His chief object must be to ascertain the truth of the case, to endeavour that the innocent may not suffer punishment as well as that the guilty may not escape. **1 C P.L.R. 115 Cr.**

(70)—*Confession made to a person not a police officer and when accused not in police custody—Confession made under inducement held out by one who is not a person in authority—Proof of so much of confession as relates to fact thereby discovered—Admission—Evidence Act, ss. 21, 24, 25, 26 and 27—Evidence of Magistrate to prove confession recorded by him—Crim. Pro. Code, ss. 533 and 164—Murder.*—The appellant, who was accused of murder, made a statement during the course of police investigation to certain men of influence in the neighbouring villages when no police official was present. In consequence of the accused's statement, some money and other things

Confession—continued.

——3.—(Confessions to Magistrates—Admissibility—Record of Confessions)—*continued.*

belonging to the deceased were found at the places mentioned by him. The accused, also, made a statement before the Magistrate of the District. The District Magistrate refused to make the memorandum referred to in s. 164, Crim. Pro. Code, because it appeared to him that the statement was not the accused's free and spontaneous statement, but was made by him in consequence of certain hopes which a constable had held out to the accused, which he thought might possibly be realised. In the Court of the committing Magistrate, when the statement made by the accused before the District Magistrate was read out to him, he stated that some constables had given him *thang* and liquor to drink and he did not remember what he stated. The Sessions Judge held both statements to be inadmissible, the former on the ground that, the accused not having been in the custody of the police at the time when the statement was made, it was inadmissible in evidence under s. 27 of the Evidence Act, the latter on the ground that it did not contain the memorandum required under s. 164, Crim. Pro. Code. On appeal, the Court of the Judicial Commissioner directed the Sessions Judge to examine the District Magistrate as to the statement made by the accused before him and to give an opportunity to the accused of explaining how he came to make it. The District Magistrate was examined and he proved that the accused appeared to be in perfect possession of his senses when he made the statement and that there was absolutely nothing to suggest that he was under the influence of any intoxicant. *Held* (*per* Ryves, O.A.J.C.): That the confession of the accused made to the residents of the neighbouring villages was admissible in evidence against him. A confession made not to a police officer, and not improperly obtained as laid down in s. 24 of the Evidence Act is always admissible against an accused. In the same way, any fact discovered in consequence of an admissible confession can also be admitted against him. *Held* (*per* Scott, J.C.) that having regard to the provisions of s. 21 of the Evidence Act, the confessions made by the accused to the residents of the neighbouring villages and to the District Magistrate were admissible in evidence. The former confession although having been made when the accused was not in police custody, proof of it was not prohibited by ss. 25 and 26 of the Evidence Act and it was relevant under s. 24, if the inducement held out to him did not proceed from a person in authority and the latter was admissible under s. 533, Crim. Pro. Code, as the evidence of the District Magistrate who recorded it was taken to prove that the said statement was made voluntarily. **8 O.C. 395 B.**

(71)—*Recorded by Police Officer and Magistrate.*—A confession recorded by a Police Officer, who is also a Magistrate, is inadmissible in evidence. **1 C. 207=25 W.R. Cr. 36.** [*R.*, 7 C.L.R. 541].

Confession—continued.

——3.—(Confessions to Magistrates—Admissibility—Record of Confessions)—*continued.*

(72)—*Crim. Pro. Code (1882), ss. 164, 342—Confession to Magistrate other than committing Magistrate—Accused having been long in police custody—Examination of accused.*—A confession made under s. 164, Crim. Pro. Code, made to a Magistrate, other than the committing Magistrate, if tendered on the part of the Crown, cannot be rejected on the sole ground that the accused had been a long time in the hands of the police. It is necessary for the Court to examine the accused at the close of the case for the prosecution, s. 342 being imperative, as it is a means of enabling the accused to explain what appears against him. **Rat Un. Cr. C. 720=Cr. Rg. 46 of 1894.**

(73)—*Crim. Pro. Code, s. 164—Question and answer by accused.*—Where the Sessions Judge regarded as an admission by the accused a statement as to her profession as recorded by the Magistrate, *held* that, if the Court wanted to use it as evidence, the Magistrate and the clerk who recorded it should be examined to prove it. The failure to do so is not a mere irregularity which can be waived. *Per Candy, J.* The fact that the statement does not purport to be given in answer to a question does not render it inadmissible. It is at best a mere irregularity which is waived when no objection is taken to it at the trial.—*Per Fulton, J.* **Rat. Un. Cr. C. 644=Cr. Rg. 17 of 1893.**

(74)—*Crim. Pro. Code (Act X of 1872), s. 346—Signature of accused in confession.*—S. 346 of the Crim. Pro. Code, imperatively demands that the accused person shall sign or attest by his mark the record of his confession. Where, in place of such signature, the record says "signature of A.B. (accused), the handwriting of C.D," *held*, that this was not enough when there was nothing to show that A.B authorised C.D. to sign for him. **11 B.H.C. 44.** [*R.*, 9 **M. 224, 23 B. 221**].

(75)—*Crim. Pro. Code (1872), ss. 45, 122, 256, 346—Confession not recorded properly—Admissibility—Confession of co-accused tried jointly—Penal Code, s. 114.*—Where a confession is not recorded in the form of question and answer, and is not completed by an indorsement under the hand of the Magistrate to the following effect:—"I believe that this confession was voluntarily made," the confession is inadmissible in evidence. The evidence of the Magistrate cannot cure the defects which appear in what is provided for by the law as a species of pre-appointed evidence, and which the law declares to be complete and admissible only when certain forms are complied with in the recording of it. The waiver of the accused cannot affect the inadmissibility of the document. [*R.*, 9 M. 224=2 Weir 128]. If an abettor of a crime is, on account of his presence at its commission, to be charged as a principal, the abetment must continue down to the time of the commission of the offence. At any time before the event he may change his mind, and withdraw from the abetment. The law allows a *locus penitentiæ* in such cases, and if he distinctly withdraws at any moment before the final act is done, the offence is no longer committed with his abetment. The confession of a person who, after admitting that he abetted the murder, says that he dissuaded the other accused from committing the murder, as the deceased was a friend of his, has not the inherent quality of a confession, and cannot, therefore, be used against the other accused, and should not be laid before the jury. **10 B.H.C. 497.** [*R.*, 5 B. 63, Rat. Un. Cr. C. 153, 436, U.B.R. (1892 to 1896). 191].

Confession—continued.

——3.—(Confessions to Magistrates—Admissibility—Record of Confessions)—*concluded.*

(76)—*Crim. Pro. Code (1872), ss. 122, 346—Scope of s. 346—Imperfect record of confession.*—S. 346, Crim. Pro. Code, 1872, would appear to apply only to the examination of the accused taken on enquiries as distinguished from investigations or trials, and dealt only with statements and confessions made in the course of the preliminary enquiry and was not applicable to confessions recorded under s. 122, Crim. Pro. Code. [*R.*, 5 C.L.R. 238.] The confession of an accused person, taken by a Magistrate having no jurisdiction to commit the accused, was *held* to be defective for want of the signature or mark of the accused, rendering the imperfect record of the confession inadmissible in evidence against the accused. Oral evidence to prove that such an inadmissible confession was made, or what the terms of the confession were, is inadmissible also. **10 B.H.C. 166.** [*F.*, 10 B.H.C. 497, 4 C. 696; *Appr.*, 4 B. 15; *R.*, 11 B.H.C. 44, 1 B. 219, 6 C.L.R. 289, Rat. Un. Cr. C. 173, 6 B. 288, 9 M. 224 =2 Weir 128, 23 B. 221, U.B.R. (1903), Crim. Pro. Code. 13].

—4.—(Confessions obtained by inducement, threat, etc.)

(1)—*Obtained by inducement—Corroboration of approver and accomplice.*—A confession induced by promising immunity from prosecution of another case is not admissible against the confessor. Evidence obviously unreliable is not sufficient to corroborate the statement of either an accomplice or an approver. **12 P.W.R. 1907 Cr.=5 Cr.L.J. 437.**

(2)—*Exhortation to confess.*—The mere exhortation to the accused to speak the truth could not be construed into an inducement, threat or promise, and, least of all, into an inducement to make a false confession, and is not enough to exclude evidence of a confession, not otherwise improperly induced. **9 P.R. 1894 Cr.**

(3)—*Confession induced by promise of pardon—Retracted confession.*—A statement by an accused person, under a promise of pardon, is not evidence against him. Where ao cnfession made by an accused, who had been in police custody for four days in the Magistrate's

Confession—continued.

——**4.—(Confessions obtained by inducement, threat, etc.)**—*continued.*

Court, was retracted by him, *held*, that the confession was properly received as sufficient for conviction, as it was corroborated by other evidence. **9 P.R. 1869 Cr.**

(4)—*Confession induced by deceit.*—A confession otherwise voluntarily made is not inadmissible merely because it was induced by deceit. **Rat. Un. Cr. C. 756.**

(5)—*Inducement to confess—Legality of conviction based on such confession.*—A conviction based upon the evidence of an approver, who confessed on being told by the police that they were in possession of information that implicated him and that all has been discovered, is illegal. **1 J.G. 18.**

(6)—*Confession under pressure—Statement admitting crime, but pleading compulsion by others.*—An admission by A and B that the crime charged against them was committed by C and D, and that whatever share they had in it was under compulsion, is not a confession on which any person ought to be convicted. **7 W.R. Cr. 8.**

(7)—*Confession, evidentiary value of.*—To give weight to the confessions of prisoners recorded under the Code of Criminal Procedure, there should be a judicial record of the special circumstances under which such confessions were received by the Magistrate, showing in whose custody the prisoners were, and how far they were free agents. **5 W.R. Cr. 6.**

(8)—*Confession made under threat for purpose other than to extort confession—Evidence Act, 1879, s. 24.*—A prisoner was tried for wounding with intent to murder, and wounding with intent to do grievous bodily harm. The offence was committed on the high seas on board a ship on which the prisoner was a seaman. At the trial it was proved for the prosecution that the master of the ship had sailed from Calcutta and could not be found, and the Standing Counsel thereupon tendered in evidence his deposition before the committing Magistrate, which contained an admission alleged to have been made to the deponent by the prisoner, when in custody. The Court refused to allow the portion of the deposition containing the admission to be read, as it was stated to have been made immediately after the prisoner, with others, had been threatened by the witness with a loaded rifle; it was immaterial that the threat was not made to extort a confession, but to suppress an attempt at mutiny. **10 B.L.R. Ap. 1.**

(9)—*Crim. Pro. Code (1882), s. 298—Confession given after inducement—Conviction.*—The accused, who was charged with the offence of murder, had made two confessions, the first before the first class Magistrate, of Junnar, and the second before the committing Magistrate. On his trial before the Court of Sessions, he retracted the confessions and alleged that

Confession—continued.

——**4.—(Confessions obtained by inducement, threat, etc.)**—*continued.*

he was beaten by the police and that the confessions were caused by inducement offered by the police. *Held*: (1) that for the proper disposal of the case, it should have been determined whether the confession was first induced by the illegal promise, and whether that inducement still existed, or had been effectually dispelled when the Magistrate recorded the confessions. If such inducement had been given, and had not been effectually dispelled until after the respective confessions had been recorded, it should be held that they were inadmissible; (2) that under s. 298, Crim. Pro. Code, it is the duty of the Judge "at his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;" and also "to decide upon all matters of fact, which it may be necessary to prove in order to enable evidence of particular matters to be given." The Judge ought, therefore, to have made some enquiry into the allegation of the prisoner about the tutoring, which he said had resulted in his confession. **Rat. Un. Cr. C. 245=Cr. Rg. 12 of 1886.**

(10)—*Confession induced by false allegation.*—A confession induced by false allegations is irrelevant even if it is true. **Rat. Un. Cr. C. 153.**

(11)—*Improperly induced and inadmissible confession—Evidence of things done in consequence of such confession.*—In consequence of certain incriminating statements which an accused person was improperly induced to make by a promise of pardon and while in police custody, a witness proceeded to a certain place and made enquiries of some persons. *Held*, that the facts that the accused made a statement, in consequence whereof a witness visited a certain place and made enquiries, were relevant facts provable against the accused, owing to the circumstance that a relevant fact was discovered in consequence of information given by the accused, if the discovery be itself a relevant fact, being capable of proof, without adducing evidence of any portion of an inadmissible confession. **34 P.R. 1894 Cr.**

(12)—*Confession made on tender of pardon held out to accused—What amounts to removal of inducement.*—An accused person made a detailed confession to a Magistrate implicating himself and others which was duly recorded. Subsequently before the committing Magistrate, he admitted the statement to be correct, but stated that he made it, as the Police Superintendent and the Magistrate had told him that the District Magistrate had promised him a pardon, and the Magistrate to whom the confession was made also admitted that. *Held*, that the confession was inadmissible owing to the inducement which the Magistrate held out, it being immaterial that the Magistrate to whom the confession was made had no authority for what he said, and though what he said did not amount to a promise of pardon.

Confession—continued.

——4.—(Confessions obtained by inducement, threat, etc.)—*continued.*

Though, when the committing Magistrate told an accused person that he could not get the pardon which the Magistrate, before whom the accused made the confession on his making a promise of pardon, had promised, the accused adhered to his original confession without however repeating it, *held*, that he was under the influence of the inducement. **1 P.R. 1899 Cr.**

(13)—*Evidence Act, I of 1872, s. 24—Confessions induced by person in authority*—Monigar *Magistrate, such a person—Confession vitiated.*—A *monigar* Magistrate who was inquiring into a dacoity case said to the accused, who requested the *monigar* not to report against him, "it should have been written yesterday; there is a hue and cry against you; if you speak the truth we would consult the Head Constable and arrange," and the accused thereupon made a confession, *held*, that the village Magistrate was a person in authority within the meaning of s. 24 of the Evidence Act and that the arrangement was an inducement intended to make the accused believe that he would be saved from prosecution by being taken as a witness instead of as an accused person, if he would confess, and that the confession was irrelevant under s. 24. **26 M. 38=2 Weir 733.**

(14)—*Evidence Act, s. 24—Confession made to son of Village Magistrate.—Held*, that a confession to the son of a Village Magistrate, who was himself acting as such, was receivable in evidence, as it was not caused by any inducement sufficient to give the accused person reasonable ground for supposing that, by making it, he would gain any advantage or avoid evil of a temporal nature in reference to the proceedings against him. **2 Weir 733.**

(15)—*Evidence Act, s. 24—Confession induced by person in authority—Opinion of Court—Removal of impression caused by inducement.*—S. 24, whilst requiring the inducement to be offered by a person in authority, leaves it entirely to the Court to form its own opinion as to whether the inducement, threat or promise was sufficient to lead the prisoner to suppose that he would derive some benefit or avoid some evil of a temporal nature. The words "you had better pay the money, than go to jail, and it is better for you to tell the truth" addressed by the Travelling Auditor of a Railway Company to a booking clerk charged with defalcation, were held to operate as an inducement, by the suggestion which they carried with them that the prisoner would be certainly sent to jail if he did not confess and pay, and that if he did so, he would not be sent. *Held*, also that the Auditor was a person in authority. The term "person in authority" is not to be construed in any restricted sense. It is not confined to a person having control over the prosecutor or the accused. [*R.*, Rat. Un. Cr. C. 245]. Where the Travelling Auditor took the accused, after inducing him to confess as

Confession—continued.

——4.—(Confessions obtained by inducement, threat, etc.)—*continued.*

mentioned above, to the Traffic Manager, before whom he signed a receipt for the amount with the misappropriation of which he was charged, *held*, that it would be impossible to hold that the impression had been effected in the short interval which elapsed between the conversation in the prisoner's house and the signing of the receipt. **9 B.H.C. 358.**

(16)—*Evidence Act, s. 24—Confession made, after hopes of pardon held out—Accomplice evidence—Corroboration.*—The confession of an accused made before a Magistrate cannot be used in evidence against him at his trial, when the police had told him that he would get a pardon if he would make a confession, and he made that confession under the hope of obtaining the pardon. The evidence of an accomplice cannot be acted upon, without corroboration in material particulars, unless it is such that the Court can unhesitatingly receive it. Such corroboration must be independent of the accomplice, or of a co-confessing prisoner. The accomplice must be corroborated as to all the persons affected by his evidence. If he is corroborated in his evidence as to one person, there will still be need for corroboration of his testimony with respect to the other prisoners. **1 A.L.J. 110.**

(17)—*Crim. Pro. Code (1872), ss. 344, 345, 347—Pardon to an accused person—Evidence—Evidence Act, s. 24.*—Tender of pardon to a person concerned along with others in an offence, not exclusively triable by a Court of Sessions, and his examination as a witness, are both illegal. And his statement would be irrelevant and inadmissible with reference to s. 344, Crim. Pro. Code, and s. 24, Evidence Act. **2 A. 260.** [*Appl.*, Rat. Un. Cr. C. 461; *R.*, 23 B. 213, 10 M.L.J. 147, 25 M. 61, P.C. 52 P.L.R. 1902, 12 P.R. 1902, 16 C.P.L.R. 112, 100 P.L.R. 1902, 33 C. 1353=10 C.W.N. 962=4 Cr. L.J. 165, 5 A.L.J. 691=A.W.N. 1908 259; *D.*, L.B.R. (1872—1892), 246, 248, 252, 16 B. 661].

(18)—*Evidence Act, s. 24—Confession to a Punchayat—Admissibility.*—Where the matter before a *Punchayat* was, whether or not the accused had by their acts disqualified themselves from further social intercourse with the rest of the brotherhood, and the accused made statements admitting that they were guilty of murder, *held*, that the provisions of s. 24, Evidence Act, could not be pleaded against their admissibility, for the members of the *Punchayat* were not in authority over them within the meaning of that section, nor was there any threat, inducement or promise, made with reference to any charge against the accused. [*R.*, 3 A.W.N. 129]. Where the statements ascribed to the accused are in general terms, and represent only the impression, conveyed by what might have been said, to the minds of the witnesses, they should not be accepted as sufficient to corroborate the evidence of the approver or to support the conviction of the

Confession—continued.

——4.—(Confessions obtained by inducement, threat, etc.)—*continued*.

accused. It is always essential that the Court should know as nearly as possible what were the words used by the supposed confessors, and what were the questions or matters in regard to which they were used. **4 A. 46.**

(19)—Where a *Punchayat* was assuming an authority and was leading the accused to believe that he had that authority, *held*, that a Court would be justified in holding that he was "a person in authority" within the meaning of s. 24. **9 C.W.N. 474=2 Cr. L.J. 255.**

(20)—*Evidence Act, s. 24—Accused in police custody—Confession, voluntary nature of, how to be ascertained in sessions trial—Confession when irrelevant under s. 24.*—Where it appears that a confessing accused has been in the custody of the police for a long period of time, the first question obviously which a Magistrate ought to put in order to satisfy himself that the confession would be a voluntary one, is, how long has the accused been in custody. If there is no record of the fact, it is the duty of the Sessions Judge, before holding the confession relevant under s. 24 of the Evidence Act, to send for the Magistrate and to satisfy himself on the point. [*R.*, U.B.R. (1903), 1st Quarter, Crim. Pro. Code, 13.] It is a mistake to suppose that a confession cannnot be irrelevant under s. 24, unless it can be alleged that there was torture leaving marks of personal violence. Under the section, the confession becomes irrelevant if the making of it appears to have been caused by any inducement, threat, or promise, etc. **25 B. 543=3 Bom. L.R. 122.**

(21)—*Evidence Act, s. 28—Confession given after promise—Removal of impression, what amounts to.*—Where a promise of safety was made by a police officer, to whom the accused confessed, which confession was also repeated before the committing Magistrate and the aceused also made a confession, although different in some respects, before a Sessions Judge, *held*, that the confession before the Magistrate was irrelevant, and that the Court was not prepared to hold that the confession before the Court of Sessions was made after the impression caused by the promise by the police officer had been fully removed. **5 N.W.P. 86.**

(22)—*Evidence Act, ss. 24 and 29—Confession to Medical Officer.*—The accused made a confession of his guilt to the Medical Officer of his Regiment, who told the accused, when he was under his treatment in the Hospital, that it would be better for him to tell the truth as to how he had certain wounds. *Held*, that the Medical Officer was not a person in authority in respect of any proceedings, which might be contemplated or taken against the accused, who made the confession to him; and that all that he represented to the accused was that, on medical grounds, it would be for the accused's benefit, if he told the truth as to how he came by the wounds. The accused made his confession of guilt to the Commissioned Officer of

Confession—continued.

——4.—(Confessions obtained by inducement, threat, etc.)—*concluded*.

their Regiment, who stated to the accused that he had already obtained information from another person and promised secrecy if he told the truth: *Held*, that the Commanding Officer was not shown to be a person in authority in relation to the proceedings that were to be taken against the accused; and that the alleged deception and inducement were covered by the provisions of s. 29 of the Act. **8 Bom. L.R. 507 =4 Cr. L.J. 49.**

——5.—(Retracted Confessions).

(1)—*Retracted confession of approver.*—Where the statement of a person in the capacity of an approver had been made under a condition not fulfilled, *viz.*, that he should be examined at the trial, if the prosecution was not prepared to treat him as a witness, preferring to deal with him as a co-accused, his retracted confession would be irrelevant under s. 24, Evidence Act, notwithstanding the special provisions of cl. 2 of s. 339, Crim. Pro. Code, 1898. **1 P.R. 1899 Cr.** 9 P.R. 1869 Cr.

(2)—In cases of retracted confessions, the Court should consider whether the story told in the confession is itself probably true, and it must see whether the story is or is not consistent with such evidence in the case as it believes. If the confession bears the appearance of truth and is not inconsistent with the true evidence on the record, the Judge or Magistrate should convict on the confession, whether it is withdrawn or not. **A.W.N. 1898, 69.**

(3)—*Confession—Retractation in Sessions Court—Circumstances—Presumption.*—Where a confession was made before a Magistrate under circumstances not liable to suspicion, and, to all appearances, fulfils the requirements of the law, the fact that it is retracted in the Sessions Court does not negative the presumption of the genuineness of the confession. **A.W.N. 1890, 173.**

(4)—*Sessions Judge—Duty—Retracted confession.*—In cases where serious importance is attached to a confession, and the confession is retracted in the Sessions Court, it is the duty of the Judge to inquire and ascertain that the confession was not the result of undue influence. **A.W.N. 1885, 59.**

(5)—*Confession—Retractation—Duty of Magistrate and Judge.*—Where a confession made before a Magistrate is retracted before him or before the Sessions Judge, and a charge of coercion or torture is made against the police in whose custody the accused was before the confession, it is the duty of the Court to inquire into the circumstances under which the confession was made and the manner in which the case was investigated prior to the confession. **A.W.N, 1885, 221.**

(6)—*Retracted confession—Corroboration.*—Some corroborative evidence is necessary to warrant a Court in acting upon a retracted confession. **A.W.N. 1886, 22.**

Confession—continued.

——**5.—(Retracted Confessions)**—*continued.*

(7)—*Confessions subsequently retracted—Confession retracted before Sessions Judge.*—A confession before the Magistrate, though afterwards retracted by the Sessions Court, is evidence against the party making it, under s. 366 of the Code of Criminal Procedure, 1861. **3 W. R. Cr. 40.**

(8)—*Confession—Conviction based on confession subsequently retracted not illegal.*—It cannot be laid down as an absolute rule of law that a confession made and subsequently retracted by a prisoner cannot be accepted as evidence of his guilt, without independent corroborative evidence. The weight to be given to a retracted confession must depend upon the circumstances under which the confession was originally given, and the circumstances under which it was retracted, including the reasons given by the prisoner for his retractation. **16 P.R. 1903 = 153 P.L.R. 1903.** (21 M. 83, *F*; 20 A. 133, 21 P.R. 1869 Cr., 7 P.R. 1899 Cr., *R*)

(9)—*Confession retracted at trial—Its value when uncorroborated by any other direct evidence—Production of thing unconnected with commission of crime.*—C, was convicted of causing the death of J, by fracturing her skull. C, made a confession before a Magistrate, which she retracted in the Court of the trying Magistrate. Except the evidence of one witness, who said he saw the two women quarrelling, there was no proof whatever to show that C, committed the crime. *Held*, that it is not safe to convict an accused person on his retracted confession standing by itself uncorroborated. *Held*, also, that production by an accused person, while in the hands of the Police, of a thing unconnected with the commission of the crime is not admissible in evidence against him. **3 P.W.R. 1907 Cr.**

(10)—*Retracted confession, value of.*—It is not proper to convict an accused solely on his confession to a *Myook* which was retracted at a Sessions trial. **L.B.R. (1872—1892), 497.**

(11)—A confession though made voluntarily by an accused person before a Magistrate, if subsequently retracted, is not sufficient by itself to justify a Sessions Court in acting upon it. **Rat. Un. Cr. C. 952 = Cr. Rg. 3 of 1898.**

(12)—Even in cases where there is a confession, the Magistrate must take all the evidence of the offence available, since, in many cases, confessions are retracted in the Sessions Court. **Rat. Un. Cr. C. 842 = Cr. Rg. 11 of 1896.**

(13)—*Retracted confession good evidence against the person making it, but not against others.*—It is a recognised rule of the law of evidence, that a retracted confession may be used against the person making it, but not against others accused jointly with him. **28 P. W.R. 1907.**

(14)—*Subsequently withdrawn—Crim. Pro. Code (1882), ss. 164, 364.*—Where a confession made by a prisoner is withdrawn at a later stage

Confession—continued.

——**5.—(Retracted Confessions)**—*continued.*

and allegations are made of improper conduct in obtaining the confession, an enquiry must be made as to the circumstances under which the prisoner confessed. **L.B.R. (1872—1892), 423.**

(15)—*Retracted—of accused—Its admissibility against co-accused.*—A confession made by one accused person before the Township Magistrate and admitted before a Sub-Divisional Magistrate, but repudiated by such accused when the District Magistrate, empowered under s. 30, Crim. Pro. Code, began his trial, is not admissible in evidence against the co-accused, who were tried jointly with him. **L.B.R. (1893—1900), 642.**

(16)—*Evidence Act, s. 30.*—There is nothing in s. 30 of the Evidence Act which would exclude, as against persons being jointly tried for the same offence, a confession made by one of the accused duly proved, simply because, at the trial, the confession is withdrawn or denied. The word "confession" must be strictly interpreted for the purpose of s. 30, Evidence Act. A confession must be a confession of guilt or a confession of facts which constitute in law the offence charged. Mere admissions of incriminating facts will not amount to a confession, unless those facts and the necessary inferences from them amount to an offence. **1 L.B.R. 133.** (L.B.R. 1893—1900, 642, *Diss.*).

(17)—*Motive for retracted confession, if a ground for mitigating sentence—Admissibility of retracted confession—Independent corroborative evidence not absolutely necessary—Accused to prove that what he admitted is really untrue.*—Spontaneous confessions are often induced by hope or belief of mitigation of punishment. Self-interest is the source from which the act comes. Such being the case, an offender should not receive a less punishment than he ordinarily would receive, merely because, in pursuance of what he considered best in his own interests, he confessed his crime. An accused person's prompt confession may no doubt be of use to the authorities, and in putting the police upon the track of, and in helping them to find, the other offenders, but the executive authorities have much better means of knowing what aid an accused has in fact given than the Courts have, and any question whether a sentence should be mitigated on such ground is one for such authorities to deal with upon an appeal for the clemency of the Crown. The mere fact that a confession has been subsequently retracted will not make it inadmissible against the accused: but, before a Court can act upon such a confession, it must be satisfied as to its truth. There is no rule of law that a retracted confession must be supported by independent reliable evidence corroborating it in material particulars. The use to be made of such a confession is a matter of prudence rather than of law. If a Judge believes that a confession made by a prisoner, although subsequently withdrawn, contains a

Confession—continued.

——5.—(Retracted Confessions)—*continued.*

true account of that prisoner's connection with the crime, the Judge is bound to act, as far as that prisoner is concerned, on that confession, which he believes to be true. The possible malpractices of the police should be borne in mind in estimating retracted confessions. Neither the accused's confession, nor the record of the Magistrate's belief that the confession had been voluntarily made is conclusive proof that it was so made, but, having made the admission that it was so made, it lay upon the accused to adduce, if not actual evidence, at least some well-founded and probable reason for the Court's coming to the conclusion that what he admitted was not in reality the fact. **1 L.B.R. 238.** (10 M. 295, 12 M. 123, L.B.R. (1872—1892), 497, 18 A. 78, 27 C. 295, *R.*; 21 M. 83, 20 A. 133, 19 B. 728, *F*).

(18)—*Retracted confessions—Corroboration.*—Where a prisoner, accused of murder, made a confessional statement, which was recorded by the Village Munsiff, and repeated the same before the committing Magistrate and before the Sessions Judge, but on appeal to the High Court, after having been sentenced to death, he retracted those statements; *held*, that as the prisoner had withdrawn all the confessional statements, it was necessary to examine the evidence and see if there was reliable evidence to corroborate, to a material extent and in material particulars, the statements contained in the withdrawn confessional statements. If no such corroborative evidence existed, then the contradictory statements remained, and doubt would exist as to which statement was true, and the confessional statements could not be relied on against the prisoner. The fact that, after the first confessional statement, the prisoner made several others, subsequently, to the same effect, including the confessional statement made at the trial, could not be accepted as a corroboration of the prior statement as such subsequent statements themselves would require corroboration as they were withdrawn. **10 M. 295=2 Weir 361.** [*Applied*, 27 C. 295=4 C.W.N. 129; *R.*, 12 M. 123=2 Weir 376, 2 Weir 510, 15 A.W.N. 227=18 A. 78, 20 A. 133; *Diss.*, Rat. Un. Cr. C. 719, 19 B. 728, 1 L.B.R. 238].

(19)—A retracted confession must be supported by independent reliable evidence corroborating it in material particulars. Depositions read under s. 288 and retracted at the trial are not by themselves material corroboration. **12 M. 123=2 Weir 376.** [*F.*, L.B.R. (1872—1892), 497, 2 Weir 509; *Appr.*, 27 C. 295; *Appl.*, Rat. Un. Cr. C. 894; *R.*, 2 Weir 510, Rat. Un. Cr. C. 719, 21 A. 111=18 A.W.N. 196, 13 C.P.L.R. 107, 1 L.B.R. 238; *Diss.*, 19 B. 728].

(20)—Where the only evidence against two persons, accused of murder, where their confessions which, taken together, conclusively proved the guilt of both, but which were subsequently retracted, and where there was no

Confession—continued.

——5.—(Retracted Confessions)—*continued.*

proof that the confessions had been extorted or obtained by inducement by the police, *held* that the accused were rightly convicted of murder inasmuch as the confessions were sufficiently corroborated in material particulars by other witnesses. **19 M. 482=2 Weir 745.** [*R.*, 13 C.P.L.R. 107].

(21)—It cannot be laid down as an absolute rule of law that a confession made and subsequently retracted by a prisoner cannot be accepted as evidence of his guilt without independent corroborative evidence. The weight to be given to such a confession must depend upon the circumstances under which the confession was originally given and under which it was retracted, including the reasons given by the prisoner for his retraction. A confession, in itself reasonable and probable, must, if repeated more than once and retracted only at a late stage in the proceedings, has greater weight attached to it than a confession made only once and retracted after a short interval. The question which should be put to the Jury regarding such confessions is not whether they are corroborated by independent evidence, but whether, having regard to the circumstances under which they were made and retracted, and all the circumstances connected with them, it was more probable that the original confessions or the statements retracting them were true. An omission on the part of the Judge to put this question to the Jury amounts to a misdirection. **21 M. 83=2 Weir 503.** [*F.*, 23 B. 316, 16 P. R. 1903 Cr.=153 P.L.R. 1903; *R.*, 1 L.B.R. 238].

(22)—A retracted confession should carry practically no weight as against a person other than the maker; and the very fullest corroboration would be necessary in such a case, far more than would be demanded for the sworn testimony of an accomplice on oath. **28 C. 689=5 C.W.N. 670.**

(23)—It is obviously important that, in cases where a retracted confession is the evidence chiefly relied on by the prosecution, not only should the Court be satisfied as to the falsity of any allegations as to improper pressure by the police, but should use every reasonable effort to ascertain to what extent, if any, the details of the confession are corroborated. **Rat. Un. Cr. C. 242.**

(24)—The High Court of Bombay, while fully conscious of the need of caution in dealing with retracted confessions, has refrained from laying down any binding rule, such as that a retracted confession must be supported by independent reliable evidence corroborating it in material particulars. It has treated the value of a retracted confession as a matter of prudence than of law. A retracted confession, if proved to have been voluntarily made, can be considered along with the other evidence in the case. **19 B. 728.** [*R.*, Rat. Un. Cr. C. 842, Rat. Un. Cr. C. 952, 23 B. 316, 1 L.B.R. 238].

Confession—continued.

——**5.**—(**Retracted Confessions**)—*continued.*

(25)—If a Judge believes that a confession made by a prisoner, although subsequently withdrawn, contains a true account of that prisoner's crime, the Judge is bound to act, so far as the prisoner is concerned, on that confession, which he believes to be true. When a confession is not supported by the evidence of witnesses, a Judge must examine carefully to see whether it gives details which indicate that it is a natural narrative of what took place in the presence of the man making it, and is not at variance with any evidence in the case which is believed, and is not merely a parrot-like repetition of a story put into the man's mouth. **20 A. 133.** [*F.*, 29 A. 434=A.W.N. 1907, 140=4 A.L.J. 310=5 Cr. L.J. 360; *R.*, 23 B. 316, 1 L.B.R. 238, 153 P.L.R. 1903=16 P. R. 1903 Cr.]

(26)—It is unsafe to rely and act upon retracted confessions unless, upon a consideration of the whole of the evidence in the case, the Court is in a position to come to the unhesitating conclusion that the confessions were true. It is very difficult, if not impossible, to come to such a conclusion unless those retracted confessions are corroborated by credible independent evidence. **18 A. 78.** [*R.*, 20 A. 133, 3 P.W.R. 1907 Cr.; *Diss.*, 1 L.B.R. 238].

(27)—*Retracted confession—Corroboration.*—In the absence of any corroboration by credible and independent evidence, it is unsafe in the majority of cases to found a conviction on a retracted confession. A retracted deposition does not in itself afford a sufficient corroboration of a retracted confession. **13 C.P.L.R. 107.**

(28)—*Crim. Pro. Code (1898), s. 288—Confession made to a Magistrate and retracted at Sessions trial—Evidence brought under s. 288—Corroboration.*—Where there are two sets of evidence, neither of which can alone be accepted without corroboration, they cannot be taken to corroborate one another, and joined together so as to justify any Court in taking action on such evidence. Evidence brought in under s. 288 cannot be accepted as proper corroboration of a confession made to a Magistrate and retracted at the Sessions trial, especially when that confession was not fairly obtained and was not voluntary. **27 C. 295=4 C.W.N. 129.** [*R.*, 13 C.P.L.R. 107, 1 L.B.R. 238, 3 P.W.R. 1907 Cr.]

(29)—*Retracted confession—Evidence of accomplice corroborated in material particulars—Evidence Act, I of 1872, ss. 133 and 114.*—A person, who was charged with murder, made a confessional statement which was recorded under s. 164, Crim. Pro. Code, but subsequently in the Sessions Court, he repudiated those statements. One of the accused, who was taken as approver, deposed against him, and he was corroborated in certain most important particulars by some witnesses. *Held*, that the accused was properly convicted as there were no

Confession—continued.

——**5.**—(**Retracted Confessions**)—*continued.*

grounds for supposing that the confessional statement was not given voluntarily and as the evidence of the approver was sufficiently corroborated by other witnesses. **25 M. 143=2 Weir 800.**

(30)—*Confession given under coercion—Subsequent withdrawal—Confession at variance with the evidence.*—Where a prisoner, a young girl of 15 years of age; who was suddenly charged with a serious offence and was kept in police custody for some time, made a confession to a Magistrate, after being beaten by the police with a view to forcing her to make it, which she subsequently retracted. *held* that it could not be relied upon, especially, when it was inconsistent with the evidence given in the case by the prosecution witnesses. **6 C.W.N. 380.**

(31)—*Examination of accused, record of—Proof of identity of person who made confession.*—If the accused was examined in a language which the Magistrate understood and was able to write, then the record of the examination, if made in another language, is inadmissible, and no evidence can be admitted to prove what statement was made by the accused. It is not the practice to base a conviction upon a retracted confession, unless it is corroborated. That a person, who is being tried, is the same person as the person who made the confession must be proved. **L.B.R. (1893—1900), 70.** (11 C. 580, 14 C. 539, 15 C. 595, 17 C. 862, 9 M. 224, *F.*; 14 B. 331, *R.*).

(32)—*Confession retracted—Corroboration—Penal Code, ss. 114, 302, conviction under—Charge under s. 302, Penal Code.*—Where a confession was taken by a Magistrate in jail with a police officer in the next room and was subsequently retracted. *Held*, such a confession could not be acted upon unless supported by very good corroboration.

Quære.—Whether a person charged under s. 302, as a principal, can be convicted under ss. 302 and 114 as an abettor. **11 C.L.J. 273.**

(33)—*Confessions—Subsequent withdrawal—Value.*—Where the only evidence in a criminal case was the confession of the accused made before the Magistrate but subsequently retracted, and where it was found that the police misconducted themselves in the search of the houses of the prisoners who confessed, the High Court set aside the conviction. **2 C.L.R. 132.**

(34)—*Confession retracted subsequently—Pardon—Statement by the accused, after accepting pardon, retracted subsequently.*—A confession made before the Magistrate, though afterwards retracted, is evidence against the party making it; and the statement of an accused made after accepting a pardon, is not inadmissible in evidence by reason of the person making it having retracted it before the committing Magistrate. **P.L.R. 1900, 19 Cr.**

(35)—*Retracted, uncorroborated, contradicted inconsistent confession, value of.*—A conviction

Confession—continued.

——5.—(Retracted Confessions)—*continued.*

cannot be prudently based upon a retracted confession when not only uncorroborated, but actually contradicted by the other evidence on record, and when containing a story intrinsically improbable. **Supp. 1 O. C. 13.** (19 B. 728, *D.* and A.W.N. (1895) 227, *R.*)

(36)—*Confession retracted as having been induced by torture—Duty of Judge, when it is sought to be used against co-accused—Evidence Act, s. 30.*—Where a confession is retracted by the accused on the ground that it was induced by torture, and especially when the confession, after admission, is to be taken into consideration against his co-accused under s. 30, Evidence Act, and the accused has marks of violence on his body, it may be the proper course for the Judge to take evidence about the circumstances before admitting the confession in evidence. **Rat. Un. Cr. C. 730=Cr. Rg. 58 of 1894.**

(37)—*Retracted confessions—Practice.*—The practice of the High Court of Bombay has been to deal with confessions in connection with all the facts of the particular case, and while not ignoring the difficulties that surround retracted confessions, it has not avoided these difficulties by applying any stringent rule. There is no rule of law that requires a duly proved confession to be corroborated. **Rat. Un. Cr. C. 719.**

(38)—*Capital cases—Conviction on retracted confession.*—In capital cases, the jury should often refrain from convicting on retracted confessions. **Rat. Un. Cr. C. 245=Cr. Rg. 12 of 1886.**

(39)—*Confession, definition of—Retracted confession—Corroboration—Confession of co-accused—Discovery of important fact—Evidence Act (I of 1872), s. 27.*—An admission of all the ingredients required to constitute an offence is a confession. A statement of the following kind cannot be regarded as a confession of complicity in an offence. "I told the other accused that, if they wanted to kill my husband, they were at liberty to do so, and I would bring no case against them. But when they arrived at my husband's house on the fateful night, I endeavoured to restrain them and was only prevented from doing so by their threats to kill me and my son if I interfered. I did neither take any part in the murder, nor did I in any way assist the murderers after my husband was put to death." A confession taken in conformity with the strict provisions of the law by a Magistrate cannot be ruled out of Court, simply because the accused was produced before the Magistrate with the sole object of having his confession recorded by him. A confession of a co-accused is corroborative evidence of another co-accused's confession, if the former supports the latter in all its material parts. A confession retracted at an early opportunity must be very carefully scrutinised before it is accepted by the Courts. But if the confession is made under circumstances which preclude the idea that it was not genuine, and if the confession is such that, had there been no retraction, the Court would not have hesitated to accept it as a voluntary admission of guilt, its value is not diminished simply because its author has subsequently thought fit to disclaim it. The fact of pointing out the place where the murdered body is found strongly corroborates the confession in a very material particular. But when the place has already been pointed out by another co-accused, the value of this evidence remains very small. In the absence of any evidence connecting the accused with the commission of the crime, it is not lawful to convict an accused person simply on the strength of the co-accused's confession. **4 Ind. Cas. 429=24 P.W.R. 1909 Cr.=153 P.L.R. 1909.**

(40)—*Admissibility—Voluntary and true confessions—Retraction of confessions.*—*Per* ASTON, J.—A Judge ought to be satisfied that a confession was voluntarily made, before it can be even admissible in evidence. *Per* BEAMAN, J.—A Judge should, in the first instance, see whether a retracted confession is voluntary or has been improperly induced. The mere fact that a prisoner puts in a plea of not guilty and denies having made the confession or explains having made it by allegation of police torture, is enough in itself to put a Judge upon enquiry. And he, then, has to decide, before admitting the confession at all, or allowing it to be looked at, whether it has been improperly induced. That is a question for the Court, *i.e.*, the Judge to answer *in limine*. If, upon weighing all the circumstances, the prisoner's denial and the probabilities, it appears to the Judge that the confession has been improperly induced, no matter how true it may be, he is bound to exclude it. If he comes to the conclusion that the confession was not improperly induced and admits it, it then becomes evidence and liable to be appreciated and weighed with the rest of the evidence in the usual way. **8 Bom. L.R. 697=4 Cr. L.J. 332.**

(41)—*Retracted confession—Duty of Court.*—Where a confession is retracted, it is the duty of the Court that has to act upon it, especially in a case of murder, to inquire into all the material points and surrounding circumstances and satisfy itself fully that the confession cannot but be true. **3 Bom. L.R. 441.**

(42)—*Crim. Pro. Code (1861), s. 205—Retracting of confession when read over by committing Magistrate.*—Where the accused, who made a detailed confession before the committing Magistrate, retracted it, on his examination being read over to him in conformity with s. 205, Crim. Pro. Code, *held* that that did not amount to a confession. **9 B.H. C. 344.**

Confession—continued.

——5.—(Retracted Confessions)—*continued.*

(43)—*Evidence Act, s. 24—Confession, admissibility of—Retracted confession—English and Indian Law.*—A confession duly recorded and certified under s. 164, Crim. Pro. Code, is admissible in evidence against the person making it, unless shut out by the provisions of s. 24, Evidence Act. In India the law relating to the admissibility of a confession is contained in s. 24, Evidence Act. It is not identical with the law in England. The question which a Court has to decide when determining on the admissibility of a confession is whether it appears to the Court to have been induced by the means mentioned in that section. The mere subsequent retraction of a confession, which has been duly recorded and certified by a Magistrate, is not enough in all cases to make it appear to have been unduly induced. **25 B. 168=2 Bom. L.R. 761.**

(44)—*Crim. Pro. Code, ss. 164, 364, 533—Confession made to Presidency Magistrate—Confession not recorded in the language in which it was made—Admissibility.*—Ch. XIV, Crim. Pro. Code (except s. 155) does not apply to the police in the Presidency towns, and, consequently, a confession or statement to a Presidency Magistrate does not come within the words of s. 164. Therefore, the procedure prescribed, in regard to the recording of statements or confessions, by s. 164 and (by reference) s. 364, does not apply to statements and confessions recorded by a Presidency Magistrate before the commencement of the trial. Such statements or confessions, though not taken under s 164, would be admissible in evidence under s. 26, Evidence Act, if it is proved that the whole statements contained in the document were either the actual words spoken by the prisoner or were accepted by him as representing the true meaning of what he had said and when the whole document was signed by him with his own hand. The scope of s. 533, Crim. Pro. Code, cannot be limited to any particular kind of non-compliance with s. 364. No distinction can be drawn between a neglect to sign the confession or the certificate, or to certify the facts requiring to be certified, and a neglect to record the examination in the prisoner's own language. In both cases, the statement would be admissible in evidence, if the accused would not be injured by such irregularities. **21 B. 495.** [*F.*, 23 B. 221; *R.*, 4 Bom. L.R. 785, U.B.R. (1903), 1st Quarter, Cr. P.C., 13, 10 O.C. 112=6 Cr. L. J. 94].

(45)—*Crim. Pro. Code, s. 164—Statement recorded by Magistrate not empowered to carry on preliminary enquiry—Contradiction before Magistrate having jurisdiction—False evidence—Alternative charge—Penal Code, ss. 191, 193.*—A statement taken by a third class Magistrate under s. 164, Crim. Pro. Code, such Magistrate not having authority to carry on the preliminary enquiry in the case, is not evidence in a stage of judicial proceeding within the meaning of ss. 191 and 193, I.P.C., such that, when the

Confession—continued.

——5.—(Retracted Confessions)—*concluded.*

statement is contradicted afterwards before the Magistrate having jurisdiction and exercising it in the preliminary enquiry into an accusation of murder, it will form a sufficient basis for an alternative charge of giving false evidence in a judicial proceeding. **11 B. 702, F.B.** [*R.*, 11 B. 659, Rat. Un. Cr. C. 468, 2 Weir 605; *D.*, 16 M. 421=1 Weir 175, 22 A. 115=19 A.W.N. 207].

(46)—*Approver—Retracted confession.*—Where an approver who had accepted a conditional pardon, made a confession implicating the accused, but afterwards retracted it, *held*, that the accused was not liable to be convicted on that confession alone. **5 N.W.P. 217.**

(47)—*Crim. Pro. Code, ss. 164, 193 (1), 537—Confession subsequently retracted.*—The accused was examined as a witness under s. 337, Crim. Pro. Code, by the committing Magistrate, and was not himself committed for trial before the Sessions Court, but was sent as a witness for the prosecution. On the same day, he made a confession recorded by a Magistrate under s. 164, Crim. Pro. Code. A pardon was offered by the District Magistrate which influenced him to confess. In the Sessions Court, however, the accused was made to plead to the charge and, on his retracting his confession, was put on trial with other persons who had been duly committed. The accused was convicted mainly on his retracted confession. *Held*, that the conviction and the sentence must be reversed on the ground that the accused was not committed for trial, under s. 193 (1), Crim. Pro. Code, as this is not a mere irregularity such as is contemplated by s. 537, Crim. Pro. Code, but is very prejudicial to the accused. *Held*, also, that the confession recorded under s. 164, Crim. Pro. Code, and retracted, was inadmissible under s. 24 of the Evidence Act. *Held*, further, that the evidence given by the accused as a witness was not admissible in the absence of anything on the record to show that the conditions of pardon were explained to the accused who was fettered by the confession which had been obtained from him. **L.B.R. (1893—1900), 8.**

(48)—*Mere statement of co-accused not amounting to confession—S. 30, Evidence Act.*—The mere statement of a co-acoused, as distinguished from a confession, cannot be used for or against another co-accused person. S. 30, Evidence Act, does not permit the confession of the co-accused to be used in favour of some other of the co-accused persons. **39 P.R. 1888 Cr.**

——6.—(Confessions by co-accused—Admissibility).

(1)—*Evidence Act, s. 30—Confession—Admission—Distinction between.*—S. 30 must be strictly construed. It makes a clear distinction between an admission and a confession. It is only under that section that the confession of one of two or more accused, jointly

Confession—continued.

——6.—(Confessions by co-accused—Admissibility)—*continued.*

tried for the same offence, can be taken into consideration as against the rest. It must be a confession to be so admissible, that is, it must affect both the person confessing and the other accused. The word "confession," as used in the Act, must not be construed as including a mere inculpatory admission, which falls short of being an admission of guilt. The terms of the section do not countenance the construction of a statement into a confession by a process of inferential reasoning. It is one thing to make statements giving rise to an inference of guilt and another thing to confess a crime. **11 Bom. L.R. 633.**

(2)—*Evidence Act, s. 30—Confession.*—A confession within the meaning of s. 30 is a full and unqualified admission of the guilt of the person making it and of a character to justify his conviction upon it. The statements, therefore, of a person being jointly tried with another person for the same offence, cannot be taken into consideration against such other person, under that section, unless such statements are of the nature indicated above. **A. W. N. 1881, 20.**

(3)—*Evidence Act, s. 30—Confession by co-accused pleading guilty.*—Where one of the co-accused pleads guilty and his trial is suspended immediately after his plea is taken, his confession cannot be used against the other accused, for, he is not jointly tried with the co-accused. His plea of guilty has not the effect of making his admission relevant against them. A statement by an accused person consisting of the vague accusations of a co-accused, but containing no admission of an offence or a share in an offence, beyond the admission that he only knew that a dacoity was to take place and that he was a passive spectator of it, was held not to be a confession. **A.W.N. 1881, 99.**

(4)—Two persons were jointly tried, the former for criminal breach of trust and the latter for the abetment of that offence. The only evidence against the latter was the confession by the former. *Held* that he was improperly convicted on such unsupported statement. **A.W.N. 1881, 164.**

(5)—*Held* that a confession made by one person while he was on his trial for murder, for being a *thug*, and implicating another, was not admissible in evidence against the latter tried alone, subsequent to the confession and conviction of the former. **A.W.N. 1881, 164.**

(6)—*By co-accused — Co-accused tried for abetment of the offence.*—An accused person and another co-accused were tried together for an offence. The accused, though only liable for abetment of the offence, was found to have been present at the time of the commission of the offence. *Held*, that, under s. 114, I.P.C., the accused stood in the same position as if he himself had committed the offence; that his trial with the co-accused for the offence was

Confession—continued.

——6.—(Confessions by co-accused—Admissibility)—*continued.*

proper, and that the confession made by the co-accused in such trial could be taken into consideration under s. 30, Evidence Act, against the accused. **32 P.R. 1882 Cr.**

(7)—*Confession of a prisoner when admissible against co-prisoner.*—To render the confession of one prisoner, jointly tried with another, admissible in evidence against the latter, it must appear that that confession implicates the confessing person substantially to the same extent as it implicates the person, against whom it is to be used, in the commission of the offence for which the prisoners are being jointly tried. **10 B.L.R. 453=19 W.R. Cr. 67**; 10 B.L.R. 455, note=19 W.R. Cr. 16. [*F.*, 21 W.R. Cr. 69, 2 A 444. 2 A. 646; *R.*, Rat. Un. Cr. C. 436, 10 B.H.C. 497].

(8)—Before the confession of a person, jointly tried with a co-accused, can be taken into consideration against such co-accused, it must appear that the confession implicates the confessing person substantially to the same extent as it implicates the person against whom it is to be used in the commission of the offience for which they are being jointly tried. **L.B.R. (1893—1900), 7.** (19 W.R. Cr. 67, 2 A. 446, Cr. Rg. 12th April, 1898, *R.*).

(9)—*Per* Rattigan, J.—A confession to be admissible against co-prisoners must affect the person making it substantially to the same extent as the others, but so long as it fulfils this condition, and provided the evidence adduced in corroboration relates not simply to the general drift of the confessing prisoner's story, but to those particular points that affect the co-accused, the actual weight to be attached to the confession must depend upon the circumstances of each case. **29 P.R. 1880 Cr.**

(10)—The extent of corroboration which is sufficient, coupled with the confession of a co-accused, to convict a prisoner must depend on the circumstances of each particular case. The same general tests must be applied to the confession by a co-accused as to other kinds of evidence, except that it must not be forgotten that the confessing prisoner is not giving his statement on oath, and that his fellow prisoners have not the liberty of cross-examining him and of exposing his falsehood. *Per* Rattigan, J. The confession of a co-accused may be considered with the other evidence, and if, in taking all together and considering the matter before it, the Court believes that the events detailed existed, or that their existence is so probable that a prudent man ought, under the circumstances of the particular case, to act on the supposition that they existed, the Court should then hold the fact stated to be proved. *Per* Brandreth, J. **29 P.R. 1880 Cr.**

(11)—The corroboration of the confession of a co-accused as to the details of the crime, without corroboration as to the person of the accused, is worthless. **13 W.R. Cr. 14.**

Confession—continued.

——**6.—(Confessions by co-accused—Admissibility)**—*continued.*

(12)—Statements made by one set of prisoners, criminating another set of prisoners, when each individual prisoner made a case for himself in which he was free from any criminal offence, ought not to be taken into consideration under s. 30 of the Evidence Act against the prisoners of the second set, when the two sets, although tried together, were tried upon totally different charges. **21 W.R. Cr. 53**; 21 W.R. Cr. 48.

(13)—Confessions of prisoners tried simultaneously with the accused for the same offence, which are in a very qualified manner made operative as evidence by Act I of 1872, s. 30, are only to be rated as evidence of a defective character, and require especially careful scrutiny before they can be safely relied on. **21 W.R. Cr. 69.**

(14)—Statements made by a prisoner before the committing officer, which implicate his fellows and exculpates himself, cannot be regarded as evidence under the Evidence Act, s. 30. **25 W.R. Cr. 8.**

(15)—The rule that the statement of one prisoner can be considered against another is applicable only when the statement amounts to a confession of guilt and implicates the prisoner making it. **A.W.N. 1885, 303.** (10 B.L.R. 453, 6 C. 279, 2 A. 444, 2 A. 646, *R.*).

(16)—In order that the confession referred to in s. 30 of the Evidence Act may be admissible, it must be proved, and the person or persons against whom it is sought to use it must be on their joint trial along with the person proved to have made it; but the law nowhere requires that the confession should have been made in the presence of the person against whom it is sought to use it. **A.W.N. 1894, 11.** (6 B. 124, *R.*).

(17)—*By co-accused—Joint trial, what amounts to.*—A prisoner escaping from custody during the trial, but before charge, who has been tried separately after re-arrest, cannot be said to have been jointly tried with the person whose trial, from a stage prior to the charge, was separate owing to the escape from custody and the confession of the co-accused, first tried, was held to be inadmissible against the prisoner as the trial was not joint. **29 P.R. 1901 Cr.**

(18)—Two persons jointly tried, one for theft, the other for abetment of it beforehand and being present during its commission, were held to be jointly tried for the same offence within the meaning of s. 30. **3 P.R. 1879 Cr.**

(19)—In 1873, two persons were concerned in the murder of a third person, the first absconded, but the second, having been arrested, was tried in that year. The second person, during his defence at the Sessions trial, made a statement that the first person admitted to him having committed the murder. In 1877, the first person having been arrested and placed

Confession—continued.

——**6.—(Confessions by co-accused—Admissibility)**—*continued.*

upon his trial—the second person had meanwhile died—the Court of Sessions used the statement of the deceased made at his trial in 1873, as evidence against the first. *Held* that the deceased person's statement was not admissible against the first, either under s. 327, Crim. Pro. Code, 1872, or ss. 30 and 133, Evidence Act. **13 P.R. 1878 Cr.**

(20)—*Evidence Act, ss. 24, 25, 26, 30—Joint trial for same offence—Confession by one, admissibility of.*—Where a number of persons are jointly tried for the same offence, the confession of one of them, if admissible at all, is admissible for the purpose of the Court's taking it into consideration against his co-accused, as well as against himself. After it has been once entirely rejected as unduly obtained, it cannot be admitted against the co-accused. If circumstances made it wholly or partly admissible, it ought not to be set aside at all, but weighed for all purposes with care and discretion. **3 B. 12.** [*R.*, 6 C. 530, 4 A. 198=2 A.W.N. 21, 26 C. 569, 2 L.B.R. 168].

(21)—*Uncorroborated confession of co-accused.*—A conviction based on the confession of a co-accused not corroborated in material particulars by independent evidence is illegal. **20 P.R. 1880 Cr.**

(22)—Although the conviction of an accused person upon the uncorroborated testimony of an accomplice is not illegal, yet, the invariable and undeviating practice of all English Courts and Judges has, time out of mind, been to require that the evidence of an approver shall be corroborated in some material particulars, from an independent and an untainted source. It would be absurd to hold that any such corroboration is to be found in the confession of another accomplice who is being tried along with the person against whom the evidence of the approver is tendered. **A.W.N. 1881, 18.**

(23)—The statement of one prisoner, when considered against another, is entitled to little or no weight if it is not corroborated by other testimony in material particulars, and, among them, such particulars as connect the accused with the offence. **A.W.N. 1885, 320.**

(24)—*Evidence Act, I of 1872, s. 30—Confession of co-accused—Evidentiary value.*—The confession of a co-accused is *evidence*, though not conclusive or of great weight, against the other accused. "May be considered," in s. 30 of the Evidence Act, means "may be considered as in the nature of evidence and the confession must be treated as evidence." (24 W.R. Cr. 42, *R.*). *Per Stuart, C.J.* The confession of one accused is not, strictly speaking, *evidence* against the other on a joint trial for the same offence. *Per Straight, J.* **A.W.N. 1884, 38.** [*R.*, 11 O.C. 328].

(25)—*Evidence Act, I of 1872, s. 30—Use of confession—Same offence—Meaning.*—Where two persons were accused of an offence under

Confession—continued.

——6.—(Confessions by co-accused—Admissibility)—*continued.*

s. 411 of the Penal Code, another of an offence under s. 457, the offences arising out of the same transaction, *held* that the confession of the third accused could not be used under s. 30 of the Evidence Act against the other two accused, though it appeared to the Magistrate that the latter should properly have been charged with abetment of the offence with which the third was charged. **A.W.N. 1899, 63.**

(26)—*By co-accused tried jointly for distinct offences—Admissibility of confession by one against the other.*—An accused person was tried, under s. 411, I.P.C., for receiving stolen property knowing it to be stolen, simultaneously with the thief. Another person was also charged under the same section with receiving stolen property, the proceeds of the same theft, from the same thief, but the property was different. *Held*, that the two persons were being jointly tried, not for the same offence, but were tried together for different offences punishable under the same section, and that a confession made by the latter could not be legally considered against the former. **9 P.R. 1886 Cr.**

(27)—*Co-accused tried jointly for principal offence and for abetment—Confession by one.*—Two persons were jointly tried, one for committing an offence and the other for abetting it. *Held*, that they were not tried for the same offence within the meaning of s. 30, so as to authorise a Court to take into consideration a confession made by one of the co-accused against the other. **8 P.R. 1874 Cr.**

(28)—*Confessions of prisoners tried jointly—Confession of co-prisoner—Trial for substantive offence and for abetment.*—S. 30, Act I of 1872, ought to be construed with great strictness, and the confession of one person is not admissible in evidence against another, although the two are jointly tried, if one is tried for the abetment of the offence for which the other is on his trial. **19 W.R. Cr. 57.**

(29)—*Confession of person jointly tried—Extent of implication.*—Before the confession of a person jointly tried with the prisoner can be taken into consideration against such prisoner, it must appear that that confession implicates the confessing person substantially to the same extent as it implicates the person against whom it is to be used in the commission of the offence for which the prisoners are being jointly tried. **2 J.G. 37.**

(30)—Self-exculpatory statements made by co-accused are not admissible in evidence against the other co-accused. **A.W.N. 1881, 135.**

(31)—*Confession of prisoners tried jointly—Confession of co-prisoner incriminating himself.*—The statement of one prisoner cannot be taken as evidence against another prisoner under s. 30 of the Evidence Act, unless the confessing prisoner implicates himself to the full as much as his co-prisoner whom he incriminates. **25 W.R. Cr. 43.**

(32)—*Confessions of prisoners tried jointly—Confession by co-prisoner implicating himself.*—The intention of the legislature as enacted in s. 30, Evidence Act, is that when, as against any person implicated by a co-prisoner's confession, there is evidence tending to his conviction, the circumstance of such person being implicated by the confession of one of those, who are being jointly tried with him, shall be taken into consideration as bearing upon the truth or sufficiency of such evidence. **24 W.R. Cr. 42.**

(33)—*Confession under s. 30, Evidence Act, not substantial evidence—Judge to decide himself the question of admissibility or otherwise of evidence—Jury not a Court.*—A confession under s. 30, Evidence Act, may only be taken into consideration but cannot be treated as substantial evidence. A Judge should not leave the question of determining the admissibility or otherwise of a piece of evidence to the Jury, but should decide it himself. The word "Court" in s. 3, Evidence Act, does not include a Jury and, therefore, a confession under that section cannot be taken into consideration by a Jury. **1 J.G. 77.**

(34)—*Confessions of prisoners tried jointly—Defects of confessions by co-prisoners.*—The confessions of co-prisoners cannot, under the Evidence Act, I of 1872, s. 30, be treated as evidence of an ordinary character, not distinguished by any special infirmity or qualifications against the other prisoners, as, in addition to the infirmity inherent in an accomplice's testimony, they are not sanctioned by an oath, and not tested by cross-examination. **23 W.R. Cr. 24.**

(35)—*Evidence Act, I of 1872, ss. 30, 114—Joint trial—Plea of guilty by a co-accused—Admissibility of such confession against other accused.*—Where, in a joint trial of more than one person, one of the accused pleads guilty, his statements affecting himself and the other accused are not entitled to be considered under s. 30, for the statements, following the plea of guilty, cease to be the statements of a person jointly tried, because the trial ends, so far as he is concerned, with his plea. [*Diss.*, 23 M. 151; *R.*, 23 A. 53.] Confessions made by accused persons at a joint trial cannot be treated as evidence of accomplices against one another. **22 M. 491=2 Weir 746.**

(36)—The trial of a person does not necessarily end as soon as he pleads guilty. The proper course to be adopted, when an accused person pleads guilty, is either to convict him on his plea and remove him from the dock, in which case his trial would be manifestly at an end so as to warrant his being called as a witness for or against any person, who had

Confession—continued.

——**6.—(Confessions by co-accused—Admissibility)**—*continued.*

been accused along with him, or else to allow the trial to go on as if the plea had been one of not guilty in which case his trial does not end with the plea of guilty and, therefore, any confession made by the person so pleading could be taken into consideration under s. 30 of the Evidence Act, as against any other person, who was being jointly tried with him for the same offence. The only case in which there may be a doubt is where neither of these courses has been explicitly adopted, but the accused who has pleaded guilty is left in the dock merely to see what the evidence will show as against him, though the Court intends ultimately to convict him on the plea of guilty. In such a case, it would not be fair to allow his confession to be considered as against his co-accused for that would be, in effect, to comply with the forms of justice while violating it in substance. **23 M. 151=2 Weir 747.** [*Appl.*, 23 A. 53=20 A.W.N. 192; *R.*, 10 M.L.J. 147, F.B.; *R.*, 25 M. 61=1 Weir 277, P.C.]

(37)—*Evidence Act, I of 1872, s. 30—Confessions of co-prisoners.*—Murder and abetment of murder are not the same specific offence so as to warrant the confessions of persons charged with murder being taken into consideration under s. 30 of the Evidence Act against those who are charged with the abetment of murder only. **7 M. 579.** [*F.*, 2 Weir 742; *R.*, Rat. Un. Cr. C. 450].

(38)—*Confession of co-accused—Evidence Act, s. 114, ill. (b).*—The confession of a co-accused, is, although evidence against the accused, one of the weakest kind, and if uncorroborated, is not sufficient to warrant a conviction. **2 C.W.N. 749.**

(39)—*Evidence Act, s. 30—Persons charged jointly with another for separate offences under ss. 372 and 373 of the Penal Code respectively—Admissibility of confession made by one of them as against the other—Retracted confessions—Their value.*—Where two persons are tried together, one charged with an offence under s. 372 and the other under s. 373, Penal Code, a confession made by one of them cannot be admitted against the other under s. 30 of the Evidence Act, as the offences are substantive offences. Confessions, which are supposed to be the offspring of penitence and remorse, and which, nevertheless, are repudiated by the prisoner at the trial, must always be open to suspicion. **22 C. 164.**

(40)—*Statement by one of several prisoners jointly charged, implicating others alone—Evidence Act, s. 30.*—A statement, by a prisoner with others, made before the committing Magistrate, which, being neither a confession nor amounting to any admission of guilt in any degree with respect to the offence charged, is simply an endeavour on his part to explain his own presence on the occasion in such a manner

Confession—continued.

——**6.—(Confessions by co-accused—Admissibility)**—*continued.*

as to exculpate himself, is quite irrelevant as regards any mention therein implicating others and is not evidence against them. **6 C. 279=7 C.L.R. 385.** [*R.*, 27 M. 271=2 Weir 808].

(41)—*Accused, confession of, affecting co-accused—Conviction—Confession is evidence.*—The confession of a prisoner affecting himself and another, being jointly tried with him for the same offence, is, under s. 30 of the Evidence Act, evidence against both when duly proved. [*F.*, L.B.R. (1895—1900), 368, 29 A. 434=4 A.L.J. 310=5 Cr. L.J. 360=A.W.N. 1907, 140.] A prisoner cannot be legally convicted upon the uncorroborated confession of another, jointly tried for the same offence. [*F.*, 2 C.W.N. 749; *R.*, 10 B. 319, Rat. Un. Cr. C. 436, Rat. Un. Cr. C. 456.] *Per* GARTH, C.J. Unsupported by other evidence, its evidentiary value is of the weakest kind; but, if supported by other evidence, it is immaterial, for purposes of a conviction upon it, whether the confession succeeds or precedes the evidence that supports it. [*Criticized*, 29 A. 434=4 A.L.J. 310=5 Cr. L.J. 360=A.W.N. 1907, 140.] *Per* JACKSON, J., and MC DONNEL, J. Such confession is not sufficient to support a conviction, even if corroborated, unless the corroborating circumstantial evidence is such as itself to support a conviction independently. [*Diss.*, 29 A. 434=4 A.L.J. 310=5 Cr. L.J. 360=A.W.N. 1907, 140.] If a relevant fact is proved, and the Law expressly authorises its being taken into consideration, *i.e.*, considered for a certain purpose or against persons in a certain situation, the fact in question is "evidence" for that purpose or against such persons, although the result has not been expressed in those words by the Legislature; and being "evidence" it must be used in the same way as everything else that is "evidence." The confession being thus what is called "evidence," it is clearly matter for the jury to consider. What the Legislature intended to denote whenever the word "evidence" is used in the Act, is explained in the interpretation clause. **4 C. 483=3 C.L.R. 270, F.B.**

(42)—An accused person ought not to be convicted where the only evidence against him is the confession of a co-accused and circumstantial evidence, which, although true, would not itself support a conviction. **6 O.C. 204.** (4 O. C. 70, *R.*).

(43)—The wording of s. 30 shows that a confession of a co-accused is merely an element in the consideration of the evidence. Unless there is something more, a conviction upon it will still be a case of no evidence. **2 Weir 740=7 M.H.C. App. 15.** [*F.*, 2 Weir 740=1 M. 163].

(44)—Statements of co-accused persons are not entitled to even as much consideration as the testimony of an accomplice. **Rat. Un. Cr. C. 468=Cr. Rg. 26 of 1889.** (10 B. 231, *R.*).

Confession—continued.

——6.—(Confessions by co-accused—Admissibility)—*continued.*

(45)—Confessions made by accused persons at a joint trial cannot be treated as the evidence of accomplices against one another. Such a confession would be evidence only against the person making it. A confession must be taken as a whole and considered along with the admitted facts of the case, and the accused must be judged by his whole conduct. Where the accused admitted that he heard the other accused say that she was going to kill the child as it was a hindrance to the journey she was about to make with him, that he saw her killing it, that he did nothing to prevent her, and that, after the murder, he, with her, concealed the body and harbcured her several days, *held* that such a confession was a positive proof of the guilt of the accused on the charge of murder. **Rat. Un. Cr. C. 370 = Cr. Rg. 19 of 1888.**

(46)—The confession of one co-accused, where he does not substantially implicate himself to the same extent as he implicates the other co-accused, is not admissible in evidence against the latter. **Rat. Un. Cr. C. 370 = Cr. Rg. 19 of 1888.**

(47)—A conviction cannot be based upon the uncorroborated confession of one of the co-accused. The mere fact that the accused, who was charged with house-breaking by night with intent to commit theft, pointed out, some months afterwards, the stolen property, is not a sufficient corroboration of the confession of a co-accused, as the act of pointing out the stolen property is in itself ambiguous, and not inconsistent with his innocence. **10 B. 231.**

(48)—When two persons are accused of an offence of the same definition arising out of a single transaction, the confession of the one may be used against the other, though it inculpates himself through acts separable from those ascribed to his accomplice, and capable, therefore, of constituting a separate offence from that of the accomplice. **8 B. 223.** [*R.*, Rat. Un. Cr. C. 450].

(49)—In a case where two persons were jointly tried on a charge of murder, the Judge examined each of the accused in the absence of the other, in order that neither of them might hear what the other said, and the statements so taken were not read over to, or in any way proved as against, the other, *held*, that the statement made by each prisoner could not be taken into consideration against the other prisoner. **6 B. 124.** [*R.*, 14 A.W.N. 11].

(50)—Where some of the accused make statements in Court denying their participation in the commission of any crime, but incriminating a co-accused, such statements are not confessions, and cannot be taken into consideration as against the co-accused under s. 30. **2 A.L.J. 53 = 2 Cr. L.J. 22.**

(51)—The words "taken into consideration" in s. 30 mean that the confessions of a co-accused

Confession—continued.

——6.—(Confessions by co-accused—Admissibility)—*continued.*

are not to have the force of sworn evidence. A conviction resting on such a confession alone cannot be maintained. **22 A. 445.** [*R.*, 11 O.C. 328].

(52)—The statement by an accused, being jointly tried with others, should not be taken into consideration against such other persons, if the person making the statement entirely deprecates any guilty knowledge and seeks to clear himself at the expense of his co-prisoners. **2 A. 646.** [*R.*, L.B.R. (1893—1900), 70].

(53)—Although the law allows a Court to consider statements made by accused persons when dealing with the case against other accused persons, who are tried with them, a conviction based on such evidence only, without corroboration on a material point, is not proper. **1 A. 664**, 1 A. 675.

(54)—*Evidence Act, s. 30—Confession of co-accused, effect of—Misdirection to jury—Judge not instructing jury that confession of co-accused was not enough, if amounts to.*—As a general rule of practice, it is not safe to convict an accused upon the uncorroborated evidence of an accomplice; the confession of a co-accused is on even a lower footing. The statement of a co-accused is of less probative force than the evidence of an accomplice, for, it is affected by all the inherent weakness of such evidence, and it could not be tested, as such evidence can, by cross-examination, nor is it given under the sanction of an oath. A conviction on such a confession alone has long been held to be a case of "no evidence and bad in law." The omission of the Sessions Judge to give instructions to the jury in the sense above stated is clearly a misdirection, leading to a failure of justice. **5 M.L.T. 355 = 9 Cr. L.J. 308 = 1 Ind. Cas. 547.**

(55)—*Evidence Act, s. 30—Confession of a co-prisoner making plea of guilty—Admissibiiity against other prisoners.*—Where, in a trial for the offence of house-breaking, some of the prisoners pleaded guilty and were convicted on their own plea, *held*, that the confessions made by such prisoner could not be used in evidence against the other prisoners inasmuch as they were not tried at all, and therefore were not "being tried jointly for the same offence" with the other prisoners. The only course to make their statements admissible against the other prisoners would be to remove them from the dock and call them as witnesses. **7 M. 102 = 2 Weir 740.** [*R.*, 19 B. 195, 10 M.L.J. 147, F.B., 2 Weir 271 = 25 M. 61, P.C.].

(56)—*Of co-accused and accomplice testimony.*—A confession of the co-accused stands on a perfectly different footing from the testimony of an accomplice. The latter being substantive evidence in the strict sense of the term, a conviction may legally proceed upon it without corroboration. It is entirely otherwise with the confession of a co-accused. It can only be

Confession—continued.

——6.—(Confessions by co-accused—Admissibility)—*continued.*

used in a subsidiary manner in connection with the substantive evidence adduced in the case. **9 C.P.L.R. Cr. 37.**

(57)—*Co-accused's confession, if accomplice testimony—Evidence Act, ss. 30 and 133.*—The confession of a co-accused is not "the testimony of an accomplice" within the meaning of s. 133, Evidence Act. **9 C.P.L.R. Cr. 35.**

(58)—*Evidence Act, s. 30--Accused pleading guilty--Admissibility of confession against co-accused on trial.*—Four persons being charged with murder, one of them was made an approver, and two of them pleaded guilty, and the trial proceeded against the fourth alone. *Held* that the statement of persons pleading guilty could not be used against the accused to corroborate the evidence of the approver, as he could not be considered to be undergoing trial jointly with persons pleading guilty. **Rat. Un. Cr. C. 400 = Cr. Rg. 60 of 1888.**

(59)—*Evidence Act, s. 30—Confession by accused—Corroboration.*—The appellants, accused Nos. 3 and 7, were convicted of the abetment of murder and of murder respectively, on the strength of a confession made by accused No. 3, which implicated himself as well as accused No. 7. *Held*, (1) that the confession of accused No. 3 was not evidence against accused No. 7, and ought not to have been considered against him, because, in the confession, the share of the accused in the murder was minimized to the last degree and the blame was all placed on the other accused, (2) that motive for the murder could not take the place of evidence of identification, nor could it afford corroboration of the confession, (3) that the confession was insufficient to convict upon, for it did not amount to a confession of murder. The accused described himself as a spectator of the murder, taking no part in it and compelled by force to witness it as he was not allowed to go away. His being there at all was not criminal as he had no fore-knowledge that a murder was about to be committed. He went when called and there he was compelled to remain. **1 Bom. L.R. 428.**

(60)—*Evidence Act, I of 1872, s. 30—Joint trial — Different charges—Amended into one charge—Confession—Effect—Crim. Pro. Code, Act X of 1872, ss. 447 to 449.*—A and B were tried at the same trial, A for murder and B for abetment. A confessed to having committed the murder at the instigation of B. The Sessions Judge subsequently amended the charge against A into one of abetment. B, who was represented by a vakil, did not object to the amendment or ask for a new trial. *Held* that the objection that the Judge should not, under s. 30 of the Evidence Act, have taken the confession of A into consideration as against B, could not be allowed in appeal, since the two charges were so nearly related, and there was no such material prejudice as would, under

Confession—continued.

——6.—(Confessions by co-accused—Admissibility)—*continued.*

ss. 447 to 449 of the Crim. Pro. Code, have necessitated a new trial, and since the amendment of charge was not objected to. **11 B.H.C. 278.** [*R.*, 8 B. 209, F.B.].

(61)—*Evidence Act, I of 1872, ss. 30, 114, 113, 157—Corroboration of evidence of accomplice—Corroboration of approver.*—The previous statement of an accomplice is no corroboration of his evidence. It must be corroborated as regards every material particular and the identity of the accused must be proved by reliable independent testimony. [*F.*, 10 B.319, Rat. Un.Cr.C. 840, 6 Bom. L.R. 481]. The confession of one of several accused persons, though it may be taken into consideration against the others, under s. 30 of the Evidence Act, cannot be taken as evidence to corroborate the testimony of an approver. **11 B.H.C. 196.** [*F.*, 1 B. 475, 10 C. 970, Rat. Un. Cr. C. 400, 750].

(62)—*Evidence Act, I of 1872, s. 30—Jointly tried—Prisoner who has pleaded guilty.*—Where one of the prisoners, who were jointly tried, pleaded guilty, the proper course for the Court to adopt is, not to keep him on along with the rest so as to use his statement against the others, but to convict and sentence him and then to examine him on solemn affirmation. **11 B.H.C. 146.** [*R.*, A.W.N. 1881, 99, 10 M. L.J. 147, F.B.]

(63)—*Evidence Act, s. 30—Confession by co-accused pleading guilty, but not convicted.*—Where one of two accused persons tried jointly pleads guilty, but is not convicted till the conclusion of the trial of the other accused, *held* that his confession is not admissible in evidence as against the co-accused, as the accused, pleading guilty, could not be treated as being jointly tried with the other accused. **19 B. 195.** [*F.*, 22 M. 491 = 2 Weir 746; *R.*, Rat. Un. Cr. C. 776, 17 A. 524, 23 M. 151 = 2 Weir 747, 10 M.L.J. 147, F.B., 25 M. 51, P.C. = 2 Weir 749, 23 A. 53, 9 C.L.J. 291 = 13 C.W. N. 552].

(64)—*S. 30, Evidence Act—Joint trial—Confession of fellow prisoners—Effect.*—Where an accused person was convicted solely on the confessions of his fellow prisoners who were tried jointly with him for the same offence, *held*, that the conviction was bad. Under s. 30, Evidence Act, these confessions could be "taken into consideration" as against the accused; but they are not technically evidence within the definition given in s. 3 of the Act. They could not, therefore, form the basis of a conviction. **15 B. 66.** [*R.*, L.B.R. (1893—1900), 368; 22 A. 445 = 20 A.W.N. 169, 24 M. 523 = 1 Weir 351, 11 O.C. 328].

(65)—*Evidence Act, s. 30—Confession by accused charged with dacoity.—Its admissibility against person charged with receiving stolen property.*—Where the sole evidence of the identity of the goods stolen at a dacoity with those found in the possession of the accused, who was charged

Confession—continued.

——**6.—(Confessions by co-accused—Admissibility)**—*continued.*

with having received the stolen property, was the confession to the committing Magistrate by the person charged with the dacoity, who had pleaded guilty to that charge, *held*, that the confession was inadmissible against the person charged with receiving the stolen property, as he and the other person were not being tried jointly for the same offences. **5 B. 63.** [*R.*, 6 Bom. L.R. 517].

(66)—*Evidence Act, s. 30—Statement of person jointly tried—Court not holding him guilty—Effect.*—The statement of a person jointly tried with others for the same offence is not the less an admission regarding all that the person knew about the offence affecting himself and the other persons, merely by the fact of the Court not holding him guilty of the offence with which he is charged. **5 N.W.P. 213.**

(67)—*Statements made by an accomplice not conclusive evidence.*—Though the confession of an accused person is relevant evidence against the co-accused jointly tried with him, still it is not conclusive evidence against the co-accused, and must be received with the greatest caution and discrimination. **A.W.N. 1884, 318.**

(68)—*Evidence Act, s. 30—Plea of guilty by some of the co-accused—Continuance of the trial without convicting them.*—Although it is open to the Court, under certain circumstances, to continue the trial without convicting those of the accused who plead guilty, yet, it is unfair to defer convicting them merely in order that their confessions may be considered against the other accused who are being tried with them. **23 A. 53.** [*F.*, A.W.N. 1908, 241=4 M.L.T. 540=30 A. 540=5 A.L.J. 505=8 Cr. L.J. 380; *Expl.*, 13 C.W.N. 552=9 C.L.J. 291].

(69)—*Evidence Act, s. 30—Co-accused pleading guilty—Joint trial.*—Where the statements of two of several co-accused persons followed their plea of guilty, *held*, they were not entitled to be considered as evidence against the other accused persons, and that, in those circumstances, they ceased to be statements of persons jointly tried, for the trial ended, as regards them, with their plea of guilty. **17 A. 524.** [*F.*, 22 M. 491; *R.*, 23 A. 53=20 A.W.N. 192, 3 Bom. L.R. 437].

(70)—The test, s. 30 of the Evidence Act intended, should be applied to a statement of one prisoner proposed to be used in evidence as against another, is to see whether it is sufficient by itself to justify the conviction of the person making it for the offence for which he is being jointly tried with another person or persons against whom it is tendered. To use a popular phrase, the confessing prisoner must tar himself and the person or persons he implicates with one and the same brush. **2 A. 444.** [*F.*, 2 A. 646, 1 A.W.N. 20, 1 A.W.N. 135, Rat. Un. Cr. C. 436, L.B.R. (1893—1900), 7; *R.*, L.B.R. (1893—1900), 70].

Confession—continued.

——**6.—(Confessions by co-accused—Admissibility)**—*concluded.*

(71)—*Evidence of co-accused—Pardon—Practice—Crim. Pro. Code, Act X of 1882, s. 288.*—Where a pardon tendered to one of two accused persons by a Magistrate was withdrawn before the close of his examination, *held* that the evidence thus given was inadmissible in the Sessions Court. In this case, the person to whom the pardon was tendered repudiated the statements in the Magistrate's Court when examined as a witness in the Sessions Court. **A.W N. 1891, 184.**

——**7.—(Miscellaneous).**

(1)—*Crim. Pro. Code (1872), ss. 122, 546—Scope of s. 122.*—S. 122 applies to a confession made to a Magistrate other than the Magistrate by whom the case has to be enquired into or tried, but who may not even have jurisdiction to enquire into or try it; and to a confession made while the case is still under investigation by the police, or before such investigation is commenced. It does not apply to a confession recorded by a Magistrate acting under Chap. XV or Chap. XVII of the Code. **5 C.L R. 238.** [*Cons.*, 6 C.L.R. 289].

(2)—*Crim. Pro. Code (1872), ss. 122, 346—Object of the section—Making confession the commencement of enquiry, validity of.*—The object of s. 122 is to enable any Magistrate, other than the Magistrate by whom the case is enquired into or tried, and who is conveniently near at hand, to record a confession promptly. S. 122 enables any Magistrate to record a confession, but if that confession be made before a Magistrate who had jurisdiction to deal with the matter to which it relates, in the form, either of a trial or of an enquiry under Ch. XV, he can record the confession before the commencement of such trial or enquiry, and so proceed under s. 346, whether or not the case be still under the investigation of the police. **6 C.L.R. 289.**

(3)—*Penal Code, ss. 109, 302—Abetment of murder.*—Where the only evidence against the accused charged with having abetted the commission of murder by the administration of arsenic was a retracted confession, *held*, that it would be manifestly unsafe to found a conviction of abetment of murder on so suspicious a piece of evidence, and more particularly when the police had failed to trace any vestige of arsenic into the accused's possession. **4 Bom. L.R. 425.**

(4)—*Crim. Pro. Code, Act X of 1872, ss. 283, 346—Prisoner represented by counsel—Prejudice.*—Where the counsel representing the prisoner in the Sessions Court did not object to the admission of a statement of the accused not signed or marked by him as required by s. 346 of the Crim. Pro. Code, *held*, that the error in the formality could not have prejudiced the prisoner in his defence and that no objection to the conviction on that ground

Confession—continued.

——**7.—(Miscellaneous)**—*continued.*

could be considered by the appellate Court. **11 B.H.C. 237.** [*R.*, U.B.R. (1892—1896), 187, 23 B. 221].

(5)—*Plea of guilty of charge of murder.*—The accused, who was in the habit of smoking *ganja*, being charged with the murder of his wife and an infant son, made a confession, two days after the occurrence, stating that he had killed his wife and child because of a quarrel which arose on account of her refusal to accede to his proposal to go to anther place, on account of his poverty. *Held*, that the statements made by the accused did not amount to an admission of the offence of murder. He alleged a sudden provocation and he should, therefore, have been put on his trial, in order that the Court might ascertain whether the provocation was grave and sudden enough to prevent the offence from amounting to murder. **14 B. 564.** [*F.*, Rat. Un. Cr. C. 532].

(6)—*Crim. Pro. Code, s. 122—Confession—Admissibility—Evidence Act, s. 80.*—Both the memorandum and the certificate required by ss. 122 and 346 of the Code of 1872, should be attached to confessions. The effect of these is to afford proof of the accuracy of the record, of the presence of a Magistrate, and of the voluntary nature of the confession. When a confession taken under s. 122 is inadmissible in evidence, oral evidence to prove that such a confession was made, or what were the terms of the confession, is inadmissible also. **1 B. 219.** [*Not F.*, 2 M. 5=2 Weir 123; *Appr.*, 4 B. 15; *R.*, 9 M. 224=2 Weir 128, 21 B. 495, 23 B. 221; *construed*, 6 C.L.R. 289].

(7)—*Crim. Pro. Code (1872), s. 122--Confession, without necessary certificate—Admissibility—Evidence Act, s. 24—Confession to a police officer.*—A confession upon which the necessary certificate that it is voluntarily made is not recorded at the time, or, at any rate, on the day the confession was reduced to writing, is bad, and cannot be admitted in evidence. [*R.*, 23 B. 221]. A confession made by an accused person, while he is in police custody, is not admissible in evidence. **6 B. 288.**

(8)—*Penal Code, s. 180—Refusal by accused to sign statement made by him.*—S. 180, I.P.C., is not applicable to the signatures or marks made to such confessions and statements as those treated of in ss. 122, 346, Crim. Pro. Code. Therefore, an accused person refusing to sign his examination does not render himself liable to be punished for contempt under s. 180, I.P.C. **4 B. 15.** [*F.*, 3 L.B.R. 199=4 Cr. L.J. 205; *R.*, 2 L.B.R. 199].

(9)—*Sessions trial—Accused's examination before committing Magistrate—Admissibility before Sessions Judge—Crim. Pro. Code (1868), s. 205.*—Where the accused makes a confessional statement when examined by the Magistrate, the mere signing of the statement by the Magistrate would not be sufficient to make the examination legal evidence in the Sessions

Confession—continued.

——**7.—(Miscellaneous)**—*continued.*

Court. The certificate under the Magistrate's hand required by s. 205 of the Code of Criminal Procedure should be attached. A confession should be recorded in the language in which it was made. The question must be put to him in a language which the accused understands, and his answers are to be recorded in full. They are to be shown and to be read to him. It is obvious that a Magistrate who shows or reads a confession, taken in English, to a Native who does not understand English, cannot be said to comply with the provisions of the law in s. 205, Crim. Pro. Code. Or if the Magistrate translates both the questions and answers, this cannot be said to be a showing or reading of the questions actually put, or the answers actually given. **4 N.W.P. 16.**

—Acquittal of confessing prisoner—*See* ACQUITTAL, 1 W.R. Cr. Letters, 2.

See ACT III OF 1867, ss. 3 and 5, L.B.R. (1872—1892), 281.

See ACT X OF 1873, 10 C.P.L.R. Cr. 16.

See BOM. ACT IV OF 1902, s. 63, 9 Bom. L.R. 789, F.B.=6 Cr. L.J. 164=2 M.L.T. 414 =32 B. 111.

See CHARGE TO JURY, 26 M. 38=2 Weir 733.

See CRIM. PRO. CODE (1898), s. 122, 5 C.P.L.R. Cr. 13.

—Recording of—*See* CRIM. PRO. CODE (1898), ss. 164, 364 and 533 (1), S.C. 277, Oudh.

—Defect in recording confession—*See* CRIM. PRO. CODE (1898), ss. 164, 364 and 533, 8 C.P.L.R. Cr. 6.

See CRIM. PRO. CODE (1898), ss. 164, 364, 533, 1 U.B.R. (1902—1903), Crim. Pro. Code, 13.

See CRIM. PRO. CODE (1898), ss. 164 and 533, 22 M. 15=2 Weir 705.

See CRIM. PRO. CODE (1898), ss. 193, 288, 337, 22 C. 50.

See CRIM. PRO. CODE (1898), ss. 200, 533, 6 C.W.N. 840.

—Admissibility in evidence of retracted confession—Evidence of accomplice—*See* CRIM. PRO. CODE (1898), s. 288, 2 L.B.R. 214.

See CRIM. PRO. CODE (1898), ss. 288, 423 (2), 2 Weir 509.

See CRIM. PRO. CODE (1898), s. 423, 2 Weir 507.

See CRIM. PRO. CODE (1898), s. 423 (2), 2 Weir 510.

See CRIM. PRO. CODE (1898), s. 533, 23 B. 221, 8 C.P.L.R. Cr. 21.

See CRIM. PRO. CODE (1898), s. 537, 3 M.L.T. 263=7 Cr. L.J. 358=18 M.L.J. 250.

See EVIDENCE, 13 C.W.N. 501.

Confession—concluded.

——**7.—(Miscellaneous)**—*concluded.*

—Relevancy of—and the prohibition placed upon police officers to extract such confessions and the illegality of such—so obtained—*See* EVIDENCE ACT, ss. 24 to 27, U.B.R. (1892—1896), Vol. I. 83.

See EVIDENCE ACT, ss. 159 and 160, 16 C.P.L.R. 122.

See FALSE EVIDENCE, 22 A. 115.

See JUDGE AND JURY, 18 M.L.J. 66=31 M. 127=3 M.L.T. 270=7 Cr. L.J. 325.

See LETTERS PATENT (BOM.), ss. 25 and 26, 9 Bom. L.R. 789, F.B.=6 Cr. L.J. 164=32 B. 111.

See MAGISTRATE, JURISDICTION OF, 4 M.H.C. App. 2.

See PARDON, 5 A.L.J. 691=A.W.N. 1908, 259, 10 P.R. 1895 Cr.

See PENAL CODE, s. 400, 18 P.L.R. 1910 Cr.

See PLEA OF GUILTY, 5 C. 826.

See SANCTION TO PROSECUTE, 19 C. 345.

—To a police officer inadmissible—*See* WITNESS, L.B.R. (1893—1900), 42.

Confinement.

See MAD. REG. XI OF 1816, s. 10, 24 M. 271=1 Weir 928.

Confirmation.

—Of death sentence—*See* SENTENCE, 7 M. H.C. App. 21.

Confiscation.

See FORFEITURE OF PROPERTY.

(1)—*Penal Code, ss. 121, 122 and 124-A—Confiscation of press in which seditious matters have been published—Crim. Pro. Code (1898), s. 517.*—Confiscation of property may be ordered either under s. 121 or s. 122, Penal Code. but there is nothing in s. 124-A which authorises a Magistrate to confiscate the property of an accused person. The offence under s. 124-A consists in publication. The Printing Press, in which seditious matters, punishable under s. 124-A, have been printed, cannot be said to be property, which has been used for the commission of an offence within the meaning of s. 517, Crim. Pro. Code, the Press being a remote instrument. The Printing Press could not be said to have been used for the commission of the offence in the same way as a gun, sword, or a dagger. **34 C. 986=11 C.W. N. 1046=6 C.L.J. 754=6 Cr. L.J. 293.**

(2)—*Crim. Pro. Code (1898), s. 517—False charge of theft—Stolen object found in complainant's house—Confiscation—Penal Code, s. 182.*—Where the accused was convicted under s. 182, Penal Code, of giving false information regarding a case of theft, the jewels alleged to have been stolen having been found in the house of the accused, and the Magistrate

Confiscation—continued.

passed an order under s. 517, confiscating them, *held*, that such an order could not be made under s. 517. **9 C.W.N. 597=2 Cr.L.J. 273.**

(3)—*Of property found with the accused.*—A Magistrate ordered the confiscation of money in the possession of the accused, who was convicted of inoculating under s. 269, I.P.C., merely because he admitted that he had received the money by way of fees for inoculating. *Held*, that the Magistrate acted illegally and that the confiscated money should be refunded to the accused. **Colm. Dig. Cr. 54 of 1876.**

(4)—*In cases of murder—Sanction of Revenue authorities.*—Confiscation, in cases of murder, does not require the sanction of the Revenue authorities. **7 P.R. 1868 Cr.**

(5)—*Money offered as bribe.*—Money given as bribe and paid into Court, by the person to whom it was offered, who at once turned informer, could, on the conviction of the person offering the bribe, be ordered to be paid partly to the informer, and could be confiscated as to the rest. **9 P.R. 1873 Cr.**

(6)—*On conviction under s. 188, I.P.C.*—Where a person disobeying a duly promulgated order was convicted under s. 188, I. P. C., for exposing beef for sale, and his knife and scales were ordered to be confiscated, *held*, that the confiscation was not authorised by law. **13 P.R. 1872 Cr.**

(7)—*Cantonment Act, XXII of 1864, s. 29—Previous conviction.*—Where the manager of a liquor-merchant was convicted under s. 29 of Act XXII of 1864, after a previous conviction of his master for selling liquor without license under the same s. 29, *held* that, an order for confiscation of wine and liquor was illegal, as the manager had not been previously convicted. **20 P.R. 1872 Cr.**

(8)—*Discharge of thief, effect of.*—The fact that the person charged with theft is discharged does not preclude the confiscation of property suspected of being stolen. **20 P.R. 1873 Cr.**

(9)—*Property stolen in British India, but seized in foreign territory.*—Property stolen in British India, but seized in foreign territory and brought into British territory by the police may be confiscated. **20 P.R. 1878 Cr.**

(10)—*Stolen property in possession of innocent purchaser.*—The proper order, where stolen property is in the possession of an innocent purchaser, is to leave the property in his possession, until the owner takes the necessary step to establish his ownership and recover possession from the purchaser. **21 P.R. 1878 Cr.**

(11)—*Penal Code, s. 62—Forfeiture of property.*—A sentence of forfeiture of property should not be inflicted where the accused does not possess any property worth mentioning. **21 P.R. 1903 Cr.**

(12)—Where the act of the accused in causing the death of another arose out of jealousy he

Confiscation—concluded.

felt at the deceased having an unnatural intimacy with a boy, with whom he had a similar intimacy, *held*, that an order for forfeiture of property, besides sentencing him to death, was not a proper order. **23 P.R. 1900 Cr.**

(13)—*Conviction for murder—Accused having mother and young children—Confiscation.*—Where the accused, convicted of murder, had a mother and young children, a sentence of confiscation of property was annulled. **35 P.R. 1866 Cr.**

(14)—*S. 517, Crim. Pro. Code.*—S. 517, Crim. Pro. Code, does not warrant an order for the disposal of property *regarding* which no offence appears to have been committed. **46 P.R. 1888 Cr.**

(15)—*Jagirs, Mafis, Inams.*—The Penal Code does not authorise the confiscation of *jagirs, mafis* and *inams*. The case should be reported for the orders of the Government as to resumption. **64 P.R. 1866 Cr.**

(16)—*Order of, added to a sentence not otherwise appealable, whether makes the order appealable—Confiscation, whether part of the sentence—Excise Act, s. 51—Crim. Pro. Code (1898), s. 414.*—The addition of an order of confiscation to a sentence passed under s. 51, Excise Act, does not render appealable a sentence otherwise not appealable. The order of confiscation is not a part of the sentence. (Case where an order of confiscation of valuable property in addition to a fine was held excessive and set aside). **1 L.B.R. 3.**

See ACT I OF 1878, s. 11, 1 Weir 835.

See ACT VII OF 1878, ss. 25 and 54, 27 C. 450.

See ACT VII OF 1878, ss. 54 and 55, 4 A. 417.

See ACT VII OF 1878, s. 75, 12 C.W.N. 139.

See BOM. ACT V OF 1878, s. 55, Rat. Un. Cr. C. 149.

See BOM. ACT IV OF 1887, s. 6, 1 S.L.R. 64 Cr. = 8 Cr.L.J. 182.

See BOM. ACT II OF 1890, s. 52, 4 Bom. L. R. 459.

See MAD. ACT I OF 1886, s. 29 (N), 5 M.L. T. 256 = 9 Cr.L.J. 149 = 1 Ind. Cas. 79 = 19 M. L.J. 254.

See U.P. ACT III OF 1867, s. 13, 26 A. 370.

See BRIBE, 16 P.R. 1896 Cr.

See CRIM. PRO. CODE (1898), s. 517, 8 C.W. N. 887.

Confiscation, etc., for Rebellion Act.

See ACT X OF 1858.

Conjecture.

—*Reasoned conclusion based on evidence and legal presumptions, to be distinguished from.*—Courts adjudicating cases upon judicial evidence should always be careful to distinguish

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between bare conjecture and reasoned conclusions as to facts or probabilities based upon evidence and legal presumptions. **L.B.R. (1893—1900), 257.**

Conjugal Rights, Restitution of.

See RESTITUTION OF CONJUGAL RIGHTS.

—Effect of Civil Court decree for restitution of conjugal rights—*See* MAINTENANCE, 27 A. 483 = A.W.N. 1905, 54 = 2 A.L.J. 160.

Consent.

See WAIVER.

(1)—*Consent of accused—Irregularity.*—The object of a trial being the administration of justice, as far as human administration of it can be—not the interest of either party—a prisoner can consent to nothing. **9 B.H.C. 358 (383).**

(2)—*Legal consent.*—A consent is not a legal consent unless the person consenting is above the age of 18 years. **1 W.R. Cr. Letters, 10.**

See SECURITY TO KEEP THE PEACE, 8 C. L.J. 68 = 35 C. 674 = 8 Cr. L.J. 128.

Conservancy Mohurrir.

See PUBLIC SERVANT, A.W.N. 1885, 175.

Conservancy Rules (Forests and Jungles).

See PUNJAB ACT IV OF 1872, Schedule 1, 7 P.R. 1893 Cr.

Consideration.

See WITHDRAWAL OF CASE, Old S. C. 43, Oudh.

Conspiracy.

See ABETMENT.

See PENAL CODE, ss. 109—114.

(1)—*Crim. Pro. Code (1882), s. 239—Charges involving conspiracy between accused—Joint trial.*—Where there are charges involving conspiracy between the accused, they should be tried jointly. **16 A. 88.**

(2)—*Abetment of kidnapping by conspiracy.*—A forcibly took a girl outside the fort against her will into the fort and there had forcible connection with her. Immediately after, B, C, and D, who were previously acquainted with A and with each other, took the girl off to a *sarai* in the city and, after having had forcible connection with her, brought the girl back in the next morning and returned her to the custody of A. *Held*, that there was sufficient evidence upon which a jury could find a conspiracy to kidnap against all the four men. **A.W.N. 1902, 143.**

(3)—*Proof of conspiracy—Evidence.*—A conspiracy may be proved by other than oral evidence: it may be proved by the evidence of surrounding circumstances and the conduct of the accused, both before and after the alleged commission of the crime. **9 Bom. L.R. 347 = 5 Cr. L.J. 323.**

Conspiracy—continued.

(4)—*Evidence Act, s. 10—Things said or done by conspirator in reference to common intention.*—Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence, anything said, done or written by any one of such persons in reference to their common intention may be proved both for the purpose of proving the existence of the conspiracy as also for showing that any such person was a party to it. **28 C. 797.**

(5)—*Penal Code, ss. 107 and 108—Conspiracy, what amounts to.*—The elements which constitute an abetment by conspiracy are, first, the combining together of two or more persons in the conspiracy, and, secondly, an act or illegal omission must take place in pursuance of that conspiracy, and in order to the doing of that thing. It is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused, nor is it necessary that the abettor should concert the offence with the person who commits it. It is sufficient, if he engages in the conspiracy in pursuance of which the offence is committed. Conspiracy is stated to be a crime, which consists either in a combination and agreement by persons to do some illegal acts or to effect a legal purpose by illegal means. The crime of conspiracy is complete, if two, or more than two, persons, should agree to do an illegal thing, *i.e.*, to effect something in itself unlawful, or to effect by unlawful means something which in itself may be indifferent or even lawful. **28 C. 797.**

(6)—*Conspiracy, under Indian Law—S. 107, Penal Code.*—Conspiracy is not a substantive offence in India. However, s. 107, laying down the law on the abetment of a crime, incorporates in it the crime of conspiracy. **28 C. 797.**

(7)—*Evidence Act, s. 10—Conspiracy, what amounts to—Abetment of kidnapping—Penal Code, ss. 109, 363.*—A conspiracy, within the terms of s. 10, contemplates something more than the joint act of two or more persons to commit an offence. Where a child was kidnapped after a visit to the accused's house by the servants of the person whose paramour the accused was, and she was charged with the abetment of kidnapping and it was proved that she was very fond of the child, *held*, that the evidence was insufficient to establish the charge of abetment, or that, if there was conspiracy, she was a party to it. **4 C.W.N. 528.**

(8)—*Conviction for conspiracy, when not sustainable.*—A conviction for conspiracy cannot stand when the charge against the other alleged conspirators has failed. **9 C.L.J. 663 = 13 C.W.N. 861 = 2 Ind. Cas. 681.**

(9)—S. 10, Evidence Act, says that reasonable ground for belief in the existence of a conspiracy should be shown before evidence is given of the acts of persons who, but for such conspiracy, would be strangers to one another. The existence or fact of conspiracy must be proved before

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evidence can be given of the acts of any person not done in the presence of the prisoner. Again, a statement which is inadmissible under s. 25 of the Evidence Act, cannot be used again as evidence against the accused under s. 10 of the same Act. The criterion in s. 25 for excluding a confession is not, to whom was the confession made and was it made by a person accused of an offence, but to whom was the confession made? If it was made to a police-officer, it is excluded. Further, it is the duty of the Sessions Judge to probe the evidence in the interest of the prisoner as well as of the prosecution, particularly, where the prisoner is not defended. **5 O.C. 321.**

See ABETMENT, 9 A.W.N. 145, 21 W.R. Cr. 35, P.L.R. 1900, p. 11, Cr.

See CRIM. PRO. CODE (1898), s. 252, 11 Bom. L.R. 1153.

See PENAL CODE, s. 109, 24 M. 523 = 2 Weir 611.

See PENAL CODE, ss. 109, 114, 124-A, 5 M.L.T. 16 = 32 M. 3 = 1 Ind. Cas. 36 = 9 Cr. L.J. 130.

See PENAL CODE, ss. 121 (*a*), 122 and 123, U.B.R. (1892—1896), Vol. I, 148.

Constable.

—Right of police constable to enter houses of suspected persons—Assault on the constable. —*See* CRIMINAL TRESPASS, 27 M. 52 = 1 Weir 529 and 346 = 13 M.L.J. 285.

—Constable firing under orders of superior officers, liability of—*See* UNLAWFUL ASSEMBLY, 21 M. 249 = 1 Weir 310.

Construction of Statutes.

See STATUTES, CONSTRUCTION OF.

Consular Court.

(1)—*Revisional jurisdiction of High Court at Bombay.*—The High Court at Bombay has no criminal revisional jurisdiction over the proceedings of Her Majesty's Consul within the dominions of the Sultan of Muscat. **24 B. 471.**

(2)—*Consular Court in Uganda—Jurisdiction over offences committed beyond British territory—Military jurisdiction.*—Her Majesty's Commissioner and Consul-General in Uganda can, as Commander-in-Chief, try foreign subjects (German in this case) under the martial law for offences committed in territories under the military occupation of the British, provided he does so at the place of military operations. **Rat. Un. Cr. C. 880 = Cr. Rg. 3 of 1897.**

See JURISDICTION OF CRIMINAL COURTS, 19 B. 741.

Contagious Diseases Act.

See ACT XIV OF 1868.

Contempt of Court.

See CONTEMPT OF LAWFUL AUTHORITY.

See PENAL CODE, ss. 172—190.

Contempt of Court—continued.

(1)—*Penal Code, s. 174—Non-attendance in obedience to summons—Contents of summons.*—A summons should be clear and specific in its terms as to the title of the Court, the place at which, the day, and the time of the day when, the attendance of the party summoned is required, and it should go on to say, that such party is not to leave the Court without leave, and if the case, wherein he has been summoned, is adjourned, without ascertaining the date of the adjournment. A conviction under s. 174, I.P.C., for non-attendance in obedience to a summons, was set aside on the ground, that the summons contained no mention of the place at which the parties summoned were to attend, nor the time of the day when their attendance would be required. **5 A. 7.**

(2)—Where a person summoned to appear before a public servant on a certain day was not informed of it till three days subsequent to that day, *held*, that he was not bound to appear before the Court as soon as he became aware of the summons to appear on a previous day, and that he was not, therefore, liable to be punished under s. 174, I.P.C. **1 N.W.P. 303.**

(3)—Where a person, who was required by summons to appear before a Magistrate and to answer a criminal charge, waited for two or three minutes beyond the time mentioned in the summons, and departed, as the Magistrate was not present then, *held* that, as he had not waited for a sufficient time, he was guilty of an offence under s. 174, I.P.C. **10 B. 93.**

(4)—A Magistrate cannot convict a person for contempt of Court committed in respect of his own authority. A commitment to another Magistrate is necessary in all such cases. **Rat. Un. Cr. C. 64=Cr. Rg. 25—4—1872.** (Rat. Un. Cr. C. 45, *R.*).

(5)—The proper construction of s. 174, Penal Code, is that the place where a witness is summoned to appear must be in British India. Where a Magistrate summoned a person to appear before him at a place outside British territory, *held*, that disobedience to such summons would not constitute an offence under s. 174, Penal Code. **16 M. 463=1 Weir 86.**

(6)—The offence contemplated by s. 174, Penal Code, is not an omission on the part of the person summoned to be at a particular place and at a particular time, but an omission to appear at such time or place before a specific public functionary. Where a public servant, who had summoned the accused to appear before him on a particular date at a certain place, was absent from that place on that date, the accused could not be convicted under s. 174 for his failure to attend, even though the failure was due to an intention to disobey the summons. **20 M. 31=2 Weir 83.**

(7)—Where the accused, summoned to appear before a Settlement Officer, explained to the process-server his inability to be present, but the latter omitted to mention it to the officer issuing the summons, *held*, that the accused could not be convicted under s. 174, Penal Code, for failure to attend in obedience to the summons, as the accused could not be said to have intentionally disobeyed the summons. **22 P.R. 1880 Cr.**

(8)—*Summons issued before Tahsildar.*—Under Madras Act III of 1869, Tahsildars are empowered to issue summonses. Therefore, disobedience to such summonses is punishable under the first part of s. 174, Penal Code. **6 M. H.C. App. 44.** [*D.*, 3 M.L.J. 241].

(9)—The only Act which authorises a Tahsildar to issue a legal summons is Madras Act III of 1869. Disobedience to such summons would constitute an offence under s. 174, Penal Code. **7 M.H.C. App. 11; 7 M.H.C. App. 10.**

(10)—Where a Tahsildar issued an order to a peon to produce the accused before him to maintain his objection to a claim for pre-emption in a *dakhil kharij* case, and the accused refused to attend, *held* that the refusal to attend was not punishable under s. 174, I.P.C., as the order had been directed to the peon, and that the Tahsildar was competent to issue such an order. **6 P.R. 1870 Cr.**

(11)—*Summons by Revenue officer.*—Where the accused intentionally omitted to attend the Mahalkari's Kacheri to give evidence in a revenue case, in obedience to a summons duly served on him, *held* that he was properly convicted under s. 174, I.P.C. **5 B.H.C. Cr. 39.**

(12)—*Order by chairman of Municipality.*—The Chairman of the Commissioners appointed under Act XXVI of 1850 is a public servant. But he is not legally competent, as such, to issue an order directing a person to appear before him. Disobedience to such an order is not, therefore, punishable under s. 174, I.P.C. **5 B.H.C. Cr. 33.** [*R.*, Rat. Un. Cr. C. 488].

(13)—*Verbal order of Village Magistrate.*—A disobedience to the verbal order of a Village Magistrate, directing the attendance of an accused person before him, is an offence under Penal Code, s.174. **1 Weir 88=7 M.H.C. App. 3.**

(14)—*Verbal order to appear when required*—Where a person, being summoned as a defendant in a case of trespass, was verbally ordered, by the Magistrate, to appear when required, the Magistrate not adjourning the trial to any particular day, *held*, that the person could not be convicted of disobedience of summons under s. 174, Penal Code. **1 Weir 82=6 M.H. C. App. 10; 5 M.H.C. App. 15.**

(14-*a*)—*Turning out the Sheriff's officers—Officers in possession by order of Court.*—Land belonging to N.B., had been seized by the Sheriff under a writ of *fieri facias*, which expressly directed him to take that particular land; while in possession, his officers were turned out by A, who knew that they were in possession by order of the High Court. A had purchased the right, title, and interest of N.B., in the land at a sale held in the Court of the Zilla Judge of the 24-Parganas, in execution

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of a decree of that Court against N.B. A was put in possession by an officer of that Court, *Held* that the turning out of the Sheriff's officers was a contempt of the High Court. **2 Ind. Jur. N S. 99.**

(15)—*Disobedience to warrant.*—Disobedience to a warrant issued for the appearance of the accused before a Settlement Officer was held not to be punishable under s. 174, I.P.C., when the warrant was not addressed to them; nor could the accused be committed under s. 224, I.P.C., in the absence of evidence of an arrest and subsequent escape. **8 P.R. 1881 Cr.**

(16)—*Resistance of process of Civil Court—Jurisdiction of Criminal Court—Penal Code, s. 186.*—The resistance of the process of a Civil Court is punishable, under the Code of Criminal Procedure, by a Court of criminal jurisdiction. **2 B.L.R., F. B. 21=10 W.R. Cr. 43, 9 W.R. Cr. 63**, [*R.*, 22 C. 759].

(17)—*Penal Code, s. 174—Non-attendance in obedience to order of public servant.*—A conviction for non-attendance in obedience to an order from a public servant, under s. 174, Penal Code, cannot be had, unless the person summoned was legally bound to attend, and refused, or intentionally omitted, to attend. **10 W.R. Cr. 33.**

(18)—*Penal Code, s. 174—Disobedience to summons served.*—In order to make a person, summoned as a witness, liable under s. 174 of the Penal Code, the fact must be that he intentionally omitted to attend at the place or time mentioned in the summons, or that he wilfully departed from the place where he had attended before the time at which it was lawful for him to depart. **14 W.R. Cr. 20.**

(19)—*Summons not specifying place of attendance.*—Where a summons does not specify the place at which the attendance is required, a person disobeying the summons cannot be convicted under s. 174. **1 Weir 81=7 M.H.C. App. 14; 7 M.H.C. App. 43.**

(20)—*Penal Code, s. 174—Scope of.*—S. 174, I.P.C., does not apply to an escape from custody under a warrant in execution of the decree of a Civil Court. **1 B.H.C. 38.** [*F.*, 4 N.W.P. H.C. 97, U.B.R. (1897—1901), 61].

(21)—*Crim. Pro. Code (1882), ss. 480, 537—Contempt of Court—Procedure.*—The provisions of s. 480, Crim. Pro. Code, should be applied *then and there*, or at any rate before it rises, by the Court in whose view or presence a contempt has been committed, if it considers that it can be properly and adequately dealt with under that section. Where a Magistrate, in whose presence a contempt was committed, after taking cognizance of the matter, postponed passing final orders, in order to afford the accused an opportunity of showing cause why such order should not be passed, and eventually fined him, *held*, that the procedure adopted by the Magistrate was an irregularity which was cured by s. 537, and that the proper procedure

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would have been to detain the accused and to deal with the matter at once or before rising. **11 A. 361.** [*F.*, 10 C.W.N. 1062=4 C.L.J. 415].

(22)—*Procedure—Duty and power of Collector—Crim. Pro. Code (1861). s. 171—Act X of 1859, s. 147—See* **9 W.R. Cr. 3.**

(23)—*Contempt of Court—Ss. 244 and 2 of Civ. Pro. Code (1882).*—Proceedings by a Court in the exercise of its inherent power to punish for contempt do not come under s. 244, nor under the term "decree" in s. 2 of the Civ. Pro. Code. **27 A. 380=2 A L.J. 18=A. W.N. 1905, 10.**

(24)—*Order of attachment for contempt—S. 591, Civ. Pro. Code (1882).*—An order of attachment for contempt is not an order in the exercise of the High Court's civil jurisdiction, and, therefore, does not come within the provisions of s. 591 of the Civ. Pro. Code. Contempts are of the nature of offences, and, therefore, under s. 15 of the Letters Patent, 1865, an appeal lies from an order of committal for contempt. In dealing with an appeal from such an order, the appellate Court will go behind the order the disobedience to which constitutes the contempt. **7 B. 5.**

(25)—*Witnesses not producing the document—Civ. Pro. Code (1882), s. 174—Crim. Pro. Code (1882), s. 480—Penal Code, s. 175.*—The jurisdiction to punish under s. 174, Civ. Pro. Code, exists only in the case of a witness, who, not having attended on summons, has been arrested and brought before the Court. The case of a witness who, having a document, will not produce it, is provided for by s. 480, Crim. Pro. Code. Where a witness denies, on oath, that he has the possession of, or means of producing, a particular document, he can, if he is guilty of falsehood, be prosecuted for giving false evidence in a judicial proceeding. **12 B. 63.**

(26)—*Penal Code, Act XLV of 1860, s. 228—Prevarication in giving evidence.*—Prevarication in giving evidence is not an offence under s. 228 of the Penal Code. **4 B.H.C. 6 Cr.** [*R.*, Rat. Un. Cr. C. 69, 473].

(27)—Prevarication by a witness may amount to a contempt of Court within the meaning of s. 228, I.P.C., and s. 435, Crim. Pro. Code. 1872. **10 B.H.C. 69.** [*R.*, Rat. Un. Cr. C. 473].

(28)—Though prevarication or persistent refusal to answer questions does not necessarily constitute the offence of contempt of Court, it may, according to circumstances, amount to interruption in a judicial proceeding punishable under the section. **Rat. Un. Cr. C. 473=Cr. Rg. 31 of 1889.**

(29)—Refusal or neglect to return direct answers to questions does not amount to an offence under s. 228 of the Penal Code. **4 B.H.C. Cr. 7.** [*R.*, Rat. Un. Cr. C. 69].

(30)—*Contempt of Court—Rule* nisi *and order for attachment granted late.*—Where a rule *nisi*

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for attachment against certain defendants in a suit, who were guilty of contempt of Court in not obeying an order with reference to the appointment of a receiver, was granted late on account of their having been evading service fraudulently, *held* that the objection that the rule and order were made late could not be raised by them. **7 B.H.C. O.C. 172.** [*R.*, 8 B.H.C.O.C. 236].

(31)—*Act XI of 1843, s. 8—Mahalkari, with powers of Second class Magistrate—Penal Code, s. 174.*—A *Mahalkari* with the powers of a Second-class Magistrate cannot issue a summons under s. 8 of Act XI of 1843. A person disobeying such a summons cannot be convicted under s. 174 of the Penal Code. **8 B.H.C. Cr. 19.**

(32)—*Language which strikes at the root of all respect for the Court and its authority amounts to contempt—Criticism of Judge or Court how far justifiable.*—Any act done or writing published, calculated to bring a Court or a Judge of the Court into contempt, or to lower his authority, or to obstruct or interfere with the due course of justice or the lawful process of the Court, is a contempt of Court. Judges and Courts are alike open to criticism; and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, it is not a contempt of Court. **10 Bom. L.R. 1040=4 M.L.T. 359=33 B. 240=8 Cr. L. J. 426=2 Ind. Cas. 288.**

(33)—*Crim. Pro. Code, Act X of 1872, ss. 49, 471—District Magistrate—Allocation of business—Contempt of Court.*—Any general allocation of business in various parts of the District made by the District Magistrate does not control the special power conferred on a Court to send cases of contempt of its authority to some other Magistrate. The latter may try it himself or transfer it to some other Court, if he is competent to do so. **Rat. Un. Cr. C. 88.**

(34)—*Magistrate—Powers of—Pleader not behaving properly.*—A Criminal Court has no right to ask a pleader to sit down in the middle of an examination of a witness because he is asking irrelevant questions, or to refuse to allow the pleader to examine other witnesses because he has not apologised for the contempt he showed in examining the previous witnesses, or to ask the accused to engage another pleader because his pleader did not behave properly. The Magistrate can only rule questions as irrelevant, and if the pleader is persistent and disrespectful and wastes the time of the Court and tries its patience, the Magistrate can commit for contempt. **Rat. Un. Cr. C. 861=Cr. Rg. 25 of 1896.**

(35)—*Imprisonment for contempt of Court—Ss. 341 and 342 of the Civ. Pro. Code (of 1877), applicability of—High Court's jurisdiction.*—Ss. 341 and 342 of the Civ. Pro. Code (of 1877) apply only to cases of imprisonment under process of execution of decrees, and not to cases of imprisonment for contempt of Court.

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So, where a party had been imprisoned for disobedience of an order of the Court in an administration suit, he could not apply to be discharged under s. 341, on the ground of his having been in prison for six months. [*F.*, Rat. Un. Cr. C. 614.] The High Court's jurisdiction to imprison for contempt has been inherited from the old supreme Court, upon which it was conferred by the Charters of the Crown, investing it with all the process and authority of the then Court of King's Bench and of the High Court of Chancery in Great Britain; and this jurisdiction has not been removed or affected by the Civ. Pro. Code of 1877. (*Per* WHITE, J.) **4 C. 655.** [*F.*, Rat. Un. Cr. C. 614; *R.*, 7 B. 1, 7 B. 5, 14 B. 353].

(36)—*Contempt of Court—Powers of High Courts—Origin of jurisdiction.*—The High Courts in the Presidencies are superior Courts of Record, and the offence of contempt, and the powers of the High Court for punishing it, are the same in India as in England, not by virtue of the Penal Code for British India and the Crim. Pro. Code, but by virtue of the common law of England which was introduced at the time of the establishment of the Supreme Courts. Such jurisdiction has not been affected by the Crim. Pro. Code. **10 C. 109, P.C.=10 I.A. 171.** [*R.*, 8 B. 380, Rat. Un. Cr. C. 614, 2 Bom. L.R. 130, 33 C. 927=3 C.L.J. 67].

(37)—*Libel upon Judge in his judicial capacity—Punishment—Offence not included in Penal Code—Contempt of Court—Crim. Pro. Code (1882), s. 5.*—Chap. 21, "of defamation," in the Penal Code, does not define "contempt of Court" or make any provision for the punishment of a contempt of Court, by the publication of a libel reflecting upon a Judge in his judicial capacity, in reference to his conduct in the discharge of his public duties. Though the offence may doubtless be punished under the chapter, it does not preclude the publisher from being summarily punished by the High Court for a contempt of Court with fine, or imprisonment, or both. Such a contempt of the High Court by a libel published out of Court, when the Court is not sitting, is not included in the words "offences under the Indian Penal Code" or "all offences under any other law," in s. 5 of the Crim. Pro. Code, though the contempt may include defamation. It is something more than mere defamation, and is of a different character. **10 C. 109, P.C =10 I.A. 171.** [*R.*, 2 Bom. L.R. 130].

(38)—*Courts of Record—Power under Common Law.*—By the Common Law, every Court of Record is the sole and exclusive Judge of what amounts to a contempt of Court. **10 C. 109, P.C.=10 I.A. 171.**

(39)—*Reg. IV of 1816 (Village Munsiffs), ss. 15 and 16—Summons by Village Munsiff—Disobedience to summons—Penal Code, s. 174.*—The provisions of s. 174, Penal Code, are not in conflict with those of Reg. IV of 1816, and effect may, therefore, be given to both. By

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s. 16, cl. 3 of the Regulation, a summary power to impose a fine on a person, who disobeys his summons, is conferred on a Village Munsiff analogous to that conferred on the Civil Courts by s. 170, Crim. Pro. Code. In ordinary cases, where there are no aggravating circumstances, the Village Munsiff or Civil Court would act discreetly in employing the special power conferred on it, but if a charge is instituted in a criminal Court under the I.P.C., it must be dealt with by that Court. **6 M. 249=1 Weir 89.**

(40)—*Crim. Pro. Code (1882), ss. 476, 477, 480, 485 and 487—Jurisdiction of Magistrates to try person for offences committed before him —Penal Code, s. 175.*—Only in cases provided for in ss. 477, 480 and 485, Crim. Pro. Code, a Court, other than the High Court, can try any person for offences committed before itself. An offence under s. 175, Penal Code, does not come under any of these sections, and, therefore, a Magistrate, before whom the offence is committed, is precluded by the provisions of s. 487 from trying the case himself. **13 M. 24=2 Weir 610.**

(41)—*Crim. Pro. Code (1882), ss. 195, 480, 482 and 537—Insulting a Village Munsiff while sitting in a stage of judicial proceeding—Penal Code, s. 228—Power of second class Magistrate to try the charge without any complaint by Village Munsiff.*—The accused was charged under s. 228, Penal Code, with having intentionally offered an insult to a Village Munsiff, while sitting in a stage of a judicial proceeding, and was convicted by a second class Magistrate, in the absence of any complaint by the Village Munsiff. *Held*, that the provisions of ss. 480 and 482, Crim. Pro. Code, do not apply to Village Magistrates, that the defect of the absence of complaint by the Village Munsiff was covered by s. 537 and that the second class Magistrate was of a grade competent to try the complaint. **15 M. 131=2 Weir 605.** [*R.*, A.W.N. 1904, 266].

(42)—*Fine for contempt of Court—Recording reasons.*—A Criminal Court inflicting a fine for contempt of Court should specifically record its reasons, and the facts constituting the contempt, with any statement the offender may make as well as the finding and sentence. **4 M.H.C. 229.** [*F.*, 4 C.L.J. 415=10 C.W.N. 1062].

(43)—*Crim. Pro. Code (1861), s. 273—Madras Act I of 1863, ss. 1 and 2—Jurisdiction of Magistrate to punish for disobedience to his own summons.*—Under s. 273, Crim. Pro. Code, read with ss. 1 and 2 of the Madras Act I of 1863, a subordinate Magistrate is competent to convict persons under s. 174, I.P.C., for disobedience to summons issued by himself. **4 M.H.C. App. 51.** [*Diss.*, 4 M.H.C. App. 52].

(44)—*Crim. Pro. Code (1861), ss. 172 to 175—Disobedience to summons—Jurisdiction.*— A Magistrate may, under the general provisions

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of the Crim. Pro. Code, try the offence of disobedience to his own summons. **4 M.H.C. App. 52** (4 M.H.C. App. 51, *R.*). [*D.*, 2 Weir 612=3 M.L.J. 241].

(45)—*Crim. Pro. Code (1898), s. 480—Contempt of Court—Walking with creaking shoes—Accused committing some act not enumerated in s. 480—Power of Court to punish—Abuse of power.*—*Held*, that, merely because the accused walked with creaking shoes on his feet near the Court-room, a Court is not justified in arriving at the conclusion that the accused intended to insult it or interrupt it in its work, and that a conviction by the lower Court in such a case is an abuse of the power conferred by the legislature on Courts to punish wilful acts of contempt or interference with the due discharge of judicial duties. Under s. 480, Crim. Pro. Code, a Court has power only to deal with the accused if he committed one of the offences enumerated therein. **5 M.L.T. 286 =1 Ind. Cas. 560.**

(46)—*Penal Code, s. 180—Refusal to sign deposition given in Revenue inquiry.*—A witness is not legally bound to sign a deposition given by him in a Revenue inquiry. **1 Weir=6 M.H.C. App. 14.**

(47)—*Penal Code, s. 174—Revenue Officers summoning village official to attend for carrying out a sale of land for revenue arrears—Legality of the summons—Madras Act III of 1869.*—Madras Act III of 1869 confers no authority upon Revenue Officers to summon a subordinate to attend for the purpose of carrying out a sale of land for arrears of revenue. Disobedience to such summons is not punishable under s. 174, Penal Code. **1 Weir 90=5 M.H.C. App. 27.** [*R.*, 1 Weir 90=7 M. 197, F.B.]

(48)—*Crim. Pro. Code (1898), s. 480—Contempt of Court.*—The power of Magistrates to punish any person for an offence committed in contempt of their own authority is restricted by the provisions of s. 480, Crim. Pro. Code. **12 C.P.L.R. Cr. 15.**

(49)—*Jurisdiction—Preferring of false charge —Prosecution for contempt of Court.*—A person who prefers a false charge commits a contempt of Court, and is, therefore, not triable by the Magistrate to whom the complaint is presented. As there has been in such a trial, a fatal defect of jurisdiction, there should be a retrial by a competent Court. *Per* Boulnois and Melville, JJ. (Lindsay, J., dissenting). The Chief Court exercising its discretion under s. 297, Crim. Pro. Code, 1872, should order a new trial, if the accused is not prejudiced by such a trial. *Per* Lindsay. **3 P.R. 1875 Cr.**

(50)—*Penal Code, s. 211—Jurisdiction.*—A Magistrate, to whom a complaint is presented and who has tried the case, cannot convict the complainant for an offence under s. 211, I.P.C. **3 P.R. 1877 Cr.**

Contempt of Court—continued.

(51)—*Complaint to police—Conviction by Magistrate for making false charge--Jurisdiction.*—Where a complaint to the police was reported to the Magistrate who convicted the complainant for making a false charge, *held*, that he had no jurisdiction to try the case. **4 P.R. 1876 Cr.** [*Not F.*, 30 P.R. 1882 Cr.].

(52)—*Conduct of a pleader in a suitor's capacity.*—The conduct, which is in itself indefensible and amounts to gross misconduct in an advocate, is not taken out of s. 41, Legal Practitioners Act, by a mere colourable pretence that it was the conduct of a suitor or accused in that capacity. **5 P.R. 1902, F.B.**

(53)—*Offence under Penal Code, s. 181—Jurisdiction to try the offence.*—The offence specified in s. 181, I. P. C., when committed in a Court of Justice, is a contempt of Court. The Court in which the offence was committed cannot try it. **7 P.R. 1874 Cr.**

(54)—*Judicial proceedings, what amounts to.*—Where the accused was committed under s. 228, I.P.C., and s. 480, Crim. Pro. Code, 1882, for contempt of Court, in having insulted the Court after the recording and reading out of an order calling upon him to give security, *held*, that he was properly convicted. The announcement of the order under s. 107, Crim. Pro. Code, was undoubtedly a stage in a judicial proceeding, and such proceedings must be held to have continued until the accused was allowed to leave the Court after executing the bond, or was removed in custody on failing to execute it. The whole sitting for the disposal of judicial work from the opening to the rising of the Court is a judicial proceeding and the necessary interval between the conclusions of one case and the opening of another is a stage in a judicial proceeding. A Magistrate cannot be considered to have concluded a case the very moment he has announced the order, while the judgment is still in his hands and before he could possibly have turned to any other occupation. *Per* Frizelle, J. **16 P.R. 1897 Cr.**

(55)—*Refusal to assist in apprehension of a criminal.*—Persons refusing to aid in the apprehension of a criminal cannot be fined summarily without a trial according to law. **18 P.R. 1869 Cr.**

(56)—*Failure of arbitrators to attend Court.*—The failure of arbitrators in a civil suit to attend Court in obedience to a summons was held not to be punishable under s. 174, I.P.C. **18 P.R. 1875 Cr.**

(57)—*Refusal for attachment in execution of a decree.*—A Judge, whose order for the attachment of the judgment-debtor's property in execution of a decree has been disobeyed, has no jurisdiction, as a Magistrate, to try and convict the accused of an offence under s. 186, I.P.C. **22 P.R. 1879 Cr.**

(58)—*Giving false evidence—Penal Code, s. 191—Jurisdiction to try.*—A judicial officer, before whom the offence of giving false evidence had been committed, might himself try and punish the offender. **25 P.R. 1873 Cr.**

(59)—*Disobedience to summons—Tahsildar's power to try the accused.*—Neither the Tahsildar nor the Naib-Tahsildar is competent to commence proceedings on the criminal side of his Court for an offence under s. 174, I.P.C., for the non-attendance of *lambardars* and *Patwaris* in obedience to summonses issued by him. **28 P.R. 1869 Cr.**

(60)—*Crim. Pro. Code Act XXV of 1861, ss. 163 and 168—Jurisdiction of Small Cause Court.*—A Judge of a Small Cause Court in the mofussil found a judgment-debtor guilty of resisting an officer of the Court in attaching property in satisfaction of a decree, and fined him. *Held* that the Judge acted without jurisdiction. He ought to have sent the judgment-debtor before the Magistrate. **2 B.L.R.A.C. 188=11 W.R. 62.**

(61)—*Crim. Pro. Code (1861), s. 219—Forfeiture of recognizance.*—In consequence of the default in appearance by the person bailed, the surety was compelled to pay the penalty mentioned in the recognizance. *Held* that, notwithstanding s. 219 of Act XXV of 1861, the accused might have been proceeded against for contempt of Court under s. 174 of the Penal Code. **1 B.L.R. A. Cr. 1=10 W.R. Cr. 4.**

(62)—*Sending officer to Judge to ask for explanation of language used on the Bench.*—A barrister, offended by the use of a strong expression on the part of a Judge while sitting in Court, sent an officer to the Judge's private residence upon a pacific errand to ask for an explanation. *Held*, by nine Judges out of eleven, that the party sending the message and the party conveying it were guilty of a contempt of Court. **1 Hyde 79.**

(63)—*Carrying of crops pending suit for rent—Ground for dismissal of suit.*—During the pendency of a suit for rent, the plaintiff procured an attachment of the growing crops; and afterwards, without authority and before the suit was determined, carried off some of the crops. *Held* that, although this was an act properly punished by the Court below as a contempt with a fine, it was no ground for dismissing the suit. **Marsh 21=1 Hay 56.**

(64)—*Application for discharge—Practice.*—When a person is in custody for contempt of Court, any application for release should be made to the committing Judge. It is advisable, but not necessary, to limit the period of commitment to a fixed time. **1 Ind. Jur. N.S. 23.**

(65)—*Sending case for investigation—Penal Code, s. 174—Crim. Pro. Code Act XXV of 1861, s. 171—Power of Subordinate Magistrate.*—A Subordinate Magistrate has no power to try an offence punishable under s. 174 of the Penal Code, committed against his own Court, but is bound, under s. 171 of the Code of Criminal Procedure, to send the case, if, in

Contempt of Court—continued.

his opinion, there is sufficient ground for investigation, to a Magistrate having power to try or to commit for trial. **5 B.L.R. 100 = 13 W.R. Cr. 66.** [*F.*, 14 W.R. Cr. 74, 15 W.R. Cr. 2, 88 : *D.*, 8 B L.R. 422, F.B., Rat. Un. Cr. C. 64; *R.*, 17 W.R. Cr. 39].

(66)—*Person under contempt—Privilege from arrest—Party to suit proceeding to Court.*—When a writ of attachment for contempt was issued by the Court against a party to a suit in that Court, *held*, he could not claim privilege from arrest while proceeding to the Court for the purpose of attending the hearing of his suit. **4 B.L.R. O.C. 90.**

(67)—*Prevarication—Crim. Pro. Code (1872), s. 435.*—Prevarication and refusal to answer on the part of a witness may amount to a contempt of Court within the meaning of s. 228, I.P.C., and s. 435, Crim. Pro. Code. **Cr. Rg. 16--3--1871.**

(68)—*Contempts generally—Communication with Judge.*—It is contrary to the practice of all Courts of Justice, unfair to an adversary, and a contempt of Court, for a suitor, under any pretext whatever, to communicate with a Judge, except by public proceedings in open Court, respecting the merits of any case in which he is interested, and which is either pending in the Court of such Judge or likely to come before him. **4 W.R. 86.**

(69)—*Contempts generally -Officer of Court accepting bribes—Person offering bribes to officers—Power of High Court.*—Any officer of the High Court, who asks for or accepts a present from any person in whose favour judgment is pronounced by the Court, is guilty of a gross breach of duty and a contempt of Court. So, also, any person who offers or gives such present is guilty of a contempt of Court. **8 W.R. Cr. 32.**

(70)—*Penal Code, s. 174—Evidence of notice to attend.*—Before convicting a person under s. 174 of the Penal Code, it is necessary to prove that he had notice to appear at a certain time and place, and that he did not do so. **17 W.R. Cr. 38.**

(71)—*Penal Code, s. 228—Jurisdiction to try.*—An officer before whom, whilst he is acting in a particular capacity, an offence under s. 228 of the Penal Code is committed, cannot, in another capacity, take up and try the offence. **12 W.R. Cr. 18.**

(72)—*Giving evidence reluctantly and inconsistently.*—No conviction can be had under s. 228 of the Penal Code, simply because witnesses in a case give inconsistent evidence, and give their evidence reluctantly, and take up the time of the Court. **15 W.R. Cr. 5.**

(73)—*Penal Code, s. 228—Obstruction of public servant.*—A party, who bids for an estate at a sale in execution, knowing that he is not able to deposit the earnest money, obstructs the business of the Court, and is guilty of a contempt of Court, punishable under s. 228 of the Penal Code. **W.R. 1864 Mis. 3.**

Contempt of Court—continued.

(74)—*Penal Code, s. 228.*—In a conviction under s. 228, Penal Code, it ought to be stated that the Judge was sitting in a stage of judicial proceeding, the nature of which should also be stated. **12 W.R. Cr. 64.**

(75)—*Penal Code, s. 228—Intention to insult, proof of.*—Before a conviction can be had, under s. 228 of the Penal Code, of offering an insult to a public servant, it must be proved that there was an intention to insult. **15 W.R. Cr. 62.**

(76)—*Procedure—When sentence of imprisonment necessary—Crim. Pro. Code (1861). s. 163—Penal Code, s. 179.*—Under s. 163 of the Code of Criminal Procedure, if a Court, before which the offence of contempt, under s. 179 of the Penal Code, is committed, considers that a sentence of imprisonment is called for, it should record a statement of the facts constituting the contempt and the statement of the accused, and forward the case to a Magistrate. **11 W.R. Cr. 49.**

(77)—*Procedure—Sending case for investigation—Crim. Pro. Code (1861), s. 171.*—A Civil Court may, under s. 171 of the Code of Criminal Procedure, transfer a case to the Criminal Court for investigation, without specifying the particular officer by whom it is to be investigated. **13 W.R. Cr. 45.**

(78)—*Jurisdiction--Complaint to police submitted to Magistrate—Competency of the latter to try complainant for an offence under s. 182 or s. 211, I.P.C.*—Where a complaint is made to the police and the police submitted a report to a Magistrate, the latter is not incompetent to try the complainant for an offence under s. 182 or s. 211, I.P.C. **30 P.R. 1882 Cr.** (4 P.R. 1876 Cr., *Not F.*).

(79)—*Application for transfer on the ground of probable failure of justice.*—A person, who applies to an Appellate Court for a transfer of a suit on the ground of a likelihood of miscarriage of justice, if the case were retained in the particular Court, cannot be convicted, on the transfer being refused, for contempt of Court under s. 163, Crim. Pro. Code, 1861. **34 P.R. 1869 Cr.**

(80)—*Duty of Court taking summary action under s. 481, Crim. Pro. Code.*—Under the provisions of s. 481, Crim. Pro. Code, 1882, the record of a Court taking summary action must show the nature and stage of the judicial proceedings in which the Court interrupted or insulted was sitting and the nature of the interruption or insult. **36 P.R. 1886 Cr.**

(81)—*Putting irrelevant and vexatious question after being warned.*—Persisting in putting irrelevant and vexatious questions to a witness after warning might amount to a contempt. **44 P.R. 1867 Cr.**

(82)—*Failure to appear before a Civil Court as entered into in a recognizance.*—A defendant, who was ordered to attend Court until the decision of a civil appeal filed against him,

Contempt of Court—concluded.

and who entered into a recognizance, which was taken by the Original Court, could not be sentenced to pay a fine for having failed to duly attend Court. **75 P.R. 1868 Cr.**

(83)—*Minor under Court of Wards—Liability for disobedience by his servants.*—A minor under the Court of Wards cannot be convicted, under s. 174, I.P.C., for disobedience by his servants of a lawful order duly promulgated with reference to such property. **84 P.R. 1866 Cr.**

See ABSCONDING OFFENDER, 7 W.R. Cr. 40.

See BOM. ACT XXVI OF 1850, 5 B.H.C. Cr. 33.

See MAD. ACT III OF 1869, 5 M. 377 = 1 Weir 91, 7 M. 197 = 1 Weir 90, 12 M. 297 = 1 Weir 98, 7 M.H.C. App. 10 and 11, 6 M.H.C. App. 44.

See APPEAL, 16 P.R. 1887 Cr.

See ARREST, 4 B.L.R. O.C. 90.

See BAIL, 12 W.R. Cr. 18.

See CRIMINAL CASES, 5 Bom.L.R. 343.

See CRIM. PRO. CODE (1898), ss. 369, 480, 481, 10 C.W.N. 1062 = 4 Cr.L.J. 415 = 4 C.L.J. 210.

See CRIM. PRO. CODE (1898), s. 480, 2 Weir 603, 2 Weir 605.

—Procedure to be adopted by Magistrates in trying cases of—*See* CRIM. PRO. CODE (1898), ss. 480 and 481, U.B.R. (1892—1896), Vol. I, 52.

—Procedure when committed in view of the Court—*See* CRIM. PRO. CODE (1898), ss. 480, 481 and 487, Colm. Dig. Cr. 45 of 1876.

—Procedure in cases of—Jurisdiction—*See* CRIM. PRO. CODE (1898), ss. 480 and 487, L.B.R. (1893—1900), 20.

See CRIM. PRO. CODE (1898), ss. 481, 482, 195, 476, 1 A. 625. F.B.

See CRIM. PRO. CODE (1898), s. 482, 2 Weir 604.

See CRIM. PRO. CODE (1898), s. 487, Colm. Dig. Cr. 27 of 1875, Colm. Dig. Cr. 41 of 1876, Colm. Dig. Cr. 44 of 1876.

See HIGH COURT, JURISDICTION OF, Rat. Un. Cr. C. 614.

See INJUNCTION, 6 C. 445 = 7 C.L.R. 350.

See JOINT TRIAL, A.W.N. 1883, 25.

See MAGISTRATE, JURISDICTION OF, 2 Weir 38 = 7 M.H.C. App. 43.

See PENAL CODE, s. 228, 29 P.L.R. 1903, 137 P.L.R. 1903.

See PERJURY, 13 C.W.N. 685, P.C. = 6 M.L.T. 9 = 19 M.L.J. 324.

See PLEADER, 7 B.H.C. A.C.J. 102.

See SENTENCE, 6 M.H.C. App. 16.

Contempt of Lawful Authority.

See CONTEMPT OF COURT.

(1)—*Penal Code, s. 185—Bidding at auction without intending to purchase.*—A person is guilty of contempt under s. 185, Penal Code, who bids for the lease of a ferry sold at a public auction by a Magistrate, without intending to perform the obligation under which he lays himself by such bidding. **3 W.R. Cr. 33.**

(2)—*Crim. Pro. Code, Act X of 1872, s. 473—Penal Code, s. 174—Contempt.*—A trial for contempt in not obeying a summons issued by a Magistrate cannot be held by the same Magistrate. **Rat. Un. Cr. C. 70 = Cr. Rg. 17—4—1873.**

(3)—*Disobedience to ywathugyi's order—Lower Burma Village Act, s. 9 (2).*—A villager, who, ordered by the *ywathugyi* to remove himself to a village X, removes himself to village Y, is not guilty of a neglect or refusal to obey the *ywathugyi's* order. **L.B.R. (1893—1900), 218.**

See PENAL CODE, s. 173, 6 A.L.J. 777.

See PENAL CODE, s. 174, Rat. Un. Cr. C. 75.

See PENAL CODE, s. 188, Rat. Un. Cr. C. 433.

See SANCTION TO PROSECUTE, 2 B. 653.

Continuing Offence.

See CONVICTION.

—*Penal Code, s. 363—Kidnapping.*—The offence of kidnapping under s. 363, Penal Code, is not a continuing offence. **19 A. 109.**

See BOM. ACT III OF 1888, ss. 471, 472, 22 B. 766.

See U.P. ACT I OF 1900, s. 147, 24 A. 309 = A.W.N. 1902, 70.

—Additional fine for, validity of—*See* CANTONMENT CODE, 1899, s. 26, Rule 2, 22 B. 841.

Contraband Salt Act, N.W P.

See PUNJ. ACT XXXVI OF 1855.

Contract.

—Breach of contract—*See* ACT XIII OF 1859.

—Compounding criminal offences—*See* ACT IX OF 1872.

—*Contract—Subsequent conduct of parties.*—If the parties who have entered into definite and distinct terms involving certain legal results—certain penalties or legal forfeiture—afterwards by their own act or with their own consent enter upon a course of negotiations which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced or will be kept in suspense or held in abeyance, the person who might have otherwise enforced these rights will not be allowed to enforce them where it would be inequitable, having regard to the dealings which have thus taken place between the parties. **29 B. 35 = 6 Bom. L.R. 667.**

See DURESS, 1 C. 330.

Contract Act.

See ACT IX OF 1872.

Contradictory Statements.

—*Contradictory statements, reconciliation of.*—In charges founded upon supposed contradictory statements, every presumption in favour of the possible reconciliation of the statements must be made. **10 B. 124.** [*R.*, 6 Bom. L.R. 379=28 B. 533].

See PENAL CODE, ss. 182, 193, 5 A. 17.

Contributory Negligence.

See PENAL CODE, s. 304-A, 1 Weir 322=6 M.H.C. App. 31, 1 Weir 327.

Conversion.

(1)—*Relapse of Christian husband and wife to Hinduism—Necessity for second marriage ceremony according to Hindu rites.*—The Hindu Law might possibly not recognise as valid a marriage obligation under the Christian status, and would not regard such a contract as a Hindu marriage. But if husband and wife reverted to Hinduism at the same time, the caste would recognise the marriage union, though contracted in another status, as a valid one, and would neither insist upon a second marriage being performed according to the Hindu ceremonial, nor permit the relapsing wife to contract a Hindu marriage with another man. **1 Weir 563.**

—Conversiono f Hindu wife to Mahomedanism and remarriage with Mahomedan—*See* BIGAMY, 4 B. 330, 18 C. 264.

—Marriage according to Hindu rites of relapsed convert—Subsequent conversion and marriage to Christian—*See* BIGAMY, 10 M. 218=1 Weir 566.

—Second marriage with a Hindu woman by a person relapsing from Christianity to Hinduism—Bigamy—*See* BIGAMY, 1 Weir 561=3 M.H.C. App. 7.

See FALSE EVIDENCE, 1 Weir 159=4 M.H.C. 185.

See MAINTENANCE, 4 M.H.C. App. 3.

Convict.

—*Bringing convicts to Court in chains, propriety of.*—As a general rule, a convict should be relieved of his chains, when brought before a Court for trial or as a witness. **4 M.H C. App. 69.**

Convict Warder.

See PENAL CODE, s. 21, 22 P.R. 1908 Cr.=9 Cr. L.J. 90.

See PUBLIC SERVANT, Rat. Un. Cr. C. 389.

Conviction.

See PREVIOUS CONVICTION.

See SENTENCE.

(1)—*Not to be based on the weakness of the defence.*—A conviction ought not to be based on the weakness of the defence, but on the strength of the prosecution. **2 A.L.J. 411=2 Cr. L.J. 352.**

(2)—*Conviction without evidence—Illegal conviction.*—A conviction on no evidence is wrong in point of law. **7 W.R. Cr. 6; 8 W.R. Cr. 59.**

(3)—*Conviction on statement of complainant.*—A conviction on the statement of a complainant is lawful. **22 W.R. Cr. 32.**

(4)—*Conviction on plea of guilty without assessors—Crim. Pro. Code (Act XXV of 1861), s. 362.*—A conviction of a prisoner on a plea of guilty before a Court of Session is valid, although there were no assessors. **2 B.L.R., F.B., 23; 10 W.R. Cr. 43.**

(5)—*Double conviction for same offence—Illegal conviction—See* **24 W.R. Cr. 46.**

(6)—*Conviction on evidence taken before another Magistrate—Illegal conviction.*—When a prisoner is convicted by one Magistrate upon evidence previously recorded before another, the defect cannot be cured by the evidence being again recorded, and the conviction confirmed. **8 W.R. Cr. 59; 21 W.R. Cr. 47.**

(7)—*Power to quash conviction.*—A lower Court has no power to quash its own conviction, though illegal. **6 W.R. Cr. 70.**

(8)—*Ground for setting aside conviction—Police Act, V of 1861, s. 29—Offence under Penal Code.*—That the facts proved would also constitute an offence under a section of the Penal Code seems to be no reason for quashing a conviction under the special law, Act V of 1861. **8 W.R. Cr. 55.**

(9)—*Subsequent evidence.*—A valid conviction arrived at by a Magistrate, who had jurisdiction in the matter, cannot be set aside, simply because, subsequent to the trial and conviction, fresh evidence has been discovered which may tend to convict the accused of an offence other than that for which he was convicted. **21 W.R. Cr. 47.**

(10)—*In criminal trial—Evidence.*—A conviction can only be based on the evidence actually before the Court, and cannot be supported by a consideration of what it is believed witnesses would have stated or ought to have testified. **5 P.R. 1901 Cr.**

(11)—*Conviction under sanction obtained after trial—Want of jurisdiction—See* **24 W.R. Cr. 64.**

(12)—*Dispute between civil suitors—Improper prosecution—Illegal conviction.*—As a general rule, one of the two parties to an impending suit ought not to put the Criminal Law in motion as against the other in matters connected with the suit; or if he does so, the hearing of the criminal case ought to be postponed until the suit is concluded. But, although that is a good ground for questioning the propriety of a prosecution, it is not a ground for questioning the legality of a conviction. **17 W.R. Cr. 46.**

Conviction—continued.

(13)—*Opinion of assessors on whole evidence necessary for legal conviction.*—No legal conviction can take place unless the opinion of the assessors is taken on the whole of the evidence in a case. **2 J.G. 38.**

(14)—*Conviction on plea of guilty without assessors - Crim. Pro. Code (Act XXV of 1861), s. 362.*—The conviction of a prisoner on a plea of guilty before a Court of Session was held to be valid, although there were no assessors. **2 B.L.R. F.B. 21=10 W.R. Cr. 43.** [*F.*, 11 W.R. 62; *R.*, 22 C. 759].

(15)—*Conviction based on Magistrate's own evidence bad.*—A conviction based on the Magistrate's own evidence is illegal, in the absence of other evidence to support it. **1 J.G. 22=2 C. 405.**

(16)—*Conviction based on uncorroborated testimony of accomplice made when a victim and believed by the Court.*—A conviction based upon the uncorroborated testimony of accomplices, found by the Court to have been once believed when the charge was different and the witnesses were not accomplices, but victims, is not illegal. **2 J.G. 13.**

(17)—*Separate convictions under I.P.C., and under special law for same offence.*—A Magistrate cannot convict and punish an accused person both under the Penal Code and under a special law for the same offence. **5 N.W.P. 49.**

(18)—*Penal Code, ss. 147 and 324, separate convictions under.*—*Quære*—Whether separate convictions under ss. 147 and 324 of the Penal Code are legal. **6 C. 718.** (9 W.R. Cr. 33, 7 W.R.Cr. 60, 2 A. 139, *referred to*).

(19)—*Crim. Pro. Code, Act X of 1872, s. 228—Record.*—Where, in a summary trial in which there was an appeal, the Magistrate did not embody in his judgment the substance of the evidence, and convicted one of the prisoners on the mere statement of another, *held* that the conviction was bad and that there should be a re-trial. **A.W.N. 1882, 178.**

(20)—*Stamp Act XXXVI of 1860, ss. 26, 37—Crim. Pro. Code, Act XXV of 1861, ss. 65, 67--Procedure.*—A conviction under s. 26 of the Stamp Act is illegal where the proceedings were commenced without any complaint on the record, but only an endorsement by the Collector of Stamp Revenue to a Deputy Magistrate to inquire into a matter and report, and where summons was issued to the accused without any sworn complaint on the record. **3 B.H.C. Cr. 34.**

(21)—*Penal Code, Act XLV of 1860, s. 409—Accounts not produced—Crim. Pro. Code, Act XXV of 1861, s. 373—Irregularity.*—In a prosecution for criminal breach of trust, where one of the accounts whose existence was not disproved and which was material for the defence, was not produced by the prosecution, and the Court did not put questions to the accused as required by s. 373 of the Crim. Pro. Code, *held* that the conviction was not justifiable. **3 B.H.C. Cr. 51.**

Conviction—continued.

(22)—*Imprisonment in default of payment of fine—Portion paid—Refund.*—A person was sentenced to a term of imprisonment and to a further term in default of payment of fine. He paid a portion of the fine, but the fact not being communicated to the jailor, he had to serve the whole term. *Held* that, under such circumstances, a Magistrate had no jurisdiction to order repayment of the fine, but that the party should be advised to apply to the Government. **4 B.H.C. 37 Cr.**

(23)—*Sentence of Assistant Sessions Judge—Power of Sessions Judge to quash sentence—More than one offence proved—Conviction for one only illegal.*—A Sessions Judge has no power to quash a sentence passed by an Assistant Sessions Judge and direct the passing of a new sentence in a case submitted to him for confirmation of sentence, even supposing such sentence to have been illegal; much less has he such a power, where the sentence is one which the Assistant Sessions Judge was competent to pass. Where more than one offence is proved, it is not proper to convict of one only, and to acquit of the rest, although the offences may be cognate. **5 B.H.C. 3 Cr.** [*R.*, 10 A. 58, Rat. Un. Cr. C. 597].

(24)—*Previous conviction no reason for subsequent conviction.*—To convict a man because he has been punished before is illegal. **8 B.H. C. Cr. 101.**

(25)—*Crim. Pro. Code, Act X of 1872, s. 457—Charge of murder—Conviction for abetment—Legality.*—A person, who has been charged with murder, cannot be convicted on the same charge of abetment of the offence, for, a charge of murder, simply as such, gives no intimation of a trial on the abetment; s. 457 of the Crim, Pro. Code does not apply to a collateral offence. **11 B.H.C. 240; 12 B.H.C. 1.** [*F.*, 7 M.L.T. 79; *R.*, Rat. Un. Cr. C. 775, 13 C.P.L.R. 167].

(26)—*Criminal case—Reason for conviction.*—A prisoner must be convicted on the strength of the case made against him and not in consequence of his inability to bring evidence to prove his innocence. **Rat. Un. Cr. C. 5.**

(27)—*Transfer of case—Order not reaching Magistrate—Conviction—Legality.*—Where a case pending before a Magistrate was ordered by the High Court to be committed to the Sessions, if there was sufficient evidence for a conviction, but. owing to the order not reaching him in time, the Magistrate tried the case and convicted the accused, *held*, that the conviction was not illegal though the Magistrate's action was indiscreet. **Rat. Un. Cr. C. 46.**

(28)—*Commitment for culpable homicide—Plea of guilty—Conviction for grievous hurt—Legality.*—Where the accused. committed for trial of the offence of culpable homicide, pleaded guilty, but the Sessions Judge, without convicting him on such plea, convicted him of grievous hurt on the evidence recorded by the committing Magistrate, *held* that the conviction was illegal. **Rat. Un. Cr. C. 413=Cr. Rg. 79 of 1888.**

Conviction—continued.

(29)—*Retracted statements by witnesses.*– A conviction based on previous statements of witnesses, who retracted them at the trial, cannot be sustained in law. **Rat. Un. Cr. C. 762 = Cr. Rg. 23 of 1895.**

(30)—*Crim. Pro. Code, Act X of 1882, s. 258—Charge framed—No rebutting evidence—Conviction, if necessary.*– Where a Magistrate has framed a charge in a warrant case, he is not bound to convict the accused merely because he does not produce any rebutting evidence. **Rat. Un. Cr. C. 854 = Cr. Rg. 20 of 1896.**

(31)—*Conviction of accused by Magistrate—Brief record of reasons.*—In non-appealable cases, a Magistrate must briefly record the reasons for convictiug an accused. **8 C. 195.**

(32)—*Of offence without specific charge—Misdirection to jury.*—If the accused had been charged with an offence under ss. 304 or 325, they might be convicted of an offence under s. 323, though no charge under that section was drawn up against them. But, when they are charged with these offences, alleged to have been committed by another person in the course of a riot, and the jury found that there was no riot they should not be convicted of the offence of hurt in respect of their individual acts, with which they were not charged and of which there is no trace in the Judge's charge to the jury of ever having been imputed to them. The omission of the Judge to call the attention of the jury to the fact of the original witnesses having been abandoned by the prosecution, of two of them having given evidence for the defence and of the witnesses examined in Court for the prosecution being entirely new witnesses, is a sufficient misdirection in the charge to the jury to justify the High Court in setting aside the conviction. **34 C. 325 = 5 Cr. L J. 424.**

(33)—*Crim. Pro. Code (1898), s. 263 (h)—Omission to record reasons for conviction in a summary trial.*—The omission to record the reasons for conviction in a summary trial is fatal, when the evidence recorded is not such as would enable the High Court to deal with the case on the merits. **6 C.W.N. 40.**

(34)—*Defence to a charge—Committal to Sessions on that charge and on further charges of fabricating false evidence and preferring false charge on disbelieving the defence—Conviction, validity of.*—Where persons, charged with the offence of wrongful confinement, raised the defence, that they had a lawful excuse for confining the persons, inasmuch as they were caught in the house of one of the prisoners under circumstances, which led to the belief, that they had committed house-breaking by night with intent to commit theft, and the Magistrate disbelieving the story and the evidence of the defence, committed the accused to the Sessions, not only for the wrongful confinement, but also, for fabricating false evidence and for bringing a false charge, and, at the Sessions trial, they were found guilty on all the three charges, *held*, that the conviction on the last two charges was illegal, inasmuch as, in putting the accused

Conviction—continued.

upon their trial in respect of the two additional charges, the Magistrate was really prejudging the defence which they had raised to the first charge. **4 C.L.R. 338.**

(35)—*Registers of, to be kept in a prescribed form.*—For the purpose of enabling the Magistrates to ascertain whether the parties, charged before them with heinous offences, have been previously convicted of any of the offences for which enhancement of punishment is provided on a subsequent conviction, registers should be opened in the prescribed form in Magistrates' offices, containing the names of parties convicted of any of the previous offences written in the vernacular of the District. **3 W.R. Cr. Cir. 2.**

(36 and 37)—*Of a prisoner pleading guilty before a Court of Sessions—Validity—Crim. Pro. Code (1861), s. 362—Conviction for one charge out of several.*–The conviction of a prisoner. pleading guilty before a Court of Session under s. 362, Crim. Pro. Code. is valid, although there are no assessors. When persons are charged with several offences and convicted of one only, the head of the charge on which they have been convicted may be indicated in Col. 5 of the Sessions statement No. 3. **10 W.R. Cr. Cir. 5.**

(38)–*Copy of, forwarding of, to the Military Department of the Government of India.*—Judicial Commissioners, District Judges and Magistrates should forward to the Military Department of the Government of India, a copy of the conviction and sentence in all cases, in which persons serving under the Government of India in that Department are convicted in a Criminal Court. **16 W.R. Cr. Cir. 1.**

(39)—*Evidence taken in the absence of the accused.*—A conviction passed upon an accused person on evidence taken in his absence is not legal. **3 M.H.C. App. 34.**

(40)—*Crim. Pro. Code (1861), s. 55—Amending of sentence.*—Where an appellate Magistrate at first reversed a sentence, but on reconsideration confirmed the lower Court's decision, *held*, that the second order of the Magistrate should be set aside and the original order restored. **6 M.H.C. App. 7.**

(41)—*Based on deposition of accused—Solemn affirmation—Sustainability.*—Where a conviction is based on the deposition of the accused taken on solemn affirmation, such a conviction is bad in law and cannot be upheld. **3 M.L.T. 138 = 7 Cr. L.J. 131.**

(42)—*Finding of guilty—Passing of sentence.*—Where the finding of the Magistrate is one of guilty, he is bound to pass some sentence, if only a nominal one. **2 Weir 305 = 4 M.H.C. App. 66.**

(43)—*Act XVII of 1854, s. 50 (s. 52 of the Post Office Act, VI of 1898)—Separate sentences for offences arising out of the same transaction.*—Where a person had been previously committed and sentenced on the charge

Conviction—concluded.

of fraudulently secreting a letter under s. 50 of Act XVII of 1854, his subsequent conviction upon the charge of having fraudulently made away with the same letter upon the same occasion was held to be invalid. **2 Weir 454 = 1 M.H.C. 83.** [*R.*, 1 Bom. L.R. 15].

(44)—*Burden of proof—Guilt of accused—Benefit of doubt—Circumstantial evidence—Facts alleged must be incompatible with the innocence of the accused*—Tracker, *evidence of.* —Before the accused can be convicted of an offence. the Criminal Court must be satisfied that the incriminating facts, brought out in the evidence for the prosecution, are incompatible with the innocence of the accused and are incapable of explanation upon any other hypothesis than that of his guilt. To convict on circumstantial evidence alone, not only must the Court be satisfied that each of the facts on which the presumption of guilt is founded is proved beyond reasonable doubt, but there must be a chain of evidence so far complete as to leave no reasonable ground for a conclusion therefrom consistent with the innocence of the accused. When the whole question of the appellant's guilt in regard to a serious crime, such as murder, depends practically upon the bare word of the *tracker*, the Court will not be justified in placing reliance upon his testimony as that of an expert, unless and until it is shown to be clear, credible, and consistent beyond all doubt, and to be wholly incompatible, upon any reasonable hypothesis, with the innocence of the accused. **136 P.L.R. 1909.**

(45)—*Crim. Pro. Code (1898), s. 256—Re-calling witness for cross-examination after charge —Accused not depositing the necessary expenses.* —It is the duty of the Magistrate to recall the prosecution-witnesses for cross-examination, if the accused demands it after the charge is framed : this must bo done presumably at the public expense. The accused is not bound to deposit the expenses. A conviction, based on the ground that the accused had not deposited the necessary expenses for re-calling the prosecution-witnesses for cross-examination, after the framing of the charge, is illegal. **12 P.R. 1907 =32 P.W.R. 1907=6 Cr. L.J 339=45 P.L.R. 1908.**

(46)—*Validity of, by reason of illegal arrest.* —The legality or illegality of the arrest of a person, does not affect the jurisdiction of a competent Court in convicting him. If the arrest was bad, the accused has other remedy as against the party, who illegally arrested him. **17 P.R. 1906 Cr=5 Cr.L.J. 89=60 P.L.R. 1907.**

(47)—*Magistrate convicting accused not according to his own conscience—Conviction bad—Practice.*—Where a Magistrate convicted the accused not according to his own conscience, the conviction was set aside as illegal. **4 Ind. Cas. 428.**

Cook's Knife.

—Cook's knife whether "arms"—*See* ACT XI OF 1878, s. 4, 5 L.B.R. 130.

Co-owner.

See PENAL CODE, ss. 99, 141, 425, 2 C.L. R. 62.

Co-prisoner.

—Evidence of—*See* CONFESSION—CONFESSIONS BY CO-ACCUSED.

Copy.

—*Statements of witnesses to the police—Grant of copies to accused.*—The granting of copies, to the accused, of statements made by witnesses before the police, is a matter in the discretion of the Magistrate. **Rat. Un. Cr. C. 874= Cr. Rg. 51 of 1896.**

—Copies of order passed by, and depositions made before, Presidency Magistrates, right to —*See* ACT IV OF 1877, s. 170, 8 C. 166=10 C. L.R. 190.

See ACT XVIII OF 1891, ss. 2 and 4, 4 C.W. N. 433, F.B.

—Right of counsel to refer to certified copies of evidence at hearing of appeal—*See* APPEAL, 11 O.C. 360=9 Cr. L.J. 55.

See APPEAL, U.B.R. (1892—1896), Vol. I, 5; 5 Bom. L.R. 704.

See CRIM. PRO. CODE (1898). ss. 161 and 162, 36 C. 560=2 Ind. Cas. 591.

See CRIM. PRO. CODE (1898), ss. 162 and 164, 17 M.L.J. 471=30 M. 466=6 Cr. L.J. 346 =3 M.L.T. 14.

See CRIM. PRO. CODE (1898), ss. 526 and 548, S.C. 141, Oudh.

See DISCHARGE OF ACCUSED, Rat. Un. Cr. C. 305=Cr. Rg. 54 of 1886.

See INSPECTION OF DOCUMENTS, S.C. 189, Oudh.

Copyright Act.

See ACT XX OF 1947, 9 C.W.N. 591=1 C.L.J. 278.

See ACT XXV OF 1867, 14 B. 586.

"Coram Non Judice."

—Admissibility in subsequent proceeding of evidence given in proceedings *coram non judice* —*See* EVIDENCE ACT, s. 33, 3 M. 48=2 Weir 756.

Coroner.

(1)—*Power of Coroner of Calcutta—Power to commit to prison.*—The Coroner of Calcutta has no power to commit any person to prison pending an inquest. In cases where he has authority to commit, a commitment to the officers deputed to receive prisoners by the statute in force is valid, and it is not necessary that the commitment should be directed to the Sheriff. **2 Ind. Jur. N.S. 101.**

(2)—*Crim. Pro. Code (1882), s. 174—Bom. District Police Act, 1867—Police Constable—Coroner.*—There is no law to authorize a police constable to take upon himself any part of the

Coroner—concluded.

duties of the Village Patel as a Coroner under the Bombay District Police Act, 1867. **Rat. Un. Cr. C. 771=Cr. Rg. 35 of 1895.**

See ACT IV OF 1871, 16 B. 159.

Coroners Act.

See ACT IV OF 1871.

Coroner's Inquest.

See INQUEST.

Corpse.

—Carrying of corpse on a highway—*See* CRIM. PRO. CODE (1898), s. 149, 7 M. 49=2 Weir 115.

Corpus Delicti.

(1)—*Term* corpus delicti *explained.*—The term *corpus delicti* is an invention of the jurists of the middle ages and was used by them to denote the whole of the facts, which constituted the crime of killing, when the body of the killed had been found. A mixture of German and Roman views led to the proposition, which has found its way into the English Penal Law, that the proof of the aggregate of facts constituting the offence failed, when the body was not found. The expression was then extended to other offences and was used to denote that the qualities necessary to bring a fact within the operation of a rule of Criminal law had been shown to attach to that fact. The jurists of the middle ages, however, never conceived the dead body, in murder, or the object stolen, in theft, to be that "*corpus.*" The expression itself has many vices, but in the sense in which its authors used it it is at least intelligible. **1 Weir 427=7 M.H.C. App. 19.**

(2)—*Murder cases--Proof.*—Before an accused person can be properly convicted of murder, it must be proved beyond reasonable doubt that murder has been prepetrated and that veritable *corpus delicti* exists. **6 P.R. 1900 Cr.**

(3)—*Indirect proof.*—It is not a correct exposition of the English or Indian law of evidence, as it now exists, that the *corpus delicti* may not be established by indirect or presumptive proof and that such proof is admissible only to fix the criminal. **44 P.R. 1888 Cr.**

See MURDER, 3 A. 383, 11 C. 635.

Corroboration.

See EVIDENCE ACT, s. 133, L.B.R. (1872—1892), 322.

Co-sharers.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 4 C.W.N. 426.

Costs.

(1)—*Suit to recover expenses incurred in prosecuting the defendant.*—A suit to recover as damages the expenses incurred in prosecuting the defendant will not lie in a Civil Court. This has no analogy to the case of a defendant in a malicious prosecution bringing a suit against the prosecutor and obtaining as damages the expenses he was put to in defending himself on the criminal trial. **12 A. 166.** (14 B. 100, *R.*). [*F.*, 15 C.P.L.R. 129, 32 C. 429].

Costs—continued.

(2)—*Adjournment of criminal trial—Costs.*—The provisions of s. 344, Crim. Pro. Code, 1898, justify criminal Courts in allowing the costs of an adjournment to the party in damage by such adjournment. **20 P.R. 1904 Cr.**

(3)—*Application for adjournment—Day's costs.*—A Court of criminal appeal cannot, on granting a motion for an adjournment made by the Public Prosecutor, order that the applicant should pay the costs of the day incurred by the appellant. **A.W.N. 1902, 59.** [*D.*, 28 A. 307=2 A.L.J. 831=A.W.N. 1905, 256; A.W.N. 1905, 257. N.]

(4)—*General order to pay costs in addition to fine bad—Process fees and Court fees to be paid in addition to fine—Any other compensation to be paid out of fine imposed.*—A general order to pay costs in addition to fine is bad. The Court, on convicting an accused, can order him to pay in addition to the fine, the Court-fee paid on the complaint and the process fees paid by the complainant. Any other compensation to the complainant can be ordered to be paid only out of the fine imposed. **L.B.R. (1872-1892), 616.**

See ACT VII OF 1870, s. 31, U.B.R. (1892—1896), Vol. I, 7.

—Incurred for prosecution—*See* ACT I OF 1871, ss. 21 and 23, L.B.R. (1872—1892), 515.

—In case transferred to High Court—*See* ACT X OF 1875, s. 147, 15 B.L.R. App. 14.

See ACT XIII OF 1880, s. 18, 4 L.B.R. 12 =6 Cr. L.J. 124.

—Expense incurred in prosecution—*See* COMPENSATION, 5 L.B.R. 50=2 Ind. Cas. 542.

See CRIM. PRO. CODE (1898), ss. 96, 105, 165, 13 C.W.N. 458=9 C.L.J. 298=36 C. 433=5 M.L.T. 367.

See CRIM. PRO. CODE (1898), s. 145, 8 C.W.N. 178.

—Jurisdiction of Magistrate to award damages and costs in disputes about land—*See* CRIM. PRO. CODE (1898), ss. 145, 148, 32 C. 602=9 C.W.N. 862=2 Cr. L.J. 552.

—Order for, and assessment thereof without notice to party affected by it—*See* CRIM. PRO. CODE (1898), s. 148, 28 C. 302=5 C.W.N. 291.

See CRIM. PRO. CODE (1898), s. 148 (3), 29 M. 373=4 Cr. L.J. 232, 9 C.W.N. 887=1 C.L.J. 331=2 Cr. L.J. 408.

—Power of Courts to order payment of the costs of the day on granting adjournments—*See* CRIM. PRO. CODE (1898), s. 344, 28 A. 207=2 A.L.J. 831=A.W.N. 1905, 256.

Costs—concluded.

—Adjournment of criminal proceedings, costs of. whether Court may order accused to pay—*See* CRIM. PRO. CODE (1898), s. 344, 6 P.R. 1906 Cr. = 4 Cr. L.J. 78.

See CRIM. PRO. CODE (1898), s. 423, 29 M. 188 = 3 Cr. L.J. 460.

See CRIM. PRO. CODE (1898), s. 545 (2), 4 Bom. L.R. 877.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY. 21 C. 609, 13 O.C. 66, 12 C. 384, 22 C. 387, 23 C. 37, 10 C.W.N. 1030 = 4 Cr. L.J. 171.

See LIBEL, 14 C.W.N. 713

—Of application for maintenance—*See* MAINTENANCE, 11 C.P.L.R. Cr. 14.

Cotton Frauds Act.

See BOM. ACT IX OF 1863.

See BOM. ACT VII OF 1878.

Cotton Frauds Regulation.

See BOM. REG. III OF 1829.

Counsel.

See ADVOCATE.

See ATTORNEY.

See BARRISTER.

See PLEADER.

See VAKIL.

(1)—*Right to appear in Criminal Courts.*—A counsel or pleader is entitled to appear and act on behalf of the prosecution in a criminal case. **5 B.L.R. Ap. 70.**

(2)—*Crim. Pro. Code (1872), ss. 59, 60, 235, 251, 252—Right of complainant to conduct case by counsel.*—Whether a private complainant is permitted or not to conduct the prosecution under s. 59, he may instruct counsel through a pleader under the Rules of the High Court, and the Public Prosecutor may avail himself of counsel's services under s. 60. S. 235 makes every case tried by a Sessions Court a case under s. 60, and the Public Prosecutor may avail himself of counsel's services in all such cases, and the right of general management of the case still vests in him. The assistance of counsel extends also to the summing up and the reply. **11 B.H.C. 102.**

(3)—*Right of counsel to address Court—Address not finished owing to favourable remark by the Court - Judgment afterwards unfavourable—Not finishing address a material error.*—Where a counsel sat down without finishing his address in consequence of a remark by the Court from which he thought and had good reason for thinking that the Court had made up its mind in favour of his client, but where the Court afterwards delivered an unfavourable judgment convicting his client, *held* that the not finishing of the Counsel's address under the circumstances was a material error and the conviction was bad in law. **1 J.G. 15.**

Counsel—concluded.

(4)—*Reference to High Court under s. 434, Crim. Pro. Code (Act XXV of 1861).*—In a reference to the High Court under s. 434 of the Criminal Procedure Code, counsel are not heard as a matter of right, but by the indulgence of the Court. **9 B.L.R. 417 = 18 W.R. Cr. 41**; 1 B. 64.

—Prosecution by Advocate or Attorney before Presidency Magistrate—*See* ACT IV OF 1877, s. 129, 6 C. 59 = 6 C.L.R. 374.

See DEFAMATION, 19 B. 340.

Counter Case.

—*Deposition of accused as witness in a counter case—Admissibility.*—The deposition of witnesses in a case of rioting may be used as evidence against them in their trial on a counter charge of rioting. **21 C. 392.** [*F.*, 8 C.W.N. 910 = 31 C. 715].

See COMPOUNDING OFFENCE, Rat. Un. Cr. C. 331.

See CRIM. PRO. CODE (1898), ss. 239, 537, 20 C. 537.

See RIOTING, 1 C.W.N. 426.

Counter Charge.

See TRANSFER OF CRIMINAL CASES, 30 M. 233 = 2 M.L.T. 89 = 5 Cr. L.J. 290.

Counterfeiting Coin.

(1)—*Penal Code, s. 232—Counterfeiting King's coin, what amounts to.*—Where the accused had been in the habit of receiving what are called "*kundedar*" rupees, and there was nothing to show that any material part of the rupee had been removed, and all that the accused could have done was to remove the "*kunda*" and work up the face of the coin where the "*kunda*" had been, *held*, that the accused was not guilty of an offence under s. 232, Penal Code. **23 A. 420.**

(2)—To constitute the offence described in s. 232, I.P.C., there must be an intention that the coins made will be used as Queen's coins, or a knowledge that they are likely to be used as such. A deception practised for show merely, and not for wrongful loss or gain, is not an offence under the Penal Code. **26 P.R. 1886 Cr.**

(3)—In order to constitute offences under ss. 232 and 235, I.P.C., it is not necessary to prove that the accused intended that the specious coins should go into circulation and be used as money. It is sufficient that there should be the intention to practise deception by means of the imitation. **4 P.R. 1899 Cr.**

(4)—Copper coins issued from the mints of the Nawab of Loharn with a certain stamp impressed upon them, the stamp not resembling any legal coin, were held not to be counterfeit coins, as it was generally believed that the Nawab had authority to establish the mints and issue the copper sent to him by merchants as coins. **38 P.R. 1870 Cr.**

Counterfeiting Coin—continued.

(5)—*Penal Code, s. 239—Scope.*—The offence for which punishment is provided by s. 239 is not the offence committed by the coiner. The words "which at the time when he became possessed of it he knew to be counterfeit" point to a person other than the coiner, that is to say, the person who procures or obtains or receives counterfeit coin. It is against such a person that the section is directed. **3 N.W.P. 150.** [*F.*, P.L.R. 1900, 14 Cr.].

(6)—*Penal Code, s. 241—Gist of the offence.*—The gist of an offence under s. 241 is that a person should deliver to another person as genuine, or attempt to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession. **4 N.W.P. 62.**

(7)—*Penal Code, ss. 230, 235—Counterfeiting "coin"—Imitations of coins.*—Charges of counterfeiting and possession and manufacture of counterfeit coins are not sustainable in respect of imitations of coins out of currency. **A.W.N. 1882, 100.**

(8)—*Penal Code, s. 239—Delivery of counterfeit coins—Evidence.*—Where a person is charged with having fraudulently delivered to another counterfeit coins, evidence of previous attempts to dispose of such coins is relevant. **8 B. 223.** [*R.*, 16 B. 414].

(9)—*Penal Code, ss. 230, 231—Money—Akbar's coin*—To counterfeit a coin of Emperor *Akbar's* time is not an offence under ss. 230, 231 of the Penal Code, since the test of "money" is the possibility of its being used as a current medium of exchange in the market. **11 B.H.C. 172.** [*F.*, 29 A. 141=4 A.L.J. 43=A.W.N. 1906, 308=4 Cr. L.J. 453].

(10)—*Penal Code, ss. 230, 243—Counterfeit coins—Murshidabad rupees—Queen's coins.*—Murshidabad rupees, which have been declared to be current coins by Reg. XXXV of 1793, are "Queen's coins" within the meaning of s. 230, I.P.C., and consequently the possession of counterfeit Murshidabad rupees with the knowledge that they are counterfeit is an offence under s. 243, I.P.C. **A.W.N. 1903, 115.** [*F.*, 28 A. 62=2 A.L.J. 498=A.W.N. 1905, 84=2 Cr, L.J. 395].

(11)—*Penal Code, ss. 240, 243—Previous conviction for possession of counterfeit coins—Subsequent trial for delivery of the same, validity of.*—A previous conviction for being in possession of counterfeit Queen's coins does not bar a subsequent trial for delivering them to another with a view to their being changed for good money. **8 C.W.N. 717.**

(12)—*S. 256—Possession of counterfeit coins and implements for making them—Evidence.*—An accused person was convicted of being in possession of implements for counterfeiting the Queen's coins and of the counterfeit coins themselves, on the evidence of three persons. The first of them had made contradictory statements, the second was on terms of enmity with

Counterfeiting Coin—continued.

the accused, and the third, a police officer, was uncorroborated in his testimony *Held*, reversing his conviction that the case was not free from reasonable doubt and that the accused was entitled to the benefit of that doubt. **3 M.L.T. 140=7 Cr. L.J. 132.**

(13)—*Penal Code, s. 231—Counterfeit coin—Essentials.*—The thing charged to be counterfeit coin must have some such resemblance to a piece of the genuine coin as to show that it was intended to resemble and pass for it, though the imitation may be imperfect or the process incomplete. **1 Weir 219.**

(14)—*Proof of fabrication—Guilty knowledge.*—Where the charge is one of counterfeiting Queen's coin, direct proof of fabrication is not necessary to render the person punishable under the section of the Penal Code with reference to the uttering of false coin. **23 W.R. Cr. 4.**

(15)—*Penal Code, ss. 240 and 241—Evidence of uttering counterfeit coin.*—To constitute an offence under ss. 240 and 241, Penal Code, there must be evidence that the accused knew the coins to be counterfeit. **5 C.P.L.R. Cr. 5.**

(16)—*Coining Rupees, etc.—Counterfeiting.*—Coining *Akbaree, Shah Jehanee, Kasi Sikka* and *Kora Poonjee* Rupees and *Mohurs*, found to have been used in the Jubbalpore District as ornaments and sometimes proffered and received in barter, but, in the latter case, not used as a known and accepted standard of value, each individual piece having its own particular value and being exchangeable for money as an article of trade rather than in itself of the nature of money, was held not to be an offence. **Colm. Dig. Cr. 24 of 1875.**

(17)—*Possession of counterfeit coins, Penal Code, s. 239.*—An accused found in possession of coins, counterfeit of Indore and Bhopal coins, was held to be rightly convicted under s. 239, Penal Code, the coins being used as money in the Hoshangabad District. **Colm. Dig. Cr. 25 of 1875.**

(18)—*Imitation of obsolete coins.*—An accused, who, in imitation of obsolete coins "not now used as money," supplied the public with ornaments found to suit the prevailing fashion using good silver and gold for the purpose, and who carried on an apparently honest business cannot be convicted under s. 239, Penal Code. **Colm. Dig. Cr. 34 of 1875.**

(19)—*Penal Code (Act XLV of 1860), s. 243—Possession of counterfeit coin.*—When there is nothing to show that a person charged under s. 243 of Indian Penal Code was in possession of counterfeit coins fraudulently or with intent that fraud may be committed, or that he knew, when he became possessed of them, that they were counterfeit, the requisites of s. 243 are not fulfilled. **69 P.L.R. 1902.**

(20)—*Counterfeiting Queen's coin—Passing of counterfeit coin and possession of instruments for counterfeiting—Penal Code, ss. 235 and 240.*—Where a person, who was passing counterfeit

Counterfeiting Coin—concluded.

Queen's coins was, on being chased, found in possession of instruments or metals used for counterfeiting coin, *held*, that he should be convicted under s. 235, and not under s. 240, I.P.C., as the latter section did not apply to the actual coins. **10 P.R. 1889 Cr.**

See ACT XIX OF 1872, 5 N.W.P. 187.

See PENAL CODE, ss. 28 and 231, 4 A.L.J. 776=A.W.N. 1907, 289=3 M.L.T. 56=30 A. 93.

See PENAL CODE, ss. 230, 235, 1 P.R. 1903 Cr.

See PENAL CODE, ss. 235, 243, 6 Bom. L.R. 887.

See SENTENCE, 111 P.L.R. 1904.

Counterfeiting Government Stamp.

—*Counterfeiting Government Stamp—Penal Code, s. 260.*—The passing off of a one-anna stamp as a one-rupee stamp is not counterfeiting a one-rupee stamp. **2 W.R. Cr. 65.**

Counterfeiting Trade-mark.

(1)—*Penal Code, s. 486—Possession of goods with counterfeit trade-mark Jurisdiction of Courts—Crim. Pro. Code (1882), s. 182.*—Before the possession of goods with a counterfeit trade-mark can be held to constitute an offence under s. 486, Penal Code, it must be shown that such possession was for sale or any purpose of trade or manufacture. But there is nothing in the law to show that the sale, for the purpose of which the accused has the goods in his possession, must be intended to take place within the jurisdiction of the Court in which the complaint is lodged. Possession within such jurisdiction of an article bearing a counterfeit trade-mark with the intention of sale, irrespective of the locality of the intended sale, is sufficient. The provisions of s. 182, Crim. Pro. Code, go to show that the policy of the law is to authorize more Courts than one to try an offence of this kind. **25 C. 639=2 C.W.N. 450.**

(2)—*Penal Code, ss. 482, 486—Counterfeit trade-mark, sale of goods marked with.*—The accused, a dealer in piece goods, purchased goods in the market bearing the trade-mark labels of the complainant (a firm) attached thereto. He sold the same in the condition in which he bought them, without removing those labels and was convicted under s. 486 of the Penal Code for selling the goods marked with a counterfeit trade-mark. *Held*, by the High Court on revision, that no offence was committed either under s. 486 or under s. 482 of the Penal Code **32 C. 969=3 Cr. L.J. 106.**

See PENAL CODE, s. 486, 9 Bom. L.R. 732=6 Cr. L.J. 75.

See TRADE-MARK, A.W.N. 1897, 99.

Court.

(1)—*"Court" as defined in Evidence Act—Scope—Judicial enquiry, what amounts to.*—The definition of "Court" in the Evidence Act is framed only for the purposes of the Act itself, and should not be extended beyond its legitimate scope. Special laws must be confined in their operation to their special subjects. An exception to the rule must not be permitted to absorb the rule. An enquiry is judicial if the object of it is to determine a jural relation between one person and another, or a group of persons, or between him and the community generally; even a Judge, acting without such an object in view, is not acting judicially. **12 B. 36.**

(2)—*"Court" in s. 30 of the Evidence Act, meaning of.*—The word "Court" in the above section means and includes, in a trial by jury, both Judge and jury. **4 C. 483=3 C.L.R. 270, F.B.** [*F.*, Rat. Un. Cr. C. 452].

(3)—*Civil Pro. Code (1877), s. 651—Revenue Court, whether "a Court of Civil Judicature."*—The term "any Court of Civil Judicature" in s. 651, is used for the purpose of including all Courts of Civil, in contradistinction to Courts of Criminal, Procedure. A Revenue Court being, therefore, a Court of Civil Judicature, the provisions of s. 651 are applicable to a person, who escapes from custody under the warrant of a Revenue Court. **4 A. 27.**

(4)—*"Court"—Meaning of—Place of trial of criminal case — Open Court — Pronouncing judgment in private house—Crim. Pro. Code (1861), s. 279.*— Where a Magistrate conducted and closed a trial in the established court-house, but could not, by reason of illness, pronounce judgment, which he did at his private house, *held* that the procedure, being exceptional and in no way prejudicial to the prisoner, could not be quashed as illegal under s. 279 of the Crim. Pro. Code, 1861. **1 Agra Cr. 17.**

—Sub-Registrar, whether a "Court"—*See* ACT III OF 1877, s. 34, 11 M. 3.

—Sub-Registrar acting under s. 41, Registration Act, whether a "Court"—*See* ACT III OF 1877, s. 41, 10 M. 154.

—Registrar whether a "Court" within the meaning of s. 195, Crim. Pro. Code, 1882—*See* ACT III OF 1877, ss. 72, 73, 74 and 75, 2 M.L.J. 64, F.B.

—Sub-Registrar, if a Court—*See* ACT III OF 1877, s. 84, 22 W.R. Cr. 10=13 B.L.R. Ap. 40.

—Collector acting under the Land Acquisition Act, whether a "Court"—Power of Collector to administer oath—*See* ACT I OF 1894, s. 53, 27 C. 820.

—Meaning of—*See* BEN. ACT VIII OF 1885, ss. 69 and 70, 17 C. 872.

See CRIM. PRO. CODE (1898), ss. 96, 105, 165, 13 C.W.N. 458=9 C.L.J. 298=36 C. 433=5 M.L.T. 367.

See CRIM. PRO. CODE (1898), s. 195, 9 C.W.N. 127.

—Registrar acting under s. 73, Act III of 1877, whether a "Court"—*See* CRIM. PRO. CODE (1898), s. 195, 15 A. 141.

Court—concluded.

See CRIM. PRO. CODE (1898), s. 195, 2 M. L.J. 286.

—Revenue Courts whether Civil Courts—*See* CRIM. PRO. CODE (1898), ss. 198, 195, 2 A. 533, F.B.

See CRIM. PRO. CODE (1898), ss. 476, 195, 34 C. 551=5 C.L.J. 508=11 C.W.N. 568=5 Cr. L.J. 398=2 M.L.T. 298.

See CRIM. PRO. CODE (1898), s. 476, 6 P.R. 1909 Cr=104 P.L.R. 1909=10 Cr. L.J. 158=2 Ind. Cas. 812.

—Excise Collector, whether a Court—*See* PERJURY, 10 C.W.N. 220=3 Cr. L.J. 196.

See REVISION, 3 S.L.R. 66 Cr.

See SANCTION TO PROSECUTE, 11 C.W.N. 909=6 Cr. L.J. 160, 4 M.L.J. 189, 5 C.L.J. 176=5 Cr. L.J. 186, 11 O.C. 358=9 Cr. L.J. 54.

Court Fees.

(1)—*Crim. Pro. Code (1861), ss. 168, 171—Complaint by Civil Court.*—Under s. 168, Crim. Pro. Code, the sanction of the Civil Court is all that is necessary, and under s. 171, Crim. Pro. Code, on the Munsif sending a case to the Magistrate, he is required to proceed thereupon according to law. The Munsif is not required to prefer a complaint on stamped paper. **5 B.H.C. Cr. 104.**

(2)—*Court-fee on copy of judgment appealed against—Warrant case—Crim. Pro. Code (1882), s. 371.*—By cl. (3) of Government Notification, No. 532 of 26th January, 1886, the Court fee is remitted on the copy of a judgment, in an appeal from a conviction in a warrant case, when given under s. 374, Crim. Pro. Code. **Rat. Un. Cr. C. 364=Cr. Rg. 9 of 1888.**

(3)—*Copies of summary of evidence—Stamp duty.*—Copies of summary of evidence and grounds of conviction can only be furnished on stamp paper. The exemption by the order of the Government of India, dated 11th September, 1870, refers only to final sentences and orders which alone it is necessary for a party to present with his petition of appeal. **6 M.H.C. App. 12.**

—Warrant case—Court-fees for summoning witnesses—*See* CRIM. PRO. CODE (1898), ss. 245 and 252, 2 Weir 323.

Court Fees Act.

See ACT VII OF 1870.

Court Fees (Presidency Magistrates) Act.

See ACT IV OF 1877.

Court of Record.

See CONTEMPT OF COURT, 10 C. 109, P.C=10 I.A. 171.

Court of Wards.

—Manager under Court of Wards—*See* PUBLIC SERVANT, A.W.N. 1885, 297, 21 A. 127.

—Peon of Court of Wards, whether public servant—*See* PUBLIC SERVANT, 7 M. 17=1 Weir 27.

Cow.

—"Bull," "Cow" and "any other animal," meaning of—*See* PENAL CODE, s. 429, **22 C. 457.**

Cowries.

—*Cowries, if instruments of gaming.*—Cowries cannot be taken to be instruments of gaming for the purposes of Act III of 1867. **6 C.P.L.R. 17 Cr.; 16 A. 23=15 A.W.N. 139; 19 A. 311=17 A.W.N. 117.**

See BEN. ACT II OF 1867, ss. 1 and 6, 5 C.W.N. 503, 25 C. 432.

Crabs.

—*Crabs, if animals.*—Crabs are animals within the meaning of s. 2 of the Prevention of Cruelty to Animals Act, XI of 1890. **24 C. 881.**

Creditor.

See SANCTION TO PROSECUTE, A.W.N. 1903, 170.

—Removal of property without consent to satisfy his own claim—*See* THEFT, 18 A. 88, 22 C. 669, 1017, 1 Weir 405, A.W.N. 1895, 233.

Cremation Ground.

See CRIM. PRO. CODE (1898), s. 133 (3), 25 C. 425=2 C.W.N. 113.

See NUISANCE, 19 M. 464=1 Weir 247=6 M.L.J. 181.

Criminal Breach of Contract.

See ACT XIII OF 1859.

(1)—*Penal Code, s. 490—Contract of service to convey indigo to the vats.*—An agreement for personal service in conveying indigo from the field to the vats is not a contract, the breach of which is punishable under s. 490 of the Penal Code. **6 W.R. Cr. 80.**

(2)—*Offences against travellers.*—*Quære*:—Whether the words "during a voyage or journey" in s. 490 of the Penal Code do not limit the offences made under that section to offences against travellers. That section, however, does not apply to a contract to place the defendant's carts at the complainant's disposal for a specified time to convey a thing from where he pleases to where he pleases. **9 W.R. Cr. 12.**

Criminal Breach of Trust.

See PENAL CODE, ss. 405—409.

See CRIMINAL MISAPPROPRIATION.

See CHEATING.

(1)—*Requisites for offence.*—To constitute the offence of criminal breach of trust, there must be dishonest misappropriation by a person

Criminal Breach of Trust—continued.

in whom confidence is placed as to the custody or management of the property in respect of which the breach of trust is charged. **16 W.R. Cr. 39.**

(2)—*Penal Code, s. 405—Criminal breach of trust.*—Where the complaint amounted only to saying that, because, as between the father of the complainant and the accused, certain arrangements were made in consequence of which certain moneys were received by the accused and that the accused declined to render accounts, *held*, that the accused would not be guilty of the offence of criminal breach of trust, unless it was alleged that the money had, as a matter of fact, been realised by the accused, and was wrongfully appropriated to his own use. **9 A. 666.** [*R.*, U.B.R. 1905, 1st Qr., Penal Code, 19].

(3)—*Penal Code, s. 406—Criminal misappropriation.—Per Batty, J.*—The loan of a chattel does not constitute the borrower a person entrusted with the chattel or with dominion over it within the meaning of s. 406, Penal Code, for, the borrower is not a trustee but has a beneficiary interest given him in the thing lent. *Per Aston, J.*—Where the property dishonestly misappropriated had come into the accused's possession through his being entrusted with, or with any dominion over, it, which includes a loan of a chattel, the offence committed is criminal breach of trust. **6 Bom. L.R. 1093.**

(4)—Evidences of trust and dishonest misappropriation are sufficient to constitute the offence of criminal breach of trust. The words "in violation of law" in s. 405 relate and are limited to, the words "dishonestly uses or disposes of that property," and are not to be extended to the words "dishonestly misappropriates or converts to his own use that property." **1 Weir 460.**

(5)—*Penal Code, ss. 405, 415—Criminal breach of trust—Cheating.*—A *chaprasi* was directed by the Tahsildar to have census labels made and to affix them to certain houses. The cost of 1½ annas to make the label, he was directed to collect from each house-owner. But he collected more than 1½ annas, and appropriated the sum. *Held* that the offence committed was not criminal breach of trust, but cheating. **A.W.N. 1881, 32.**

(6)—*Penal Code, ss. 95, 405—Value of property.*—In the case of a conviction for criminal breach of trust, except in so far as s. 95 is concerned, the question of the value of the property, in respect of which the offence was committed, is quite immaterial. **27 A. 28.**

(7)—*Penal Code, s. 409—Naib Nazir, whether a public servant.*—The Naib Nazir is a public servant within the meaning of s. 409, and not merely the private servant of the Nazir. **2 N.W.P. 298.**

(8)—*Penal Code, ss. 62, 406—Criminal breach of trust—Sentence.—Held*, that the special sentence provided for by s. 62 of the Code is a sentence, which should only be inflicted in rare cases—those cases in which crimes of an atrocious nature are exposed or in which offences have been committed under aggravated circumstances. **A.W.N. 1906, 259=3 A.L.J. 772=4 Cr. L.J. 371=29 A. 25.**

(9)—*Penal Code, s. 409—Criminal breach of trust.*—The accused, a clerk in a record room entrusted with Government records, gave a document in his custody stealthily to a person entitled to it. By his action, the Government was deprived of money, which it would have received, had the return of the document been applied for in the usual manner. *Held*, that the clerk was rightly convicted, under s. 409, of the offence of criminal breach of trust by a servant, as the giving of a document in his custody stealthily amounted to a violation of an implied contract touching the discharge of his trust. **27 A. 260.**

(10)—Where the accused, a revenue *patel*, who received from Government small sums of money to be paid over as temple allowances, took formal receipts from the person to whom these payments were to be made, and forwarded those receipts to the authorities in due course, but the money was not paid over to the persons entitled to receive it, as they were willing to trust him; *held*, that the accused had fulfilled the trust reposed in him by the Government, and that he was not guilty of an offence under s. 409, I.P.C. **10 B. 256.** [*R.*, U.B.R. 1905, 1st Qr., Penal Code, 19].

(11)—*Intention to cause wrongful gain or loss—Penal Code, ss. 405, 406—Cattle Trespass Act (I of 1871), s. 19.*—The accused was Sub-Inspector of Police at the *thana* of Dunyar. A pony was brought to the pound at the police station and confined there under Act I of 1871. The books kept at the station showed that the pony had been sold by auction under the Act and purchased by one Gopinath. After some time, the pony had eventually been purchased by the accused from a vendor from Gopinath. The Magistrate found on the evidence that there had been no sale under Act I of 1871, and convicted the accused of criminal breach of trust, and sentenced him under s. 406 of the Penal Code. *Held*, the conviction was illegal. There must be an entrusting of the accused with the property, and evidence that he dishonestly misappropriated it; there must be an intention on the part of the accused to cause wrongful gain or wrongful loss. **8 B.L.R. App. 1; 16 W.R. Cr. 52.**

(12)—*Penal Code, s. 405—Criminal breach of trust.*—An *ekka driver* was the owner of a pony, when the pony fell into such condition of disease that it was condemned by the Municipal authorities. It then came into the custody of a Magistrate who, in the ordinary course, would have ordered it to be destroyed, but, being actuated by humane motives, handed the pony over to the accused, who professed to be the Secretary of a Society for the maintenance of incurable animals. Having kept the animal for some time, the accused sold it to the *ekka-driver*. *Held* that the accused was guilty of criminal breach of trust. **A.W.N. 1894, 197.**

Criminal Breach of Trust—continued.

(13)—*Partner—Master and servant.*—The accused was convicted of criminal breach of trust in respect of the value of goods he was asked to sell. The contention was that the conviction could not be sustained, as the accused was a partner with the prosecutor. *Held* by Jackson, J., that the finding of the Magistrate and Sessions Judge on the evidence was to the effect that the prisoner was a servant not a partner; but that such finding could not be interfered with by the High Court as a Court of Revision, unless there was a mistake in law; that the finding was legally correct; that the defence of the prisoner could not be taken to mean that he was a partner, but merely that he claimed a small share in the profits, and that such claim did not make him a partner, as an agent's remuneration, a share in the profits, does not constitute the agent a partner. *Held* by Kemp and Mitter, JJ., (releasing the prisoner) that, though the allowance of a portion of the profits or goods does not destroy the relation of master and servant, the accused in this case distinctly pleaded that he was a partner, not merely that he was entitled to a share of the profits; that the Lower Courts did not specifically decide that the accused was a servant; and that the prosecutor should sue for an account. **9 W.R. Cr. 37.**

(14)—*Penal Code, s. 409*—Kanungo *receiving salary through Government—Threat of criminal prosecution.*—A *kanungo* appointed to collect rents for the Maharajah of Benares and receiving his salary through the Government is punishable under s. 409 of the Penal Code for criminal breach of trust. Where a threat of criminal prosecution is used for constraining the accused to pay up moneys misappropriated by him and, after a portion is recovered, a criminal complaint is preferred, *held* that the conduct of the complainant is improper in that it is in disregard of the real objects of the criminal law and that a criminal prosecution should not be used as a means of recovering a civil debt. **A.W.N. 1884, 105.**

(15)—*Penal Code, s. 405—Breach of trust—Refusal to give up mortgaged land.*—A refusal by the accused to give up land alleged to have been mortgaged to them, the mortgage being denied, could not be treated as a misappropriation of the documents of title amounting to criminal breach of trust under s. 405, I.P.C. The matter in dispute would be but of the ordinary description which would form the subject of a civil suit. **2 B.H.C. 127.**

(16)—*Fraud by mortgagor in respect of mortgaged property—See* **5 W.R. Cr. 230.**

(17)—*Failure to account—Penal Code, ss. 406, 408 and 407.*—The prisoner, a *gomastah*, took from his employers, between the 15th April and 30th June, sums amounting to Rs. 600, for the purchase of wood. During that period he supplied wood to the value of Rs. 234, but the prosecutor alleged that most of that was to be set off against the balance to the debit of the prisoner for the year before, and that the value of the firewood was, as a fact, only Rs. 34. The prisoner was charged with criminal breach of trust as a servant. The defence was that he had purchased wood and made advances on that account; but this defence was proved to be false. The Magistrate convicted him, but the Judge held it was merely a failure to account, and acquitted the prisoner. *Held*, the prisoner was guilty of criminal breach of trust. **1 B.L.R. S.N. 21 = 10 W.R. Cr. 28.**

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(18)—*Act XIII of 1850—Furnishing false accounts.*—Where there is no provision in the Penal Code, and any other law (such as the Breach of Trust Law, Act XIII of 1850) provides for the punishment of persons furnishing false accounts such persons may be tried under that law. **14 W.R. Cr. 80.**

(19)—*Misappropriation of pay of thanna police—Penal Code, ss. 405, 409.*—A constable, who dishonestly misappropriates to his own use the pay of his *thanna* police entrusted to him, commits the offence of criminal breach of trust. **3 W.R. Cr. 44.**

(20)—*Penal Code, Act XLV of 1860, ss. 405, 417.*—Where the accused, to whom silver had been entrusted for making a jewel, introduced copper, *held* that the offence committed was criminal breach of trust and not cheating. **4 B.H.C. Cr. 16.**

(21)—*Penal Code, s. 408—Breach of trust—Temporary loss.*—An offence, under s. 408 of the Penal Code, is committed, even where the act of the accused was to cause wrongful loss to the complainant for a time only. **8 Bom. L.R. 951 = 5 Cr. L.J. 5.**

(22)—*Penal Code, s. 405—Criminal breach of trust—Municipal Chairman—Statement as to cash in hand.*—A Municipal Chairman was charged with criminal breach of trust for stating to the *Mamlatdar* who examined the accounts on a certain day that he had a definite sum of money in hand, while the accounts, showing a correct cash-balance, showed also that a sum in addition to the admitted amount must have been in the hands of the Chairman as due to petty servants. This was, however, paid to the servants two days later, and the failure to state that sum appeared to have been due merely to a desire to hide the delay in the payment to servants. *Held* that no offence was made out, since no dishonest intention or dishonest use of money was proved, mere delay in payment not being a criminal act, and that there was no duty cast on the accused to pay the servants on any particular day. Not merely a civil breach of trust, but also a fraudulent intent or a wilful violation of trust with fraudulent design, should be proved. **Rat. Un. Cr. C. 484 = Cr. Rg. 50 of 1889.** (12 M. 51, *D.*)

(23)—*Penal Code, s. 409—Burden of proof.*—In a case of criminal breach of trust where the accused pleads that he has accounted to the complainant and paid the balance of the money,

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the burden of proving non-accounting and non-payment is on the prosecution and not on the accused. **Rat. Un. Cr. C. 860=Cr. Rg. 27 of 1896.**

(24)—Where, in a charge of criminal breach of trust, the accused pleads payment to the proper person, the burden of proving non-payment is on the prosecution and not on the accused. **Rat. Un. Cr. C. 872=Cr. Rg. 47 of 1896.**

(25)—*Penal Code, ss. 403 and 405—Immoveable property.*—The property referred to in s. 405 must, as in s. 403, be moveable property, and criminal breach of trust cannot be committed in respect of immoveable property. **23 C. 372.** [*R.*, Rat. Un. Cr. C. 928].

(26)—*Penal Code, s. 408—Charge under section in respect of general deficiency in accounts.*—In a case of criminal breach of trust under s. 408, a count based upon a general deficiency was struck out of the indictment by the presiding Judge after consultation with the Chief Justice. **24 C. 193.** [*Approved*, 2 C.W.N. 341].

(27)—*Penal Code, s. 406—Criminal breach of trust—Refusal to pay money on ground of claim made to it by another.*—Where a person was employed by the complainant and another person to take their paddy for sale, but refused to give the complainant the amount of money realised by the sale of his paddy on the ground that a portion of the paddy was also claimed by the other person, *held*, that the accused could not be convicted of criminal breach of trust. The fact that the other person had brought a suit to recover the sum of money claimed by him would be a complete answer to the charge and meet the findings of the Magistrate that the claim made by the other person was false. **28 C. 362.**

(28)—*Penal Code, s. 408—Criminal breach of trust by servant—Waste paper ordered to be destroyed—Appropriation by servant.*—A servant received from his employers, a firm in Calcutta, some bags of waste paper with an order to take them to their yard and there to burn and destroy the papers. The servant instead of destroying them brought some of them to Bow Bazaar in Calcutta; *held*, that the act committed by the accused did not amount to an offence under s *408*. **29 C. 489.**

(29)—*Penal Code, s. 406—Criminal breach of trust—Dishonest conversion by partner—Liability of partner to account for partnership money.*—In a partnership, it is open to a partner to spend the money he receives and account for it in dealing with the partnership; and such a partner is plainly entitled to be called upon for an account of the expenditure of the money which he has received. In a case where it was not satisfactorily made out that this was not done, and it could not be made out in the absence of a proper demand for an account, it was held that no dishonest conversion could be found, which would justify the conviction of the partner under s. 406, Penal Code. **35 C. 1108=9 Cr. L.J. 74.**

(30)—*Penal Code, ss. 406, 409—Gist of the offence—Jurisdiction of Magistrates.*—S. 409 does not require the property, in respect of which criminal breach of trust is committed, to be the property of the Government, but only requires that it shall be entrusted to a public servant in his capacity as such. [*F.*, 1 S.L.R. 38]. Where a Magistrate tried a case which properly came under s. 409, and which was, therefore, triable by the Court of Session, under s. 406, the High Court annulled the trial, and ordered a new trial for an offence under s. 409, Penal Code, before a Court of Sessions. **2 C. L.R. 515.**

(31)—*Penal Code, ss. 213, 214, 406—Compounding offences.*—The offence of criminal breach of trust, being one into which the element of dishonesty enters, cannot, under the terms of ss. 213 and 214, I.P.C., be lawfully compounded. **6 C.L.R. 392.**

(32)—*Penal Code, s. 409—Appropriation of property ordered to be destroyed.*—Where unclaimed rice lying at the Kidderpore Docks was advertised for sale, but before sale, it was condemned as being in a rotten condition and was handed over to the Superintendent of the Health Department of the Calcutta Corporation, *held*, that the latter had not committed the offence of criminal breach of trust by selling the property and retaining the sale proceeds, instead of destroying it. **2 C.W.N. 216.** [*F.*, 29 C. 489].

(33)—*Penal Code, ss. 408 and 414—Abetment of criminal breach of trust by servant.*—In order to sustain a conviction for the abetment of criminal breach of trust by a servant, it must be proved that the accused knew that, in respect of such transaction, the servant was acting dishonestly and was committing a breach of trust, and that the accused abetted the servant in doing it. **4 C.W.N. 309.**

(34)—*Criminal breach of trust by servant—Prosecution by owner on taking the management from the Court of Wards.*—The owner of an estate, on assuming management thereof, is competent to prosecute a servant of the Court of Wards for criminal breach of trust committed during the management of the estate by the Court. **5 C.W.N. 248.**

(35)—*Abetment—Conviction of abettor on the uncorroborated confession of the principal offender.*—Where a person was charged with abetment of criminal breach of trust and the only evidence against him was a confession by the principal offender, who had pleaded guilty, *held*, that, in the absence of any corroboration of the confession, it was not proper to convict the accused. **5 C.W.N. 294.**

(36)—*Penal Code, ss. 23, 24, 109 and 408—Criminal breach of trust by a servant.*—Where a person, entrusted with some blocks of wood engraving for the purpose of having a catalogue

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printed for the complainant, allowed his brother to use the block to print his catalogue, *held*, that such act constituted criminal breach of trust. **6 C.W.N. 203.**

(37)—*Penal Code, s. 405—Criminal breach of trust—Leaving box in accused's house—Claim of debt—Refusal to allow removal of box till payment of debt.*—*Held*, that the refusal of the accused to allow the complainant to remove a box left in his (accused's) house by the latter, unless a debt claimed by the accused to be due to him from the complainant was paid, did not amount to a criminal breach of trust, inasmuch as there was no evidence that the accused dishonestly misappropriated or used or disposed of the box. **17 M.L.J. 413=6 Cr. L.J. 330.**

(38)—*Penal Code, ss. 403, 405, 415 and 108—Criminal breach of trust—Manager of Provident Institution permitting proprietor to receive monies which should have been in deposit in Bank—Contract so to permit—Manager not guilty of breach of trust or abetment.*—The accused B, the manager of a Provident Institution, undertook by his security bond to make himself civilly and criminally liable to the proprietor for the management of the entire concern, the safe custody and proper application of funds, but the proprietor and his agent were at liberty to take charge of money, papers, etc., relating to the Institution. B allowed the proprietor to receive a sum of money from a diploma-holder, which should, according to the Prospectus and Rules, be deposited in the Bank for meeting death claims, and the proprietor misappropriated the same. *Held*, on a charge of criminal breach of trust or abetment thereof, the accused was not guilty, as he could not, under his contract, prevent the proprietor and his agent from taking the money. There was no contract between B., and the diploma-holders, and he cannot be said to have held the subscription in trust for their nominees. **5 M.L.T. 141.**

(39)—*Penal Code, s. 405—Criminal breach of trust—"Dishonestly" explained.*—The word "dishonestly" means the doing an act with the intention of causing wrongful loss or wrongful gain; and wrongful gain is gain by unlawful means of property to which the person gaining is not legally entitled. For either wrongful loss or gain, the property must be lost to the owner or the owner must be wrongfully kept out of it. The deterioration of an article pledged with another by use is not such a loss of property to the owner and the wrongful use of the property by the pledgee is not such a gain to him. **1 Weir 460=3 M.H.C. App. 6.** [*R.*, 6 C.W.N. 203].

(40)—*Penal Code, s. 406—Criminal breach of trust by a pledgee.*—A person, who pledges what is pledged to him, may be guilty of criminal breach of trust. There are two elements to constitute the offence, (1) the disposal in violation of any direction of law or contract, express or implied, describing the mode in which the trust ought to be discharged, (2) and such disposal must be made dishonestly. Great caution

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ought to be used in drawing the inference of dishonesty from a breach of duty imposed by civil law. Whether it should be drawn or not is a question in each particular case. **1 Weir 461=6 M.H.C. App. 28.**

(41)—*Penal Code, s. 406—Criminal breach of trust—Misappropriation of money that ought to be sent to the treasury.*—Where the accused, whose duty it was to send immediately to the treasury sums received by him, retained small sums without immediately entering them in his accounts, and also mixed the employer's money with his own, *held*, that the accused was guilty under s. 406. **1 Weir 462.**

(42)—*Penal Code, s. 406—Agreement with person guilty of embezzlement for refund of money embezzled, effect of.*—An agreement allowing a person, who had committed criminal breach of trust, to refund the property misappropriated cannot operate to bar a subsequent prosecution for the offence of criminal breach of trust. **1 Weir 462.**

(43)—*Penal Code, s. 406—Entrusting property in order to prevent it from being taken in execution of decree—Misappropriation.*—The fact that the complainant entrusted the accused with his flock in order to evade the payment on the execution of a decree, which might be issued, is not a legal defence which will justify the accused in selling the animals and appropriating the sale proceeds to his own use. **1 Weir 463.**

(44)—*Penal Code, s. 405—Entrusting of property for raising a loan—Raising a larger sum and applying the additional money to his own use, effect of.*—The prisoner was entrusted with dominion over a pair of ear-rings for the purpose of raising Rs. 7 upon them, and creating a lien upon them to that amount only. The accused obtained a larger sum and created a greater lien, and then applied the additional money to his own use. *Held*, that the accused was guilty of criminal breach of trust. **1 Weir 464.**

(45)—*Penal Code, s. 408—Delay in remitting money to treasury.*—Where a village officer delayed, for four or five months, in remitting the kist amount to the treasury, *held*, that the officer was guilty of an offence under s. 408. *Held*, also, that it may be difficult to separate carelessness from dishonest misappropriation and to say where the one ends and the other begins. **1 Weir 464.**

(46)—*Penal Code, s. 408—Criminal breach of trust by servant—Effect of servant executing a bond for the amount misappropriated.*—Where a servant committed criminal breach of trust, *held*, that the circumstance that the employer had taken a bond for the amounts misappropriated or for amounts similarly misappropriated, would not prevent the prosecution or conviction of the accused for the offence. But the accused would be entitled to prove that the terms of his employment were such that the omission to make payment of the sums collected amounted only to a debt. **1 Weir 465.**

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DAR (Kashmir)

Criminal Breach of Trust—continued.

(47)—*Penal Code, s. 409—Village shroff receiving grain in payment of public revenue—Misappropriation of the grain.*—Where a village shroff, whose duty it was, among other things, to assist in collecting the revenue, received grain from certain ryots and, in return, granted receipts for the public revenue, as if for money received, *held*, that the shroff could not be convicted of criminal breach of trust of the grain so received, inasmuch as the accused were not authorised to receive the public revenue in kind, and as the party who so delivered the grain did not thereby discharge himself from liability for the revenue. **1 Weir 465=4 M.H.C. App. 32.**

(48)—*Penal Code, ss. 409 and 417—Kurnam receiving illegal payment.*—The accused was charged with criminal breach of trust and also of cheating in respect of the following:—(1) payment from ryot, as part of the assessment for a *fasli* of three *poramboke* fields for which the accused, subsequently, on the same day, issued two forged pattahs to the ryot; (2) payment from a ryot as costs of demarcation stones for two waste fields, one of which the ryot was cultivating without leave; (3) payment from another ryot as for assessment on a piece of waste land which the accused promised to get for him without a darkhast and as for cost of demarcation stones to be fixed for the said lands. *Held*, that the payments made to the accused were not made under such circumstances that it could be said that the accused received them as Government money or in trust for Government. *Held*, further, that the accused was not guilty of cheating, as the persons who gave the money must clearly have known that the money was not to be paid to the Government. **1 Weir 466.**

(49)—*Penal Code, s. 409—Criminal breach of trust by public servant, what amounts to.*—The accused, a petty officer in the Salt Department, was empowered to sell salt at reduced prices to fish-curers (ticket-holders). The charge against him was that he really bought salt for himself at reduced rates, entering the sales in the Government books as if made to ticket-holders, thus defrauding Government of the difference in the price of the salt. *Held*, that the officer was guilty of the offence of criminal breach of trust by a public servant. **1 Weir 467.**

(50)—The petitioner, a Nazir of the Court of the Cantonment Magistrate, was convicted of the offence under s. 409, I.P.C., for having criminally misappropriated the sum of Rs. 52-6-3 out of the Government money in his charge. It appeared that the accused intended to restore this money to the Government. It was also found that the accounts in the books were kept all right and there appeared to have been a long standing practice in the office, among the officials employed, to receive advances of moneys out of the cash with the accused according to their requirements, generally out of mutual regard, and then to repay them when the salaries were drawn from the Treasury and that the accused had made advances when the cash was found to be deficient. The accused made good the deficiency when he was ordered by the Cantonment Magistrate to refund it. *Held*, that there was no dishonest misappropriation or conversion or use within the meaning of s. 405 of the Indian Penal Code and that the accused was entitled to be acquitted. **39 P.L.R. 1902.**

(51)—*Mere retention of money—Penal Code, s. 405.*—Mere retention of the money received by an accused person as diet-money in his capacity as Naib Nazir, would not amount to misappropriation and if he produces the money when asked for it, clear proof must be given of its use or conversion in the meantime. Further where the accused has given security for the money placed in his hands, there would be a reasonable presumption that, if he kept the money in his possession until he was told to repay it, he did not convert it to his own use. **2 C.P.L.R. 161.**

(52)—*Penal Code, s. 403—Embezzlement of public money.*—If an accused person receives public money and does not pay it into the treasury and it is not shown to have left his possession, the proper inference would be that he embezzled it. **Colm. Dig. Cr. 35 of 1876.**

(53)—*Penal Code, s. 406—Criminal breach of trust—Loan—Deposit.*—Upon a charge of criminal breach of trust, the accused pleaded that the amount claimed by the complainants was due by them as a debt but having sustained losses in business they were unable to pay it. *Held*, that in such cases the crucial test is was the sum due to the complainants owed by the accused as a debt, or was it held by them as trust money for the complainants over which they had no right of disposition of any kind. *Held*, upon the evidence, that the accused must be considered to have acted as the complainant's bankers, and the relation between banker and customer is in law that of debtor and of creditor. **135 P.L.R. 1901.** (95 P.R. 1885, *R.*).

(54)—*Servant of agent of a firm—S. 409, Penal Code—Agent entirely responsible—Misappropriation by agent—Liability of servant.*—Where a branch firm employed purchasing agents who, in their turn, employed the accused as their servant, and where the purchasing agents were charged with criminal breach of trust as agents under s. 409, and the servant for criminal breach of trust as a servant, *held*, that the servant could not be convicted of the offence, as he was not the servant of the firm, the purchasing agents having taken the sole responsibility, as no specific amount had been proved to have been embezzled by him and as he was not proved to have abetted the purchasing agents. **2 P.R. 1902 Cr.**

(55)—*Penal Code, s. 406—Position of shroff of a Battery—Deficiency of Government monies in his hands—Criminal breach of trust—Essence of misappropriation.*—The shroff of a

Criminal Breach of Trust—continued.

Battery holds the position of a cashier with reference to the custody of Government monies entrusted to him, and his failure to produce cash for the entire balance due out of the amount so entrusted amounts to a criminal breach of trust. A contract of a special nature to keep a certain fund intact, and not to mix it with the other cash he holds in his hands for his business, must be established, before a person can be held to be a trustee of that fund. It is doubtful whether a mere contract that he should always be ready to show that he has in hand a sum equal to the balance of Government monies in his hands would suffice. For, the essence of misappropriation of property is that the property itself should not be at the disposal of the accused person according to his wish. **19 P.R. 1908 Cr.**

(56)—*Police officer entrusted with property by a traveller for protection.*—A thana officer entrusted with property for its protection by a traveller, who believed himself to be dying, would be guilty of an offence under s. 409, I.P.C., if he misappropriated it as the accused entrusted with the property in his capacity as a public servant, who was empowered under s. 95, Crim. Pro. Code, 1872, to receive the property to prevent the commission of an offence, *i.e.*, theft by other persons taking advantage of the illness or death of the traveller. **24 P.R. 1876 Cr.**

(57)—*Criminal breach of trust, if a compoundable offence.*—A charge of criminal breach of trust is not compoundable; the dishonest intent being an essential ingredient. **30 P.R. 1879 Cr.**

(58)—*Banker and customer—Moneys of customer used by Banker for his own purpose.*—Moneys due to a customer from a banker are simply due as debts and are fully at the disposal of the banker. The latter is not, therefore, guilty of criminal breach of trust in using them for his own purpose. **32 P.R. 1901 Cr.** (95 P. 1885, *R.*).

(59)—*Servant taking money entrusted to him to be taken to another place—Necessity for proof of actual concession.*—Where a servant is charged with criminal breach of trust of his master's money, it is not necessary for the prosecution to show that the accused has actually expended any portion of the money. The first possession being lawful, the offence consists in a mental act or intent to deprive his master of his property without any outward or visible trespass. Where a servant entrusted with money for the purpose of taking it to one place walks away with the amount to another place, he is guilty of criminal breach of trust, although he has not spent any portion of the money. **36 P.R. 1889 Cr.**

(60)—*Penal Code, ss. 406, 408—Criminal breach of trust—Defective charge—Crim. Pro. Code (1898), ss. 222, 234, 439.—Held*, that, in the case of criminal breach of trust, a general charge of embezzlement, mentioning the gross

Criminal Breach of Trust—continued.

sum misappropriated, as laid down in sub-section (2) of s. 222 of the Code of Criminal Procedure, is sufficient, but it is defective and must fall through, where the accused appears to have been prejudiced by not having any definite charge to answer. **16 P.W.R. 1907 Cr.=6 Cr. L.J. 137.**

(61)—*Stake-holder misappropriating stakes—Penal Code, s. 406.*—The holder of the stakes of a wager, who appropriates them or converts them to his own use without the consent of the depositor or of the winner of the wager, is liable to conviction under s. 406, Penal Code. The words "by unlawful means" in the definition of "wrongful gain" and "wrongful loss" are intended to refer to an act which would render the doer liable either to a civil action or to a criminal prosecution. **2 L.B.R. 216.** (L.B.R., 1872—1892, 130, *Over.*).

(62)—*Penal Code, s. 405—Money advanced for a specific purpose, misappropriation of, constitutes the offence of criminal breach of trust.*—The accused was convicted and sentenced on a charge of criminal breach of trust for having misappropriated the money lent to him to buy paddy with, in pursuance of an agreement, under which he was to sell the paddy, so bought, to the complainant. *Held*, the money was advanced for a specific purpose, and, apart from that purpose, it would not have been advanced at all and, the relation of debtor and creditor not being incompatible with the existence of a trust in respect of the money advanced, such money must be regarded as having been entrusted to the accused within the meaning of s. 405 of the Code. **3 L.B.R. 200=4 Cr. L.J. 466.**

(63)—*Penal Code, s. 406—Criminal breach of trust—Hypothecation by accused of all his claims as a contractor against Government—Undertaking to convey all cheques drawn in his favour—Cashing cheques and appropriating proceeds in violation of the undertaking—Whether constitutes criminal breach of trust.*—An accused person hypothecated by a written contract to the applicant all his claims as a contractor against the Government in respect of work done and materials supplied to the Executive Engineer, and undertook "regularly and without fail" to "convey and make over" to the applicant all cheques drawn by the said Executive Engineer in his favour, to "hold the same unto the use of the applicant, and not under any circumstances to cash any bill or cheque or otherwise appropriate the proceeds thereof without the knowledge and consent of the applicant." The accused cashed two cheques and misappropriated the proceeds in violation of the contract. *Held*, such misappropriation amounted to a criminal breach of trust. **U.B.R. 1908, 1st Quarter, Penal Code, 13=8 Cr. L.J. 24.**

(64)—*Penal Code, s. 405—Failure to account for money entrusted—Criminal breach of trust, whether constituted.*—Failure to account for

Criminal Breach of Trust—concluded.

money by the person to whom it has been entrusted may constitute the offence of criminal breach of trust under s. 405, Penal Code. **U. B.R. 1909, 1st Quarter, Penal Code, 21.**

(65)—Failure to account for money entrusted to the accused for a particular purpose constitutes criminal breach of trust. Dishonest misappropriation may sometimes be inferred from the circumstances without direct evidence. **11 Cr. L.J. 44=4 Ind. Cas. 762=U.B.R. 1909, 1st Quarter, Penal Code, 21.**

(66)—*Penal Code, s. 409—Subject-matter of breach of trust not belonging to Government—Crim Pro. Code, s. 222 (2)—Inclusion of various items in one charge.—Held*, s. 409, I.P.C., does not require the property, in respect of which criminal breach of trust is committed, to be the property of the Government, but only requires that it shall be entrusted to a public servant in his capacity as such public servant. The inclusion of various items, in respect of which the criminal breach of trust was alleged to have been committed, in one charge, does not vitiate the trial, as such a procedure is in accordance with the provisions of s. 222 (2), Crim. Pro. Code. **8 Cr. L.J. 160=1 S.L.R. 38 Cr.**

(67)—*Penal Code, ss. 408, 409—Sentence, Mitigation of.—See* 8 W.R. Cr. 1.

See CHEATING, A.W.N. 1881, 32.

See COMPOUNDING OFFENCE, 1 M. 191.

See CRIM. PRO. CODE (1898), ss. 179, 181 (2) and 190 (*c*), 4 M.L.T. 481=9 Cr. L.J. 92.

See CRIM. PRO. CODE (1898), ss. 181 (2) and 531, 9 P.L.R. 1902.

See CRIM. PRO. CODE (1898), ss. 222, 234, 24 A. 254=A.W.N. 1902, 44, 31 C. 928=8 C. W.N. 807.

See JOINDER OF CHARGES, 29 M. 558, 7 A. 174, F.B.

See JURISDICTION OF CRIMINAL COURTS, 19 A. 111, A.W.N 1883, 88.

See PENAL CODE, s. 407, 9 Bom. L.R. 229 =5 Cr. L.J. 235.

See PENAL CODE, s. 409, 17 A. 153, 16 A. 88, 18 A. 116.

See PENAL CODE, s. 411, 2 N.W.P. 312.

See RELEASE ON PROBATION OF GOOD CONDUCT, 1 L.B.R. 142.

See REVISION, 19 B. 714.

See THEFT, Rat. Un. Cr. C. 928.

Criminal Case.

(1)—*Not to be thrown out as civil, but to be investigated.*—It is no answer to a criminal charge to say that a civil action should be brought; for "a charge, properly laid under the Penal Code, should be investigated even if the case be one in which a civil action will lie." **4 Bom. L. R. 938.** (10 W.R. 40 Cr., *R*).

Criminal Case—concluded.

(2)—*St. 11 and 12 Vic., c. 42, s. 50—Insolvency ending in imprisonment, effect of—Punishment for contempt of Court, conditions for.*—An insolvent, seeking the benefit of the Insolvent Act, was found to defeat the object of the Act by wilfully preventing and purposely withholding the production of letters written to him. No charge was framed against him regarding this: and no pointed question was asked him during the proceedings: yet, at the termination of the proceedings, he was sentenced to a term of imprisonment, under the provisions of s. 50 of the Act. *Held*, reversing the sentence, that the proceedings, so far as they resulted in imprisonment, amounted to a criminal charge; and in all criminal cases, it was necessary that there should be a charge, a finding, and a conviction, as a foundation for the sentence: everything should be strictly and accurately pursued: and if, in any one of these three points, a substantial defect should appear it would be a ground for reversing the proceeding: and that no person should be punished for contempt of Court, which is a criminal offence, unless the specific offence alleged against him be distinctly stated, and an opportunity of answering it given to him. **5 Bom. L.R. 343.**

(3)—*Evidence Act, s. 101—Criminal cases—Adjudication on mere probabilities.*—The Court ought not to judge a criminal case on mere probabilities as if it were a civil action, or contravene the well-known principle of law that the burden of proof lies on the Crown, not at all on the accused; and, unless the evidence is such as to enable the Court to judge rather than to conjecture, the accused should not be called upon to make his defence. **Rat. Un. Cr. C. 772=Cr. Rg. 36 of 1895.**

(4)—*Re-opening a criminal case disposed of in default of appearance—Inherent power of Court to re-hear—Judgment signed and sealed—Crim. Pro. Code (Act V of 1898), s. 440.*—A Court has power to re-open and dispose of a criminal case, which has been previously disposed of in default of appearance. The Court may, under s. 440, Crim. Pro. Code, determine the questions raised, without hearing counsel or pleader on either side, but, where it has not done so, but merely disposed of the case in default of appearance, the Court has power to restore the case and hear and determine it. **10 C.L.J. 80=3 Ind. Cas. 393.**

See BUR. ACT XI OF 1889, 19 C. 605.

See CHEATING, 7 C.L.J. 375=12 C.W.N. 750=7 Cr. L.J. 342.

—Proceedings to prevent breach of the peace, if a—*See* CRIM. PRO. CODE, 1898, ss. 145 and 526, 25 B. 179.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 11 O.C. 61=7 Cr. L.J. 423.

Criminal Court.

—*Police Patel, if Court.*—A police patel is not a Criminal Court. **4 B. 479.**

Criminal Court—concluded.

—Duty of, in cases of disputes as to land—*See* CRIM. PRO. CODE (1898), s. 145, 5 C.W.N. 563.

—Duty of Criminal Court to give effect to final judgment of Civil Court—*See* CRIM. PRO. CODE (1898), s. 476, 12 C.W.N. 1=6 C.L.J. 703.

See LOCAL GOVERNMENT, Rat. Un. Cr. C. 827.

Criminal Force.

See PENAL CODE, ss. 349—358.

—*Death caused by striking a person with enlarged spleen—Culpable homicide—Criminal force.*—Where the accused struck the deceased who had an enlarged spleen, in the course of a quarrel and caused his death thereby, but the accused had no knowledge of the diseased state of the deceased's spleen, *held*, that the accused was guilty only of using criminal force, under s. 352, Penal Code, but not of culpable homicide. **21 P.R. 1876 Cr.**

See COMPLAINT, 3 Bom. L.R. 675.

—Meaning of—*See* CRIM. PRO. CODE (1898), s. 522, 5 C.W.N. 250.

—Used on a vaccinator—*See* PENAL CODE, s. 353, 1 Weir 345.

See WRONGFUL RESTRAINT, 1 Weir 340.

Criminal Intimidation.

See PENAL CODE, s. 506.

(1)—*Penal Code, ss. 503, 506—Criminal intimidation, what amounts to.*—The communication by a person that he is going to take revenge by false complaints cannot amount to threat or criminal intimidation. A threat will not amount to an offence, unless made with intent to cause alarm to the complainant. **2 Bom. L.R. 55.**

(2)—Where the accused threatened the complainant that he would get him imprisoned for six months if he continued to detain his adult sister in his house, *held* that this did not amount to the offence of criminal intimidation. **8 B.H.C. Cr. 101.** [*F.*, 20 B. 794].

(3)—To constitute the offence described in s. 506, Penal Code, it must be shown that the person charged actually threatened another with injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm. Where, upon a quarrel between two brothers, one of them ran off and fetched a sword, but the sword was snatched from his hands before he had occasion to use the sword, and till then there was nothing to show that the prisoner used any threat towards the complainant, although, when he was seized and disarmed, he threatened to kill the complainant if he was free, *held*, that the accused was not guilty under s. 506, as the words used by the accused were uttered under circumstances which negatived any intention to intimidate. **45 P.R. 1882 Cr.**

Criminal Intimidation—continued.

(4)—The words 'threatens another' in s. 503, I.P.C., show that the threat must be made to the complainant personally, or, if made to a third person, must be made with the intent that he should communicate it to the complainant. When a man conveys threats to the pleaders of a person, who is executing a decree against him, he may reasonably be presumed, in the absence of evidence to the contrary, to intend those threats to be communicated by the pleaders to their employer. **5 C.P.L.R. Cr. 50.**

(5)—Where the accused held out threats to both Hindus and Muhammadans to get them implicated and imprisoned if they kept to the terms of an *ikrarnama* (entered into by the parties to keep the peace during the *Moharram* festival), *held* that he had committed an offence under s. 506, I.P.C. **A.W.N. 1886, 41.**

(6)—*Penal Code, s. 503—Criminal intimidation—Gist of the offence.*—The gist of the offence of criminal intimidation, as defined in s. 503, is the effect which the threat is intended to have upon the mind of the person threatened, and it is equally clear that, before it can have any effect upon the mind, it must be either made to him by the person threatening or communicated to him in some way. In other words, it must be a threat communicated or uttered with the intention of its being communicated to the person threatened for the purpose of influencing the man's mind. **15 C. 671.**

(7)—*Penal Code, ss. 44, 503 and 506—Criminal intimidation—Threat to ruin another with cases, whether amounts to injury.*—According to the definition of criminal intimidation in s. 503, Penal Code, there must be a threat to another person of injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested. Where a person had been convicted under s. 506, for threatening to "ruin another with cases," *held*, that the conviction should be set aside, since the threat to ruin by cases did not necessarily imply that the cases were false cases. If the cases were not false, the mere fact that they were instituted for the purpose of persecuting the complainant would not bring them within the definition of the term "injury," because the harm, although caused from an improper motive, would not be caused illegally. If the threat had been to ruin the complainant with false cases, the offence of criminal intimidation would have been committed. **30 C. 418=7 C.W.N. 116.**

(8)—*Penal Code, s. 503—Threat of excommunication.*—Where a person complains to a Magistrate that he is threatened with an illegal sentence of excommunication, which will at least injure his reputation unless he abstains from acts which he is legally entitled to do, the allegation, if established, might constitute the offence of criminal intimidation. But to hold that the offence has been committed, it would be necessary for the Courts to inquire (1) whether the acts inhibited by the threat are such as the complainant was legally entitled

Criminal Intimidation—continued.

to do, (2) whether the ecclesiastical authority has or has not jurisdiction to pronounce on their legality, (3) whether or not the same authority has, under the circumstances, jurisdiction to pronounce a sentence of excommunication, and (4) whether, if it does not possess that jurisdiction, but has exercised it in good faith and under a misapprehension of law, such an exercise of jurisdiction would amount to an offence. All these enquiries except the last raise nice questions of civil right involving the consideration of the ordinances and practice of a particular ecclesiastical authority and the proper course for a Magistrate is to postpone the trial till the complainant has proved in a Civil Court the incompetency of the ecclesiastical authority to exercise the powers it has assumed, either generally or in the particular case and the legality of the rights they severally assert. **8 M. 140=2 Weir 249.**

(9)—*Penal Code, s. 506—Threat of injury, what amounts to.*—Intimidating a police constable, by holding out a threat of getting him dismissed from service, is not such a threat of injury as is punishable under s. 506. **20 B. 794.**

(10) A mere threatening to bring a matter before the caste in order to get one expelled does not amount to criminal intimidation. **Rat. Un. Cr. C. 186.**

(11)—*Penal Code, s. 506—Threat addressed to a third person.*—The threat, under s. 506, need not be addressed to the prosecutor direct. It is sufficient if the threat, though addressed to the neighbours, was intended to reach the party threatened. **1 Weir 622.**

(12)—To constitute an offence under s. 506, Penal Code, it is not necessary that the threat should be uttered directly to the persons intended to be intimidated. It is sufficient if it is intended to be, and is, communicated to such person. **1 Weir 623.**

(13)—*Threat to commit suicide.*—A threat to commit suicide, if another person refuses to do a particular act, is not criminal intimidation, unless the person be interested in the person making the threat. **109 P.R. 1866 Cr.**

(14)—*Penal Code, s. 506—Threat to bring false charge.*—A threat to bring a false charge against a person and to support it by fabricating false evidence is criminal intimidation. **1 Weir 623.**

(15)—*Crim. Pro. Code, 1872, s. 489—Security to keep the peace on conviction for criminal intimidation—Penal Code, ss. 503, 506.*—Upon a mere conviction under ss. 503, 506, I.P.C., the accused person cannot be called upon under s. 489, Crim. Pro. Code, to find recognizances to keep the peace. **2 A. 351.**

(16)—*Penal Code, ss. 503, 507, 511—Attempt.—Per West, J.*—The offence of criminal intimidation, as defined, seems to require both a person to be threatened and another in whom

Criminal Intimidation—concluded.

he is specially interested. Then, there must be the intent to cause alarm to the former by a threat to him of injury to the latter. The intent itself might be complete, though it could not be effected, but the existence of the interest seems essential to the offence, as also and equally to the attempt at the offence, since, otherwise, the attempt would be at something not constituting the offence. *Per Birdwood, J.*—No criminal liability can be incurred under the Code by an attempt to do an act, which, if done, would not be an offence against the Code. Where, therefore, the accused was not guilty of committing criminal intimidation, because the person threatened had no interest in the person regarding whom the threat is made, he could not also be guilty of an attempt. **11 B. 376.** [*R.*, 9 C.P.L.R. 14.]

(17)—*Penal Code, ss. 186, 189, 506—Intimidation of people going with Police—Crim. Pro. Code, Act X of 1882, s. 106—Rioting.*—Where a police inspector sent a constable to bring two persons for inquiring of them about an offence, the order was one under s. 160 of the Crim. Pro. Code, and, if the order was not in writing, the persons need not accompany the constable. A person, therefore, who threatened and induced such persons not to accompany the constable and give evidence, cannot be convicted under ss. 186 and 189 of the Penal Code, but commits an offence under s. 506. Rat. Un. Cr. C. 850=Cr. Rg. 18 of 1896.

(18)—*Penal Code, s. 503—Criminal intimidation, what constitutes—Conventional punishment by spiritual superior, whether amounts to injury.*—There can be no criminal intimidation where the injury of which complaint is made is the hardship arising from conventional punishment which a spiritual superior, acting in the exercise of his authority as regulated by the custom of the caste, is competent to inflict. The custom implies a common submission to his authority, and, assuming that there was an error of judgment on his part, the error cannot be accepted as sufficient for turning a case of conventional discipline into a criminal offence. **6 M. 381=1 Weir 595.**

Criminal Justice Regulation.

See REG. V OF 1895.

—Sch. XV—*See* SUMMARY TRIAL, U.B.R. 1906, Crim. Pro. Code, 51=5 Cr. L.J. 298.

Criminal Law.

See PENAL CODE, s. 1, 25 A. 31.

Criminal Law Amendment Act.

See ACT III OF 1895.

See ACT XIV OF 1908.

Criminal Misappropriation.

See PENAL CODE, ss. 403, 404.

See CRIMINAL BREACH OF TRUST.

See CHEATING.

Criminal Misappropriation—continued.

(1)—*Conversion—Penal Code, s. 403.*—Where the accused found a thing, and merely retained it in his possession, he was acquitted of criminal misappropriation under the section referred to. **10 W.R. Cr. 23.**

(2)—*Retaining by servant of money due as wages.*—The retaining by a servant of money due as wages would constitute criminal misappropriation. **11 W.R. Cr. 51.**

(3)—*Misappropriation of property of deceased person—Penal Code, s. 404.*—It is not necessary for a conviction for dishonest misappropriation of property possessed by a deceased person at the time of his death, under s. 404 of the Penal Code, that the accused should misappropriate it to his own use. **12 W.R. Cr. 39; 11 W.R. Cr. 1.**

(4)—*Penal Code, s. 404.*—Under s. 404, all the elements are required to constitute the offence which would be required to constitute the offence of criminal misappropriation in respect of a person who is alive. **12 W.R. Cr. 39.**

(5)—*Refusal to pay for goods purchased—Penal Code, s. 403.*—The person, who takes certain hides from the prosecutrix, but refuses to pay for them, is not on that account guilty of dishonest misappropriation. **17 W.R. Cr. 11.**

(6)—*Penal Code, ss. 403, 415—Criminal misappropriation—Cheating.*—A and B met at Benares station. A got a ticket for Ajudhia and B for Benares cantonment. A showed her ticket to B to see if it was all right. B, instead of returning the same ticket, substituted his own. *Held* that the offence was one of misappropriation under s. 403 of the Penal Code rather than cheating under s. 415. **A.W.N. 1905, 9.**

(7)—*Penal Code, s. 403—Criminal misappropriation—Dishonest intent.*—A mortgagor, who appropriated to himself certain money which was stated in the mortgage bond to be payable to the mortgagee, was charged with criminal misappropriation. He pleaded that he did so, as the mortgagee had not paid part of the consideration money provided for in the bond. *Held* that, assuming that there had been misappropriation by the mortgagor, it did not become criminal misappropriation, as defined in s. 403, I.P.C., until it had been established that there was dishonest misappropriation. **A.W.N. 1881, 80.**

(8)—*Dishonest intent.*—The mahars of a village appropriated to their own use the skin of a buffalo, the owner of which could not be found. *Held*, that they were not guilty of criminal misappropriation, as there was no dishonest intention. **Cr. Rg. 1—5—1872.**

(9)—*Penal Code, s. 403—Iron safe containing property belonging exclusively to other members of the family—Iron safe common property of all—Removal of iron safe with property, nature of the offence.*—A, the managing member of a joint Hindu family, removed an iron safe, the property of the joint estate, but containing properties which exclusively belonged to the other members of the family, from the possession of the latter without their consent. *Held* that A, by removing it, did not commit theft or any other offence but was guilty of misappropriation, if, on discovering the contents of the safe, he retained them and attempted to appropriate them. **1 J.G. 31.**

(10)—*Penal Code, s. 403—Criminal misappropriation—Joint property—Question of ownership—Jurisdiction of Criminal Courts.*—Joint property may be the subject of criminal misappropriation. The question of the actual ownership of property is not one for the decision of a Criminal Court, but of a Civil Court, and all appearances of prejudging the question should be avoided. **A.W.N. 1881, 89.**

(11)—*Appropriation of money paid by mistake.*—Where money is paid by mistake, and the person receiving it, either at the time he received the money or at any time subsequently before its refund, discovers the mistake made by the complainant, but determines to appropriate the money, he is guilty of misappropriation. **2 N.W.P. 475.**

(12)—*Innocent possession when amounts to.*—Criminal misappropriation takes place when the possession has been innocently come by, but where, by a subsequent change of intention, or from the knowledge of some new fact with which the party was not previously acquainted, the retaining becomes wrongful and fraudulent. **15 C. 388.**

(13)—*Gist of the offence.*—To constitute the offence under s. 403, I.P.C., there must be a misappropriation of moveable property and the misappropriation must be dishonest. In order to be dishonest, the property must be misappropriated or converted "with the intention of causing wrongful gain to one person and a wrongful loss to another," *i.e.*, with the intention of causing gain by unlawful means of property to which the person gaining it is not legally entitled, or the loss by unlawful means of property to which the person losing it is entitled. Where there is no intention to cause wrongful gain or wrongful loss of property, and merely an intention to deprive the owner temporarily of the use of property, dishonesty is not made out. Expl. 1 to s. 430, I.P.C., does not extend the section so as to include not only cases of wrongful gain or loss of property, but also cases of wrongful gain or loss of the possession of property, as distinct from gain or loss of possession of the property itself. **27 P. R. 1886 Cr.**

(14)—*Penal Code, ss. 403 and 411—Distinction between criminal misappropriation and "dishonestly retaining."*—A person, who is proved to be the thief, cannot be convicted of receiving, and by like reasoning, a person, who is proved to have dishonestly misappropriated property, cannot be convicted of retaining it under s. 411. If a man came honestly into possession of stolen property and then retained it, after he had discovered that it was stolen,

Criminal Misappropriation—continued.

he would commit the offence of dishonestly retaining under s. 411. S. 75, Penal Code, does not apply to s. 403, though it applies to s. 411. **3 L.B.R. 254=5 Cr. L.J. 413.**

(15)—*Property not taken from the possession of the owner—No theft but criminal misappropriation—Penal Code, ss. 379, 403.*—Where property, lost by the owner, is found in the possession of the accused, the offence committed by the accused is not theft but criminal misappropriation as the property was not taken from the possession of the owner. **1 L.B.R. 123.**

(16)—*Penal Code, ss. 403 and 429—Bull dedicated to idol.*—A bull dedicated to an idol and allowed to roam at large is not *fere bestia* and therefore *res nullius*. Such an animal would, *prima facie*, be the property of the temple, and be the subject of criminal misappropriation. **11 M. 145=1 Weir 498.** [*R.*, 17 C. 852, U.B.R. (1892—1896), 238 Cr.].

(17)—*Promise to pay—Acquittal—Order of—Revision.*—When an acquittal proceeds on a mistaken view of the law, the High Court can interfere in revision. The complainant agreed to receive money which the accused, charged with criminal misappropriation, promised to pay in three days. The Magistrate thereupon acquitted the accused. *Held*, that the acquittal was illegal. **6 A.L.J. 758.**

(18)—*Duty of agent to landholder.*—It is the duty of the agent of a landholder to keep the collections he makes for his master separate from his own moneys, expending thereout moneys on his master's behalf and handing over the balance to his master, and if he, in breach of this trust, converts the money to his own use, he is amenable to a criminal prosecution. Where a landowner permits the agent to mix the collections with his own moneys, if the agent applies the moneys so collected to his own use, fraudulently and dishonestly, and falsifies the accounts so as to conceal his fraud, there is evidence of criminal misappropriation. **3 N.W.P. 30.**

(19)—*Property in lost goods.*—The offence consists in the dishonest misappropriation or conversion of moveable property, and before a conviction can be recorded, it must be proved that the article forming the object of the charge was moveable property. [*D.*, 11 P.R. 1908=27 P.W.R. 1908 Cr.]. Where property has been cast away or abandoned, any one finding it and taking it acquires a right to it which would be good even as against the former owner, if the latter should be minded to resume it; but when a thing has been accidentally lost, the property is not divested, but remains in the owner who has lost it. Where the accused found a gold mohur on an open plain, and sold it the next day to a shroff, *held* that, in the absence of all information as to the circumstances under which it was lost, it would be impossible to say, with any approach to certainty, that it had not been finally abandoned before it was picked up, and that the accused could not be convicted under s. 403, I.P.C. **18 B. 212.** [*D.*, 11 P.R. 1908=27 P.W.R. 1908 Cr.]

Criminal Misappropriation—continued.

(20)—*Penal Code, Act XLV of 1860, s. 404—Immoveable property.*—S. 404 of the Penal Code does not apply to immoveable property. **6 B. H.C. Cr. 33.** [*F.*, 23 C. 372; *R.*, Rat. Un. Cr. C. 928; *D.*, 36 C. 758].

(21)—*Penal Code, ss. 409, 463—Misappropriation and falsification of accounts for the purpose of screening the misappropriation.*—Where a person misappropriates a sum of money, and to screen the misappropriation falsifies the account, the offence of falsification becomes part and parcel of the offence of misappropriation, and the whole transaction must be considered as an offence consisting of criminal misappropriation. **6 Bom. L.R. 94.**

(22)—*Penal Code, s. 405—Misappropriation by partner.*—A partner who dishonestly misappropriates or converts to his own use any of the partnership property with which he is entrusted or which he has dominion over, is guilty of an offence under s. 405. **6 Bom. L.R. 553.**

(23)—*Taking coins from land bought.*—A person finding and taking coins from land bought by him cannot be convicted of criminal misappropriation though the money did not belong to him, so long as they were not in the possession of any other person. **Rat. Un. Cr. C. 8.**

(24)—*What should be considered in a case of—Criminal misappropriation.*—In a case of criminal misappropriation, the Court should consider the question, whether the money was kept with a dishonest intention, or only on a wrong opinion that the prisoner was justified in keeping it. In the latter case, the act of the accused would not constitute the offence of criminal misappropriation. **Rat. Un. Cr. C. 700=Cr. Rg. 30 of 1894.**

(25)—*Penal Code, s. 403—Crim. Pro. Code, Act X of 1882, s. 203—Misappropriation of temple property.*—Where the complaint of a *poojari* of a temple against the trustees, of having misappropriated some of the God's ornaments, was dismissed under s. 203 of the Crim. Pro. Code, on the ground that the nature of the trust had not been determined, *held* that the dismissal without enquiry was illegal and that any use of temple property otherwise than for the idol or temple amounts to misappropriation. **Rat. Un. Cr. C. 919.**

(26)—*Penal Code, s. 403—Criminal misappropriation—Inference of dishonest intention—Gist of the offence.*—Where an Income-tax clerk in a Collectorate, whose duty it was to receive moneys paid by persons assessed to income-tax, to enter such receipts in the remittance book and to remit the moneys immediately to the treasury, retained two sums for several months without entering them in his accounts, and paid them up, when he knew that detection was inevitable, making false entries in the remittance book as to the date of receipt, *held*, that the intention of the accused, as was deducible from the circumstances of

Criminal Misappropriation—continued.

the case, was a dishonest one, and that the accused was, therefore, guilty of criminal misappropriation under s. 403, Penal Code. [*D.*, Rat.Un.Cr.C. 484]. The offence under s. 403 consists in the dishonest misappropriation or conversion, either permanently or for a time, of property which is already without wrong in the possession of the offender. **12 M. 49=1 Weir 457.**

(27)—*Penal Code, ss. 379, 403 and 424—Standing crops under attachment under s. 274 of the Civ. Pro. Code—Their removal, whether amounts to theft or criminal misappropriation.*—Standing crops are, for the purposes of the Penal Code, immoveable property, and when such crops are attached under s. 274 of the Civ. Pro. Code, possession of them is not transferred to the Court, but remains with the owner with the condition that he is forbidden to alienate or charge the crops. When the crops are cut by the owner, they become moveable property, but it cannot be said that the possession of them is transferred to the Court or its officer by the act of cutting. The cutting, however, cannot put an end to the attachment once properly effected. The crops must be regarded as moveable property under attachment, but in the possession, as before, of the judgment-debtor. A judgment-debtor removing such attached crops would, therefore, not be guilty of an offence under s. 379, but will be liable to be convicted of criminal misappropriation under s. 403 and of an offence punishable under s. 424, Penal Code. **22 M. 151=1 Weir 424.**

(28)—*Penal Code, ss. 403 and 409—Conviction for minor offence—Evidence disclosing graver offence to appellate Court—Conviction, whether invalid.*—The conviction of a public servant by a second class Magistrate for the minor offence of criminal misappropriation was held not to be invalid, although the facts, established by the evidence, seemed to constitute the offence of criminal breach of trust by a public servant, not triable by the second class Magistrate; the interests of justice did not suffer by the conviction of the prisoner in respect of the minor charge. **2 M.L.T. 495=7 Cr. L.J. 215.**

(29)—*Managing member of joint Hindu family, when liable to be charged with criminal misappropriation.*—The managing member of a joint Hindu family is entitled, under the Hindu law, to collect, keep and sell the produce of the family lands, notwithstanding the wish of any of the co-parceners to the contrary, such co-parcener being only entitled to an account of the family income at the time of partition and not to the payment of a share of the produce whenever it is collected. Such managing member may be liable to a charge of misappropriation, if, after a division of the property has taken place, and the share of each member of the family has been ascertained, it is found that the manager has wrongfully applied to his own use the share that belongs to one of the other co-parceners; but, so long as no account

Criminal Misappropriation—continued.

of the produce or money has been taken or the shares ascertained, no member of an undivided Hindu family has the right to claim any particular share or property as his separate property, and no prosecution against the manager for misappropriation would lie. The mere fact that there has been a general agreement to divide does not entitle one of the co-parceners to claim any defined portion of the estate, nor does it even enable him to say that he is entitled to any particular *quantum* in an isolated item of the property; until division, the law entrusts the property to the manager. **1 Weir 453.**

(30)—*Accused finding logs of wood in a river and leaving them in front of his house.*—The accused found two logs of wood drifting in a river during high freshes and took possession of them. They were left in front of his house for about nine months. *Held*, that the accused had not committed an offence under s. 403, because the fact that the wood lay unused and exposed in front of the accused's house for a long time would negative any dishonest intention. **1 Weir 455.**

(31)—*Criminal misappropriation by Kurnam.*—Where the accused, a village Kurnam, received money from the head of the village for the purpose of remitting it to the treasury, but omitted to do so, until after an inquiry by the Tahsildar into the arrears due by the villagers, *held*, that the Kurnam was guilty of the offence of misappropriation. **1 Weir 455.**

(32)—*Penal Code, s. 411—Buying stolen article from a child for a value much below its original value.*—Where the accused purchased for one anna from a child, six years old, two pieces of chintz valued at 15 annas, *held* that, although it was doubtful whether the accused could be convicted under s. 411, yet, the accused was clearly guilty of criminal misappropriation, if he knew that the property belonged to the child's guardian and dishonestly appropriated it to his own use. **1 Weir 470.**

(33)—*Picking up of money.*—The mere picking up of money and retaining it, or making it over to another, would not necessarily constitute the offence of criminal misappropriation under s. 403, I.P.C. **5 C.P.L.R. 47 Cr.**

(34)—*Penal Code, s. 403—Misappropriation—Burden of proof—Dishonesty—Use of strayed animal—False statement by accused.*—The accused was found riding on a mare which had strayed away from the possession of its owner. The day after he was found riding, he confessed that he had found the mare hobbled, had unfastened the rope and used it as a bridle, had mounted the mare intending to ride her to his house, being tired, and to loosen her when he reached his house. Subsequently he stated before the Magistrate that his intention was to take the strayed mare to a Police Station. He was convicted under s. 403 of the Indian Penal Code. *Held*, that the conviction was illegal, for it could not be assumed that the intention

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of the accused was dishonest. The subsequent statement, being attributable to fear, did not affect the question of the accused's guilt. **28 P.L.R. 1906=3 Cr. L.J. 299.**

(35)—*Partner misappropriating partnership property.*—There is nothing in the law to exempt a partner from a prosecution for criminal breach of trust provided the ingredients of the offence, as defined in s. 405, I.P.C., can be made out. **10 P R. 1903 Cr.**

(36)—Where a partner received money on behalf of the firm, and omitted to enter it in the accounts so that the fact of the receipt could not be known to his co-partner, *held*, that such omission, unless accounted for, was some proof of a *prima facie* dishonest intention, and that his admission, when detected, and profession to credit the money to his share of the profits did not exculpate him. **10 P.R. 1903 Cr.** (13 B.L.R. 307, *R.*)

(37)—*Penal Code, s. 403—Property found in a public place—Finder picking it up and putting it in his pocket—No overt act of misappropriation—Whether criminal misappropriation committed—Revisional powers of Chief Court—Discretion—Crim. Pro. Code, s. 439.*—The accused picked up from the floor of a temple a bag containing articles of appreciable value, placed the bag in his waist cloth, and had not taken any action to discover the owner of the bag when arrested. *Held, per Reid and Chatterji, JJ.*, (Clark, C.J., dissenting as to this) that a person who merely picks up an article and puts it in his pocket, cannot be held, *ipso facto*, to have appropriated or converted it to his own use and that there must be some disposal of the article indicating an intention to exercise rights of ownership. Further, technical flaws and minor errors in the procedure of the Lower Courts, and even mistakes in the appreciation of portions of the evidence would not ordinarily be good grounds for the Chief Court's revisional interference where they have not resulted in substantial prejudice or injustice to the accused. The discretion is a sound judicial discretion which is to be exercised with reference to the facts and circumstances of each case, and which should be subservient to the ends of justice. But, where such flaws and errors result in substantial prejudice or injustice to the accused, the Chief Court ought, under s. 439, Crim. Pro. Code, to interfere in revision. **11 P.R. 1908=27 P.W.R. 1908=8 Cr. L.J. 250.**

(38)—*Appropriation to one's own use of jewel picked by another and got from the latter on false representation.*—Where the brother of a girl, who picked up a gold necklace, got possession of the necklace from the latter on representing that it belonged to an acquaintance of his, but later on delivered it to the police, although repeating to the police, representations made to his sister, which were found to be untrue to the knowledge of the accused, *held*, that he was guilty of criminal misappropriation. **24 P.R. 1886 Cr.**

Criminal Misappropriation—concluded.

(39)—*Charge, form of—Penal Code, s. 403.*—In a case in which the accused is charged with having dishonestly appropriated property, the charge should specify the person to whom the property belonged. Where the accused is interested in the property jointly with others, he is not necessarily guilty of a criminal act, if he takes possession of it and disposes of it. **14 W.R. Cr. 13.**

(40)—*Separate items of money—Charge, form of.*—The misappropriation of each separate item of money with which a person is entrusted is a separate offence, and the facts connected with it should form the subject of a separate enquiry. The duty of a committing officer in such a case is to select certain distinct items, to frame his charges upon them and to adduce evidence specially upon those items. **15 W.R. Cr. 5.**

(41)—*Trust arising from duty of public servant—Penal Code, s. 409.*—Where it was proved that the Head Clerk of an office entrusted the management of stamps, with the knowledge and sanction of his superiors, to one of his assistants, the latter was held to be guilty of criminal misappropriation by a public servant, within the meaning of s. 409, when he made away with the stamps. **13 W.R. Cr. 77.**

(42)—*Chowkidar obtaining money from person fraudulently—Penal Code, ss. 383, 403, 417—See* **3 W.R. Cr. 32.**

See ACT XIV OF 1866, s. 48, 14 M. 229=1 Weir 860.

See COMPOUNDING OFFENCE, 7 M.H.C. App. 34.

See CRIMINAL BREACH OF TRUST, 9 A. 666, 6 Bom. L.R. 1093, 1 Weir 465=4 M.H.C. App. 32.

See CRIM. PRO. CODE (1898), ss. 222 (2), 234, 31 C. 928=8 C.W.N. 807.

See CRIM. PRO. CODE (1898), s. 234, 2 C.W.N. 341.

See CRIM. PRO. CODE (1898), ss. 536 and 537, 26 M. 243 (Note).

See FALSE EVIDENCE, 10 C.L.R. 187.

See PENAL CODE, ss. 95, 403, A.W.N. 1881, 100.

See PENAL CODE, ss. 379 and 403, 7 C.P. L.R. Cr. 34.

See PENAL CODE, s. 409, 18 A. 116.

See THEFT, 4 Bom. L.R. 626, Rat. Un. Cr. C. 136, 143, 314=Cr. Rg. 70 of 1886, 15 C. 390 (N.), 15 C. 392, 1 Weir 408.

Criminal Procedure Amendment Act.

See ACT XI OF 1874.

See ACT III OF 1884.

See ACT IV OF 1891.

Crim. Pro. Code (Act XXV of 1861).

(1)—*General—Adoption of Western Court's Circular No. 12—Publishing a table of changes.* —For the information and guidance of all Sessions Judges and Magistrates, the High Court was pleased to circulate Circular Order No. 12, dated the 27th April, 1866, issued by the Western Court, publishing a table indicating the changes made in the schedule annexed to the Crim. Pro. Code by the provisions of Act VIII of 1866. **6 W.R. Cr. Cir. 1.**

(2)—S. 15—*See* MAGISTRATE, JURISDICTION OF, 4 M.H.C. App. 2.

(3)—Ss. 22, 46—*See* SENTENCE, Rat. Un. Cr. C. 49.

(4)—Ss. 43, 66 and 68—*See* MAD. ACT III OF 1871, 6 M.H.C. App. 49.

(5)—*Crim. Pro. Code (1861), ss. 66, 205—Attestation and signature of statement.*—Where the statement of an accused person was not attested and signed by the Magistrate as required by s. 205 of the Crim. Pro. Code, before an appeal from the conviction was disposed of, *held*, the omission was a material irregularity. Where the examination of the complainant was not signed as required by s. 66 of the Code, *held* that the warrant of arrest issued on such examination was informal. **7 B.H.C. Cr. 50.** [*R.*, 12 B. 377].

(6)—S. 100—*See* ARREST, 7 P.R. 1869 Cr.

(7)—S. 149—*See* CONFESSION, 7 B.H.C. Cr. 56.

(8)—S. 163—*See* BAIL, 12 W.R. Cr. 18.

(9)—S. 167—*See* ACT V OF 1861, ss. 24 and 42, 2 P.R. 1868 Cr.

(10)—S. 199—*See* ABATEMENT OF PROSECUTION, 4 M.H.C. App. 55=2 Weir 235.

(11)—Ss. 205, 366, 380, 426, 439—*See* REMAND, 2 B.H.C. 395.

(12)—S. 212—*See* BAIL, 1 B.L.R.S.N. 26=10 W.R. Cr. 34.

(13)—Ss. 225, 359, 425—*See* COMMITMENT TO SESSIONS COURT, 4 M.H.C. App. 30.

(14)—Ss. 234 and 237—*See* CHARGE, 9 W.R. Cr. 33.

(15)—*S. 237.*—In s. 237, Crim. Pro. Code, 1861, requires that in framing a charge under any section of the Penal Code, the existence of the special exception contained within that section should be distinctly denied. **1 W.R. Cr. Letters, 10.**

(16)—*S. 237, Crim. Pro. Code (1861), as amended by Act VIII of 1869, Amendment Act.* —S 237, Act VIII of 1869, forbids a police officer in charge of a station from proceeding with the investigation of any case in which there is no sufficient ground for entering on an enquiry or in which the immediate apprehension of the accused is not necessary for the ends of justice. In such a case, he must report the substance of the complaint or information for the orders of the Magistrate having jurisdiction and no other police officer is competent to make such enquiry unless he is authorised and

Crim. Pro. Code (Act XXV of 1861)—contd.

required to do so by any order of the Magistrate. **16 W.R. Cr. Cir. 1.**

(17)—Ss. 237, 239—*See* PENAL CODE, s. 323, Rat. Un. Cr. C. 20.

(18)—Ss. 237, 239 and 243—*See* CHARGE, 8 W.R. Cr. Cir. 3.

(19)—*Crim. Pro. Code (1861), s. 239(6)—Form of indictment.*—Where the Legislature has provided, as in s. 239 of the Crim. Pro. Code of 1861, an example of an indictment to be used, it is sufficient to follow that form. **4 M.H.C. App. 5.**

(20)—S. 242—*See* CHARGE, 12 W.R. Cr. 23.

(21)—S. 271—*See* COMPLAINT, 8 P.R. 1871 Cr.

(22)—*Crim. Pro. Code (1861), ss. 280, 287 and 288—Report of Sub-Magistrate not evidence of likelihood of breach of peace—Scope of ss. 287 and 288.*—The report of a Sub-Magistrate is not evidence on which a Magistrate can properly arrive at a conclusion that the accused is likely to cause a breach of the peace. Ss. 287 and 288, Crim. Pro. Code, require that evidence in such a case shall be recorded, and, if none is forthcoming, security to keep the peace should not be demanded. **3 J.G. 37.**

(23)—S. 306—*See* ABSCONDER, 2 N.W.P. 2.

(24)—S. 318—*See* ACT XXVII OF 1860, 2 B.L.R. A. Cr 27, 11 W.R. Cr. 23, 25 W.R. Cr. 16.

(25)—S. 318—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 6 B.H.C. Cr. 30.

(26)—Ss. 368 and 369—*See* EXAMINATION OF WITNESSES, 8 W.R. Cr. Cir. 6.

(27)—S. 369—*See* DEPOSITION, Cr. Rg. 26—8—1869.

(28)—S. 373—*See* CONVICTION, 3 B.H.C. Cr. 51.

(29)—S. 382—*See* ALTERNATIVE FINDING, Rat. Un. Cr. C. 20=Cr. Rg. 6—9--1869.

(30)—Ss. 411, 436—*See* BAIL, 1 B.L.R A. Cr. 7.

(31)—S. 415—*See* APPEAL, 5 W.R. Cr. 80.

(32)—S. 426—*See* APPEAL, 6 B.H.C. Cr. 47.

—S. 426—*See* REVISION, 3 B.H.C. Cr. 42.

(33)—Ss. 426, 439—*See* ACCUSED PERSON, 6 M.H.C. App. 45.

(34)—S. 427—*See* REVISION, 4 B.H.C. Cr. 2.

(35)—*Crim. Pro. Code (1861), s. 440—Scope of the section.*—S. 440 of the Code has no bearing on the question of stamp duty, but refers solely to the expense of copying. Copies applied for under that section should in all cases be written by a salaried Officer of the Court. **4 M.H.C. App. 57.**

(36)—S. 443—*See* DEPOSITION, 1 W.R. Cr. Cir. 4.

(37)—Ss. 445-A—445-C—*See* APPEAL, 14 W.R. Cr. 18.

Crim. Pro. Code (Act XXV of 1861)—concld.

(38)—*Crim. Pro. Code, Act XXV of 1861, Sch.—Seventh Explanatory note—Purpose.*—The seventh explanatory note at the head of the schedule to the Crim. Pro. Code of 1861, as amended by Act VIII of 1869. refers to procedure and not the class of officers by whom an offence is punishable. **Rat. Un. Cr. C. 24 = Cr. Rg. 20—9—1869.**

See ACT V OF 1861, 5 W.R. Cr Cir. 1.

See ACT XX OF 1866, ss. 51, 94, 95, Rat. Un. Cr. C. 51.

—Ch. XX—Declaratory suit to set aside award—*See* ACT I OF 1877, 15 W.R. 294.

—Ch. XV—*See* BEN. ACT II OF 1872, ss. 4, 34, 19 W.R. Cr. 4.

—Ch. XV—*See* COMPENSATION, 14 P.R. 1866 Cr., 27 P.R. 1866 Cr., 6 P.R. 1869 Cr., 28 P.R. 1870 Cr.

—Ch. XIV—*See* COMPLAINANT, 3 N.W.P. 341.

—Ch. XIV—*See* COMPLAINT, 6 M.H.C. App. 8.

—Chs. XX and XXII—Order for removing of encroachments not dealt with as local nuisance—*See* JURISDICTION OF CIVIL COURTS, 2 W.R. 287.

—Ch. III—*See* MAGISTRATE, JURISDICTION OF, 2 Weir 20.

See NUISANCE UNDER CRIM. PRO. CODE, 4 B.H.C.A.C.J. 150.

Crim. Pro. Code (Act X of 1872).

(1)—*Crim. Pro. Code (1872), ss. 4, 296—"Sessions case," meaning of—S. 457, Penal Code—Held by the Full Bench (Spankie and Oldfield, JJ., dissenting)*:—A "Sessions case" in s. 296, means a case exclusively triable by a Sessions Court. Where a Magistrate discharged an accused person under s. 457, I.P.C., and the Sessions Judge ordered the commitment of the accused to the Sessions Court on a charge under ss. 457 and 380, I.P.C., *held*, that the Judge's order to commit the case to the Sessions Court was illegal, as the case was a Magistrate's case, and not one triable by the Court of Sessions only. **1 A. 413, F.B.** [*F.*, 7 C.L.R. 168, 2 A.W.N. 105; *R.*, 2 A. 570].

(2)—Ss. 4 and 296—*See* COMMITMENT TO SESSIONS COURT, 7 M.H.C. App. 27.

(3)—*Ss. 34 and 283—Evidence for the defence, not recorded by the Magistrate who tried the case.*—S. 283 does not cure the defect of a Magistrate, who had not jurisdiction, recording the evidence of witnesses for the defence, while the case was tried by another Magistrate having jurisdiction over the offence. **19 P.R. 1881 Cr.**

(4)—*Ss. 36 and 109—Alternative sentence of imprisonment.*—An alternative sentence of imprisonment exceeding 9 months could not be legally passed by a Magistrate of the District with enhanced powers, without confirmation by the Sessions Judge. **16 P.R. 1881 Cr.**

Crim. Pro. Code (Act X of 1872)—continued.

(5)—*Crim. Pro. Code, Act X of 1872, ss. 45, 315—Penal Code, s. 75—Previous convictions—Light sentence.*—Though the High Court found that, in consideration of the various previous convictions proved against the accused, the sentence passed by the Magistrate was inadequate and that the Magistrate should have proceeded under ss. 45 and 315 of the Crim. Pro. Code, *held* that the Magistrate had full discretion under s. 315 and that no new trial could be ordered. **Rat. Un. Cr. C. 70 = Cr. Rg. 24—4—1873.**

(6)—Ss. 50, 530—*See* BENCH OF MAGISTRATES, 2 C.L.R. 263.

(7)—Ss. 63, 530—*See* JURISDICTION, 9 P.R. 1883 Cr.

(8)—*Ss. 76, 90, 93*—A Magistrate is competent to admit to bail recalcitrant witnesses arrested under s. 90 of the Code. **2 Weir 39.**

(9)—*S. 90—Information to police by agents.*—*Per* MARKBY, J.—A *khazanchi* of the zemindar of a village is not an 'agent' under the above section. A *dewan* may be an 'agent' during the absence of his master; but not a *dewan*, who acts only under the orders of his resident master. *Quære—Per* PRINSEP, J.—Whether, under the above section, an agent is responsible only for giving information of the occurrence of any sudden or unnatural death? **4 C. 603 = 3 C.L.R. 87.**

(9-*a*)—*S. 90—See* ILLEGAL OMISSION, 34 P.R. 1882 Cr.

(10)—*Ss. 227, 274—Sentence of imprisonment and fine by first class Magistrate—Appeal—Form of record.*—Where a Magistrate of the first class passed a sentence of fine and imprisonment, *held* that his order was appealable; therefore, he should record the evidence of the witnesses and his reasou for passing the sentence. **2 C.L.R. 511.**

(11)—*Crim. Pro. Code (1872), s. 263—Acquittal by jury—Duty of Sessions Judge in making a reference.*—When a Sessions Judge disagrees with a verdict of acquittal, it is his duty in sending up a case to the High Court, under ss. 263 and 464, to state the offence which, in his opinion, has been committed **1 J.G. 58.**

(12)—*Crim. Pro. Code (1872), s. 263—Verdict of acquittal by majority of jury—Reference to the High Court—Powers of High Court.*—Where a Sessions Judge referred a case to the High Court under s. 263, Crim. Pro. Code, 1872, *held* that the Court was competent to find the prisoner guilty, though the majority of the jury might have returned a verdict of acquittal. **1 J.G 58.**

(13)—*Crim. Pro. Code (1872), s. 263—Verdict of jury—Interference of High Court.*—Where there are reasons for suspicion sufficient to warrant the jury in disbelieving the witnesses and in giving the prisoner the benefit of the doubts raised by inconsistencies in their evidence, the High Court will not interfere,

Crim. Pro. Code (Act X of 1872)—continued.

merely on the ground that another jury would have come to a different conclusion on the evidence. It must be shown that the verdict was unreasonable and perverse. **1 J.G. 76.**

(14)—Ss. 272, 283, 443—*See* CHARGE, 10 B.H.C. 373.

(15)—Ss. 308, 310, 311—*See* JURISDICTION OF CIVIL COURTS, 19 W.R. 345.

(16)—S. 309 (3)—*See* SENTENCE, Rat. Un. Cr. C 68.

(17)—*S. 315—Power of Subordinate Magistrate to send a case for trial to the District Magistrate.*—A Magistrate may, at any stage of the proceedings, without framing a charge or completing an enquiry, send the accused to the Magistrate of the District to be placed upon his trial. 12 P.R. 1873 Cr.

(18)—S. 315—*See* HABITUAL OFFENDER, A.W.N. 1881, 153, A.W.N. 1882, 215.

(19)—S. 390—*See* BAIL, 24 W.R. Cr. 8.

(20)—S. 435—*See* CONTEMPT OF COURT, Cr. Rg. 16—3—1871.

(21)—S. 439—*See* CHARGE, 22 W.R. Cr. 39.

(22)—*S. 446—Power of Sessions Judge to expunge a charge before calling upon accused to plead.*—Where a Magistrate commits an accused person to the Sessions Court to be tried on specific charges, the Sessions Judge has no power, before calling upon the accused to plead, to expunge one of the charges. **7 C.L.R. 143.**

(23)—Ss. 489, 490, 500, 504—*See* SURETY BOND, Rat. Un. Cr. C. 126.

(24)—Ss. 491, 492—*See* SECURITY TO KEEP THE PEACE, 27 P.R. 1882 Cr.

(25)—S. 497—*See* SECURITY TO KEEP THE PEACE, 11 P.R. 1882 Cr.

(26)—*Ss. 505 and 506, Crim. Pro. Code (1872)—Discretion.*—The powers under these very stringent sections should be exercised only with extreme discretion. **6 C. 14=6 C.L.R. 128.** [*R.*, 16 B. 372].

(27)—Do.—*See* SECURITY FOR GOOD BEHAVIOUR, A.W.N. 1882, 92.

(28)—S. 521—*See* PENAL CODE, s. 188, A.W.N. 1882, 232.

(29)—Ss. 536 and 537—*See* MAINTENANCE, 28 P.R. 1880 Cr.

(30)—S. 539—*See* PUNJ. ACT IV OF 1872, s. 42, 28 P.R. 1873 Cr.

See ACT I OF 1877, s. 42, 6 M. 176.

See ACT IV OF 1877, s. 168, 7 C. 447.

See MAGISTRATE, JURISDICTION OF, 7 B. 303.

See MAINTENANCE, 4 C. 374.

See REVIVAL OF CRIMINAL PROCEEDINGS, 1 C. 282=25 W.R. Cr. 30.

See STOLEN PROPERTY, 1 B. 630.

Crim. Pro. Code (Act X of 1872)—concluded.

See SUMMARY TRIAL, 6 M. 396=2 Weir 328.

See WITNESS, 4 M. 130.

Crim. Pro. Code (Act X of 1882).

(1)—*Crim. Pro. Code, object of.*—The object of a Code of Criminal Procedure is to provide a machinery for the punishment of offenders against the substantive criminal law. **13 B. 590, F.B.** [*F.*, 16 B. 580; *R.*, 16 B. 661, Rat. Un. Cr. C. 776].

(2)—*Police officer's authority to take security bond for production of a person before the Police—Magistrate's power to alter such bond.*—There is no provision in the Code, authorizing a police officer to take a security bond for the production of any person before the Police. The Magistrate has, therefore, no power to alter it and to impose a fresh obligation. **11 C. 77.**

(3)—*Crim. Pro. Code (1882), s. 100—Custody of minor.*—It is not in all cases of alleged kidnapping that an order under s. 100 of the Crim. Pro. Code should be passed. It is only when the Magistrate believes that the minor was wrongly confined that such an order should be made. **Rat. Un. Cr. C. 839=Cr. Rg. 8 of 1896.**

(4)—*Ss. 109, 112, 118 and 123—Security—Minor.*—There is nothing in these sections, which precludes a Magistrate from ordering a minor to give security, but the nature of the security which may be required, when the person in respect of whom the inquiry is made is a minor, is provided for. **L.B.R. (1893—1900), 129.**

(5)—S. 380—*See* SENTENCE, 4 P.R. 1886 Cr., 35 P.R. 1886 Cr., F.B., 25 P.R. 1887 Cr., 3 P.R. 1898 Cr., 58 P.R. 1887 Cr., 43 P.R. 1884 Cr.

(6)—S. 556-A—*See* TRANSFER OF CRIMINAL CASE, 2 C.W.N. 498.

(7)—*Crim. Pro. Code (1882), Ch. XXXII—Sessions Judge—Reference to District Magistrate.*—Where an application is made to a Court of Sessions under Ch. XXXII of the Crim. Pro. Code, the Court has no power to refer the applicant to a District Magistrate whose Court is one not subordinate to, but of concurrent jurisdiction with, the Sessions Court for the purposes of that chapter. **Rat. Un. Cr. C. 525=Cr. Rg. 20—11—1890=Cr. Rg. 57 of 1890.**

—Applicability of—*See* ACT XXI OF 1879, 12 M. 39=1 Weir 110.

—*See* APPEAL, A.W.N. 1884, 130.

See FALSE EVIDENCE, 7 A. 44, 18 B. 377, F.B.

See MAGISTRATE, JURISDICTION OF, 2 Weir 21, L.B.R. (1893—1900), 223.

See PENAL CODE, s. 75, L.B.R. (1872—1892), 386.

Crim. Pro. Code (Act X of 1882)—concluded.

See REPLY, RIGHT OF, Rat. Un. Cr. C. 938.

—Repeal of Crim. Pro. Code of 1872 by that of 1882—*See* REVISION, 9 C. 513=12 C.L.R. 500.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869).

Crim. Pro. Code (Act V of 1898).

[REP. IN PART, ACT VI OF 1900, S. 48; (IN BOMBAY), BOM. ACT IV OF 1902. AMENDED, ACT XII OF 1899, S. 3; ACT VI OF 1900, S. 47; ACT I OF 1903, SCH. II; ACT IV OF 1909; (IN MADRAS), ACT V OF 1889, S. 4, AS AMENDED BY ACT I OF 1903; (IN PUNJAB FRONTIER DISTRICTS AND IN THE N.W.F. PROVINCE), REG. III OF 1901, SS. 7, 38 (II) AND 47, AND REG. VII OF 1901, PT. II.]

(1)—*Withdrawal of Criminal Procedure Code from a District—Its effect on the powers of the High Court.*—It is quite conceivable that, notwithstanding the withdrawal of the operation of the Code of Criminal Procedure from a certain district, the High Court might continue to exercise appellate and revisional powers over that district. **26 C. 874=3 C.W.N. 564.**

(2)—*Delivery of property, order directing, merely upon complaint illegal.*—An order passed by a Magistrate, directing the delivery of property to the complainant merely upon a complaint that some accused person was detaining it unlawfully, is illegal. The High Court, as a Court of Revision, set aside such an order, but declined to make a further order for restoration, on the ground that it would be illegal to do so. **5 C.L.J. 229=5 Cr. L.J. 147.**

(3)—*Examination of the accused at a Sessions trial.*—At a Sessions trial, if, at the close of a case for the prosecution, the accused person makes any statement in his defence, it should be recorded; if he does not voluntarily make any statement and declines to answer any question put by the Court, the fact should also be noted. **S.C. 95, Oudh.**

(4)—*Ch. VIII—Surety bond—Breach and forfeiture of—Fresh proceedings necessary for fresh bond.*—A person cannot be required, without fresh proceedings taken against him, to find sureties a second time, when, in consequence of a breach, his original security is forfeited. The Code does not provide for a renewal of the bond without fresh proceedings. **7 M.L.T. 90.**

(5 and 6)—*Ch. VIII—Security for good behaviour.*—The District Magistrate, on appeal from a person sentenced to imprisonment for default in furnishing security, could only pass such an order as may be passed under Ch. VIII of Crim. Pro. Code, 1898, *i.e.*, under s. 123. There is no power to order security for six months and to imprison in default for a less period than the period for which security is demanded. If the sentence fixed in default is to be reduced in appeal, the period for which security is demanded should also be reduced to the same time. The procedure to be adopted on a breach of the bond is set cut in s. 514, Crim. Pro. Code. Any

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869)—continued.

person bound can be ordered to pay the penalty thereof. On failure of payment and of realization by attachment and sale of the property, the person bound may be imprisoned in a civil jail. There is no power given to order the accused person to give fresh security or to be imprisoned for the period of the bond. All that can be done is. to forfeit the bond and proceed as above mentioned. **U.B.R. (1892—1896), Vol. I, 21.**

(7)—*Ch. X and s. 133—Scope of section—Abatement of nuisance of privy.*—Where a privy is allowed to remain in such a condition as to be a nuisance to persons lawfully using a public place or way, proceedings to cause the nuisance to be abated can be instituted under Ch. X of the Code. S. 133, Crim. Pro. Code, does not empower a Magistrate to order a privy to be removed, because it is only recently made in any locality. **4 Bom. L.R. 882.**

(8)—*Ch. X, ss. 133, 138, 139—Obstruction of a pathway—Magistrate's power to refer the matter to a jury*—Bona fide *claim to the pathway as private—Magistrate's duty to decide.*—In a proceeding under Ch. X, Crim. Pro. Code, relating to the obstruction of a way, it is the duty of the Magistrate, before referring the matter to the jury, to decide himself whether or not the claim of right to the land in question is made in good faith, and whether the pathway is a public one or not, and it is only on deciding that there is no such claim that any matter can be referred to the jury. **14 C.W.N. 544.**

(9)—*Ch. XII—Crim. Pro. Code (1861), Ch. XXII (Ch. XII of the Code of 1898)—Omission to record a preliminary order setting forth grounds of a likelihood of a breach of the peace.*—The failure to record a preliminary order setting forth the grounds for believing that a dispute likely to cause a breach of the peace exists between the parties cannot operate as invalidating an order under s. 145, unless the party against whom the order is passed has been prejudiced by the order. **2 Weir 98.**

(10)—*Ch. XII—Crim. Pro. Code (1861), Ch. XXII (Ch. XII of the Code of 1898)—Possession of trespasser.*—The actual possession intended in Ch. XXII (Ch. XII of the Code of Criminal Procedure) does not include the occupancy of a mere trespasser. **2 Weir 99, Foot-note=6 M.H.C. App. XIII.** [*Overruled*, 2 Weir 98].

(11)—*Chapter XII—Disputes relating to immoveable property—Joint possession—Joint property—Joint family—Proceedings of son against father—Revision—Want of jurisdiction—Abuse of jurisdiction—Restoration of possession.*—Proceedings under Ch. XII of the Crim. Pro. Code are not proceedings which can be sent for under s. 435 of the Code by the High Court, by the Sessions Judge, or the District Magistrate for any of the purposes specified in that section. Nor are the proceedings criminal proceedings in the proper sense of the word. (25 B. 179, *R.*). They can be revised only by

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

the High Court under s. 439 on the ground of want of jurisdiction or grave irregularity in the proceedings or non-compliance with the provisions of the Code amounting to an abuse of jurisdiction. The provisions of Ch. XII do not apply to joint possession or joint property, nor to moveable property other than crops or produce of land specified in s. 145 of the Code. (23 C. 80, *R.*) Where the Magistrate misapprehended the meaning of a party's statement and refrained from enquiring into the question of possession imperatively required by s. 145 of the Code, and prevented the party from producing the evidence, *held*, that it constituted a grave irregularity amounting to an abuse of jurisdiction. The object of Ch. XII is to prevent breaches of the peace pending a settlement of the rights of the parties in the Civil Court. The Magistrate's jurisdiction is ancillary in a way to that of the Civil Courts; in fact, it is *quasi* civil. In making use of his powers under the section, the Magistrate should be guided by this cardinal principle. For example, he cannot, acting on the mere words of the section, pass an order in respect of any property where the question of the right to it has been decided by a competent Court not long before the time of his taking proceedings. (26 C. 625, *R.*) Under the Hindu Law of the Mitakshara School, the sons have no dominion over the undivided property of a joint family. The father, as the head and manager, has alone that power, and the son's remedy, if he is dissatisfied with the management or is turned out, is a suit for partition. The law allows the son equal rights in joint ancestral property, but saves a deadlock by giving the father the sole dominion until the son obtains partition. (1 A. 77, *R.*) When an order passed under Ch. XII is set aside by the High Court as passed without jurisdiction, it is the duty of the Magistrate to restore the parties to the position in which they were before the order was passed, as no man ought to suffer wrong from a Court of justice. **135 P.L.R. 1902.**

(12)—*Ch. XXI—Trial of warrant cases.* —In all warrant cases, a charge should be framed against the accused by Magistrates. **U.B.R. (1892—1896), Vol. I, 37.**

(13)—*Ch. XXII—Crim. Pro. Code, 1872, Ch. XVIII (Ch. XXII of the Code of 1898) —Charge of theft with previous conviction for the same—Summary trial.*—Where the offence charged is an offence under Ch. XVII, Penal Code, with the aggravation of a previous conviction superadded, and it is intended, for the purposes of punishment, to prove the aggravation, the charge must specifically set out the previous conviction. Where this is done, the summary jurisdiction of Magistrates, under Ch. XVIII (Ch. XXII), Crim. Pro. Code, is ousted. **2 Weir 324.** [*Applied*, 2 Weir 432].

(14)—*Ch. XXXI—Re-hearing of warrant cases after discharge of accused person.—Held*, by the Full Bench (Ghose, J., *dissenting*), that

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

the Presidency Magistrate is competent to rehear a warrant case triable under Ch. XXXI of the Code in which he has discharged an accused person. **28 C. 652=5 C.W.N. 457, F.B.** [*F.*, 29 C. 726, 7 C.W.N. 527, 2 Weir 325-A=28 M. 310, 1 N.L.R. 18, 16 M.L.J. 79=1 M.L.T. 31=29 M. 126; *R.*, 50 P.L.R. 1902, 2 L.B.R. 27, U.B.R. 1904, 2nd Quarter, Crim. Pro. Code, 19, 29 A. 7=A.W.N. 1906, 245=3 A.L.J. 562].

(15)—Ch. VIII—*See* BREACH OF THE PEACE, 14 B. 25.

(16)—Ch. XXI—*See* DISCHARGE OF ACCUSED, 7 N.W.P. 230.

(17)—Ch. VIII—*See* DISCRETION, 9 A. 452.

(18)—Ch. XII—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 4 M.H.C. App. 12, 6 M.H.C. App. 13, 2 Weir 97 =4 M.H.C. App. 20.

(19)—Ch. XXXIII—*See* EUROPEAN BRITISH SUBJECT, 27 A. 397=2 A.L.J. 20=A.W.N. 1905, 5=2 Cr. L.J. 17.

(20)—Ch. XL—*See* EVIDENCE ACT, s. 33, 19 B. 749.

(21)—Ch. XXXVI—*See* JUDICIAL PROCEEDINGS, 5 A. 224.

(22)—Ch. VIII—*See* BOM. REG. XII OF 1827, s. 27, 7 Bom. L.R. 459.

(23)—Ch. VIII—*See* SECURITY FOR GOOD BEHAVIOUR, 6 Bom. L.R. 34.

(24)—Ch. XIX—*See* SECURITY FOR GOOD BEHAVIOUR, 4 M.H.C. App. 22.

(25)—Ch. VIII, s. 118—*See* SECURITY PROCEEDINGS, 6 C.P.L.R. 13 Cr.

(26)—Ch. XXII—*See* SUMMARY TRIAL, Rat. Un. Cr. C. 988.

——S. 1 (=1882, s. 1; 1872, ss. 1, 2, 111, 535, 540).

(27)—*S. 1 (=Crim. Pro. Code, 1882, s. 1 (2) (b) —Applicability of the Code to village headmen.*—No part of the Crim. Pro. Code applies to village headmen and, therefore, they are not bound to follow the procedure prescribed by s. 476. **2 Weir 1.**

(28)—*Ss. 1 (2) (a), 4 (p) and (s), 55 (b)— Arrest by Police in Calcutta.*—From s. 1 (2) (*a*) of the Code of Criminal Procedure, it is clear that the Code does not apply to the Police of Calcutta, unless expressly made applicable to them. Paragraphs (*p*) and (*s*) of s 4 have not been expressly made applicable, and hence they do not apply to the Calcutta Police. S. 55 of the Code is, however, expressly applicable. Therefore, an officer in charge of the police station in Calcutta may therefore arrest a person, although there is no declaration by Government declaring a *thana* or police station in Calcutta to be a police station within the meaning of the Code. **31 C. 557=7 C.W.N. 661.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(29)—*Ss. 1 (2) (a), 4 (p) and (s), 55 (b), 109 (b) —Arrest by Police in the town of Calcutta—Security for good behaviour—Duty of Magistrate to proceed with the case—Legality of the arrest.*—Honorary Magistrates are empowered to put in force the provisions of s. 109 of the Code, whenever they have credible information that the accused has no ostensible means of livelihood or is unable to give a satisfactory account of himself and is within the limits of their jurisdiction. Whether the person is before them under a lawful arrest or not is immaterial. **31 C. 557=7 C.W.N. 661.** (26 M. 124, *F.*).

(30)—Ss. 1, 2 (1 to 3)—*See* ACT XVIII OF 1854, ss. 30, 35, Rat. Un. Cr. C. 83.

(31)—Ss. 1, 2 (1 to 3)—*See* ACT XXXI OF 1860, s. 35, Rat. Un. Cr. C. 80.

(32)—Ss. 1 and 192—*See* ACT I OF 1871, ss. 20 to 23, 23 C. 300.

(33)—S. 1—*See* MAD. ACT XXIV OF 1839, s. 3, 14 M. 121=2 Weir 7.

(34)—Ss. 1 and 403—*See* AUTREFOIS ACQUIT, PLEA OF, 10 B. 181.

(35)—Ss. 1 and 2 (1 to 3) and 44—*See* EUROPEAN BRITISH SUBJECT, 2 Weir 578=7 M.H.C. App. 32.

——S. 2 (=1882, ss. 2 (1) (2), 558; 1872, ss. 2, 82, 86).

(36)—Ss. 2, 32—*See* MAGISTRATE, JURISDICTION OF, 7 B. 303.

(36-*a*)—S. 2—*See* Nos. 30, 31 and 35, *supra*.

——S. 3 (=1882, s. 3 (1) (2); 1872, s. 2 (3) and (4).

(37)—S. 3—*See* ACT XVI OF 1874, 2 M. 161=1 Weir 887.

——S. 4 (=1882, s. 4).

See COMPLAINT.

See JUDICIAL PROCEEDINGS.

(38)—*Ss. 4, 190 and 200—203.*—A petition sent by post to a District Magistrate informing him of an offence and praying for an enquiry by the Tahsildar, is not a complaint within the meaning of s. 4, but only an information under cl. (*c*) of sub-s. 1 of s. 190 of the Crim. Pro. Code. The rejection of such a petition does not bar the entertainment by a subordinate Magistrate of another complaint in respect of the same offence. **A.W.N. 1899, 201.**

(39)—*Ss. 4, 195, 537—Absence of complaint or sanction—Penal Code, s. 186—Defect of jurisdiction.*—Where a Magistrate convicted a person of an offence under s. 186 of the Penal Code, on a letter sent by a Civil Court Amin to a police officer, and without sanction by the Civil Court, *held* that the Magistrate had no jurisdiction, since there was no complaint within the meaning of s. 4 of the Crim. Pro. Code, and since there was no sanction. The defect was not cured by s. 537. **A.W.N. 1904, 266.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(40)—*Ss. 4, 495 (4), 537—Prosecution conducted by police officer making investigation—Irregularity.*—An Inspector of Police, on information received by him in a case of gambling, applied for the warrant, arrested the accused, seized the books, etc., and named the witnesses to be summoned by the Magistrate. But he did not examine any of the witnesses, and his investigation was confined to an inspection of the books and the papers which had been seized, and from which he gained all the necessary information. *Held* that, though the case technically fell within the provisions of s. 495 (4), Crim. Pro. Code, the irregularity in the Magistrate's proceedings in no way prejudiced the accused persons. **4 Bom. L.R. 271.**

(41)—*Ss. 4, 488 (=Crim. Pro. Code, 1882, ss. 4 and 488)—Meaning of the term "adultery,"—Wife's refusal to live with husband on the ground of husband's adultery.*—The term "adultery" in s. 488 must be construed with reference to the definition of the term given in s. 487, Penal Code. The husband's immorality, which does not amount to adultery or involve the degradation of a married woman being brought into the society of a concubine, is not a sufficient ground for the wife's refusal to live with her husband. In face of s. 4 of the Crim. Pro. Code, no other interpretation of the term "adultery" is possible than the limited interpretation contained in the Penal Code. **17 M. 260 =2 Weir 641=4 M.L.J. 83.** [*Overruled*, 7 M. L.J. 303=2 Weir 645=20 M. 470, F.B.]

(42)—*Ss. 4 (h) and 190 (c)—Complaint, what amounts to.*—Where a petition was presented to a Magistrate alleging that the petitioner was taken to a certain place and there was made to sign a paper, but he expressly stated that he did not wish to prosecute, *held*, that the petition was not a complaint and that proceedings taken upon such a petition could not be justified as having been instituted by the Magistrate on his own responsibility under s. 190 (*c*). **6 C.W.N. 926.**

(43)—The presentation of a petition by the complainant that his complaint should be enquired into is in effect a complaint within the meaning of s. 4 (*h*), and the Magistrate is bound to hold a full judicial inquiry into the matter before proceeding further. **5 C.W.N. 106.**

(44)—Although a petition to the Magistrate impugning the correctness of the Police report, and praying that the person accused by the petitioner might be brought to trial, is not such a petition as, according to the practice in the mofussil, would be regarded as a complaint, still as the definition of complaint in s. 4 is very wide, such a petition falls within that definition. **33 C. 1=10 C.W.N. 153=2 C.L.J. 228.**

(45)—A letter of a Civil Court Amin to a Police Officer, containing an allegation against an accused person and made to a Magistrate with a view to his taking action, is not a complaint. **A.W.N. 1904, 266.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(46)—*Ss. 4 (1) (h) and 190 (1) (b)*--"*Report of a police officer*" *and* "*Police report*," *meaning of —Burma Gambling Act, ss. 11 and 12.*—The words "Report of a Police Officer" and "Police Report" respectively, in ss. 4 (1) (*h*) and 190 (1) (*b*) of the Crim. Pro. Code, do not refer exclusively to reports under Chapter XIV of the Code. They refer to, and include, any report by a Police Officer, whether in a cognizable or non-cognizable case; and it is not necessary for a Magistrate receiving such a report to treat the reporting officer as a complainant under s. 200 of the Code.

The term "Police Report" in s. 190 (1) (*b*) includes even a verbal report by a police officer. The term "Police Report" in ss. 4 and 190 includes any written information given by a Police Officer in the performance of his duty as a public servant, and not in his capacity as a private individual. **2 L.B.R. 146.** (1 U.B.R. 1892—1896, 28, *Diss.*; 1 L.B.R. 18, 58 and 59, *overruled*; 8 B.H.C. Cr. 113, 13 W.R. Cr. 27, 10 B.H.C. Cr. 70, *R.*)

(47)—An information laid by a police officer of gambling contrary to ss. 11 and 12 of the Act is not a police report in the sense in which this term is used in s. 4 or s. 190, Crim. Pro. Code. Police report means a report made by a police officer under Chapter XIV in a case he is authorised to investigate. The information must be treated as a complaint and the complainant should be examined, and, if necessary, action should be taken under s. 202, Crim Pro. Code, before issue of process. **1 L.B.R. 58.** [*Overruled*, 2 L.B.R. 146].

(48)—*Ss. 4, 145, 437 (=Crim Pro. Code, 1882, ss. 4 (h) 145 and 437)—Case under s. 145—Power of Magistrate to order a further enquiry.*—S. 437 of the Code does not authorise a Magistrate to order a further enquiry in a case under s. 145 of the Code, as the section is not directed to any offence at all. S. 437 only allows a further enquiry into a complaint which means, under s. 4 (*h*) a complaint of an offence, *i.e.*, any act or omission made punishable by any law for the time being in force. **20 C. 729.** [*R.*, 17 C.P.L.R. 127, 42 P.R. 1905 Cr. = 131 P.L.R. 1905; *D.*, 29 C. 242 = 6 C.W.N. 290, 33 P.R. 1905 Cr. = 149 P.L.R. 1905].

(49)—*Ss. 4 (h), 200 to 203—Charge before Police reported false—Petition to Magistrate impugning the Police report—Magistrate's order to complainant to show cause against his prosecution under s. 211, I.P.C.—Legality of the order and the procedure.*—The petitioner instituted proceedings at the thana, against two persons, for an offence under s. 436, I.P.C. The Police investigated the case and reported it to be false. He then presented a petition to the Sub-Divisional Magistrate, impugning the Police report and praying for the trial of the persons charged. This petition the Magistrate ordered to be "put up with the Police report" and, without any disposal of it, directed the petitioner to show cause why he should not be prosecuted under s. 211, I.P.C. The case was then referred for enquiry and report to a Sub-Deputy Magistrate and agreeing with his report that the charge was maliciously false, the Sub-Divisional Magistrate passed an order directing the prosecution of the petitioner. *Held*, that the petition presented to the Magistrate was a complaint under s. 4 (*h*) of the Crim. Pro. Code and must have been dealt with as such under s. 203 of the Code before any order for the prosecution of the petitioner. **33 C. 1 = 10 C.W.N. 158 = 2 Cr. L.J. 228.**

(50)—*Ss. 4 (h), 195—Petition to Collector against a subordinate officer, whether a criminal complaint—Dismissal of complaint, without giving opportunity to call witnesses—Order for prosecution under s. 211, Penal Code, validity of.*—A petition to the Collector directed against one of his official inferiors, and asking the Collector, as the head of the Department, to redress the grievances of the petitioner, is not a complaint within s. 4 (*h*). Where, on such a petition being presented, the Collector saw the petitioner and got him to repeat his statement on oath and, purporting to act judicially, dismissed the complaint and ordered the prosecution of the petitioner for an offence under s. 211, *held*, the order should be set aside, inasmuch as the Collector was not justified in arbitrarily turning a departmental complaint into a criminal complaint and that, even if the Magistrate was justified in taking the course he did, he should have given the petitioner an opportunity of calling his witnesses and proving his allegation. **30 C. 415.** [*F.*, 109 P.L.R. 1904, 8 C.W.N. 17 = 30 C. 910, F.B.]

(51)—*Ss. 4 (h) and 195—Public servant, obstruction to—Cutting crops distrained under s. 123, Bengal Tenancy Act (VIII of 1885)—Penal Code, ss. 143 and 186—Absence of complaint by public servant concerned.*—A person, acting under the orders of a Munsiff, was cutting crops which were distrained under s. 123, Bengal Tenancy Act. While doing so, with the assistance of a number of labourers the petitioners with a mob threatened the labourers and prevented the peon from having the crops cut. The peon lodged information of the occurrence, and the petitioners were convicted under ss. 186 and 143, Penal Code. *Held*, that the conviction under s. 186, Penal Code, should be set aside as there was no complaint of the public servant concerned within s. 195, Crim. Pro. Code, taking complaint as defined in s. 4, Crim. Pro. Code. **30 C. 285.** [*R.*, 8 C.W.N. 17 = 30 C. 910, F.B.]

(52)—*S. 4 (i)—British-born subject—Proof.* Where a prisoner pleaded that he was a British-born subject and that he ought, therefore, to be tried before the High Court, and where the evidence showed that the prisoner was the legitimate grandson of a person said to have been a serjeant in the service of the King or of the East India Company, and there was no

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

sufficient evidence to establish a valid marriage between that grandfather and a native Christian woman, through whom the prisoner traced his descent, and there were also doubts about the nationality of the said grandfather, *held*, that there was no evidence to show that the prisoner was a British-born subject. **2 Weir 11=6 M.H.C. 7.**

(53)—*Ss. 4, cl. (k), 145 and 526—Investigation in a case under s. 145, whether an enquiry in a Criminal Court.—Per* GHOSE, J.—An investigation in a case under s. 145 is an enquiry within the meaning of s. 4, cl. (*k*). The Court or Magistrate taking cognisance of it is a Criminal Court within the meaning of the Code. Therefore, a proceeding under s. 145 is an enquiry in a Criminal Court as indicated in the 1st para of s. 526. **28 C. 709=5 C.W.N. 749.**

(54)—*Ss. 4 (k), 145 and 350—"Enquiry" —Proceeding under s. 145, whether—Part-heard proceeding under s. 145—Transfer of trying Magistrate—"Successor."*—Proceedings, under s. 145, Crim. Pro. Code, are inquiries within the meaning of the Code of Criminal Procedure. Under that Code, enquiry means not only an enquiry into an offence, but extends to enquiry into matters which are not offences. When, in the course of a proceeding under s. 145, Crim. Pro. Code, one Magistrate is transferred and another comes in his place, the latter, if of competent jurisdiction, can deal with the proceeding under s. 350, Crim. Pro. Code. S. 350, Crim. Pro. Code, ought to be construed with all reasonable liberality. **13 C.W.N. 420=9 Cr. L.J. 278=1 Ind. Cas. 336.**

(55)—*S. 4 (l)—"Investigation," definition of.*—The definition of the term "investigation" in s. 4 is not exhaustive. **26 B. 533=4 Bom. L.R. 71.**

(56)—*S. 4 (l)—Investigation—Bombay Act IV of 1887 (Gambling), ss. 4 and 5.*—The definition of the term "investigation" in s. 4, Crim. Pro. Code, 1898, is not exhaustive. A Police Inspector, who had got information that persons were carrying on wagering business, and, having satisfied himself, had obtained a warrant under s. 6 of the Bombay Gambling Act and effected the arrest of the accused and seizure of their books, does make an "investigation" into the offence in respect of which the accused was being prosecuted. **4 Bom. L.R. 271=26 B. 533.**

(57)—*Ss. 4 (m), 476—"Judicial proceedings," what amounts to.*—An enquiry conducted by a Magistrate into the truth of allegations against a subordinate official, contained in a petition presented to a Deputy Commissioner, is a judicial proceeding within the meaning of s. 4 (*m*) of the Code. **28 A. 89=A.W.N. 1905, 195=2 A.L.J. 717=2 Cr. L.J. 454.** (32 C. 367, *D.*).

(58)—*Ss. 4, 88, 89 (=Crim. Pro. Code, 1882. ss. 4 (m), 88, 89)—Proceedings of Magistrate under s. 88, Crim. Pro. Code, whether "judicial proceedings."*—The law makes no provision for the investigation by a Magistrate of the claims of third persons to property which has been attached under s. 88 of the Code. Therefore, the proceedings of Magistrates under s. 88 are not "judicial proceedings" in the sense of s. 4 (*m*) of that Code. **6 A. 487.** [*F.*, 4 L.B.R. 109; *R.*, 9 P.R. 1908 Cr.=29 P.W.R. 1908 Cr.=8 Cr. L.J. 260].

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(59)—*Ss. 4 (m), 476—Execution proceedings, if judicial proceedings—Jurisdiction of executing Court to determine genuineness of decree—Onus of proof as to jurisdiction*—The petitioners presented an application for the execution of a decree alleged to have been passed, whereas, as a matter of fact, no such decree had been passed, and all the statements contained in the application were false. The Court took action under s. 476, Crim. Pro. Code, the petitioners were prosecuted, and convicted under s. 193. *Held*, that execution proceedings are 'judicial proceedings' within the meaning of s. 476, Crim. Pro. Code. The test which has to be applied to a particular proceeding before a Court, to determine whether it is or is not a 'judicial proceeding' for the purposes of s. 476, is, whether, in the course of that proceeding, the Judge has power legally to take evidence on oath, not whether he has actually taken such evidence. *Held*, also, that the Munsiff had jurisdiction in the matter, as the *onus* lay upon the petitioners of showing that the amount of the decree sought to be executed exceeded the pecuniary limits of the Munsiff's jurisdiction, and they were unable to discharge the same. *Held*, further, that the Munsiff had jurisdiction to enquire into and decide the question of the genuineness of the decree, and the mere fact that the decree was fictitious and so not executable cannot make the proceedings, so far as regards the determination of the genuineness or otherwise of the decree, void for all purposes. **1 P.R. 1910 Cr.**

(60)—*Ss. 4, 195, 487 (=Crim. Pro. Code, 1882, ss. 4 (m), 195 and 487)—Power of Magistrate declining to revoke a sanction. to try the case.*—An order, whether original or appellate, granting or refusing or revoking sanction under s. 195, Crim. Pro. Code, is a "judicial proceeding" as defined in s. 4 of the Act. Therefore, a Magistrate, who has declined to revoke a sanction to prosecute a person on a charge of forgery, is precluded, under s. 487, from himself trying the case. **20 M. 383=2 Weir 613.**

(61)—*Ss. 4 (o), 250—Appeal against order made under s. 22, Cattle Trespass Act (I of 1871), ss. 20 and 22.*—By s. 4 (*o*) of the Crim. Pro. Code of 1898, the word "offence" includes an act, in respect of which a complaint may be made under s. 20 of the Cattle Trespass Act. It follows that a person, against whom an order under s. 22 of the Cattle Trespass Act is made, is a "person convicted on a trial," and an appeal against such conviction, therefore, lies under s. 407 of the Code. S. 250 of the Code applies to a case, in which compensation is

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

awarded to an accused person, because a frivolous complaint has been made against him. But, where compensation is awarded, not to the accused, but to the complainant, and it is awarded under s. 22 of the Cattle Trespass Act, s. 250 of the Crim. Pro. Code does not apply. **29 M. 517=5 Cr. L.J. 86.**

(62)—*S. 4 (r)—Mukhtear—Power of Magistrate to withhold permission to appear.*—An order by a Magistrate refusing permission to a mukhtear to appear in two cases and also a general order refusing permission to appear in any case before him, owing to the latter's alleged misconduct in Court on a particular day, were held to be without jurisdiction. Even in punishing the mukhtear for the particular misconduct, the Magistrate should deal with the matter on its own merits giving the mukhtear an opportunity of defending himself. **7 C.W.N. 524.**

(63)—*S. 4 (r)—Mukhtears, meaning of—Right to practice—Legal Practitioners Act (XVIII of 1879), s. 9—Powers of mukhtears.—Per Curiam.* —A mukhtear cannot, as a matter of right, practice in Criminal Courts. He can do so only if he obtains the permission of the Court in each case. The word "Mukhtear" in cl. (*r*), s. 4 of the Crim. Pro. Code also refers to such mukhtears as have obtained a certificate of qualification from the High Court. Where the District Magistrate issued a notice that "mukhtears can appear under s. 4 (*r*) only with the Court's permission," *held*, that he did not act without jurisdiction. *Per Banerji, J.* —If permission, to act in a criminal case, is asked for by a mukhtear, who holds a certificate empowering him to practise, such permission should not be refused except for valid reasons. *Per Richards, J.*—In considering whether or not permission should be granted to a mukhtear, who has qualified himself with a certificate provided by the Legal Practitioners Act, the Court ought to consider every application on its merits. **5 A.L.J. 40=A.W.N. 1908, 11=30 A. 66=7 Cr. L.J. 21.**

(64)—Ss. 4, 155, 156, 165—*See* ACT XIII OF 1857, s. 24, 24 C. 691.

(65)—Ss. 4, 250—*See* ACT XIII OF 1859, s. 2, 4 C.W.N. 253.

(66)—Ss. 4 (*o*), 192 (1)—*See* ACT I OF 1871, ss. 20 to 23, 34 C. 926.

(67)—S. 4 (*p*) and Ch. XII—*See* ACT I OF 1871, ss. 20 to 23, 23 C. 248.

(68)—Ss. 4 (*o*), 241, 243, 245, 246, 407, 439—*See* ACT I OF 1871, s. 22, 4 L.B.R. 10=6 Cr. L.J. 121.

(69)—Ss. 4, 435—*See* ACT V OF 1876, s. 8, 14 B. 381, Rat. Un. Cr. C. 494.

(70)—Ss. 4, 155, 156, 165—Offence under s. 9, Opium Act—*See* ACT I OF 1878, s. 9, 24 C. 691.

(71)—S. 4—*See* ACT XXII OF 1881, ss. 35, 47 and 49, 8 P.R. 1894 Cr.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(72)—S. 4, cl. (*h*)—*See* ACT VI OF 1898, ss. 61 and 72, 10 C.W.N. 1029.

(73)—Ss. 4 (*o*), 29 (2)—*See* BEN. ACT VIII OF 1885, s. 58 (3), 9 C.W.N. 816=2 Cr. L.J. 532.

(74)—Ss. 4, 205—*See* BOM. ACT VI OF 1873, s. 48, Rat. Un. Cr. C. 205=Cr. Rg. 7—8—1884.

(75)—S. 4 (*p*)—*See* BUR. ACT IX OF 1892, L.B.R. (1893—1900), 329.

(76)—Ss. 4 and 537—*See* PUNJ. ACT XXII OF 1881, ss. 41 and 47, 28 P.R. 1883 Cr.

(76-*a*)—Ss. 4 and 190—*See* PUNJ. ACT XX OF 1891, s. 186, 2 P.R. 1892 Cr., 3 P.R. 1892 Cr.

(77)—Ss. 4 and 250—*See* COMPENSATION, 7 M. 563.

(78)—S. 4 (*a*)—*See* COMPLAINT, Rat. Un. Cr. C. 554=Cr. Rg. 29 of 1891.

(79)—Ss. 4, cl. (*h*), 190, 191—*See* COMPLAINT, 2 Ind. Cas. 453.

(80)—Ss. 4, 191, 200 and 537—*See* COMPLAINT, 11 M. 443=2 Weir 238.

(81)—Ss. 4, 196, 287 and 537—*See* COMPLAINT, 5 M.L.T. 1=32 M. 3=9 Cr. L.J. 108 =1 Ind. Cas. 22.

(82)—Ss. 4 and 199—*See* COMPLAINT, 30 C. 910, F.B.= 8 C.W.N. 17.

(83)—Ss. 4, 203, 437—*See* COMPLAINT, 2 C.W.N. 290.

(84)—Ss. 4, 177, 488—*See* MAINTENANCE, 3 P.R. 1893 Cr.

(85)—S.4 (1) (*n*) and (*f*)—*See* PENAL CODE, s. 218, 27 C. 144.

(85-*a*)—S. 4—*See* Nos. 28 and 29, *supra*.

——S. 5 (=1882, s. 5; 1872, ss. 6, 7, 8, 11, 63 Expl.; 1861, s. 21).

(86)—*Ss. 5 and 83—Warrants issued under Act XIII of 1859.*—A Magistrate has no discretion to decline to execute warrants issued by the Magistrate of another district under Act XIII of 1859 and forwarded to him for execution under s. 83 against persons residing in his district, as s. 5 read with s. 83, Crim. Pro. Code, does not exclude from the operation of the latter section warrants issued under Act XIII of 1859. **11 P.R. 1898 Cr.**

(87)—*Ss. 5, 7 (=Crim. Pro. Code, 1872, ss. 8 (2) and 12 (2)—Jurisdiction of Magistrate.* —A Magistrate in the division in which an offence is committed and a Magistrate whose powers have not been formally limited to any particular portion of the division have jurisdiction over an offence committed in the division. **2 Weir 13.** [*R.*, U.B.R. (1892—1896), 16].

(88)—Ss. 5, 386—*See* ACT I OF 1868, s. 5, Rat. Un. Cr. C. 57.

(89)—S. 5—*See* ACT I OF 1871, 5 B.H.C. Cr. 13.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(90)—S. 5 –Applicability of Penal and Crim. Pro. Codes to the Laccadive Islands –*See* ACT XIV OF 1874, ss. 1 to 7 and 11, 13 M. 353=2 Weir 1.

(91)—S. 5—*See* ACT XI OF 1878, s. 19 (*i*), 1 Weir 660.

(92)—S. 5—*See* CONTEMPT OF COURT, 10 C. 109=10 I.A. 171, P.C.

——S. 6 (=1882, s. 6; 1872, ss. 5, 19; 1861, s. 23).

(93)—*Ss. 6 and 32 –District Magistrate—Jurisdiction—Trial commenced but not concluded by first class Magistrate while officiating as Magistrate of the District.*—A trial commenced before an Officiating District Magistrate was concluded by that Officer after he had ceased to act as Magistrate of the District. He continued to serve in the District as a first class Magistrate. No objection to his jurisdiction was raised during the trial by the accused. On appeal, the learned Sessions Judge set aside the conviction and ordered a retrial on the ground that the Magistrate in question had no jurisdiction to continue the trial after ceasing to act as District Magistrate. *Held*, that the Magistrate had jurisdiction to continue the trial to its conclusion. **A.W.N. 1906, 201=4 Cr. L.J. 140=3 A.L.J. 825.**

(94)—*Ss. 6, 545 (=Crim. Pro. Code, 1882, ss. 6, 545)—Power of Police Patel to make order for compensation under s. 545—Village Police Act, VIII of 1867, s. 15.*—As the Police Patel's Court is not a Criminal Court within the enumeration contained in s. 6, Crim. Pro. Code, 1882, he has no power to make an order under s. 545, Crim. Pro. Code. **Rat. Un. Cr. C. 317= Cr. Rg. 2 of 1887.**

(95)—S. 6—*See* PRESIDENCY MAGISTRATE, Rat. Un. Cr. C. 193.

——S. 7 (=1882, s. 7 (1) (2) (3); 1872, ss. 12, 13, 38, 14; 1861, s. 2).

(96)—*Ss. 7 (3), 408, 435—Two Sessions divisions in one district—Magistrate having jurisdiction over the whole district—Jurisdiction of the Sessions Courts in appeals against the Magistrate's decisions.*—Under s. 435, the Sessions Judge may call for and examine the records of any inferior Criminal Court "situate" within the local limits of his jurisdiction. The word "situate" means fixed or located, and when applied to a Court, it must be taken to refer to the place where the Court ordinarily sits. In the absence of any indication to the contrary in the Code, the principle thus laid down in regard to the analogous powers of revision under s. 435, should be followed in the case of appeals also. So, where a Magistrate, against whose decisions appeals are preferred, has his head-quarters in a place, which is within the local limits of one of the two Sessions Divisions in a district (*e.g.*, Malabar), though he is authorised to try offences throughout the whole district, including cases arising within the other Sessions Division, the appeals lie to the Sessions Division, within whose jurisdiction the head-quarters of the Magistrate are situate, irrespective of the place where the offence was committed. **16 M.L.J. 444=4 Cr.L.J. 443=30 M. 136=1 M.L.T. 402.**

(96-*a*)—S. 7—*See* No. 87, *supra*.

——S. 8 (=1882, s. 8 (1) (2); 1872, s. 39).

(97)—S. 8 (*i*)—*See* COMPLAINT, 3 N.W.P. 317.

——S. 9 (=1872, ss. 15 to 18), paras 1, 3 and 5 (=1882, s. 9, paras 1, 2, 3).

(98)—*Ss. 9, 31, 193, 423, 426, 439 and 440 (=Crim. Pro. Code, 1872, ss. 18, 280, 297).*—The word "modify" in s. 18 does not include the power of enhancing a sentence. An Appellate Court can, when hearing an appeal, enhance the sentence under s. 280. The High Court, as a Court of Revision, can enhance a sentence under cl. 7, s. 297; but no such power of enhancement of sentence is anywhere given to a Sessions Judge taking up a case referred by an Assistant Sessions Judge under the first clause of s. 18. **4 B. 239.** [*R.*, 9 C.P.L.R. 29].

(99)—*Ss. 9, 193, 197 (=Crim. Pro. Code, 1882, ss. 9, 193, 197)—Power of Local Government to appoint Additional Sessions Judge to try a case of bribery against a public officer.*—The Local Government, under the provisions of s. 197, Crim. Pro. Code, specified the Sessions Court of Tellicherry, as the Court which should try a Subordinate Judge, charged with an offence under s. 161, Penal Code, and the abetment of an offence under s. 164, and the second accused, a relative of the first accused, charged with an offence under s. 164 Penal Code. Mr. Irvine was appointed to officiate as District and Sessions Judge of Tellicherry. Subsequently Mr. Irvine was appointed Additional Sessions Judge of Tellicherry and was directed to try the case. *Held* by the Full Bench:—Having under s. 197, Crim. Pro. Code, specified the Sessions Court of Tellicherry as the Court before which the trial of the Subordinate Judge was to be held, the Local Government under s. 9 of the Code appointed Mr. Irvine as Additional Sessions Judge, to exercise jurisdiction in the Tellicherry Sessions Court and under s. 193 of the Code directed him to try the cases then pending. His appointment did not constitute an Additional Sessions Court. There can be only one Sessions Court for each Sessions Division, but there may be more than one Judge of such Sessions Court. If an Additional Sessions Judge is appointed, he can only try such cases as the Local Government directs, or as the Sessions Judge makes over to him. Mr. Irvine, having been directed by the Local Government to try the case, was competent to try the case. **1 M.L.J. 397, F.B.**

(100)—Ss. 9 and 215—*See* JURISDICTION OF CRIMINAL COURTS, 5 P.R. 1907 Cr=6 Cr. L.J. 108=41 P.L.R. 1907=26 P.W.R. 1907.

(101)—Ss. 9 (1 to 5), 31, 193 and 35—*See* SENTENCE, 1 B. 223.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

——S. 10, para (1) (=1882, s. 10; 1872, s. 35) and para (2), new.

(102)—*Ss. 10, 12—District Magistrates and Magistrates of the first class—Area af appointment.*—Ss. 10 and 12 of the Code show that District Magistrates and Magistrates of the first class are appointed only in districts outside the Presidency-towns. **32 M. 303.**

(103)—*Ss. 10 (2), 12, 528—Subordination of Additional District Magistrate to District Magistrate—Relations between a District Magistrate and an Additional District Magistrate—Transfer of cases—Omission to state reasons for —Irregularity.*—S. 12 of the Crim. Pro. Code does not make an Additional District Magistrate, appointed under sub-s. (2) of s. 10 of the Code, subordinate to a District Magistrate, who, therefore, has no power under s. 528 of the Code to transfer cases to the former; the Code does not define the relations between a District Magistrate and an Additional District Magistrate; although, under sub-s. (3) of s. 528, an officer transferring cases from one Court to another ought to record his reasons for it, his omission to do so, being only an irregularity, is not a material ground for setting aside his order of transfer. **34 C. 918.**

(104)—*Ss. 10 (2) and 435 (1)—Relation between Additional District Magistrate and District Magistrate—Additional District Magistrate inferior to District Magistrate--Revision.*—The Court of a Magistrate of the first class, appointed under s. 10 (2), Crim. Pro. Code, to be an Additional District Magistrate, is an inferior Criminal Court, situate within the local limits of the jurisdiction of the District Magistrate, for the purposes of s. 435 (1) of the Code. The Code of 1898 did not except Additional District Magistrates from supervision by the District Magistrate and Additional District Magistrates are obviously not inferior to Subdivisional Magistrates. **25 P.R. 1908 Cr. = 9 Cr. L.J. 104.**

(105)—Ss. 10 (1), 12 (1, 2), 17 (1 to 5)—*See* MAGISTRATE, JURISDICTION OF, 3 A. 563.

——S. 11 (=1882, s. 11; 1872, s. 55; 1861, s. 23-B).

(106)—S. 11—*See* SENTENCE, 20 M. 444 = 2 Weir 452.

——S. 12, para (1) (=1882, s. 12; 1872, ss. 37, 49; 1861, s. 23-G) and para (2), new.

(107)—*S. 12—Transfer of Magistrate.*—A judgment written by a Magistrate subsequent to his transfer to another district, after he had handed over charge of his duties as such Magistrate and thus ceased to exercise his powers, is invalid. **15 C.P.L.R. 15.** (3 A. 536, 19 A. 114 and 7 C.P.L.R. 18, *R.*).

(108)—*S. 12—Magistrate, local jurisdiction of.*—*Held* that a Sub-Divisional Magistrate has power to record the confessions of the accused at the headquarters of the district, though beyond the limits of his sub-division. **U.B.R. (1892—1896), Vol. I, 16.** (4 C. 696, 5 C. 954, *R*).

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(109)—*Ss. 12, 17, 90, 342 (=Crim. Pro. Code, 1861, ss. 23-G and 273)—Power of District Magistrate to refer cases to Divisional Magistrates.*—S. 23-G empowers District Magistrates to refer cases under s. 273 to Divisional Magistrates. **7 M H.C. App. V.**

(110)—*Ss. 12 and 107—Magistrate in a District—Extent of jurisdiction.*—Under s. 12, Crim. Pro. Code, unless the powers of a Magistrate have been restricted to a certain local area, he has jurisdiction over the entire District. Where a Sub-Divisional Magistrate instituted proceedings under s. 107, and the District Magistrate transferred the case to a Magistrate not in the Sub-Division, but holding his Court at the head-quarters of the District, *held*, that the Deputy Magistrate, inasmuch as his powers were not restricted to a certain local area, had jurisdiction over the entire District, and had jurisdiction to institute the fresh proceedings. **29 C. 389 = 6 C.W.N. 552.** [*R.*, 2 L.B.R. 80, 10 C.W.N. 1095].

(111)—Ss. 12 (1, 2), 476—*See* CONTEMPT OF COURT, Rat. Un. Cr. C. 88.

(112)—S. 12 (1 and 2)—*See* MAGISTRATE, JURISDICTION OF, 19 A. 114.

(113)—Ss. 12 (1, 2), 17 (1 to 5), 90, 342—*See* MAGISTRATE, JURISDICTION OF, Rat. Un. Cr. C. 18.

(114)—Ss. 12 (1, 2), 17 (1 to 5), 198—*See* SANCTION TO PROSECUTE, 2 A. 205, F.B.

(114-*a*)—S. 12—*See* Nos. 102, 103 and 105, *supra*.

——S. 13 (=1882, s. 13; 1872, s. 40).

(114-*b*)—S. 13—*See* No. 130, *supra*.

——S. 14 (=1882, s. 14; 1872, s. 42; 1861, s. 23).

(115)—Ss. 14, 412—*See* APPEAL, 3 B.H.C. Cr. 18.

——S. 15, paras (1) and (2) (=1882, s. 15; 1872, ss. 50, 51, 224).

See BENCH OF MAGISTRATES.

(116)—*S. 15—Bench of Magistrates—Disposal of case by single member of Bench.*—Where a Bench of Magistrates established by the Local Government under s. 15, Crim. Pro. Code, is, under the notification establishing it, to consist of not less than two members, one member of the Bench cannot alone adjudicate upon a case. **A.W.N. 1902, 148.**

(117)—S. 15—*See* BENCH OF MAGISTRATES, 29 C. 483 = 6 C.W.N. 596.

(118)—Ss. 15 and 16—*See* BENCH OF MAGISTRATES, 16 M. 410 = 2 Weir 14.

(119)—Ss. 15 and 145—*See* BENCH OF MAGISTRATES, 3 C. 754.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

—— S. 16 (=1882, s. 16; 1872, ss. 52 and 53).

(120)—*S. 16, cl. (d)—Bench of Honorary Magistrates—Chairman's casting vote—Rule 6 of the Government rules, whether* ultra vires.—*Held*, by a majority of the Full Bench (GHOSE and PRATT, JJ., *diss.*)—Rule 6 of the Rules framed by the Government of Bengal for the guidance of Benches of Honorary Magistrates, under the provisions of s. 16 of the Code, cl. (*d*), providing that, when the members of a Bench of Magistrates are even, the view of the Chairman shall prevail, is not inconsistent with the Code, and, therefore, not *ultra vires*, though highly undesirable. **3 C.L.J. 492, F.B. = 10 C. W.N. 642.**

(121)—*Ss. 16 and 350 (=Crim. Pro. Code, 1882, ss. 16 and 350)—Rules framed by Bengal Government under s. 16, Rule 8—Validity of the rule.*—Under s. 16 of the Crim. Pro. Code, the Bengal Government has framed rules for the guidance of the Magistrates. Rule 8 of those Rules is as follows " any part-heard case postponed to a further sitting of the Bench may be proceeded with, if any member of the Bench has been present at the previous hearing in the case, but subject to the provisions of s. 350 of the Crim. Pro. Code." *Held*, that the rule is *ultra vires*, and does not come under the provisions of s. 16 of the Code. **20 C. 870.**

(122)—S. 16—*See* BENCH OF MAGISTRATES, 2 Weir 13, 2 Weir 18.

(123)—Ss. 16, 350—*See* BENCH OF MAGISTRATES, 18 M. 394 = 2 Weir 17.

(123-*a*)—S. 16—*See* No. 118, *supra*.

—— S. 17 (=1882, s. 17, paras 1, 2, 3 and 4; 1872, ss. 37, 41; 1861, s. 23-G).

(124)—*S. 17 (1) and (5)—District Magistrate, if subordinate to Sessions Judge.*—Under s. 17 (1) and (5), Crim. Pro. Code, neither the District Magistrate nor the other Magistrates are subordinate to the Sessions Judge, except so far as is expressly provided by the Crim. Pro. Code. **13 M.L.J. 272 = 26 M. 596.**

(125)—*Ss. 17, 195 and 435—Sanction by Sub-Magistrate—Revocation of the sanction by the Sub-Divisional Magistrate—Power of Sessions Judge.*—The subordination of an authority, which is a Court, to another authority is regulated by sub-s. 7 of s. 195, but when the authority granting or refusing sanction does not act as a Court, the appeal lies under sub-s. 6 to the authority to which the former is subordinate under s. 17, Crim. Pro. Code. Where a Sub-Magistrate sanctions the prosecution of a person under s. 182, Penal Code, the appeal lies to the Sub-Divisional Magistrate. The latter, in a case of this kind, does not act as a Court, but as an executive officer. Therefore, where the Sub-Divisional Magistrate revokes the sanction given by the Sub-Magistrate, a Sessions Judge has no jurisdiction to interfere under sub-s. 6 or 7 of s. 195, nor has he any authority under s. 435, Crim. Pro. Code. **2 Weir 19 = 2 Weir 155.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(126)—*Ss. 17, 435 and 437 (=Crim. Pro. Code, 1882, ss. 17, 435, 437)—First class Magistrate, whether subordinate to District Magistrate.*—A Magistrate of the first class is, within the meaning of s. 437, subordinate to the Magistrate of the District. The latter is, therefore, competent to call for the records of the former. **7 A. 853, F.B.** [*F.*, 12 C. 473, F.B.]

(127)—Ss. 17, 435, 436—*See* MAGISTRATE, JURISDICTION OF, 9 B. 100.

(128)—Ss. 17, 435 and 437—*See* RE-TRIAL, 38 P.R. 1885 Cr.

(129)—S. 17 (1-3 and 5) and Ch. 32—*See* SESSIONS JUDGE, JURISDICTION OF, 9 B. 164.

(130)—Ss. 17, 13, 435—*See* SESSIONS JUDGE, JURISDICTION OF, 2 Weir 537 = 7 M.H.C. App. 27.

(130-*a*)—S. 17—*See* Nos. 105, 109, 113 and 114, *supra*.

—— S. 18, para (1) (=1882, s. 18 (1), and para (2), new.

(131)—*Ss. 18, 21 and 106—Power of Bench of Honorary Presidency Magistrates to take action under s. 106.*—S. 18, Crim. Pro. Code, confers the full powers of a Presidency Magistrate on a Bench of Honorary Presidency Magistrates under the Criminal Procedure Code, and the Bench can, therefore, take action under s. 106 of the Code. **7 Bom. L.R. 833 = 2 Cr. L. J. 770.**

—— S. 21, para (1) (*a, b, c, d*) (=1882, s. 21, *a, b, c, d*) and paras 1 (*e*) and 2, new.

(132)—*S. 21—Rules framed by Chief Presidency Magistrate under that section regarding decisions by Bench of Magistrates—Rule 8.*—Rule 8 of the Rules framed by the Chief Presidency Magistrate under s. 21, is held to be not consistent with the provisions of the Code in so far as it directed that, in a Bench composed of two members, the decision of the Chairman should prevail. It was also arbitrary and not consonant with justice. **8 C.W.N. 862.** [*F.*, 10 C.W.N. 640].

(133)—S. 21—*See* BOM. ACT XXXI OF 1850, 5 B.H.C. Cr. 61.

(134)—S. 21, Rule 9—*See* PRESIDENCY MAGISTRATE, Rat. Un. Cr. C. 968.

(134-*a*)—S. 21—*See* No. 131, *supra*.

—— S. 25 (=1882, s. 25).

(135)—Ss. 25, 526—*See* ACT XVIII OF 1879, ss. 13 and 14, 41 P.R. 1888 Cr.

—— S. 26 (=1882, s. 26; 1872, s. 9).

(136)—S. 26—*See* PENAL CODE, s. 202, A.W.N. 1883, 9.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

——S. 28 (=1882, s. 28).

(137)—*S. 28—Offences under Treasure Trove Act—Jurisdiction of third class Magistrate.*—Third class Magistrates have no jurisdiction to try offences punishable under s. 20 of Act VI of 1878. **2 Weir 23.**

(138)—*S. 28 (=Crim. Pro. Code, 1882, s. 28) —Scope of the section.*—S. 28, subject to the other provisions of the Code, empowers the High Court and the Court of Sessions to try any offence under the Penal Code. The provisions as to the other Courts do not cut down or limit the jurisdiction of the High Court or Court of Sessions. **8 A. 665.**

(139)—*Ss. 28, 30 and 250—Compensation for making a false and frivolous complaint—"Triable by a Magistrate"—Offence ordinarily triable by Court of Sessions tried by District Magistrate exercising powers under s. 30, Crim. Pro. Code.*—The object of the Legislature is to exclude offences of great gravity from the provisions of s. 250 of the Crim. Pro. Code. The words "triable by a Magistrate" in that section mean triable under s. 28 of the Code by a Magistrate. The cases provided for by s. 250 are those specified in the eighth column of the Schedule as triable by a Magistrate. A Magistrate exercising powers under s. 30, of the Crim. Pro. Code, is not competent to award compensation under s. 250 to the complainant in a case ordinarily triable by a Court of Sessions or the High Court. **139 P.L.R. 1902.**

(140)—Ss. 28, 207, 245, 254—*See* MAGISTRATE, JURISDICTION OF, 24 C. 429=1 C.W.N. 414.

——S. 29 (=1882, s. 29; 1872, s. 8, para 1).

(141)—*S. 29 (=Crim. Pro. Code, 1882, s. 29) —Offences under the Treasure Trove Act—Jurisdiction of third class Magistrate.*—Third class Magistrates have no jurisdiction to try offences punishable under s. 20 of Act VI of 1878. **2 Weir 23.**

(142) *S. 29 (=Crim. Pro. Code, 1882, s. 29) —Offences punishable under Act III of 1877 (Registration Act)—Jurisdiction.*—Under s. 29, cl. (*b*), sub-s. 1, a second class Magistrate cannot try an offence under s. 82 of the Registration Act, since the offences referred to therein are punishable with imprisonment which may extend to three years. **2 Weir 25.**

(143)—S. 29—Jurisdiction of second class Magistrate over offences under Registration Act—*See* ACT III OF 1877, s. 29, 7 M. 347=2 Weir 24.

(144)—S. 29—*See* ACT I OF 1878, s. 9, 19 A. 465.

(145)—S. 29—*See* BOM. ACT XVI OF 1861, ss. 7, 9, 21, Rat. Un. Cr. C. 364=Cr. Rg. 7 of 1888.

(146)—S. 29—*See* BOM. ACT VI OF 1873, s. 69, Rat. Un. Cr. C. 763.

(146-*a*)—S. 29—*See* No. 13, *supra*.

Crim. Pro. Code (Acts V of 1898, X of 1882 X of 1872, XXV of 1861 and VIII of 1869 —continued.

——S. 30 (=1882, s. 30; 1872, s. 36).

(147)—*S. 30, cases triable by District Magistrate empowered under.*—A District Magistrate empowered under s. 30, may try all offences not punishable with death. **3 P.R. 1891 Cr.**

(148)—*S. 30—Inquiry of dacoity case—Transfer by Magistrate to a Deputy Commissioner empowered under s. 30, validity of.*—A Magistrate of the first class, who is holding an inquiry in a case of dacoity has jurisdiction either to commit the accused to the Court of Sessions or to discharge him. He has no authority to make over the case to a District Magistrate, who is a Deputy Commissioner specially empowered under s. 30, to try such cases. But the High Court maintained a conviction by the District Magistrate in a case where it was found that the accused had not been prejudiced by such trial. **7 C.W.N. 457.**

(149)—*S. 30—District Magistrate empowered under this section—Jurisdiction to try the offence of culpable homicide not amounting to murder.*—A District Magistrate, empowered under s. 30 to try all offences not punishable with death, cannot legally try the offence of culpable homicide not amounting to murder, punishable under the first part of s. 304, I.P.C., an offence not punishable with death. Where there is credible evidence both of murder and of qualified murder, the accused should be committed for trial before a Court which is competent to do what a District Magistrate is not, *viz.*, try both offences once for all, and pronounce a judgment which shall effectively bar a second trial on the same facts. **1 P.R. 1893 Cr., F.B.**

(150)—*S. 30—Magistrate described in the heading of his judgment as invested with powers under s. 30, but not purporting to act under those powers.*—*Held*, that, a first class Magistrate simply described in the heading of his judgment as invested with powers under s. 30, but not purporting to act under such powers, cannot exercise those powers in passsing the sentence. **17 P.W.R. 1908 Cr.**

(151)—*Ss. 30, 33 and 34, Crim. Pro. Code (1882)—Imprisonment in default of payment of fine.*—A District Magistrate, who is empowered under s. 30 and convicts an accused for an offence under s. 47, I.P.C., can pass a sentence of 1 year and 9 months, *i.e.*, ¼ of 7 years, in default of payment of fine. His power is not limited to awarding one-fourth of the punishment which, under s. 34, he is competent to inflict without confirmation. **35 P.R. 1885 Cr.**

(152)—*Ss. 30 and 34 (=s. 36, Crim. Pro. Code, 1872)—Commitment to sessions—Powers of Deputy Commissioner empowered under s. 36.*—On the committal of a prisoner to the Court of Sessions, the records were sent to the Deputy Commissioner, who, on the passing of the Code of 1872, was no longer a Sessions Court, but had received power under s. 36, to try as a Magistrate, classes of cases which formerly he would have tried as a Court of Sessions. *Held*,

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

that the Deputy Commissioner was not competent to intercept the case and try it himself, but should send the case to the Court of Sessions. **5 N.W P. 219.**

(153)—*Ss. 30 and 34 (=Crim. Pro. Code, 1872, s. 36).*—The powers conferred on a Deputy Commissioner under s. 36, cannot be exercised by him in a summary trial. **Colm. Dig. Cr. 42 of 1876.**

(154)—*Ss. 30 and 34 (=Crim. Pro. Code. 1872, s. 36)—Case referred for confirmation by Sessions Judge—His powers.*—Where a case is referred for confirmation of sentence, a Sessions Judge has no power to enhance the same. **Colm. Dig. Cr. 16 of 1874.**

(155)—*Ss. 30 and 34 (=Crim. Pro. Code, 1872, s. 36)—Sentence submitted for confirmation—Powers of Sessions Judge—Appeal—Annulment.*—Where a sentence is referred to a Sessions Judge, under s. 36, Crim. Pro. Code, 1872, for confirmation, no appeal lies by the accused until the Sessions Judge has passed orders upon the sentence submitted to him. The annulment of the sentence amounts to a removal of the sentence, which is tantamount to an acquittal.

(156)—A Sessions Judge to whom a sentence has been referred for confimation under s. 36, is competent to annul such sentence on the ground that evidence does not, in his opinion, prove the offence. **16 P.R. 1881 Cr.**

(157)—*Ss. 30 and 34 (=Crim. Pro. Code, 1872, s. 36)—Confirmation by Sessions Judge, when necessary.*—The confirmation of the Sessions Judge is necessary only when a sentence exceeds three years' imprisonment, and this must be construed to mean the substantive sentence, exclusive of the imprisonment, which the offender may have to undergo in default of payment of fine. A longer period of imprisonment, in default of payment of fine, than one-fourth of three years, the substantive imprisonment being three years' imprisonment, need not be confirmed by the Sessions Judge. **18 P.R. 1882 Cr.**

(158)—*Ss. 30, 34 (=Crim. Pro. Code, 1872, s. 36)—Order of Sessions Judge—Sentence under s. 325, I.P.C.—Confirmation—Legality*—A Sessions Judge's order, annulling the proceedings of a Magistrate, who sent the case, under s. 36, for confirmation of sentences passed under s. 325, I.P.C., and directing him to retry the case for culpable homicide not amounting to murder, was held to be *ultra vires*, and, all subsequent proceedings being thereby rendered illegal, the Sessions Judge was ordered to again proceed under s. 36, the annulment of the Magistrate's order by him being annulled. **Colm. Dig. Cr. 56 of 1876.**

(159)—*Ss. 30, 34 (=s. 36, Crim. Pro. Code, 1872)—"Modify," meaning of.*—The word "modify" in the above section of the Code does not empower a Sessions Judge to

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

alter a sentence of imprisonment into one of transportation. Under ss. 75 and 379, Penal Code, the awarding of more than six years' imprisonment is illegal. **Colm. Dig. Cr. 62 of 1876.**

(160)—*Ss, 30, 34 (=Crim. Pro. Code, 1872, s. 36)—Reference by Sessions Judge to Chief Court for enhancement of sentence.*—A Sessions Judge, to whom a case has been referred under s. 36, Crim. Pro. Code, 1872, can refer the case to the Chief Court for enhancement of sentence, only after confirming the sentence. **5 P.R. 1882 Cr.**

(161)—*Ss. 30, 34 (=Crim. Pro. Code, 1872, s. 36)—Sessions Judge, duty of, before confirming the sentence.*—A Sessions Judge, to whom a case has been referred under s 36, Crim. Pro. Code, 1872, should consider, before confirming the sentence on his holding the conviction to be right, whether that sentence is appropriate, notwithstanding the fact that the accused can appeal to the Chief Court. **8 P.R. 1883 Cr.**

(162)—*Ss. 30 and 34, Crim. Pro. Code (1882)—Sentence of transportation for 7 years—Confirmation by Sessions Judge.*—Though a Magistrate can lawfully pass a sentence of 7 years' transportation in exercise of his powers under ss. 30 and 34, Crim. Pro. Code, aided by s. 59, I.P.C., yet, as he can lawfully pass a sentence of 7 years' imprisonment subject to the confirmation of the Sessions Judge, the existence of a power to lower the sentence of imprisonment to one of transportation is no reason for dispensing with the confirmation, which is required by law for the sentence of imprisonment, for which the sentence of transportation is substituted and upon which it is founded. **14 P.R. 1886 Cr.** (17 P.R. 1880 Cr., *R.*).

(163)—*Ss. 30, 34 (=s. 36, Crim. Pro. Code. 1872)—Summary trial.*—The Magistrate of the District in the exercise of his special powers under s. 36, Crim. Pro. Code, 1872, has no power to try an accused person summarily. **25 P.R. 1879 Cr.**

(164)—*Ss. 30, 34, 35 (=ss. 36, 34 of the Code of 1872)—Confirmation of sentence—Two separate sentences of three years.*—Confirmation by the Sessions Judge is not necessary for two consecutive sentences of three years' imprisonment passed for two distinct offences. **25 P.R. 1882 Cr.** (23 P.R. 1881, *R.*).

(165)—*Ss. 30, 34, 244 (=ss. 36, 207 of the Code of 1872)—Order of Deputy Commissioner—Omission to get sanction of Sessions Judge—Appeal.*—Where a Deputy Commissioner's order required, under s. 36 of the Code of 1872, the sanction of the Sessions Judge, the High Court could have no jurisdiction to entertain an appeal from it until so sanctioned. **25 W.R. Cr. 18.**

(166)—*Ss. 30, 34, 347, 349, 463, 528 (=Crim. Pro. Code, 1872, ss. 36, 46, 47 and 460)—*

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

Submission of case to District Magistrate—New trial by the latter—Validity—Enhancement of sentence by Sessions Judge.—A case, after conviction, was submitted by a Subordinate Magistrate to the District Magistrate under s. 46, Crim. Pro. Code. The District Magistrate purported to withdraw that case from the Subordinate Magistrate under s. 47 of the Code, and then proceeded, ostensibly by way of a new trial, and finally passed a sentence of rigorous imprisonment for 5 years, being invested with powers under s. 36 of the Code; *held*, that the new trial was barred by s. 460, so long as the original conviction was in existence; that, hence, the Magistrate's proceedings were not valid on a new trial, and that they were merely proceedings under s. 46 of the Code, and the sentence was reduced to 2 years' rigorous imprisonment; *held* further that a Sessions Judge could not be said to 'modify' a sentence of imprisonment by ordering solitary confinement which had been ordered by the Magistrate, for, such an order, if made, was only calculated to enhance the punishment which a Sessions Judge had no power to do under s. 36 of the Code of 1872. **Colm. Dig. Cr. 68 of 1877.**

(167)—*Ss. 30, 34, 349 (=ss. 36, 46 of the Code of 1872)—Maximum term of imprisonment, awardable under s. 46.*—The maximum term of imprisonment that can be legally imposed by a Magistrate under s. 46 of the Code, even though entrusted with powers under s. 36, is only 2 years. **Colm. Dig. Cr. 64 of 1876.**

(168)—*Ss. 30, 34, 349 (=ss. 36, 46 of 1872) —Case referred to District Magistrate under s. 46—Power to direct fresh trial under s. 36.*—Though the Magistrate of the District cannot, if he passes a judgment and sentence under s. 46, Crim. Pro. Code, 1872, exercise his powers under s. 36, he can, under that section, pass an order directing a fresh trial before himself under s. 36, and, if on such trial, he finds the prisoner guilty, he can then exercise his powers under that section. **10 P.R. 1881 Cr.**

(169)—*Ss. 30, 34, 408, 410, 423 (=Crim. Pro. Code of 1872, ss. 36, 270, 271)—Confirmation by Sessions Judge of a conviction by a Deputy Commissioner—Appeal.*—Where a conviction passed by a Deputy Commissioner, acting under s. 36, Crim. Pro. Code, is confirmed by a Commissioner, having the powers of a Sessions Judge, to whom the former is subordinate, it is doubtful whether an appeal lies to the High Court. In accordance with the practice of the Allahabad High Court, such an appeal was admitted. **2 A. 63.**

(170)—*Ss. 30, 337 and 338 of 1898—Conditional pardon—Tender by Local Government—Validity—Evidence of co-accused so pardoned—Admissibility—Trial by Deputy Commissioner of case after tender of pardon by him.*—The Local Government has no power to offer a conditional pardon to an accused, within the meaning of ss. 337, 338 of the Code. The evidence

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

of an accused taken under a conditional pardon so offered is wholly inadmissible. When a Deputy Commissioner tries a case exclusively triable by the Court of Sessions, under powers conferred upon him by s. 30 of the Code, he does so as a Magistrate, and, if he tenders a conditional pardon to one of the accused, he is precluded from trying the case himself. **10 C. W.N. 847=4 Cr. L.J. 44.**

(171)—*Ss. 30, 349, 408—Illegal sentence on reference to a District Magistrate—Appeal.*—In a case transferred to a District Magistrate under s. 349, Crim. Pro. Code, the District Magistrate must be regarded as a Magistrate not empowered with the powers conferred under s. 30. But where, in such a case, he exercises his powers under s. 30, and sentences the accused to five years' imprisonment, the sentence is *ultra vires* under the last clause of s. 349. In spite of such a sentence, an appeal lies not to the Chief Court, but to the Court of Session. **4 L.B.R. 53=6 Cr. L.J. 289.**

(172)—*Ss. 30 and 436—Discharge—Power of District Magistrate invested with powers under s. 30, to take action under s. 436.*—The words "triable exclusively by a Court of Session" in s. 436 of the Crim. Pro. Code mean an offence shown as so triable in the eighth column of the second schedule to the Code, and a District Magistrate in non-regulation provinces, invested with powers under s. 30 of the Code, is competent to take action under s. 436, when he finds an accused person has been improperly discharged by any inferior Court. **60 P.L.R. 1904.**

(173)—*Ss. 30 and 437—Discharge by District Magistrate exercising powers under s. 30, Crim. Pro. Code—Jurisdiction of Sessions Judge to order further inquiry.*—The police sent up the accused for trial under s. 366, Penal Code, to the District Magistrate who ordered a Magistrate of the first class to hold a local enquiry and to submit a report. The Magistrate made an enquiry and submitted a report adverse to the accused. The District Magistrate, however, without examining the complainant or taking any evidence for the prosecution, held the charge false upon the police papers and the record of the local enquiry, and discharged the accused under s. 253 of the Crim. Pro. Code. The Sessions Judge, on application under s. 437 of the Crim. Pro. Code, set aside the order of discharge and directed the District Magistrate to make a further inquiry into the case. On revision in the Chief Court, it was contended on behalf of the accused that, the District Magistrate having acted under s. 30 of the Crim. Pro. Code as a Court of co-ordinate jurisdiction with the Sessions Judge, the latter Court had no jurisdiction to revise the order of discharge, and that the order of discharge was a proper one. *Held*, overruling the contentions, that the Sessions Judge was competent to revise the order of the District

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

Magistrate under s. 437 of Crim. Pro. Code, and that the order passed by the Sessions Judge was right. **131 P.L.R. 1904.** (Criminal Revision No. 594 of 1903, *overruled*).

(174 and 175)—Ss. 30, 34, 408, 410, 422—*See* APPEAL, 10 P.R. 1875 Cr. and 8 P.R. 1877, F. B. Cr.

(176)—Ss. 30 and 34—*See* COMMITMENT, 30 P.R. 1869.

(177)—Ss. 30, 34—*See* DISTRICT MAGISTRATE, L.B.R. (1893—1900), 219.

(178)—Ss. 30, 34—*See* PENAL CODE, s. 363, 12 P.R. 1879 Cr.

(179 and 180)—Ss. 30, 34—*See* SENTENCE, 27 P.L.R. 1904, 17 P.R. 1880 Cr.

(181)—Ss. 30, 34, 394 and 395—*See* WHIPPING, 10 P.R. 1889 Cr.

(181-*a*)—S. 30—*See* No. 139, *supra*, and No. 2033, *infra*.

——S. 31 (=1882, s. 31; 1872, ss. 15, 17 and 18).

(181-*b*)—S. 31—*See* Nos. 98 and 101, *supra*.

——S. 32 (=1882, s. 32; 1872, s. 20).

See SENTENCE.

(182)—*S. 32—Enhanced sentence—Penal Code, s. 75*—A Magistrate, whose powers are limited by s. 32 of the Crim. Pro. Code, has no power to pass an enhanced sentence under s. 75 of the Penal Code. **L.B.R. (1893—1900), 78.**

(183)—*Ss. 32 and 395—Sentence of imprisonment in lieu of whipping.*—Although s. 395 enables a Magistrate in certain cases to impose a sentence of imprisonment in lieu of a sentence of whipping, yet, it is expressly provided that nothing in s. 395 shall be deemed to authorise a Court to inflict imprisonment for a term exceeding that which the Court is competent to inflict under s. 32. **2 Weir 449.**

(184)—S. 32—*See* ACCUSED PERSON, 16 B. 661.

(185)—S. 32—*See* ACT VI OF 1882, s. 35, 20 **C. 676.**

(186 to 188)—Ss. 32, 33, 262—*See* SENTENCE, 6 Bom. L.R. 548, 6 A. 83, 6 A. 61.

(188-*a*)—S. 32—*See* Nos. 36, 93, *supra*.

——S. 33 (=1882, s. 33; 1872, ss. 20, Expl. 309, para 2).

See SENTENCE.

(189)—*S. 33 (=s. 309 of the Code of 1872)—Effect of the section on s. 65, I.P.C.—Act VIII of 1873, Canal Act.*—The provisos to s. 309, Crim. Pro. Code, do not extend the period of imprisonment that may be awarded under the provisions of s. 65, I.P.C. They only regulate the proceedings of Magistrates whose powers are limited. S. 309, Crim. Pro. Code, makes ss. 64 and 65 of the Indian Penal Code applicable, not only to offences punishable under

Crim. Pro Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

that Code, but to offences punishable under any law in force for the time being, and, therefore, applicable to offences punishable under the Canal Act, VIII of 1873. **1 A. 461, F.B.** [*F.*, 10 M. 166=2 Weir 26, 10 M. 165=2 Weir 30; *R.*, L.B.R. (1893—1900), 494].

(190)—*S. 33 (=Crim. Pro. Code, 1872, s. 309)—Imprisonment in default of payment of fine.*—When a fine alone is inflicted, imprisonment in default of payment of fine may, under s. 309, Crim. Pro. Code, 1872, be awarded by a Court of Sessions or by a Deputy Commissioner, under s. 36 of the Code for a term not exceeding one-fourth of the maximum term provided for the offence; by a Magistrate for any term allowed by law, provided such term does not exceed the term awardable by the Magistrate under the Crim. Pro. Code. **S.C. 28, Oudh.**

(191)—*S. 33—Penal Code, s. 65—District Magistrate with higher powers—Maximum term of imprisonment which he may inflict.*—The effect of s. 33, Crim. Pro. Code, read with s. 65, Penal Code, is to limit the maximum imprisonment which a District Magistrate with higher powers may inflict to one-fourth of seven years. **L.B.R. (1893—1900), 281.**

(192)—*S. 33—Applicability of.*—S. 33, paragraph 2 of the Crim. Pro. Code, does not apply to cases where the substantive sentence is one of fine only. **L.B.R. (1872—1892), 486.**

(193)—*Ss. 33, 369, 386, 387—Imprisonment in default of payment of fine.*—Imprisonment in default of fine should, as a rule, be awarded in the judgment in cases where the Court is competent to award it, unless the Magistrate for special reason sees fit not to award such imprisonment in default; and this is because the Magistrate has no power to alter his judgment after he has signed it (s. 369, Crim. Pro. Code); so that, if the fine is not paid up at once, he has no power to detain the accused and can only proceed in the ordinary way under ss. 386, 387, Crim. Pro. Code. **U.B.R. (1892—1896), Vol. I, 18.**

(193-*a*)—S. 33—*See* PENAL CODE, s. 64, 30 P.R. 1878 Cr.

(194)—S. 33—*See* SENTENCE, 1 M. 277, F.B., 10 M 165=2 Weir 30, 10 M. 166, note, 1 Weir 31, 1 L.B.R. 57.

(194-*a*) S. 33—*See* Nos. 151, 188, *supra*.

——S. 34 (=1882, s. 34; 1872, s. 36).

(195)—*S. 34*—In every appeal, and *a fortiori* in every reference under s. 34 of the Code of Criminal Procedure, it is obviously the duty of the Sessions Judge to carefully weigh the evidence himself and not to rely solely upon the weight attached to it by the Court whose order is appealed against or is referred for confirmation. No doubt an appellate Court is right in attaching, in all cases, a certain weight, and in some cases very considerable weight, to the

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

fact that the lower Court believed the witnesses for the prosecution; but, even in such cases, the appellate Court is not justified in placing complete reliance upon the lower Court's view as to the credibility of the witnesses. It is bound to look into all the circumstances of the case and to see whether they, in any way, impugn the statements made by them. **L.B.R. (1872—1892), 516.**

(196)—*Ss. 34, 35, 380—Convictions by a District Magistrate at one trial of several offences—Aggregate sentence--Sentence submitted for confirmation of Sessions Judge—Single sentence—Crim. Pro. Code (1882), ss. 34, 35 and 380.*—When a sentence passed by a District Magistrate, acting under s. 34, Crim. Pro. Code, is submitted to a Sessions Judge for confirmation in a case in which more than one sentence has been passed upon conviction at one trial of several distinct offences, the sentence submitted for confirmation under s. 380 of the Crim. Pro. Code is the aggregate sentence. For the purpose of confirmation or appeal, aggregate sentences passed under s. 35 of the Crim. Pro. Code in case of convictions for several offences at one trial shall be deemed to be a single sentence. **L.B.R. (1893--1900), 268.**

(197)—Ss. 34, 209—*See* JURISDICTION OF CRIMINAL COURTS, 10 C. 85=13 C.L.R. 375.

(198)—Ss. 34 and 380—*See* SESSIONS JUDGE, POWERS OF, L.B.R. (1893—1900), 258.

(198-*a*)—S. 34—*See* Nos. 151, 152, 153, 154, 155, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 175, 176, 177, 178, 180, 181, *supra*, and No. 2033, *infra*.

——S. 35 (=1882, s. 35; 1872, s. 314; 1861, s. 46) and Explanation new.

See ACT VI OF 1864.

See WHIPPING.

(199)—*S. 35 (=Crim. Pro. Code, 1872, s. 314)—Section does not apply to separate trials.*—An accused was tried on four separate charges by a Magistrate of the second class and sentenced to an aggregate punishment of twenty months' rigorous imprisonment. *Held* that the section did not apply, as the trials were separate. **A. W.N. 1881, 23.**

(200)--*S. 35 (=Crim. Pro. Code, 1872, s. 314—Scope of the section.*—S. 314, Crim. Pro. Code, 1872, has reference only to the conviction of an accused person of two or more offences at one trial. It does not include the case of separate trials held on the same day for separate offences committed by the same person. **2 Weir 30.** [*F.*, 2 Weir 31].

(201)—The restriction in s. 314 is limited to cases in which the Magistrate is at liberty to hold one trial for distinct offences under ss. 452 and 453 (s. 234 of the Code of 1898). **2 Weir 31.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(202)—*S. 35 (3), Applicability of.*—Sub-sec. (3) of s. 35, Crim. Pro. Code, applies to consecutive sentences only and not to sentences which run concurrently. **U.B.R. (1897—1901), Vol. I, 13.**

(203)—*S. 35 (=Crim. Pro. Code, 1882, s. 35)—Separate sentences, if, can be passed under.*—The above section being permissive with respect to the passing of separate sentences for each offence of which an accused may be found guilty, a Criminal Court is not bound to pass separate sentences in such cases. **L.B.R. (1872—1892), 271.**

(204)—*S. 35 (=Crim. Pro. Code, 1882, s. 35)—Offence under s. 411, I.P.C., read with s. 75, I.P.C., whether distinct offences—Enhanced punishment.*—The fact that an accused person is convicted under s. 411, I.P.C., after having been previously convicted of the same (*sic*) offence, is not sufficient to give the Magistrate the increased powers referred to in s. 35, Crim. Pro. Code. If the Magistrate thinks that the accused deserves an enhanced punishment, the best course for him would be to commit the accused for trial to the Court of Sessions under ss. 411, 75, I.P.C. **11 A. 393.**

(205)—*S. 35—Penal Code, ss. 357, 380—Distinct offences—Conviction—Sentence—Powers of the Magistrate to pass consecutive sentences.*—The offences under ss 457 and 380 of the Penal Code not being distinct offences, the trying Magistrate's ordinary jurisdiction is not enhanced by the provisions of para 2 and proviso (*b*) of s. 35 of the Crim. Pro. Code. **8 Bom. L.R. 850=4 Cr. L.J. 445.**

(206)—*S. 35 (=Crim. Pro. Code, 1882' s. 35)—Penal Code, s. 59—Maximum term of imprisonment.*—According to cl. (*a*) of s. 35 of the Code, the maximum term of imprisonment awardable as an aggregate sentence is 14 years. A sentence of transportation in lieu of imprisonment awarded under s. 59, Penal Code, is, therefore, subject to the limitation, which has been provided by s. 35, Crim. Pro. Code, in the case of sentences of imprisonment. It is not sufficient to find that an accused person is guilty of the offence charged "after previous convictions," or even "after having been previously many times convicted of similar offences." The finding should clearly show that the previous convictions are such as bring the case within the purview of s. 75, Penal Code. **7 C.P.L.R. Cr. 29.**

(207)—*S. 35 (=Crim. Pro. Code, 1882, s. 35)—Power of Magistrate to pass aggregate sentence, where separate sentences ought to be passed.*—S. 35, Crim. Pro. Code, does not empower a District Magistrate or any other Magistrate to pass an aggregate sentence, instead of separate sentences, upon an accused person convicted at one trial of two or more distinct offences. **14 P.R. 1886 Cr.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(208)—*S. 35(=Crim. Pro.Code, 1882, s. 35)—Maximum term of imprisonment passed under this section, no bar to further punishment on the same accused for a distinct offence tried separately.*—Where a person was charged on two charges of dacoity and one charge of kidnapping, and was tried separately for the dacoity and for the kidnapping, *held*, that the fact that the Magistrate had passed, under s. 35, Crim. Pro. Code, double the amount of sentence he was competent to award on the charges of dacoity, would not disqualify him from passing sentence for the offence of kidnapping, although the trial for that offence was contemporaneous with the trial on the dacoity charges and terminated on the same day. **14 P.R. 1886 Cr.**

(209)—*S. 35 (=Crim. Pro. Code, 1882, s. 35) —Concurrent sentences of transportation.*—A direction that several sentences of transportation passed on an accused person on a conviction of two or more distinct offences at the same trial, should be concurrent, is illegal, being contrary to the provisions of s. 35 of the Crim. Pro. Code. **Rat. Un. Cr. C. 383=Cr. Rg. 34 of 1888.**

(210)—*Ss. 35, 397—Concurrent sentences.*—The passing of concurrent sentences is opposed to the provisions of s. 397; this, however, must be read subject to the provisions of s. 35 of the Code. **4 Bom L.R. 876.** [*R.*, 5 Bom. L.R. 26].

(211)—*Ss. 35, 397.*—S. 35 does not authorize any Court to direct that two or more sentences, shall run concurrently except sentences passed at one and the same trial. S. 397 is explicit and gives the Court no option; a sentence of imprisonment must commence at the expiry of the previous sentence. **4 L.B.R. 147=7 Cr. L.J. 445.**

(212)—*Ss. 35, 397.*—It is only in the case of a conviction for several offences at one trial that a Court, under the provisions of s. 35, Crim. Pro. Code, can direct that the punishments shall run concurrently. S. 397, Crim. Pro. Code, provides that a sentence of imprisonment for another offence shall commence at the expiration of the imprisonment to which he has been previously sentenced. **U.B.R. (1902—1903), Criminal Procedure, 19.**

(213)—*S. 35—Separate convictions for housebreaking and theft.*—Separate sentences in a case of house breaking with intent to commit theft, and theft are illegal under s. 35 of Crim. Pro. Code, 1898. **2 Weir 34.**

(214)—*S. 35—Concurrent sentences when not awardable.*—It is illegal to award concurrent sentences under this section; when a person is convicted at one trial of two or more distinct offences and sentenced to several punishments, such sentences must not be directed to run simultaneously. **6 C.P.L.R. 9 Cr.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(215)—*S. 35 (=Crim.Pro. Code, 1882, s. 35) —Concurrent sentences—Penal Code, ss. 471 and 109.*—An accused person was separately convicted at the same trial of two distinct offences, one being abetment of forgery under s. 109 read with s. 465, Penal Code, and the other dishonestly using a forged document as genuine under s. 471. He was sentenced for each offence to two years' rigorous imprisonment, the sentences to run concurrently. *Held*, that it was not correct to charge or convict under s. 471 only, any more than it would be to charge or convict under s. 109 only. S. 471 must be coupled with one or other of the sections which provide a punishment for the commission of forgery. Concurrent sentences cannot be legally passed at a trial under s. 35, Crim. Pro. Code. **8 C.P.L.R. Cr. 1.** (7 W.R. 59 Cr., 10 B. 254, 6 C.P.L.R. 9 Cr., *R.*).

(216)—*S. 35 (=Crim. Pro. Code, 1882, s. 35) —Concurrent sentences of imprisonment.*—Under s. 35 of the Code, if separate sentences are passed for each offence of which an accused has been found guilty, the sentences must commence the one after the expiry of the other. Concurrent sentences of imprisonment are not recognised by the Criminal Procedure Code. The above section does not require a separate sentence to be passed on the accused in respect of every distinct offence of which he has been found guilty at one trial. **L.B.R. (1872—1892), 526.**

(217)—*S. 35—House-trespass and insult—Separate convictions bad.*—A man, who commits house-trespass with intent to commit an offence and commits that offence, can be punished either for the house-trespass or for the offence, but not separately for both. He may be tried for and convicted of the offence of house-trespass and the offence which he intended to commit. But, he cannot be punished separately for the two offences. **1 L.B.R. 279.** (1 L.B.R. 33, 23 B. 706, *F.*)

(218)—*S. 35—Concurrent sentences passed at one trial not to be considered aggregate sentences for purposes of appeal.*—Where the accused was convicted on three charges and sentenced to imprisonment for 4 years on each charge, the sentences to run concurrently, *held*, that, as the punishment, to which the appellant was sentenced, was four and not 12 years' rigorous imprisonment, the appeal lay to the Court of Session and not to the High Court. **U B.R. (1897—1901), Vol. I, 13.**

(219)—*S. 35—Penal Code, ss. 147 and 447—Conviction for rioting and trespass, when common object is the same.*—Where the common object of a riot and a criminal trespass was the same, *held*, that separate convictions for both the offences were not valid. **8 C.W.N. 305.**

(220)—*Crim. Pro. Code, ss. 35, 123—Previous sentence under s. 123, Crim. Pro. Code—Subsequent sentence for an offence under Arms Act.*

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

s. 19 (e)—Concurrent sentences.—The accused was sentenced to a term of imprisonment for an offence under the Arms Act; the sentence was ordered to run concurrently with another sentence previously passed upon him under s. 123, Crim. Pro. Code. *Held*, that the sentence for the substantive offence must commence at once and cannot be postponed to take effect after the expiry of the period of imprisonment in default of giving security for good behaviour which the accused was undergoing at the date of the conviction, that s. 35 of the Crim. Pro. Code, applies to sentences on conviction for offences at one trial and has no application to imprisonments under s. 123, Crim. Pro. Code. **5 Bom. L.R. 26.**

(221)—*Ss. 35, 391, 397 (=Crim. Pro. Code, 1882, ss. 35, 391, 397)—Sentence of imprisonment and whipping—Execution of latter sentence.*—The accused was convicted of house-breaking by night in order to commit theft, and of theft in a building, and sentenced to suffer rigorous imprisonment for 18 months and to receive twenty stripes with a light rattan, the sentence to commence after the expiration of the sentence in the other case (*viz.*, eighteen months' rigorous imprisonment and twenty stripes): *Held* that a sentence of whipping must be executed fifteen days after the sentence is pronounced or on confirmation of the sentence in appeal. It is only a sentence of imprisonment that can be pronounced to take effect in succession (ss. 35 and 397, Crim. Pro. Code). The sentence of whipping should not have deferred the infliction of the punishment so as to contravene the provisions of s. 391 of the Crim. Pro. Code. **Rat. Un. Cr. C. 300=Cr. Rg. 47 of 1866.**

(222)—S. 35—*See* ABETMENT, 8 Bom. L.R. 855=4 Cr. L.J. 450.

(223)—S. 35—*See* ACT VI OF 1864, s. 3, 17 P.R. 1870 Cr.

(224)—S. 35—*See* BOM. ACT V OF 1878, 1 Bom. L.R. 344, 4 Bom. L.R. 720.

(225)—Ss. 35 and 408—*See* APPEAL, 25 P. R. 1901 Cr.

(226)—S. 35—*See* HOUSE-BREAKING BY NIGHT, 8 Bom. L.R. 855=4 Cr. L.J. 450, 1 Bom. L.R. 69.

(227)—S. 35—*See* JOINDER OF CHARGES, 3 A. 305, F.B.

(228)—S. 35—*See* PENAL CODE, s. 71, U.B. R. 1904, 1st Qr., Penal Code, 1.

(229)—S. 35—*See* PENAL CODE, s. 75, Rat. Un. Cr. C. 688.

(230)—S. 35—*See* SENTENCE, A.W.N. 1884, 285, 4 M.H.C. App. 27, 1 Weir 34=2 Weir 35, 10 A. 58, 10 B. 254, 25 C. 557, 5 M.H.C. App. 42, 13 C.P.L.R. 124 Cr., 35 P.R. 1870 Cr.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(231)—S. 35, ill.—House-breaking with intent to commit theft and theft not distinct offences — Separate sentences illegal — *See* SENTENCE, Cr. Rg. 36 of 1898.

(232)—S. 35, cl. 2 (*a*)—*See* SENTENCE, L.B.R. (1893–1900), 478.

(232-*a*)—Ss. 35, 235—*See* SENTENCE, 7 A. 29, 10 B. 493, 10 A. 146=8 A.W.N. 5.

(233)—Ss. 35, 233, 235, 236—*See* SENTENCE, 2 A. 644.

(234)—Ss. 35 and 253—*See* SENTENCE, 12 M. 36=2 Weir 32.

(235)—Ss. 35, 367—*See* SENTENCE, A.W.N. 1897, 207, 20 A. 1, F.B.

(236)—Ss. 35 and 391—*See* SENTENCE; L.B.R. (1893—1900), 582.

(237)—Ss. 35 and 397—*See* SENTENCE—CONCURRENT SENTENCES, 2 S.L.R. Cr. 23=10 Cr. L.J. 236.

(238 and 239)—Ss. 35 and 423—*See* SENTENCE, 45 P.R. 1887 Cr.

(240)—S. 35—*See* STOLEN PROPERTY, 1 Weir 469=4 M.H.C. App. 13.

(240-*a*)—S. 35—*See* Nos. 101, 164 and 196, *supra* and Nos. 1781, 1895, *infra*.

——S. 36 (=1882, s. 36; 1872, ss. 22, 24, 26, 28, 30).

(241)—*Ss. 36, 107 (3) (4), 104, 111 and 334—District Magistrate's order detaining accused not sent before him under s. 107, cl. (3)—Jurisdiction.*—Where an accused person is not sent before a District Magistrate by any other Magistrate under sub-s. 3 so as to bring the case within sub-s. 4, such District Magistrate's order detaining him in custody is one made without jurisdiction. Even if s. 36 can be construed as giving powers which are not specially referred to in sch. III, having regard to the terms of sub-s. 3 of s. 107, the power is not one which can vest in the Magistrate to whom the accused person is sent. Assuming that the proviso to s. 114 applies in the case of a person who is before the Court, an order of the Magistrate cannot be supported under s. 114, where he has not followed the procedure therein prescribed, **3 M.L.T. 311, F B.=31 M. 315=7 Cr. L.J. 360.**

——S. 37 (=1882, s. 37; 1872, ss. 23, 25, 27, 29).

(242)—*Ss. 37, 190, 64, 242, 243 (=ss. 25, cl. (3), 108 to 206, Crim. Pro. Code, 1872).*—A Magistrate, having no power to try a case under s. 25, cl. (3), can try such cases under ss. 108-206, as these sections otherwise invest him with jurisdiction. S. 108 of Crim. Pro. Code, enacts that bail may be allowed to an accused for his appearance for trial before a Magistrate having jurisdiction; so that, if the Magistrate, acting under s. 108, chance to have jurisdiction

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

to try the case, he can legally do so though not invested with the power of s. 25, cl. (3), Crim. Pro. Code. **Colm. Dig. Cr. 22 of 1875.**

(243)—Ss. 37, 190—*See* COMPLAINT, 27 P. R. 1873 Cr.

(244)—Ss. 37, 190, 423, except. 1 *(d)*—*See* EVIDENCE, 10 B.H.C. 497.

——S. 39 (=1882, s. 39; 1872, s. 43).

(245)—*Ss. 39, 235(=Crim. Pro. Code, 1882, ss. 39, 235)—Powers of Magistrate of first class conferred on a Magistrate of second class during trial—Sentence.*—*Held by the Full Bench (Petheram, C.J., and Brodhurst, J., dissenting)*:—A Magistrate of the second class, who begins a trial in that capacity, and continues it in the same capacity up to the passing of the sentence, and who, previously to the passing of the sentence, has been empowered as a Magistrate of the first class, can inflict a severer sentence than he could have inflicted as a Magistrate of the second class. *Per Petheram, C.J. (Contra)*:—A case is supposed to be tried on the day the trial commences, and after that day the case proceeds by adjournment. The only date to be looked at is the date of the first day of trial. Hence, the Magistrate is not competent to pass sentences in his capacity as a Magistrate of the first class conferred upon him just before the passing of the sentence. **7 A. 414, F.B.**

——S. 40 (=1882, s. 40; 1872, s. 56; 1861, s. 23-E).

(246)—*S. 40—Transfer of Magistrate—Conferring of appellate powers—Continuance of powers.*—An Assistant Collector was appointed a first class Magistrate in Shikarpur District and was subsequently invested with appellate powers. He was then transferred to Sholapur and was next appointed to act as Collector and District Magistrate of Ahmedabad, and as Assistant Collector of Ahmedabad on the return to the duty of the permanent incumbent. During the course of this service, there were various intervals of leave. *Held* that, under the provisions of s. 40, he continued to exercise the same powers in successive local areas to which he was transferred; and it made no difference that he proceeded on various terms of leave. **2 Bom. L.R. 536.**

(247)—*S. 40 (=Crim. Pro. Code, 1882, s. 40)—Scope of section—Jurisdiction of* Mamlatdar *invested with second class powers.*—S. 40, Crim. Pro. Code, relates only to transfer from one district or area to another. A *Mamlatdar* invested by name with second class Magisterial powers in a district, retains them though he ceases to be a *Mamlatdar*. His revenue title is a matter of mere description. **Rat. Un. Cr. C. 322=Cr. Rg. 8 of 1887.**

(248)—*Ss. 40, 41 (=Crim. Pro. Code, 1882, ss. 40, 41)—Magistrates—Investiture of powers—Continuance.*—When a Tahsildar is invested with the powers of a Magistrate of the First Class, while acting as a Deputy Collector, his powers continue so long as he is a Magistrate, until they are withdrawn by a fresh notification, though he is posted in a less responsible post. **2 Weir 36.**

(249 and 250)—*Ss. 40, 86—Civ. Pro. Code (1882), ss. 588 (29), 651—Conviction for escape from lawful custody—Appeal.*—As to whether a person who has been convicted under s. 651, for escaping from lawful custody and has been sentenced for one month, has the right of appeal under s. 588 (29), Civ. Pro. Code, see **5 A. 318.**

——S. 41, para (1) (=1882, s. 41, para 1; 1872, s. 54; 1861, s. 23-F.) and para (2), new.

—S. 41—*See* No. 248, *supra*.

——S. 42 (=1882, s. 42; 1861, s. 91).

(251)—*S. 42—Power of police officer to demand aid of* chowkidar *in arresting an accused person.*—A police officer is authorised to employ a *chowkidar* to assist him in arresting a person or in preventing his escape. **6 C.W.N. 337.**

(252)—*S. 42 (=Crim. Pro. Code, 1882, s. 42)—Scope of the section.*—The assistance that can be demanded under s. 42, Crim. Pro. Code, is personal assistance of the individuals of whom it is demanded, and not a supply of a contingent of men to assist. **2 Weir 37.**

——S. 43 (=1882, s. 43; 1872, s. 163; 1861, s. 78).

(253)—*S. 43 (=Crim. Pro. Code, 1872, s. 90)—Village Accountant and village peons—Applicability of the section—Penal Code, s. 217.*—A Village Accountant, being neither the head of the village nor a person engaged in the collection of the public revenue, does not come within s. 90, Crim. Pro. Code, 1872, nor does the section impose any obligation on village peons as such. Therefore, neither of them can be convicted under s. 217, Penal Code, for having disobeyed the direction of the law contained in s. 90, Crim. Pro. Code. **1 M. 266 =1 Weir 196.**

(254)—*S. 43 (=s. 90 (c), Crim. Pro. Code, 1872).*—The word 'near' in the above section of the Code might include, in certain cases, a distance of two miles. **Colm. Dig. Cr. 14 of 1874.**

(255)—S. 43—*See* INFORMATION OF OFFENCE, 4 C. 623.

(255-*a*)—S. 43—*See* No. 256, *infra*.

——S. 44, para (1) (=1882, s. 44; 1872, s. 89; 1861, s. 138).

(256)—Ss. 44 (1), 43—*See* PENAL CODE, s. 147, 1 M. 266=1 Weir 196.

(257)—S. 44 (1)—*See* PENAL CODE, s. 193, Rat. Un. Cr. C. 674.

(258)—S. 44—*See* No. 35, *supra*.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

——S. 45, para (1) (*a, b, c, d*) [=1882, s. 45, para (1) (*a, b, c, d*); 1861, s. 90, para (2) (i) (=1882, s. 45, Expl.) and paras (1) (*e, f*), (2) (ii) and (3), new.

(259)—*S. 45 (=Crim. Pro. Code, 1872, s. 90)—Omission to give information of offence—Residence—Liability of resident agent.*—The duty imposed by Act X of 1872, s. 90, upon a village headman, etc., of giving information as to the occurrence of any sudden or unnatural death is intended to be done only when such occurrence takes place at or near the village of which he is headman, or in which he owns or occupies land, etc. Residence in a dwelling-house owned by another is not such an occupation of land as is within the meaning of the section. **23 W.R. Cr. 60.**

(260)—*S. 45 (=Crim. Pro. Code, 1882, s. 45)—Village* chaukidar—*Omission to give information of dacoity committed in another village—N.W.P., Village and Rural Police Act, XIV of 1873, ss. 8 and 11—Penal Code, s. 176.*—A dacoity was committed in the lands of a certain village. The village *chaukidars* did not give information of the occurrence till the next day. They were charged with and convicted of an offence under s. 11 of Act XVI of 1873. *Held* that, under the Act, the village *chaukidars* were not bound to give immediate information of an offence not committed within their village. **A.W.N. 1886, 65.**

(261)—*S. 45 (=Crim. Pro. Code, 1882, s. 45)—Omission to give information of offence to the police—Penal Code, s. 176—Proof of knowledge of offence.*—When information, as to the commission of a murder, is conveyed to the nearest Magistrate or police officer by one of the parties bound to give such information under s. 45 of the Crim Pro. Code, it is not reasonable that every other person, who may, possibly, be bound to give information, should be prosecuted for not having done so, and convicted of an offence under s. 176 of the Penal Code. [*F.*, Rat. Un. Cr. C. 778; *R.*, Rat. Un. Cr. C. 674]. Certain proprietors residing at a certain village were charged, under s. 176 of the Penal Code, for not giving information to the Police of a murder which was committed in another village four miles off their village. There was no evidence on the side of the crown, that those persons were aware of the murder on the date of the occurrence. But there was evidence on the side of the defence that they did not obtain information of the murder until the next day, and that one of their agents, thereupon, went to the spot and reported the matter to the Sub-Inspector on their behalf. *Held*, that it lay on the crown to show that they had obtained information on the day of the occurrence and had failed to inform on that day; otherwise, it could not be held that they were under a legal obligation to report the murder as required by s. 45 of the Crim. Pro. Code; *held*, also, that, under the circumstances

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

of the case, they had sufficiently discharged the obligation imposed upon them by s. 45, Crim. Pro. Code, and would, therefore, be entitled to an acquittal. **20 C. 316.** [*D.*, Rat. Un. Cr. C. 784].

(262)—*S. 45 (=Crim. Pro. Code, 1882, s. 45)—Penal Code, s. 176—Omission to report sudden death in a house.*—The owner or occupier of a house within a village is not an owner or occupier of land within the meaning of s. 45, Crim. Pro. Code. Where the *karnavan* of a Nayar tarwad was convicted under s. 176, Penal Code, for omitting to give information touching the sudden death of a member of his family, *held*, that the conviction was wrong as he was not bound to do so under s. 45, Crim. Pro. Code. **12 M. 92=1 Weir 102.**

(263)—*S. 45 (=Crim. Pro. Code, 1882, s. 45)—Omission to give information regarding suspicious death—Necessity for proof of death on land—Penal Code, s. 176.*—To sustain the conviction under s. 176, I.P.C., of a person falling under s. 45 of the Crim. Pro. Code, 1882, for omission to give information of an occurrence referred to in cl. (*d*) of the latter section, it is not necessary to show that the death actually occurred on his land, if the dead body is found on the land under circumstances distinctly showing that the death was sudden, unnatural or suspicious, as, in such circumstances, the inference will reasonably be made that the death itself took place on the land—*Per* Prinsep and Macpherson, JJ. *Mitter J.*, however, held that proof of death on the land was necessary, as the finding of a dead body thereon would not afford the proof. **11 C. 619.** [*Appr.*, Rat. Un. Cr. C. 784].

(264)—*Ss. 45, 87, 88 (=Crim. Pro. Code, 1882, ss. 45, 87 and 88)—Omission by zemindar to give information of presence of proclaimed offender to police—Proof of proclamation—Penal Code, s. 176—Object of ss. 45 and 176, I.P.C.*—Where a zemindar was convicted of having intentionally omitted to inform a public servant of the resort to the village of a proclaimed offender, and the fact of his being a proclaimed offender was presumed from the fact that the property belonging to him was attached and sold under the provisions of s. 88, Crim. Pro. Code, *held*, that the conviction was bad, as it was on the prosecution to prove that the proclamation was made in the manner prescribed by s. 87 of the Code. The provisions of s. 45, Crim. Pro. Code, and s. 176, Penal Code, are not to be worked solely or principally for the purpose of vexation, but for the purpose of insuring that information be not intentionally withheld by those whose position renders them liable to give it. It is not reasonable that every person, other than him or those from whom such information has been actually obtained and who may possibly be bound to give such information, should be prosecuted for not having done so. **7 M. 436=1 Weir 102.** [*F.*, Rat. Un. Cr. C. 778].

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(265)—*S. 45 (c)—Information of commission of offence, what is.*—Where the evidence showed that the only information the village munsiff had, was that a jewel was missing, whether it had been stolen or it was lost, *held*, that he had no information of the commission of the offence of theft, which he was bound to communicate to the Magistrate or Police under s. 45 (*c*), Crim. Pro. Code, 1898. **5 M.L.T. 257 =9 Cr. L.J. 224=1 Ind. Cas. 245.**

(266 and 267)—*S. 45 (2) (ii)—"Proclaimed offender," scope of.*—The persons included in the expression "proclaimed offenders" in s. 45, sub-s. (2), cl. (ii), are persons over and above those to whom the words in their ordinary signification apply, and who might, but for this explanation, have escaped out of the category of "proclaimed offenders." *Per Blair, J.*,—The explanation clause in the section dealing with "proclaimed offenders" does not in any way apply to persons proclaimed as offenders for any act committed in British India. It applies exclusively to acts which, if committed in British India, would be punishable under certain sections. **A.W.N. 1901, 10.**

(268)—*S. 45—Cattle-theft, whether an offence in Upper Burma—Liability of headman for not reporting case of cattle-theft.*—In Upper Burma, s. 45, Crim. Pro. Code, is, as amended by s. 4 of the Village Regulation Cattle theft is not one of the offences mentioned in s. 45, Crim. Pro. Code, as it exists in Upper Burma, where it was not, as far as appeared from the proceedings, been made, by order under cl. 6 of the section, an offence respecting which a headman is directed to communicate information, and it was *held* that the accused committed no breach of obligation by omitting to report a case of cattle-theft, and that, even if the obligation existed, the accused would not be liable, because he was not a headman appointed under the Village Regulation. **U.B.R. (1892—1896), Vol. I, 19.**

(269)—*Ss. 45 (3), 435—Revision—Executive order—Order of District Magistrate dismissing headman.*—*Held* that an order passed by a District Magistrate under the rules framed by Government under s. 45 (3) of the Code of Criminal Procedure is an executive order, and not subject to the revisional powers of the High Court. **A.W.N. 1907, 168=5 Cr. L.J 476=29 A. 563.**

(270)—*S. 45 (=Crim. Pro. Code, 1882, s. 45)—Section interpreted.*—On the interpretation of s. 45 (*d*), the Court concurred with the majority of the Judges in *Matuki* v. *Queen Empress* (11 C. 622). The word "*forthwith*," in the first clause, must be construed with reference to the object of the enactment. **Rat. Un. Cr. C. 784=Cr. Rg. 45 of 1895.**

(270-*a*)—*S. 45 (=Crim. Pro. Code, 1872, s. 90)—Omission to give information of offence—Specification of offence*—*See* **22 W.R. Cr. 42.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(271)—Ss. 45, 87, 88—*See* ABSCONDING OFFENDER, 7 M. 436=1 Weir 102.

(272)—S. 45 (*c*)—*See* CHARGE, 6 M.L.T. 175.

(273)—S. 45—*See* ILLEGAL OMISSION, 20 P.R. 1887 Cr., 30 P.R. 1887 Cr.

(274)—S. 45—*See* INFORMATION OF OFFENCE, Rat. Un. Cr. C. 779.

(275)—S. 45—*See* PENAL CODE, s. 176, A.W.N. 1900, 207, 1 Weir 101.

(276)—Ss. 45 (6), 54 (1)—*See* PRIVATE DEFENCE, RIGHT OF, 21 P.R. 1900 Cr.

——S. 46 (=1882, s. 46; 1872, ss. 177, 178; 1861, ss. 91 and 92).

(277)—*S. 46—Arrest, power of—Punjab Frontier Regulation, IV of 1887, s. 37—Effect.*—The Punjab Frontier Crimes Regulation makes no alteration in the general principle of the law, that, in making an arrest, no more force is to be used than is necessary, and that death should not be caused, unless the arrest cannot be effected without causing it. But the limits presented by this section, as to the classes of persons to whom death may be caused in effecting an arrest, do not prevail where Reg. IV of 1887, s. 37 is in force. **32 P.R. 1894 Cr.**

(278)—Ss. 46 and 80—Warrant of arrest in possession at time of arrest—*See* ACT XIV OF 1882, s. 651, 5 A. 318.

(279)—Ss. 46 and 50—*See* ARREST, 1 L.B.R. 173.

(280)—Ss. 46 and 59—*See* ARREST, 29 P.R. 1903 Cr=2 P.L.R. 1903.

(281)—Ss. 46 and 59—*See* PRIVATE DEFENCE, RIGHT OF, L.B.R. (1893—1900), 136.

——S. 50 (=1882, s. 50; 1872, s. 182; 1861, s. 96).

(282)—*S. 50 (=s. 182, Crim. Pro. Code, 1872).*—A Magistrate is incompetent to require bail for the personal appearance of an absentee accused person at a future date, where he has been permitted to appear by agent under s. 182. **Colm. Dig. Cr. 9 of 1873.**

(282-*a*)—S. 50—*See* No. 279, *supra.*

——S. 54 (=1882, s. 54; 1872, s. 92; 1861, s. 100).

(283)—S. 54—*See* BOM. ACT VII OF 1867, s. 42, Rat. Un. Cr. C. 220=Cr. Rg. 26—11—1885.

(284)—S. 54—*See* ARREST, Rat. Un. Cr. C. 795, 10 B. 506, 7 P.R. 1869 Cr.

(285)—S. 54—*See* PENAL CODE, s. 221, 3 A. 60.

(286)—S. 54—*See* PENAL CODE, s. 223, A.W.N. 1907, 94=5 Cr. L.J. 277=29 A. 377.

(287)—S. 54 (1)—*See* PENAL CODE, s. 225, 5 L.B.R. 21=2 Ind. Cas. 619.

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(288)—S. 54—*See* WRONGFUL CONFINEMENT, 19 B. 72.

(289)—S. 54—*See* WRONGFUL RESTRAINT, 12 B. 377.

(289-*a*)—S. 54—*See* No. 276, *supra*.

——S. 55 (=1882, s. 55; 1872, s. 94; 1861, s. 101).

(290)—*S. 55—Object.*—S. 55 was intended for the suppression of habitual bad characters, whom an officer in charge of a police station suddenly finds within his jurisdiction, or about whom he has good cause to fear that they will commit serious harm before there is time to apply to the nearest Magistrate empowered to deal with the case under s. 112, Crim. Pro. Code. **14 A. 45.**

(291)—*S. 55—Burma Gambling Act, 1899, s. 17—Arrest by Police under s. 55, Crim. Pro. Code, on suspicion of gambling, illegal—Evidence of repute.*—The accused was suspected of earning his livelihood by unlawful gaming. The Police, under the sanction of the Magistrate, for institution of proceedings, arrested the accused under s. 55 of the Crim. Pro. Code. *Held*, that s. 55 does not empower the Police to arrest a person on suspicion of unlawful gaming and that the Magistrate should have made an order in writing under s. 112 and summoned the accused to appear under s. 114, attaching to the summons a copy of the said order under s. 112 as required by s. 115 of the Crim. Pro. Code. Observations on how evidence of repute ought to be accepted. **3 L.B.R. 94=3 Cr. L.J. 20.**

(292)—*S. 55—Arrest immediately after release.*—The arrest of the accused at Delhi under the orders of the Magistrate of Meerut, and all the proceedings subsequently taken by the Magistrate against him under Chap. VIII, Crim. Pro. Code, were held by the High Court to be illegal. But the Magistrate of Meerut, however, while ostensibly giving his release, caused him immediately to be arrested within the Court precincts under the provisions of s. 55, Crim. Pro. Code, and renewed proceedings against him under Chap. VIII of the Code. *Held* that the proceedings so taken did not give effect to the order of the High Court, and had rendered it abortive. It was an attempt in another way to do what had been declared to be illegal. The Magistrate could not, by unlawful exercise of authority, obtain jurisdiction over a person with a view to take proceedings against him when his former proceedings were set aside. **A.W.N. 1883, 223.**

(293)—*Ss. 55, 112 (=Crim. Pro. Code, 1882, ss. 55, 112)—Security for good behaviour.*—The powers with which officers in charge of police stations and the District Magistrate have been armed under the Code, for the purpose of restraining bad characters, are exceptional powers. They provide very strong remedies, and should never be put in force without the greatest deliberation, and except upon evidence which

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convinces the Magistrate that, in the interests of the public welfare, it is absolutely necessary to demand from the person before him, security for good behaviour. **14 A. 45.**

(293-*a*)—*S. 55 (=Crim. Pro. Code, 1882, s. 55)—Magistrate—Disqualification to try a case.*—Where a Magistrate is not shown to be personally interested in the case, the mere circumstance that he happens to hold the office of Secretary to the Cantonment Committee, would not, of itself, debar him from trying an accused person on a charge, the substance of which was an alleged infringement of one of the Committee's bye-law. **43 P.R. 1888 Cr.**

(294)—Ss. 55 and 165—*See* ACT XI OF 1878, ss. 19 (*f*), 20, 25 and 29, 27 C. 692=4 C.W.N. 750.

(295)—S. 55—*See* ARREST, A.W.N. 1883, 223.

(296)—S. 55—*See* BAIL, 14 A. 45.

(297)—Ss. 55, 110, 117 (1, 2 and 3), 118—*See* ESCAPE FROM LAWFUL CUSTODY, 7 A. 67.

(298)—Ss. 55, 156, 161—*See* FALSE EVIDENCE, A.W.N. 1893, 124.

(299)—Ss. 55, 61, 109 and 110—*See* SECURITY FOR GOOD BEHAVIOUR, L.B.R. (1893—1900), 270.

(299-*a*)—S. 55—*See* Nos. 28, 29, *supra*.

——S. 56 (=1882, s. 56; 1872, s. 102, para (1); 1861, s. 140).

(300)—*S. 56 (1)—Arrest by a* Chowkidar, *an officer subordinate to officer in charge of Police Station, legality of.*—A *chowkidar*, having regard to his duties as set out in s. 39 of the Village Chowkidari Act (VI of 1870. B.C.), is an officer subordinate to an officer in charge of a Police Station, within the meaning of s. 56 of the Crim. Pro. Code. An arrest of a person by a *chowkidar*, who may be lawfully arrested, without a warrant, on the authority of an order in writing delivered to him in conformity with the provisions of s. 56 (1) of the Crim. Pro. Code, would be legal. **10 C.W.N. 287, 3 Cr.L.J. 201.**

(301)—*S. 56 (=Crim. Pro. Code, 1861, s. 140).*—The above section was held inapplicable where an arrest for dacoity was made without warrant by a subordinate police officer, in the presence of a head constable who authorised him to make the arrest. **11 W.R. Cr. 20.**

(302)—Ss. 56 and 80—*See* ARREST, 27 C. 320=4 C.W.N. 311.

(303)—Ss. 56 and 80—*See* ESCAPE FROM LAWFUL CUSTODY, 27 C. 320=4 C.W.N. 311.

——S. 58 (=1882, s. 58; 1872, s. 103; 1861, s. 141).

(304)—S. 58 (3)—*See* BEN. ACT VIII OF 1865, 9 C.W.N. 816.

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——**S. 59 (=1882, s. 59, 1872; ss. 105, 107).**

(305)—S. 59—*See* ARREST, 27 C. 366=4 C.W.N. 252.

(306)—S. 59—*See* CHOWKIDAR, 27 C. 366=4 C.W.N. 252.

(307)—S. 59—*See* ESCAPE FROM LAWFUL CUSTODY, 5 M. 22=1 Weir 200, 11 M. 480=1 Weir 200.

(308)—Ss. 59, 239, 535 and 537—*See* ESCAPE FROM LAWFUL CUSTODY, 11 M. 441=1 Weir 210.

(309)—S. 59—*See* PENAL CODE, ss. 224, 225, 29 A. 575=A.W.N. 1907, 179=4 A.L.J. 483=6 Cr. L.J. 10.

(310)—S. 59—*See* PENAL CODE, s. 225, 1 Weir 209.

(310-*a*)—S. 59—*See* Nos. 280, 281, *supra*.

——**S. 60 (=1882, s. 60; 1872, s. 101; 1861, s. 109).**

(311)—*Ss. 60, 61 (=Crim. Pro. Code, Act XXV of 1861, ss. 109, 152)—Accused—Arrest—Police officer—Village Police Act (Bombay Act VIII of 1867)—24 hours—Detention by police—Computation of time—Time required for carrying accused to Magistrate.*—When an arrest is made under s. 109, Crim. Pro. Code, by an officer of the District Police not authorized to make an enquiry under Ch. IX, Crim. Pro. Code, such police officer must forward the accused "without unnecessary delay" to a Magistrate having jurisdiction or to the officer in charge of the Police Station. He has no authority to detain the accused person for 24 hours under s. 152, Crim. Pro. Code. When a police officer has authority to make enquiry under Ch. IX, Crim. Pro. Code, the 24 hours of detention under s. 152 are to be counted up to the time when the accused person leaves the Police Station on the way to the Magistrate. The time occupied on the journey to the Magistrate is not to be counted in the 24 hours, but it is the duty of the Magistrate to see that the time so occupied is reasonable with reference to the distance to be traversed and other local considerations. The 24 hours during which the Village Police may detain an accused person under (Bombay) Act VIII of 1867 are not to be counted in the 24 hours allowed to the District Police Officer under s. 152, Crim. Pro. Code. **Rat. Un. Cr. C. 22=Cr. Rg. 14—9—1869.**

(311-*a*)—Ss. 60, 61—*See* POLICE, A.W.N. 1885, 59, F.B.

——**S. 61 (=1882, s. 61; 1872, s. 124, para (1); 1861, s. 152).**

(312)—S. 61—*See* ACT V OF 1861, s. 42, 36 P.R. 1870 Cr.

(312-*a*)—S. 61—*See* Nos. 299, 311 311-*a*, *supra*, and No. 1085, *infra*.

——**S. 62 (=1882, s. 62; 1872, s. 132, para (1); 1861, s. 160).**

(313)—*Ss. 62, 143, 190, 191 and 528 (3)—Police Report—Transfer of case—Notice.—Held* that, under s. 190 (*b*), the term (*Police Report*) does not necessarily mean only a Chalan, but includes also a report by the Police under s. 62 of the Code of Criminal Procedure, 1898. cl. (*c*) of the former section cannot possibly cover a case of information derived from the Police, and does not oblige a Magistrate to proceed under s. 191 of the Code and ask the accused whether he consented to be tried by him. *Held*, also, that the rule that notice should be given before a criminal case is transferred at the instance of a party does not apply where the District Magistrate *suo moto* withdraws it to his own file or transfers or re-transfers it from one Court to another under his control. *Held*, further, that under s. 528 (3) "reasons" for transfer should be recorded; but the defect does not necessarily vitiate the order of transfer, and the superior Court can call for the reasons. The provisions of the Indian law in regard to the transfer of criminal cases are calculated to be used, and are in practice used, not to further justice, but to harass and annoy opponents. **35 P.W.R. 1909 Cr.=3 P.R. 1910 Cr.**

——**S. 63 (=1882, s. 63; 1872, s. 132, para 2).**

(313-*a*)—S. 63—*See* No. 2387, *infra*.

——**S. 64 (=1882, s. 64; 1872, s. 108; 1861, s. 110).**

(313-*b*)—S. 64—*See* No. 242, *supra*.

——**S. 65 (=1882, s. 65; 1872, s. 166, para 2).**

(314)—Ss. 65, 105—*See* BOM. ACT IV OF 1887, ss. 4, 5, 6 and 7, 9 Bom. L.R. 695=6 Cr. L.J. 60=31 B. 438.

(314-*a*)—S 65—*See* No. 1256, *infra*.

——**S. 67 (=1882, s. 67: 1861, s. 112).**

(315)—S. 67—*See* FOREIGN TERRITORY, Colm. Dig. Cr. 94 of 1877.

——**S. 68 (=1882, s. 68; 1872, ss. 152, 153; 1861, ss. 69, 70).**

(316)—Ss. 68, 79—*See* ARREST, 27 C. 457.

(317)—S. 68—*See* COMPLAINT, 5 B.H.C. Cr. 48.

(318)—Ss. 68, 437—*See* NOTICE, 6 A. 367.

(319)—S. 68—*See* PENAL CODE, s. 174, 1 A.L.J. 263=A.W.N. 1904, 122.

——**S. 69, paras (1) (2) (=1882, s. 69; 1872, s. 154; 1861, s. 71) and para (3) new.**

(320)—Ss. 69 and 70 (=s. 154 of 1872)—*See* NOTICE, A.W.N. 1882, 170.

——**S. 70 (=1882, s. 70; 1872, s. 154; 1861: s. 71).**

(321)—*Ss. 70, 342 (=Crim. Pro. Code, 1868), s. 273—Reference to Subordinate Magistrate.*—Under s. 273, a full power Magistrate may refer for enquiry to a Subordinate Magistrate any criminal case. The reference may be (1) for

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enquiry, or (2) for trial by the Sub-Magistrate, (3) with a view to commitment either to a Court of Session or to the High Court. **4 M.H.C. App. 40.**

(321-*a*)—S. 70—*See* No. 320, *supra*.

——S. 75 (=1882, s. 75; 1872, s. 159; 1861, s. 76).

(322)—*Ss. 75, 76—Warrant of arrest—Resistance—Endorsements to bail fixing date of appearance—Warrant if remains in force after expiry of date—Lapse of bail—Order—Ss. 75 and 76, Crim. Pro. Code, construction of—S. 76 (1), Crim. Pro. Code, is permissive.*—A warrant, on which there is an endorsement for bail to be taken for the appearance of the accused on a certain date, does not lapse on the expiry of that date; after that date, only the direction to take bail lapses, but the warrant continues in force until it is cancelled by the Court which issued it or until it is executed. The arrest of an accused on the 29th October, on a warrant issued against him, with an endorsement for bail to be taken for his appearance, on the 26th October, is not illegal, and the rescuing and escape of the accused from custody are punishable under ss. 225 and 224 of the Penal Code. **13 C.W.N. 1091.**

(323)—*Ss. 75 and 204—Issue of warrants—Cancellation—Issue of summons instead—Discretion—Sufficient cause.*—A Magistrate has a discretion, under s. 204, Crim. Pro. Code, on sufficient cause shown, to cancel the warrants issued at first against an accused person and issue summons instead. Cancellation of warrants under s. 75, Crim. Pro. Code, adverted to. **1 S.L.R. Cr. 69=8 Cr. L.J. 187.**

(324)—*Ss. 75, 437, 438 (=Crim. Pro. Code, 1882, ss. 75, 437, 438)—Power of superior Magistrates to direct subordinate Magistrates to issue warrants.*—A District Magistrate has not the power to direct a subordinate Magistrate to re-issue the warrant for the apprehension of certain accused persons, when the latter has issued the warrants but afterwards cancelled the same. **1 C.W.N. 650.**

(325)—Ss. 75 (2), 205 and 353—*See* PARDANASHIN WOMAN, 20 P.W.R. 1908 Cr.

(326)—Ss. 75, 80—*See* PENAL CODE, s. 186, 23 C. 896.

——S. 76 (=1882, s. 76; 1872, s. 160; 1861, s. 181).

(327)—*Ss. 76, 90, 93 (=Crim. Pro. Code, 1872, ss. 160, 352, 355 and 185)—Arrest of witnesses—Bail.*—A Magistrate is competent to admit to bail recalcitrant witnesses arrested under ss. 352 and 355 (s. 90) of the Crim. Pro. Code. **2 Weir 39.**

(327-*a*)—S. 76—*See* No. 322, *supra*.

(328)—Ss. 76, 81, 90, 91, 160—*See* WITNESS, 24 C. 320=1 C.W.N. 154.

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——S. 77 (=1882, s. 77; 1872, ss. 161, 164; 1861, ss. 77, 79).

(329)—*Ss. 77, 83—Scope.*—Ss. 77 and 83 of the Crim. Pro. Code, are directory and not mandatory, and a substantial compliance with their provisions is sufficient. **1 P.R. 1896 Cr.**

(330)—S. 77—*See* BUR. ACT I OF 1899, ss. 6. 10 (*a*), 15 (2), 3 (*a*), L.B.R. (1893—1900), 547.

(331)—Ss. 77, 82, 83, 190 (*c*), 200 and 537—*See* ARREST, 1 P.R. 1896 Cr.

——S. 79 (=1882, s. 79; 1872, s. 165; 1861, s. 80).

(332)—S. 79—*See* ARREST, 4 C.W.N. 85.

(333)—S. 79—*See* WARRANT, 5 C.W.N. 447.

(334)—S. 79—*See* No. 316, *supra*.

——S. 80 (=1882, s. 80; 1872, s. 176; 1861, s. 90).

(335)—S. 80—*See* ARREST, 26 C. 748=3 C.W.N. 741.

(335-*a*)—S. 80—*See* Nos. 278, 302, 303, 326, *supra*.

——S. 81 (=1882, s. 81; 1872, s. 183; 1861, s. 97).

(335-*b*)—S. 81—*See* No. 328, *supra*.

——S. 82 (=1882, s. 82; 1872, s. 167; 1861, s. 83).

(336)—*S. 82—Scope.*—S. 82 is essentially an enabling section, and from the fact that it only provides that warrants may be executed in British India, the inference does not necessarily follow that it positively forbids the execution of warrants outside British India, or that warrants which are meant to be so enforced are *ab initio* illegal and void. **1 P.R. 1896 Cr.**

(337)—S. 82—*See* SANCTION TO PROSECUTE, 7 M.H.C. 182.

(337-*a*)—S. 82—*See* No. 331, *supra*.

——S. 83 (=1882, s. 83; 1872, ss. 168, 170; 1861, ss. 86, 87).

(338)—*S. 83—Act XIII of 1859—Warrants under Act—Crim. Pro. Code (1882), s. 83.*—S. 83, Crim. Pro. Code, 1882, is applicable to warrants issued under the provisions of Act XIII of 1859. **A.W.N. 1897, 220.**

(339)—S. 83—*See* ACT XIII OF 1859, 20 M. 235=2 Weir 40.

(339-*a*)—S. 83—*See* Nos. 86, 329, 331, *supra*.

——S. 86 (=1882, s. 86; 1872, s. 170; 1861, s. 84).

(339-*b*)—S. 86—*See* No. 249, *supra*.

——S. 87 (=1882, s. 87; 1872, ss. 171, 353 1861, ss. 183, 189).

(340)—*S. 87—Proclamation for person absconding, requisites of.*—A proclamation issued

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under s. 87of the Code, against an absconding person, should give thirty days' time for his appearance from the date of the proclamation. Where this is not done, the proceedings are liable to be set aside. **17 M.L.J. 438=6 Cr. L. J. 332.**

(341)—*Ss. 87 and 88—Sale on a proclamation not published in accordance with s. 87—Suit to set aside sale.*—A complaint was filed against the plaintiff in a Criminal Court. On his not appearing, that Court, acting under the provisions of ss. 87, 88, Crim. Pro. Code, attached and sold the property, but the proclamation of sale was not published as required by s. 87. *Held*, that the sale was a nullity and passed no estate to the purchaser who was bound to enquire whether the Court had issued a statement in writing to the effect that the proclamation was duly published. **27 A. 572=A.W.N. 1905, 102=2 A.L.J. 349=2 Cr. L.J. 247.** [*R.*, 9 P.R. 1908 Cr.=29 P.W.R. 1908 Cr.=8 Cr. L.J. 260].

(342)—*Ss. 87 and 88—Forfeiture of ancestral property of a criminal, subject to Punjab Customary Law for absconding or committing a crime —Extent of his interest—Necessity—Sale—Right of his reversioner—Full owner defined.*—*Held*, by the majority (Clark, C.J. and Chatterji, J.), that, when the ancestral property of a person subject to the Punjab Customary Law is attached and sold by the order of a Criminal Court under the Indian Criminal Law, for his committing a crime or absconding, the sale disposes of the life-interest of that person only, but not the right of inheritance, after his death, of his male lineal descendants, or of collaterals descended from the original holder of the property. *Johnstone, J.—contra.* Upon such a sale, the fee-simple of the property is sold and nothing remains for the heir to inherit. *Per Clark, C.J.*—The reversioner has such indefinite interest in the ancestral property that the owner in possession cannot, by his crime or absconding, cause that interest to be forfeited. *Per Chatterji, J.*—A full owner, in jurisprudence, is a person, who has a right over a determinate thing, indefinite in point of user, unrestricted in point of disposition, and unlimited in point of duration, or, in other words, having the fullest and freest right of possession, enjoyment and disposition. Principles underlying the existing law must be extended by analogy and other approved methods to new phases of affairs. **19 P.W.R. 1908 F.B. Cr.**

(343)—*Ss. 87 and 88—Attachment of the undivided interest in a joint family of an absconding party.*—S. 88 is not intended to apply to an undivided member of a Hindu joint family, for, his interest cannot be seized, being unascertained. A receiver cannot be appointed, nor can an order be made prohibiting the payment of rent or delivery of the property to the managing member of the family. Nor can the undivided interest of the absconding person be sold under sub-s. 7 of s. 88. **2 Weir 43.**

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(344)—*Ss. 87, 88 (=Crim. Pro. Code, 1882, ss. 87 and 88)—Refusal to release attachment.*—As the attachment of property under s. 88, Crim. Pro. Code, is intended to enforce the attendance required by a proclamation issued under s. 87, it is illegal to wait till the period specified in the proclamation has expired and to order attachment, because that proclamation has not been obeyed. Where a Magistrate went even further and refused to release an attachment which was not made till after the appearances of the persons concerned, the order of attachment passed by the Magistrate was set aside. **6 C.P.L.R 38 Cr.**

(345)—*Ss. 87, 88, 89—Absconding offender—Irregular proclamation—Sale of property—Title of purchaser.*—Where the property of an absconder had been attached and sold, and had vested in a third person (the purchaser), *held*, that the sale could not be set aside on the ground of irregularity in the proclamation, as the property had vested in a person who was not a party to the proceedings in which the proclamation was made. **22 A. 216.** [*R.*, 9 P. R. 1908 Cr.=29 P.W.R. 1908 Cr.=8 Cr. L.J. 260].

(346)—*Ss. 87, 88, 90—Issue of warrant and attachment after issue of summons—Conditions necessary—Failure to comply with provisions before issue of warrant or attachment—Effect—Procedure in cases of warrant.*—*Held* that, according to the fourth schedule of the Code of Criminal Procedure, 1898, the Magistrate ought, in the absence of any special grounds mentioned in s. 90, to issue a summons. He ought not, after the issue of a summons, to order the issue of a warrant, unless he first placed on record his reasons for considering that the accused had been duly served and that, in spite of such service, he had failed to appear without reasonable excuse. To lay a foundation for the issue of a proclamation under s. 87 with an accompanying order of attachment under s. 88 of the Code, it is necessary to comply strictly with the provisions of the law relating to the issue of a warrant in a case, where a summons is the ordinary mode of enforcing attendance. Those provisions have been embodied in the Code to safeguard the rights of the subject and anything done in defiance of them can have no force. *Obiter*:—Just as in the case of the summons, so in the case of the warrant, before the Magistrate could proceed under the above sections, he is bound to satisfy himself that the accused was absconding or concealing himself for the purpose of avoiding the execution of the warrant. **5 N.L.R. 125.**

(347)—*Ss. 87, 88, 90—Absconding of accused —Issue of warrant of arrest in lieu of summons —Proclamation and attachment.*—When a Magistrate is asked to proclaim an accused person, he should first take evidence that the person has absconded, and, when the absconding is proved, he should record evidence of the offence under s. 512. Then, if he considers

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there is sufficient *prima facie* proof of the offence, he can proceed under ss. 87 and 88, and, in the absence of such proof, he should refuse to issue either proclamation or attachment. Magistrates must also use their discretion towards refusing to proclaim an accused when the offence is a petty one. A warrant of arrest cannot be issued in cases in which a summons should ordinarily issue, unless the summons should be proved to have been duly served in good time, and a Police Officer's report that he served the summons is not evidence of service of the summons under cl. (*b*) of s. 90 of the Code. **3 L.B.R. 116.**

(348)—*Ss. 87, 88 (=Crim. Pro. Code, 1872, ss. 171, 172)—Absconding by person against whom warrant of arrest has been issued—Penal Code, s. 172.*—A person, against whom a warrant of arrest has been issued and who absconds, should be dealt with under the Crim. Pro. Code, and not under s. 172, I.P.C. **7 N. W.P. 302.** [*F.*, 2 C.L.J. 625].

(349)—*Ss. 87, 88, 537 (=Crim. Pro. Code, 1882, ss. 87, 88 and 537)—Proclamation for the appearance of an absconding person—Failure to comply with provisions of the section.*—S. 87 prescribes a certain rule with regard to time and place. In respect of these matters, the section is imperative and the neglect of the rule with regard to time is no more excusable than would be the neglect of the rule requiring publication in two places. Such an irregularity cannot be cured by s. 537 of the Code. The penal consequences of a disobedience to such a proclamation cannot be visited on the person disobeying such an order. **5 M.L.J. 215.**

(350)—S. 87—*See* ABSCONDING OFFENDER, 29 C. 417=6 C.W.N. 680, 6 W.R. Cr. 73, 2 Weir 40, 3 W.R. Cr. 34, 19 W.R. Cr. 12=10 B.L.R. Ap. 14.

(351)—Ss. 87, 88 and 89—*See* ABSCONDING OFFENDER, 22 A. 216, 19 M. 3=2 Weir 40.

(352)—Ss. 87, 88, 90, 436 and 437—*See* ABSCONDING OFFENDER. 15 P.R. 1893 Cr.

(353)—Ss. 87, 88—*See* ATTACHMENT, 9 C. 861=12 C.L.R. 411.

(354)—Ss. 87 and 537—*See* IRREGULARITY, 19 M. 3=2 Weir 40.

(355)—S. 87—*See* PROCLAMATION, 19 M. 3 =2 Weir 40.

(356)—S. 87—*See* No. 271, *supra.*

——S. 88 (=1882, s. 88; 1872, ss. 172, 353; 1861, s. 184).

(357)—*S. 88 (=Crim. Pro. Code, 1882, s. 88) —Scope of the section.*—There is nothing in the language of s. 88 to restrict the meaning of the word "property," and it includes the rights and interests of persons who, as members of an undivided family, are jointly entitled to the property of the family. **2 Weir 43, Foot-note.** (11 C. 861, *R.*).

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(358)—*S. 88—Attachment of property—Claim by third person—Duty of Magistrate—Rights of claimant—Civil suit.*—Where the District Magistrate attached the property of an absconder under s. 88 of the Crim. Pro. Code, a claim made to such property cannot be investigated by the Magistrate. But the Magistrate should stay the sale to give the claimant time to establish his right; and, if the Magistrate errs, the remedy of the aggrieved party is by civil suit and not by criminal revision petition. **4 L.B.R. 109.**

(359)—*S. 88—Suit by real owner for possession and mesne profits and damages.*—Where immoveable property, believed to belong to an absconding accused, was attached and placed at the disposal of the Government, under s. 88, Crim. Pro. Code, and where, notwithstanding a notice, under s. 424, Crim. Pro. Code, by the real owner of the property, the Collector of the district did not repudiate his connection with the property after due enquiry of title, a suit against the Government and the person at whose instance the criminal proceedings were instituted for the recovery of possession of the property, with mesne profits and damages done to the property, while it was at the disposal of the Government, can be maintained by the real owner. **28 C. 540=6 C.W.N. 175.** (*R.*, 6 Bom. L.R. 131, 9 C.W.N. 736).

(360)—*Ss. 88, 89—Irregularities in proclamation and sale—Right of civil suit.*—The provisions of the Crim. Pro. Code do not bar the right of civil suit for the recovery of property sold under the provisions of ss. 88, 89, on the ground that the proclamation and sale were absolute nullities on account of material irregularities. **A.W.N. 1904, 159.** [*F.*, 27 A. 573=A.W.N. 1905, 102=2 A.L.J. 348=2 Cr. L.J. 247].

(361)—*Ss. 88, 435 and 439—Magistrate investigating claims of third parties to property attached belonging to absconding accused—Jurisdiction of Chief Court to interfere in revision.*—The Chief Court has, under s. 439, Crim. Pro. Code, jurisdiction to interfere in revision with the order of a Magistrate, under s. 88, Crim. Pro. Code, attaching and selling the property of an absconder and adjudicating on the rights of lessees of the land so attached and sold, such an order being a proceeding within the meaning of s. 435 of the Code. *Held*, that the order of the Magistrate should be amended by ordering that the sale be subject to the right of the lessees to remain in possession until the expiry of the term of the lease. **9 P. R. 1908 Cr.=29 P.W.R. 1908 Cr.=8 Cr. L.J. 260.**

(362 and 363)—Ss. 88, 89—*See* ABSCONDING OFFENDER, 6 A. 487, 29 C. 417, 4 M.H.C. App. 48, 9 C. 861=12 C.L.R. 411, 18 W.R. Cr. 33=9 B.L.R. 342, 20 M. 88=2 Weir 42, 4 M.H.C. App. 48, 7 W.R. Cr. 35.

(364)—Ss. 88 and 386—*See* ABSCONDING OFFENDER, 20 M. 88=2 Weir 42.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(365)—Ss. 88, 89, 523, 512 and 517—*See* ATTACHMENT, L.B.R. (1893—1900), 324.

(365-*a*)—S. 88—*See* Nos. 58, 271, 341, 342, 343, 344, 345, 346, 347, 348, 349, 351, 352, 353, *supra*.

——S. 89 (=1882, s. 89; 1872, ss. 173, 354; 1861, ss. 185, 190).

(365-*b*)—S. 89—*See* Nos. 58, 345, 351, 360, 363, 365, *supra*.

——S. 90 (=1882, s. 90; 1872, ss. 148, 150, 156, 352, 355; 1861, ss. 260, 273, 188, 191, 285).

(366)—*Ss. 90 and 487—Issue of warrant in lieu of summons—Penal Code, s. 174—Magistrate not to try certain offences committed in contempt of his authority.*—A Magistrate taking cognizance of an offence in which a summons should ordinarily issue may not issue a warrant for the arrest of the accused, without previously recording in writing the reasons therefor. **S. C. 99, Oudh.**

(367)—Ss. 90 and 342—*See* CONTEMPT OF COURT, 4 M.H.C. App. 51.

(367-*a*)—Ss. 90, 342—*See* FALSE EVIDENCE. 24 P.R. 1870 Cr.

(368)—Ss. 90, 107, 112, 114—*See* SECURITY FOR GOOD BEHAVIOUR, A.W.N. 1896, 73.

(368-*a*)—S. 90—*See* Nos. 109, 113, 327, 328, 346, 347, 352, *supra*, and Nos. 484, 1291, 1367, 1401, *infra*.

---S. 91 (=1882, s. 91).

(369)—*S. 91—Process for compelling attendance of witness.*—A Magistrate, being of opinion that there was reason to believe that an important witness in a case pending before him might be kept out of the way by interested persons, took a bond from a *mukhtear* by which he undertook to produce the said witness whenever called upon during the pendency of the case. *Held* that such a bond was not open to objection upon the ground that no security for her appearance has been taken from the witness herself. **A.W.N. 1901, 35.**

(369-*a*)—S. 91—*See* No. 328, *supra*.

——S. 93 (=1882, s. 93; 1872, ss. 158, 185; 1861, ss. 75, 99).

(369-*b*)—S. 93—*See* No. 327, *supra*.

——S. 94 (=1882, s. 94; 1872, s. 365; 1861, s. 142).

(370)—*S. 94—Inspection of accused's books by prosecution at office of accused's lawyers.*—It is not open to a Magistrate to issue an order allowing the prosecution to inspect the entries in the books of the accused, relating to the subject matter of the charge, at the offices of the accused's lawyers. **5 Bom. L.R. 978.** (8 W. R. Cr. 174, 15 C. 109, *R.*)

(371)—*S. 94—Scope of section.*—S. 94 deals with documents forming the subject of a criminal offence as also with documents which are or can be used only as evidence in support of a prosecution. The question whether the production of a particular document or book is necessary or desirable for the purposes of any trial, is one which must be decided by the Magistrate before he orders its production, and in determining the question he has to exercise his discretion judicially, in the sense that he must satisfy himself that the document or book has a bearing upon and is relevant to the case. When he has so satisfied himself, his jurisdiction to order its production comes into play, and that carries with it the jurisdiction to allow the prosecution the right of inspection. **5 Bom. L.R. 980.**

(372)—*Ss. 94, 96, 190 (c), 537—Search warrant, under s. 96—Magistrate's jurisdiction to issue—Cognizance of an offence under s. 190 (c) —Information, nature of, upon which cognizance could be taken—Record of the information—How much should be recorded.*—The District Magistrate, on receiving information of the commission of an offence, cannot issue a search warrant under s. 96, para (1), Crim. Pro. Code, before he has acted judicially upon the information so received (*a*). To justify a Magistrate in taking cognizance of an offence under s. 190 (*c*), Crim. Pro. Code, upon information received from any person other than a police officer, the information need not contain all the allegations necessary to be proved to establish the offence; it is sufficient if enough is alleged to justify the Magistrate in dealing judicially with the matter. What allegations or how much of the information should be recorded by the Magistrate in such a case, it is difficult to lay down in general terms; but when it is found that the recorded information is sufficient to justify the Magistrate in considering that a *prima facie* case has been made out, the High Court will not interfere with the Magistrate's action in taking cognizance under s. 190 (*c*). Section 537, Crim. Pro. Code, cannot give legal effect to a defective warrant. **12 C.W.N. 1075=8 Cr. L.J. 235.**

(373)—*Ss. 94, 96, 517, 523—Security required for production of ornaments, validity of.*—Where a Magistrate thinks that a criminal offence has been committed in respect of certain articles, he has power to proceed under s. 94 of the Code and to direct their production in his Court for the purpose of any investigation or trial into that offence, and, on failure of the party in whose possession the articles then are to produce them, to proceed under s. 96 or any other section in the Code in order to secure their production. There is no section of the law enabling him to demand security from the person in possession of the articles for their production, when required. An order of that kind passed in his judicial capacity, after taking cognisance of the offence and after having postponed the trial, pending the reference by the complainant to the Civil Court, cannot be considered as an executive order. **7 C.W.N. 522.**

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(374)—Ss. 94, 105 and 165—*See* ACT XI OF 1878, s. 25, 8 C.L.J. 75.

(375 and 376)—Ss. 94-99—*See* INSPECTION OF DOCUMENTS, 19 C. 52, 15 C. 109.

(377)—S. 94—*See* PRODUCTION OF DOCUMENT; 12 C.W.N. 1016=8 C.L.J. 320=8 Cr. L.J. 224.

(378)—Ss. 94, 96—*See* SEARCH WARRANT, 22 B. 949.

——S. 96 (=1882, s. 96; 1872, ss. 336, 368, 369; 1861, ss. 268, 114).

(379)—*S. 96—Issuing of search warrant—Discretion.*—The first para of s. 96, Crim. Pro. Code, requires, as a condition precedent to the issue of a search warrant, that the Court must have reason to believe that the person, against whom the warrant is issued, is not likely to produce the document or thing in his possession, as required by the summons or order under s. 94 or requisition under s. 95 (1) served upon him, or that he is not likely to produce it, should such summons or order or requisition be served. **5 Bom. L.R. 1032.**

(380)—*S. 96 (=Crim. Pro. Code, 1882, s. 96) —Search warrant.*—S. 96, Crim. Pro. Code, authorizes and compels the production in Court of the property in respect of which a search warrant is issued, but when property not alleged to be stolen is in the hands of third parties, such production can only be sought for the purpose of evidence, and ought not to be granted for the sole purpose of attaching property the title to which is in dispute. **Rat. Un. Cr. C. 677=Cr. Rg. 43 of 1893.**

(381)—*S. 96 (=Crim. Pro. Code, 1882, s. 96) —Issuing search warrant.*—Under the provisions of s. 96, it is lawful for a Magistrate to issue a warrant for the search and production of anything before him, when he considers that such production is necessary for the purposes of investigation or inquiry under the Code. Nor is it obligatory upon him to wait until a preliminary inquiry is held and all the witnesses for the prosecution are examined and cross-examined. Such a restriction would often tend to defeat the object with which search warrants are authorised to be issued. The Magistrate is entitled to act upon information which he considers credible, provided that there is a complaint before him, and the complainant is examined by him on solemn affirmation in the manner prescribed by the Code. **13 M. 18=2 Weir 44.** [*R.*, 22 B, 949].

(382)—*Ss. 96, 99, 104 (=Crim. Pro. Code, Act X of 1882, ss. 96, 99, 104)—Production of account books—Procedure.*—Where a Presidency Magistrate, on a telegram from a District Magistrate requiring him to take possession of the account books of a certain person and to send them to him, summoned the person to produce the same and sent them, on production, to the District Magistrate, *held* that the procedure was illegal. Ss. 96 and 99 of the Crim. Pro. Code did not apply, since there was no search warrant, and s. 104 did not apply, since the Magistrate had no authority to summon the production of the books and send them out of his jurisdiction. **Rat. Un. Cr. C. 880=Cr. Rg. 2 of 1897.**

(383)—*Ss. 96, 105, 165—Tort—Trespass—House search by Magistrate—Statutory justification—Indian Arms Act (XI of 1878), s. 25—Arms, general search for—Grounds of belief, recording of—"Court," when a Magistrate is—Judicial Officers' Protection Act (XVIII of 1850), s. 1—Acts, executive or judicial—Malice*—Bona fides—*Damages—Costs of appeal—Cross objections.—Held (Brett, J., dissentiente).*—When a statute creates a special right, but certain formalities have to be complied with, antecedent to the exercise of that right, a strict observance of the formalities is essential to the acquisition of that right. In a general search for arms under s. 25 of the Indian Arms Act, 1878, the Magistrate holding such search must first record the grounds of his belief as directed therein, in order to avail himself of the protection of that section from the consequences of his action. A Magistrate can only conduct a search under s. 105, Crim. Pro. Code, when he is competent to issue a search warrant under s. 96 of that Code which applies to the issue of a search warrant by the Court. *Per Maclean, C.J.*—Where there are special provisions in an act of the Legislature dealing with the case of a search for arms and laying down what are the conditions precedent to the making of such a search, and there are general provisions in another Act of the Legislature dealing with searches generally, and, in point of fact, the search was one made for arms, it ought—in the absence of evidence to show that the search was made under the general as opposed to the specific legislation—to be taken that the search was not made under the general provisions authorising searches, and especially so, when the search was made by one who, in the circumstances, had no power of search under the general provision as to searches. The scheme as regards searches under the Code of Criminal Procedure is as follows:—(1) the Court can issue a search warrant under s. 96: or (2) in lieu of that, the Magistrate may himself search under s. 105; and (3) s. 165 deals with searches by a police-officer and not by a Magistrate. The duties of a Magistrate in this country are at once executive and judicial. If a search is conducted by a Magistrate in his executive capacity, he cannot rely on Act XVIII of 1850 as a protection from the consequences of holding a search. *Per Harrington, J.*—Where a statute authorises the doing of an act which is *prima facie* a wrong to an individual, the doer must comply strictly with the conditions imposed by the statute, if he desires to rely on the statute as a justification for his act. A Magistrate cannot be said to be acting judicially in directing a search to be made,

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without any proceeding having been instituted before him which he would be called on to determine judicially. The respondent, though successful, was not allowed his costs for pressing charges of malice against the appellant which were held to be unfounded. **13 C.W.N. 458 = 9 C.L.J. 298 = 36 C. 433 = 5 M.L.T. 367.**

(384) – Ss. 96, 100—*See* PRIVATE DEFENCE, RIGHT OF, 11 C.W.N. 836 = 6 C.L.J. 127 = 6 Cr. L.J. 38.

(385)—S. 96—*See* WARRANT, 11 C.W.N. 836 = 6 C.L.J. 127 = 6 Cr. L.J. 38.

(385-*a*)—S. 96—*See* Nos. 372, 373, 378, 400, *supra*.

——S. 99 (=1882, s. 99; 1872, ss. 373, 374; 1861, s. 119).

(385-*b*)—S. 99—*See* Nos. 376, 382, *supra*.

——S. 100 (=New).

(386)—*S. 100—Complaint by guardian of wrongful confinement—Warrant for production of ward—Grown-up ward voluntarily appearing and denying allegations of wrongful confinement—Proceedings directed to be stayed—Guardian's civil remedy.*—A search warrant was issued for the production of a ward, alleged, by the complainant as his guardian, to have been wrongfully confined. The boy, who was quite grown up and able to look after himself, voluntarily appeared and denied the complainant's allegations of wrongful confinement. *Held* that, under the circumstances, the Magistrate should have declined to take any further action in the criminal proceeding, leaving the complainant to take such civil action as he may be advised for the recovery of the person of the ward under s. 25 of the Guardian and Wards Act (VIII of 1890). **2 S.L.R. 2 Cr. = 10 Cr. L. J. 219.**

(387)—S. 100—*See* SEARCH WARRANT, 2 S.L.R. 2 Cr.

(387-*a*)—S. 100—*See* No. 384, *supra*.

——S. 102 (=1882, s. 102; 1872, ss. 382—384; 1861, ss. 122—124).

(388)—*Ss. 102, 103—Search by the Police who should be called as witnesses to—Burma Gambling Act, applicability of the sections to searches under.*—The provisions of ss.102(2) and 103 of the Code, which regulate searches made under s. 6 of the Burma Gambling Act, obviously contemplate that two respectable inhabitants of the locality, unconnected in any way with the Government and its officers, should be called in to witness every search made. So, the calling in, and employment of, headmen of wards as witnesses for a search is against the above provisions: and the premises so searched could not, therefore, be deemed to have been duly entered and searched under s. 6 of the Burma Gambling Act, so as to afford room for the presumption under s. 7 that the place was a common gaming house. **3 L.B.R. 229 = 4 Cr. L.J. 390.**

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(389)—Ss. 102 and 103—*See* ACT I OF 1878, ss. 14, 15 and 16, 4 L.B.R. 121.

(390)—Ss. 102, 103—*See* BUR. ACT I OF 1899, ss. 6 and 7, 14 Bur. L.R. 81 = 4 L.B.R. 213 = 7 Cr. L.J. 479, 4 L.B.R. 134 = 7 Cr. L.J. 411.

(390-*a*)—S. 102—*See* No. 1134, *infra*.

——S. 103 (=1882, s. 103; 1872, s. 385; 1861, s. 125).

(391)—*S. 103—Search list—Evidence—Whether search list the only evidence of its contents.*—The contents of a search list need not be proved by the search list alone. 'External evidence of its contents is admissible.' **11 Cr. L.J. 136 = 5 Ind. Cas. 438 = 7 M.L.T. 362.**

(392)—*S. 103—Search of stolen property—Selection of witnesses to the search.*—S. 103, Crim. Pro. Code, requires the officer about to make the search to call upon two or more respectable inhabitants of the locality in which the place of the search is situate to attend and witness the search. There is nothing in that or in any other section of the Code to justify the view that the required witnesses are to be selected by any person other than the officer conducting the search. **21 M. 83 = 2 Weir 503.**

(393)—*S. 103—Search list—Admissibility in evidence—Evidence Act, s. 91.*—The search list prepared under s. 103, Crim. Pro. Code, is proper evidence of the matters which it should contain, *viz.*, the properties found and the place where they were found. **2 Weir 47 = 2 Weir 515.**

(394)—*S. 103—Ward and village headmen, whether competent witnesses to search under s. 103, Crim. Pro. Code—Gambling Act, searches under—Competency of witnesses.*—The mere fact that ward and village headmen are appointed by Government does not disqualify them as witnesses to a search under s. 103, Crim. Pro. Code. In theory, at any rate, the ward headman, like the village headman, is chosen for his "respectability," the very quality which is contemplated by s. 103. It is true that the actual appointment of ward headmen and village headmen is made by the Deputy Commissioner, but they are not officials in the same sense as salaried servants of Government, and their usefulness lies chiefly in the fact that they are spokesmen and representatives of the people in their charge and intermediaries between them and the various Government Departments. Hence, it cannot be said that the mere fact of their appointment by Government should be regarded as a bar. *Held*, also, the existence of obligations, similar to, though somewhat wider than, those imposed by Chap. IV of the Crim. Pro. Code on landholders and private individuals, in the case of ward and village headmen, does not disqualify them in the matter of searches under the Gambling Act. **U.B.R. 1908, 2nd Quarter, Gambling, 1.**

(395)—S. 103 (1)—*See* ACT I OF 1878, 2 O.C. 99.

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(396)—S. 103—Search under s. 16 of Opium Act to be made in accordance with—*See* ACT I OF 1878, s. 16, U.B.R. (1892--1896), Vol. I, 135.

(397)—S. 103—*See* BUR. ACT I OF 1899, s. 6, U.B.R. (1897—1901), Vol. I, 213.

(398)—S. 103—*See* BUR. ACT I OF 1899, ss. 6 and 7, 14 Bur. L.R. 81=4 L.B.R. 213=7 Cr. L.J. 479.

(398-*a*)—S. 103—*See* Nos. 388 to 390, *supra*.

——S. 104 (=1882, s. 104; 1872, s. 367).

(399)—*S. 104—Impounding a document.*—A District Magistrate could not, under s. 104, impound any document which had been produced in a pending case before a Subordinate Magistrate. **1 A.L.J. 607.**

(400)—Ss. 104, 96—*See* PRACTICE AND PROCEDURE, L.B.R. (1872—1892), 354.

(400-*a*)—S. 104—*See* Nos. 241, 382, *supra*.

——S. 105 (=1882, s. 105; 1872, s. 378).

(401)—S. 105—*See* CHEMICAL EXAMINER'S REPORT, 10 C. 1026.

(401-*a*)—S. 105—*See* Nos. 314, 374, 383, *supra*.

——S. 106 (=1882, s. 106; 1872, ss. 489, 490; 1861, ss. 280, 281).

(402)—*S. 106, Ch. VIII—Scope and object of Chapter—Hearsay evidence.*—Hearsay evidence amounting to evidence of general repute is admissible for the purposes of proceedings under Ch. VIII, Crim. Pro. Code, 1898. The object of Ch. VIII, Crim. Pro Code, is the prevention, not the punishment, of offences. The Chapter gives a certain amount of discretion to Magistrates; and the High Court must be always slow to interfere with that discretion, unless there is an error of law. **6 Bom. L.R. 34.** (27 C. 781, *R.*; 3 M. 28, *F.*).

(403)—*Ss. 106 and 110—Security for good behaviour—Meaning of the term "offences involving a breach of the peace"—Immoral and indecent act, whether amounts to such offences.*—The expression "the offences involving a breach of the peace" should not be interpreted as offences provoking, or likely to lead to a breach of the peace. The expression should be taken as meaning offences in which a breach of the peace is an ingredient. Where a person, who was found to be addicted to acts of immorality in attempting to seduce married women and behaving indecently and immodestly towards them, was bound over to give security for good behaviour under s. 110 (*c*), *held*, that the order for security should be set aside, as the offences, though offences under the law, were not offences involving a breach of the peace. **3 O.C. 366.** [*R.*, 9 O.C. 381].

(404)—*Ss. 106 and 522— Applicability of s. 106 where no breach of peace occurs.*—S. 106 may apply to a case in which armed men are assembled with the intention of committing a breach of the peace, but no breach of the peace occurs because the assembly does not go so far. **5 C.W.N. 250.**

(405)—*S. 106—Security to keep the peace on conviction—Offence not coming within the terms of s. 106—Duty of Magistrate to record finding of facts which make the section applicable.*—When a person is convicted of offences which do not, in themselves and apart from any other incidents, come within the terms of s. 106, it is incumbent upon the Magistrate to record a clear finding with respect to the facts, which, in his opinion, make that section applicable in the case. **30 C. 93=6 C.W.N. 471.** [*F.*, 7 C.L.J. 172; *R.*, 7 C.W.N. 25, 8 C.W.N. 517, 29 M. 190, 9 O.C. 381].

(406)—*S. 106—Order under the section on conviction for house trespass* —An order, under s. 106, Crim. Pro. Code, can be passed against a person who has been convicted of house trespass, if he committed it with the object of causing hurt. **7 C.W.N. 25.** [*R.*, 4 M.L.T 468].

(407)—*S. 106—Order under the section on conviction under s. 153, I.P.C.*—A conviction for an offence under s. 153, I.P.C., does not warrant an order under s. 106, Crim. Pro. Code. **29 A. 569=A.W.N. 1907, 171=6 Cr. L.J. 14.**

(408)—*S. 106—Order under, on conviction under ss. 143, 379, I.P.C.*—A conviction under s. 143, or s. 379, Penal Code, is not of itself sufficient to sustain an order under s. 106, Crim. Pro. Code, although such conviction, coupled with findings bringing the case within the scope of s. 106, may sustain an order under that section; but, in such cases, those findings must be clear and explicit; and, moreover, if the finding be that the accused was guilty of the offence of criminal intimidation, the conviction must also be of criminal intimidation in order to sustain an order under s. 106. **8 C.W.N. 517.** [*F.*, 7 C.L.J. 172=7 Cr. L.J. 200].

(409)—*S. 106—Security to keep peace on conviction for offences not involving a breach of the peace--Absence of finding that breach of peace had been committed—Order under, when could be passed.*—Where certain persons convicted of theft, of mischief and of being members of an unlawful assembly, were ordered to furnish security to keep the peace without an express finding that a breach of the peace had been committed by them, *held*, that the offences for which they were convicted did not necessarily involve a breach of the peace, and, in the absence of an express finding that a breach of the peace had been committed by them, the order under s. 106, Crim. Pro. Code, should be set aside. [*R.*, 9 O.C. 381, 29 M. 190=3 Cr. L.J. 461, 8 C.W.N. 517.] *Quære*:—Whether, in a case in which a person is not accused of an offence involving a breach of the peace, or of taking unlawful measures with the evident intention of committing the same, but in which there is nevertheless an

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express finding that a breach of the peace has been committed or unlawful measures have been taken with the evident intention of committing the same, the accused could be called upon to give security to keep the peace under s. 106 of the Code of Criminal Procedure? **26 M. 469=2 Weir 48.** [*R.*, 8 C.W.N. 517].

(410)—*S. 106 (=Crim. Pro. Code, 1882, s. 106)—Conviction for offences under ss. 296, 298, Penal Code—Order for security to keep the peace—Validity.*—Where certain Mahomedans were convicted, under ss. 296 and 298, Penal Code, for having caused disturbance to a Hindu congregation engaged in religious worship by beating tomtoms in front of the temple and also for having uttered abusive words with the intention of wounding the religious feelings of the Hindus, and were also required to furnish security to keep the peace for six months under s. 106, Crim. Pro. Code, *held*, that, as there was no finding of the actual commission of the breach of the peace or of criminal intimidation, the Magistrate was not right in requiring security from the accused, as the mere fact of the accused instigating others to beat the tomtom would not amount to "taking unlawful measures with the evident intention of committing a breach of the peace." **2 Weir 47.**

(411)—*S. 106 (=Crim. Pro. Code, 1882, s. 106) —Order for security to keep the peace—Penal Code, s. 336.*—Under s. 106, Crim. Pro. Code, it is the offence for which the person is convicted, and not the facts as put in evidence at the trial, which determines whether or not security can be demanded. The offence under s. 336, Penal Code, of doing an act so rashly as to endanger the personal safety of others is not either a riot, assault or other breach of peace, and the circumstance that the evidence might have justified a conviction under some other section is immaterial. **2 Weir 48.**

(412)—*S. 106—Order under—Offence under s. 294, I.P.C.*—An offence under s. 294 does not necessarily involve a breach of the peace for the purposes of s. 106 of the Crim. Pro. Code. **2 L.B.R. 125** (1 L.B.R. 262, *R.*)

(413)—*S. 106 (=Crim. Pro. Code, 1882, s. 106)—Powers of appellate Court—Security for keeping the peace.*—An appellate Court, affirming a conviction and sentence, has no power to make an order under s. 106 of the Code, requiring the appellant to execute a bond for keeping the peace. **16 C. 779.** [*F.*, 10 A.W.N. 201, 17 A. 67, Rat. Un. Cr. C. 906].

(414)—An appellate Court cannot make an order under s. 106, unless the conviction, on which the order is based, was by a Court of the description specified in the first paragraph of the section. **1 M.L.T. 403.**

(415)—*Ss. 106 and 423—Powers of appellate Court—Order for security to keep the peace, when could be made, in appeal.*—Where, in affirming a conviction under s. 379, I.P.C., the

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District Magistrate, on appeal, added to his judgment an order under s. 106 binding over the accused to keep the peace, without expressly finding that the accused had committed an offence within the terms of s. 106, *held*, that the order under s. 106 was without jurisdiction; and the fact that there was evidence on record, which, if accepted, would have shown that such an offence had been committed, was not enough to justify the order. **29 C. 393=6 C.W.N. 678.**

(416)—*S. 106—Power of District Magistrate in appeal or revision to require an accused person to furnish security to keep the peace.*—A District Magistrate is competent, in revision of the proceedings of a Magistrate of the second or third class, to require an accused person to furnish security to keep the peace under s. 106, Crim. Pro. Code. But, as the effect of such an order would be to prejudice the accused, he should be given an opportunity of showing cause against it. **U.B.R. (1897—1901), Vol. I, 9.**

(417)—*S. 106 (=Crim. Pro. Code, 1872, s.489)—Remission of penalty under recognizance bond.*—Neither the Magistrate nor the High Court has the power to reduce the amount of a penalty entered in a recognizance bond. **8 C. L.R. 72.** [*D.*, 15 P.R. 1905 Cr.=99 P.L.R. 1905=2 Cr. L.J. 131].

(418)—*S. 106 (=Crim. Pro. Code, (1861), s.280—Order for recognizance to keep the peace—Default—Imprisonment.*—S. 280 does not authorise or contemplate the imposition of a term of imprisonment in default of compliance with an order to enter into a recognizance to keep the peace, nor is there any provision, in the chapter to which the section belongs, for the awarding of imprisonment to enforce compliance with an order under s. 280 to enter into such recognizance. **6 M.H.C. 25.**

(419)—*S. 106—Accused convicted by second class Magistrate—Direction by Sub-Divisional Magistrate to execute bonds on appeal—Legality.* The order of the Deputy Magistrate, in appeal, directing the execution of a bond under s. 106, Crim. Pro. Code. is illegal, where the convicting Court was a second class Magistrate and, therefore, not a Magistrate who could make an order under that section. **7 M.L.T. 104.**

(420)—*Ss. 106, 349—Conviction by third class Magistrate—Appeal—Recommendation to first class Magistrate as to binding down—Conviction and appeal good—Recommendation bad.*—The accused were convicted by a third class Magistrate, who submitted the record to the Sub-Divisional Magistrate under s. 349, Crim. Pro. Code, in order that they might be bound down under s. 106. The Sub-Divisional Magistrate ordered the accused to be bound down. An appeal was then instituted from the original conviction, and the appellate Court set it aside. *Held*, that the recommendation as to binding down the accused was without jurisdiction, and the action of the Sub-Divisional Magistrate

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under s. 106 was also without jurisdiction; but the original conviction and the appeal against it were good and within jurisdiction. **11 Cr. L.J. 170=5 Ind. Cas. 576.**

(421)—*S. 106--Necessity for proceeding under, where an youthful offender is sentenced to whipping for causing hurt with dangerous weapon.*—Where a boy is sentenced to whipping for causing hurt with a dangerous weapon, a Magistrate could not pass an order under s. 31, Reformatory Schools Act, 1897, directing delivery of the youthful offender to his parents on their giving a bond, but should proceed under s. 106 of the Criminal Procedure Code. **3 L. B.R. 30.**

(422)—*Ss. 106, 120, 123—Security proceedings—Preventive sections—Order for security on expiration of substantive sentence of imprisonment—Order for imprisonment in default of furnishing security.*—A person convicted of criminal intimidation was sentenced to three months' rigorous imprisonment,and was further ordered to give security to keep the peace for six months under s. 106, Crim. Pro. Code. At the time of the sentence, the Magistrate added an order to the effect that, if the accused failed to give the security demanded, he was to undergo six months' simple imprisonment. The case was referred to the Chief Court by the Sessions Judge, as it had been held in a previous case that an order made in similar circumstances for imprisonment in default of furnishing security was premature. *Held*, that it was unnecessary to interfere with the order in revision. (*Per* Irwin, J., *dissenting*). The order for imprisonment in default of furnishing security should be set aside, as such an order cannot properly be passed until the accused has failed to give the security demanded, and therefore not until the time from which the security is to be given has arrived. (*Per* Irwin, J.) The law requires that a person ordered to give security shall be imprisoned until the security is given or the period for which it is demanded expires. The Magistrate's order for imprisonment in default of security was, therefore, strictly speaking, superfluous, but did not call for interference. It is convenient that the warrant to the jail should mention the demand of security and should contain a warning of what the law requires, if the security is not furnished. (*Per* Fox, C.J.) When security to keep the peace is demanded under s. 106, Crim. Pro. Code, an order should be passed at the time of sentence for the accused's detention in simple imprisonment, unless he shall have given the security on or before the expiration of his substantive sentence of imprisonment. *Per* Hartnoll, J. **4 L.B.R. 205=7 Cr. L.J. 472.**

(423)—*Ss. 106, 226, 354– Persons required to execute bond for keeping the peace—Whether, 'persons accused of an offence' are 'accused persons'—Order refusing bail to such persons—Legality.*—An order refusing bail to persons required to execute bonds for keeping the peace under s. 106, Crim. Pro. Code, is wrong. Persons ordered to give security for keeping the peace are not persons "accused of an offence." *Quære.*—Whether such persons are accused persons within the meaning of the Code? **7 M.L.T 104.**

(424)—*Ss. 106, 404, 406 (=Crim. Pro. Code, 1882, ss. 106, 404, 406)—Order to furnish security under s. 106—Appeal.*—An order to furnish security under s. 106 is a separate order and not a part of the sentence. It is not, therefore, appealable. **2 Weir 460.**

(425)—*Ss. 106, 423.*—An order under s. 106 may be set aside on appeal, and the order of the appellate Court setting aside such order is an incidental order within the meaning of s. 423, cl. (3), Crim. Pro. Code. **30 C. 101=6 C.W.N. 422.**

(426)—S. 106—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY. 11 C.W. N. 176=5 Cr. L.J. 19.

(427)—S. 106—*See* PENAL CODE, s. 294, L.B.R. (1893—1900), 50.

(428)—S. 106—*See* SECURITY TO KEEP THE PEACE, 22 P.R. 1901 Cr., 3 P.R. 1890 Cr., 23 P.R. 1888 Cr.

(429)—Ss. 106 and 123 (5)—*See* SECURITY TO KEEP THE PEACE, L.B.R. (1893—1900), 630.

(430)—Ss. 106, 257, 349—*See* SECURITY TO KEEP THE PEACE, 35 C. 1093.

(431)—Ss.106, 349—*See* SECURITY TO KEEP THE PEACE, 21 C. 622.

(432)—Ss. 106, 423—*See* SECURITY TO KEEP THE PEACE, 21 P.R. 1884 Cr

(432-*a*)—S. 106—*See* No. 31, *supra*, and No. 3382, *infra*.

——S. 107, para 1 (=1882, s. 107; 1872, ss. 491, 502; 1861, s. 282); para 3 (=1882, s. 108); and para (2), new.

(433)—*S. 107 (=Crim. Pro. Code, 1872, s. 502)—Scope of the section—Breach of security bond, what amounts to.*—The penultimate clause of s. 502 says: "The commission or attempt to commit or the abetment of any offence whatever and wherever it may be committed is a breach of the bond." Whatever may be the extent of the application of this very wide language, it is intended merely as an illustration of some modes in which the peace may be broken, and is not to be read as a definition of the acts which will give rise to the penalty of the bond so as to confine the liability to occasions on which some actually punishable offence has been committed, or to render it incumbent on the prosecution, in calling upon the defendant to show cause why the penalty should not be levied, to establish the actual commission of an offence. All that it is necessary to show is that some act was done which was likely in its

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consequence to provoke a breach of the peace, and it is not material to consider whether the person bound did the act himself with his own hand or made use of other persons to do it. **2 M. 169.**

(434)—*Ss. 107, 110 (=Crim. Pro. Code, Act X of 1882, ss. 107, 110)—Procedure.*—Where the Police sent a report to the Magistrate accusing some persons of habitually committing extortion, and praying that they may be called on to give security for good behaviour under s. 110 of the Crim. Pro. Code, but the Magistrate, considering the information to be insufficient for such purpose, called on the persons to show cause under s. 107, *held* that the procedure was illegal and that all the persons should not have been dealt with in one proceeding. **A.W.N. 1884, 54.** [*R.*, 9 A. 452=A.W.N. 1887, 111].

(435)—*Ss. 107, 112 (=Crim. Pro. Code, 1882, ss. 107, 112)—Power to take action under s. 107, nature of.*—The power of taking action under s. 107, Crim. Pro. Code, is a discretionary power, and there is nothing irregular in the Magistrate calling for a report from a Subordinate Magistrate before issuing notice under s. 112, especially, if he doubts whether the information before him is reliable. **2 Weir 51.**

(436)—*S. 107—Acts for which security may be required.*—The acts in respect of which security is required must not be acts, the repetition of which may be merely apprehended from past commission of similar acts, but acts from which a reasonable inference can be drawn that the accused *are* likely (not *were* likely) to commit a breach of the peace. The mere fact that certain persons had made preparations for disturbing the public tranquillity on the occasion of the last Muharram festival, would afford no ground, after the festival had passed without the public tranquillity having been disturbed, for inferring that they would be likely to commit a breach of the peace or disturb the public tranquillity at the next Muharram, and would not be a sufficient ground for binding them over. **26 A. 190=A.W.N. 1903, 229,** [*F.*, 6 Bom. L.R. 663].

(437 and 438)—*Ss 107, 118 (=Crim. Pro. Code, 1872, ss. 491 and 497)—Order for security to keep the peace, when can be made.*—The act, of which information is given and in respect of which security is required, must be an act which is shown to be in contemplation at the time of the information given and not merely one, a repetition of which may be apprehended from the past misconduct of the kind without anything further. **2 Weir 49; U.B.R. (1897—1901), Vol. I, 15.**

(439)—*Ss. 107 and 145—Condition necessary for orders under—Revision.*—There should be reliable information as to the probability of a breach of the peace being apprehended, before proceedings either under s. 145 or s. 107 of the Crim. Pro. Code, should be taken.

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The Chief Court may, on revision, set aside an order passed by a Magistrate under s. 145 of the Code of Criminal Procedure, when the Magistrate has not observed the proper procedure in the trial of the case. **115 P.L.R. 1903.** (2 P.R. 1889 Cr., 23 P.R. 1902 Cr.=135 P.L.R. 1902, *F.*)

(440)—*S. 107—Apprehension of breach of the peace.*—A Magistrate is only entitled to bind over a person who, he is informed, is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act which may probably occasion a breach of the peace or disturb the public tranquillity. **1 A.L.J. 418.**

(441)—*S. 107—Conditions for bringing case under section.*—To bring a case within the provisions of s. 107, Crim. Pro. Code, it is not enough to show that there is a great probability of a breach of the peace ensuing; it must further be shown that the party is likely to do illegal acts of violence. **6 Bom. L.R. 862.** (3 C.W.N. 297, *F.*)

(442)—*S. 107.*—In order to place an accused person on security to keep the peace, there must be evidence to show that some specific act likely to amount to, or to occasion, a breach of the peace is contemplated. **U.B. R. (1897—1901), Vol. I, 16.**

(443)—*S. 107—Facts justifying an order for security to keep the peace.*—The facts proved to warrant an inference that the persons in question would be likely to disturb the public peace must be facts of a definite character, and must show that the persons sought to be bound down are individually and not collectively connected with them. No hard and fast rule can be laid down applicable to all cases. Each case must be determined upon its own circumstances. **8 C.W.N. 180.** (9 A. 452, *F*).

(444)—*S. 107—Instigating the throwing of stones at theatre—Proceedings under section.*—The accused, who was the leader of the young men of a village, was supposed to have instigated the throwing of stones at a theatre. He was called upon to furnish security to keep the peace for one year. *Held* that, if there was sufficient evidence to show that the accused had instigated the throwing of stones at the theatre, he should have been prosecuted for any offence which he might thereby have committed. **U.B.R. (1897—1901), Vol. I, 16.**

(445)—*Ss. 107 and 110—Apprehension of using violence to a person.*—When all that the evidence discloses is that a certain person might commit a breach of the peace, by using violence towards a particular person or persons, action should be taken under s. 107 and not under s. 110. **27 A. 92=1 A.L.J. 495.**

(446)—*Ss. 107, 144 and 145—Dispute relating to land likely to cause a breach of the peace—Discretion of Magistrate to proceed either under s. 107 or ss. 144 and 145.*—The mere fact of a

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dispute likely to cause a breach of the peace, being one relating to the possession of land, is not sufficient to preclude the Magistrate from taking proceedings under s. 107. In such cases, the Magistrate is not bound to act only under ss. 144 and 145, but has a discretion to proceed either under those sections or under s. 107. **32 C. 966=10 C.W.N. 288=2 Cr. L.J. 769.** [*R.*, 1 S.L.R. 50 Cr.]

(447)—*Ss. 107, 145—Dispute relating to possession—Order under s. 107, validity of.*—Where a dispute likely to cause a breach of the peace concerning the possession of a land exists, a Magistrate should proceed under s. 145, and not under s. 107. **25 A. 537=A.W.N. 1903, 102.**

(448)—*Ss. 107, 145.*—In a dispute, likely to cause a breach of the peace, relating to the possession of a land, the Magistrate should proceed under s. 145, and not under s. 107. An order under s. 107 binding down one of the parties in such a case is bad. **6 C.W.N. 883.** [*R.*, 35 C. 117=6 C.L.J. 697=6 Cr. L.J. 398].

(449)—*Ss. 107, 145.*—The mere fact of a dispute likely to lead to a breach of the peace being a dispute as to the possession of land, may not be sufficient to preclude the Magistrate from taking proceedings under s. 107. But where the only facts found by the Magistrate were that one of the parties was the aggressor, and that he was trying to disturb the peaceful possession of the other party, *held*, that it was not such as would justify an order under s. 107. *Per* Harington and Bannerji, JJ., Brett, J, *dissenting*. **7 C.W.N. 746.** [*F.*, 10 C.W.N. 288=2 Cr.L.J. 769=32 C. 966; *R.*, 1 S.L.R. 50 Cr.; *R.*, 6 C.L.J. 697=35 C. 117=6 Cr. L.J. 398].

(450)—*Ss. 107, 145.*—Ordinarily where two or more persons are disputing with regard to the possession of certain land, and there is a likelihood of a breach of the peace, the more appropriate procedure is that provided by Ch. XII, Crim. Pro. Code, which deals with disputes as to immoveable property. But where the complainant alleges that the accused has threatened to use violence to him, if he should go upon the land of which he is in possession, the Magistrate is justified in instituting proceedings under s. 107. **9 C.W.N. 551=2 Cr. L.J. 272.**

(451)—*Ss. 107, 145.*—Where the persons bound over consisted of two parties, who were quarrelling over a mango orchard, and one of the parties claimed to be in exclusive possession of the orchard, whereas the other party claimed to be in joint possession of the same, *held*, that s. 145 was applicable, and that the Magistrate ought not to have taken proceedings under s. 107, as there was a dispute concerning land, which was likely to cause a breach of the peace. **1 C.L.J. 682=2 Cr. L.J. 658.**

(452)—*Ss. 107, 145 and 146—Possession of immoveable property, dispute as to—Order requiring security to keep the peace.*—Where a

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Magistrate apprehends a breach of the peace, if an attempt is made by either of the parties in dispute to exercise acts of possession upon the disputed piece of land, the Magistrate should proceed under ss. 145, 146 and not under s. 107. **7 C.W.N. 29.**

(453)—*Ss. 107 and 145—Initiation of proceedings under s. 145—Necessity for making the formal order—Order under s. 145 (1) in a proceeding under s. 107.*—The making of a formal order under sub-s. 1 of s. 145 is absolutely necessary to give the Magistrate jurisdiction to initiate proceedings under the section. Where notice was issued on the parties to show cause why they should not execute a bond to keep the peace, and the Magistrate, when he tried the case, recorded an order in the course of which he stated that, on the facts, the case was one for the application of s. 145, and not of s. 107, and proceeded at once to "bind down" the first party under cl. 6 of s. 145, *held*, that the order was bad and the use of the expression "bind down" was not correct. **30 C. 443=7 C.W.N. 174.** [*F.*, A.W.N. 1904, 234=27 A. 296; *R.*, 25 A. 537].

(454)—*S. 107—Presumption under section—Past actions.*—S. 107, Crim. Pro. Code, presupposes that the person sought to be put upon a rule of bail *is* likely (not *was* likely) to commit a breach of the peace; and it cannot be presumed from the fact that a person has done a wrongful act in the past that he is likely to do the same again. **6 Bom. L.R. 663.** (26 A. 190, *R.*).

(455)—A presumption as to future probable conduct may often, though it cannot always necessarily, be drawn from past actions. **U.B. R. (1897—1901), Vol. I, 16.**

(456)—*S. 107—District Magistrate visiting the place after dispute concerning it has arisen—Competency to hear proceeding under s. 107 arising out of such dispute—Transfer of proceedings—Nature of proceedings under section—Threats of violence, if amount to breach of the peace.*—Where the District Magistrate visited a place, where a rival market was being started, after a dispute concerning it has arisen, to enquire into the facts and to take other steps to prevent a breach of the peace, these circumstances might afford a good reason for his transferring the proceedings under s. 107 to another Magistrate, but it would not be a sufficient ground for transferring the case to another District. Threats of violence are sufficient to indicate an intention to commit a breach of the peace. The fact that a breach of the peace was averted by the precautionary measures taken by the authorities is no ground for the discharge of a person from liability to be bound over to keep the peace. The object of s. 107 is to restrict the initiation only of proceedings against persons residing out of the jurisdiction of the District Magistrate, and not

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to restrict his power to transfer such proceedings, after initiation, to a Subordinate Magistrate. (23 C. 300, 23 C. 442, *Dist.*; 8 C. 851, 22 C. 898, *R.*; 24 A. 151, *F*). [*R.*, 2 C.L.J. 614, 10 C.W.N. 1095]. The proceedings under s. 107 being intended to be precautionary and not punitive, excessive security should not be required. **31 C. 350.**

(457)—*S. 107—Proceedings under the section —Jurisdiction of Magistrate to remand person into custody till the completion of enquiry.*—Only in the special circumstances referred to in cls. (3) and (4) of s. 107, does the law empower a Magistrate to detain a person against whom proceedings have been instituted under s. 107, in custody until the completion of the enquiry. **32 C. 80=8 C.W.N. 779.**

(458)—*S. 107—Security to keep the peace—Measurement of land by co-owner—Bengal Tenancy Act, VIII of 1885, ss. 90, 188.*—Where one of several co-sharer landlords sought to make a measurement of lands contrary to the provisions of ss. 90 and 188, Bengal Tenancy Act, the other co-sharer landlords would be justified in objecting; where no force has been used by them, they ought not to be bound to keep the peace under s. 107, Crim. Pro. Code, inasmuch as any likelihood of a breach of the peace was really due to the action of the co-sharer. **9 C.W.N. 618=2 Cr. L.J. 338.**

(459)—*S. 107—Resistance offered by a* dur-putnidar *to the purchaser from the* putnidar—*Regulation VII of 1819, ss. 11 and 15.*—Where everything has been done by the Revenue authorities and the Zemindar to give possession to a purchaser of a *putni* taluq under Reg. VIII of 1819, *held*, that the act of a *dur-putnidar* in continuing to collect the rents from the raiyats was wrongful and he was rightly bound down to keep the peace under s. 107, as his act was likely to cause a breach of the peace. As the effect of the *putni* regulation was to render any such acts unlawful, until such time as the setting aside of the sale, the mere fact that the *dur-putnidar* had brought a suit to set aside the sale would not make any difference. **9 C.W.N. 792=2 Cr. L.J. 415.**

(460)—*S. 107—Grantee of zemindar in possession of property—Zemindar's interference with his possession—Resistance to such interference—Order for security to keep the peace.*—A zemindari village was in the possession of the accused as grantee thereof from the zemindar and the ryots in the village had previously attorned to him and had been paying rents to him, having executed *muchilikas* in his favour. The agent of the zemindar, attended by a body of men, came to the village for the express purpose of ousting him by inducing the tenants to break their engagements with him and to make them go over to the zemindar and execute *muchilikas* and pay rents to the latter. The agent was asked by the accused to leave the village and desist from inciting the tenants to break their contracts with him in a threatening manner. *Held*, that the agent was acting illegally and that the conduct of the accused could afford no ground for binding him to keep the peace. **14 M.L.J. 491.**

(461)—*S. 107 (=Crim. Pro. Code, 1872, s. 491)—Taking of evidence.*—The evidence as to the likelihood of a breach of the peace, referred to in the section, should be taken before the Magistrate and in the presence of the parties concerned. **Colm. Dig. Cr. 15 of 1874.**

(462)—*Ss. 107, 117—Security to keep the peace—Evidence of general repute—Admissibility.*—An enquiry in a proceeding for security to keep the peace must be made in the same way as in a trial in a summons case. The finding must be based on legal evidence. It is only in the case of a person who is an habitual offender, and is called upon to furnish security for good behaviour that the fact of his being a habitual offender may be proved by evidence of general repute. This cannot be done in a case where a person is called upon to furnish security to keep the peace. **25 A. 273.**

(463)—*Ss. 107 and 117 (4)—Security to keep the peace—Joint inquiry—Association—Persons acting as servants, whether liable to be bound down.*—Where all the acts alleged against certain persons, against whom a joint inquiry under s. 107 of the Code was instituted, were found to have been done by them for the benefit of their common master, *viz.*, with a view to extort *kabuliyats* at enhanced rates from his tenants. *Held* (*Henderson, J., dissentiente*), that, although each of the acts alleged was not done by all of them together, yet they were associated together within the meaning of s. 117, sub-s. (4), so as to justify a joint inquiry. *Held*, further, that they could be proceeded against under s. 107 of the Code, notwithstanding that the acts imputed to them were committed by them, not as individual members, but as servants of another person. **9 C.W.N. 898=1 C.L.J. 616=2 Cr. L.J. 554.** [*R.*, 5 C.L.J. 231=11 C.W.N. 472=5 Cr. L.J. 197].

(464)—*Ss. 107 and 144 (=Crim. Pro. Code, 1882, ss. 107, 144).*—*Held*, no one is entitled to molest others in the orderly and decent exercise by them of their religion, in the edifices of religion, in private houses, or in such public places as the Magistrate permits. **S.C. 77, Oudh.**

(465)—*Ss. 107, 147 (=Crim. Pro. Code, 1882, ss. 107 and 147)—Jurisdiction of Magistrates.*—The jurisdiction vesting in Magistrates under Chap. XII (s. 147) does not necessarily oust the jurisdiction vesting in them under Chap. VIII (s. 107), Crim. Pro. Code. **2 Weir 50.**

(466)—*Ss. 107 (2), 192—Transfer by a District Magistrate after taking cognizance of a proceeding for security to keep the peace against a person not within his district.*—Where proceedings for security to keep the peace have

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once been instituted before a District Magistrate against a person not resident within the District, the District Magistrate is not precluded from transferring the case to a Magistrate subordinate to him, who is otherwise qualified to complete the proceedings. **24 A. 151.** [*F.*, 31 C. 350, S.L.R. (August 1907), 2 Cr.; *R.*, 10 C.W.N. 1095].

(467)—*Ss. 107, 406 and 438—Appeal from orders to keep the peace.*—An appeal is given from orders requiring security for good behaviour under s. 406. There is no such appeal in case of orders to keep the peace. The District Magistrate might, if he considered the case a proper one, make a reference to the High Court under the provisions of s. 438 of the Code. **32 C. 948=9 C.W.N. 860=2 Cr. L.J. 550.**

(468)—*Ss. 107, 537—Misjoinder of parties and charges.*—The main principles applicable to a criminal trial regarding joinder of charges and the joint trial of accused persons are also applicable to inquiries under s. 107. Where both the parties to a proceeding under s. 107 were tried together, some of them having been examined as witnesses also, *held*, that there was a misjoinder of parties, and s. 537 did not cure the defect. **8 C.W.N. 180.** (14 C. 358, 5 C.W.N. 866=25 M. 61, *R.*). [*R.*, 9 C.W.N. 898=1 C.L.J. 616=2 Cr. L.J. 554, 5 C.L.J. 231=11 C.W.N. 472=5 Cr. L.J. 197].

(469 to 472)—Ss. 107, 117, 119, 250 and 560 —*See* COMPENSATION, 37 P.R. 1884 Cr., 33 P.R. 1902 Cr., 9 P.L.R. 1903, 16 P.R. 1893 Cr., 4 P.R. 1896 Cr.

(473 to 476)—Ss. 107, 144, 145, 147—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 11 C.W.N. 176, 7 C.W.N. 142, 3 C.W.N. 463, 25 C. 559, 23 C. 557.

(477)—S. 107—*See* EUROPEAN BRITISH SUBJECT, 1 L.B.R. 275.

(478)—Ss. 107, 117, 118—*See* EVIDENCE. 9 A. 452.

(479)—Ss. 107, 108, 110, 117 (4)—*See* JOINDER OF CHARGES, 4 L.B.R. 46=6 Cr. L.J. 284.

(480)—Ss. 107, 112—*See* JOINT TRIAL. 9 A. 452.

(481)—Ss. 107, 110, 112—*See* NOTICE, 30 M. 282=2 M.L.T. 183=5 Cr. L.J. 397.

(482)—Ss. 107, 125, 439—*See* SECURITY PROCEEDINGS, A.W.N. 1905, 143=2 Cr. L. J. 335.

(483)—S. 107—*See* SECURITY TO KEEP THE PEACE, 1 P.R. 1877 Cr., 13 P.R. 1889 Cr., 21 P.R. 1888 Cr., 6 B.H.C. Cr. 1, A.W.N. 1881, 152.

(484)—Ss. 107 (1), 90, 145 (1, 4, 5, 6).—*See* SECURITY TO KEEP THE PEACE, 1 C.L.R. 48.

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(485)—Ss. 107 (1), 110, 112, 117 (1, 2 and 3)—*See* SECURITY TO KEEP THE PEACE, 6 A. 132.

(486)—Ss. 107, 117—*See* SECURITY TO KEEP THE PEACE, 64 P.R. 1887 Cr.

(486-*a*)—Ss. 107, 117, 119, 250—*See* SECURITY TO KEEP THE PEACE, 37 P.R. 1884 Cr.

(487)—Ss. 107, 118—*See* SECURITY TO KEEP THE PEACE, 25 C. 798.

(488)—Ss. 107, 118, 123—*See* SECURITY TO KEEP THE PEACE, 4 M.H.C. App. 38.

(489)—Ss. 107, 118, 514—*See* SECURITY TO KEEP THE PEACE, 9 C.L.J. 296.

(490)—Ss. 107, 119, 437—*See* SECURITY TO KEEP THE PEACE, 149 P.L.R. 1905.

(491)—Ss. 107 (1), 124, 125—*See* SECURITY TO KEEP THE PEACE, 10 C.L.R. 335.

(492)—Ss. 107, 144—*See* SECURITY TO KEEP THE PEACE, 10 P.R. 1876 Cr.

(493)—Ss. 107, 145—*See* SECURITY TO KEEP THE PEACE, 3 C.W.N. 297.

(494)—Ss. 107, 514, 515—*See* SECURITY TO KEEP THE PEACE, 13 C.W.N. 555=36 C. 562=9 C.L.J. 296.

(495)—Ss. 107 (1), 554—*See* SECURITY TO KEEP THE PEACE, 11 B.H.C. 170.

(496)—S. 107—*See* SUMMONS, 10 C.L.R. 430.

(496-*a*)—S. 107—*See* Nos. 112, 241, 368, *supra*, and Nos. 777, 2465, 2888, 3383, 3501, *infra*.

——S. 108 (=New).

(497)—Ss. 108 and 118—*See* SECURITY FOR GOOD BEHAVIOUR, 34 C. 991=6 C.L.J. 699=11 C.W.N. 1050=6 Cr. L.J. 297.

(497-*a*)—S. 108—*See* No. 479, *supra*.

——S. 109 (=1882, s. 109; 1872, ss. 504, 515; 1861, s. 295).

(498)—*S. 109—Jurisdiction of the Magistrate under the section—Residence of the accused.*—It is not necessary that a person, against whom proceedings under s. 109 have been taken, should have a residence within the jurisdiction of the Magistrate who is asked to exercise the powers conferred under s. 109, Crim. Pro. Code. **2 Weir 53.**

(499)—*Ss. 109 and 110 (=Crim. Pro. Code, 1882, ss. 109, 110)—Powers of Magistrates under.*—S. 109, Crim. Pro. Code, confers powers for the summary disposal of cases of vagabondism, where sturdy rogues are found lurking about, and s. 110 gives a preventive, not a punitive, power, and should be used only by the Deputy Commissioner himself or by a specially qualified and careful officer vested by Government with power under the said section. **S.C. 73, Oudh.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(500)—*S. 109 (b)—Security for good behaviour from one who has "no ostensible means of subsistence."*—The fact that a man does no work does not necessarily mean, what the law requires, that he has no ostensible means of subsistence. **5 C.W.N. 28.**

(501)—*Ss. 109, 110 (=Crim. Pro. Code, 1882, ss. 109, 110).*—Where a member of a gang of Yerukalas was asked to furnish security for good behaviour, on the ground that he had no ostensible means of livelihood and that his looks pointed to his having no settled abode or livelihood, *held*, that the order was not proper. **2 Weir 53.**

(502)—*S. 109 (=Crim. Pro. Code, 1861, ss. 295 and 296)—Security for good behaviour—Separate proceedings—Amount of security—Discretion of Magistrate.*—Separate proceedings should be instituted against each person charged under s. 295, Crim. Pro. Code, 1861, unless there is such a connection between the parties as may indicate the necessity of the contrary course. **2 Weir 51.** [*F.*, 1 Weir 52=4 M.H.C. App. 46].

(503)—*Ss. 109, 110.*—There must be separate proceedings in security cases against each accused person. **L.B.R. (1872—1892), 421.**

(504)—*S. 109 (= Crim. Pro. Code, 1861, s. 296)*—Separate proceedings should be instituted against each person charged under s. 296, unless there is association between them which would justify a contrary course. The power given by s. 296 is one that should be exercised discreetly, and, in fixing the amount of security, the Magistrate should consider the station in life of the person concerned, and should not go beyond a sum for which there is a fair probability of his being able to find security. The imprisonment is provided as a protection to society against the perpetration of crime by the individual, and not as a punishment for a crime committed, and, being made conditional on default of finding security, it is only reasonable and just that the individual should be afforded a fair chance at least of complying with the required condition of security. **2 Weir 52=4 M.H.C. App. 46.**

(505)—*S. 109.*—A security order should be in an amount which the accused may be reasonably expected to be able to furnish. **L.B.R. (1872—1892), 422.**

(506)—*Ss. 109, 110—Proceedings under—Ordinarily not to be instituted immediately after release of person from jail.*—It is not possible to lay down any definite limit of time within which proceedings under s. 109 or s. 110 should not be instituted against a person released from imprisonment, either under one of those sections or under sentence for a substantive offence; but sufficient time should be given to allow the accused a chance of reformation. **U.B.R. (1897—1901), Vol. I, 22.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(507)—*S. 109 (=s. 109 of the Code of 1882)—Accused being a gambler, if sufficient for proceeding under.*—The mere fact that an accused gambles and smokes opium is not, in the absence of previous bad conduct, sufficient ground for requiring him to give security for good behaviour. **L.B.R. (1872—1892), 246.**

(508)—*Ss. 109 and 110—Fresh security, when can be demanded—New proof.*—Fresh security could not be demanded without fresh proceedings. **U.B.R. (1897—1901), Vol. I, 20, 26.**

(509)—*Ss. 109, 110.*—After the expiration of a term of security, some new proof of bad livelihood or of the fact that the person is not capable of following any honest calling, is necessary before fresh security may be demanded. **L.B.R. (1872—1892), 420.**

(510)—*Ss. 109 and 110—Liability of sureties under.*—Sureties cannot be required each to pay the full amount of the bond. **U.B.R. (1897—1901), Vol. I, 20, 26.**

(511)—*Ss. 109, 110.*—There is only one penalty of a bond. The principal is bound in this amount, and, if he has to furnish sureties, they are bound for the same amount. They may be jointly and severally liable for it or may be each liable for a part. **U.B.R. (1897—1901), Vol. I, 24, 26.**

(512)—*Ss. 109, 110—Mode of security to be taken from the accused.*—If any security is taken, the accused must be ordered to execute his own bond as well as furnish securities. **L.B.R. (1872—1892), 421.**

(513)—*Ss. 109, 110.*—If a security order is made under the above sections, the accused must be ordered to execute his own bond as well as furnish securities. **L.B.R. (1872—1892), 422.**

(514)—*Ss. 109, 110—Order under s. 110 during continuance of an order under s. 109, validity of.*—As ss. 109 and 110 have the same object, an order under s. 110 is not valid during the continuance of an order under s. 109. **8 C.W.N. 543.**

(515)—*Ss. 109, 110, 112 (=Crim. Pro. Code, 1882, ss. 109, 110 and 112)—Proceedings under—Duty of Magistrate.*—A Magistrate proceeding under ss. 107, 109, 110, Crim. Pro. Code, 1882, is bound to follow strictly the procedure laid down in s. 112 of the Code and the following sections. **L.B.R. (1872—1892), 398.**

(516)—*Ss. 109, 110, 112—Difference between ss. 109 and 110 pointed out—Errors in procedure.*—Where the accused was sent up being charged under s. 110, and the Magistrate sanctioned his prosecution under s. 109, and under s. 112 summarized the information as follows:—"No ostensible means of subsistence, association with bad characters, and habitual stealing," *held*, that the Magistrate ought to have kept to s. 110, Crim. Pro. Code, in his order

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

under s. 112, in view of the information about the habitual stealing. *Held*, also, that, if the evidence failed to establish this, a final order could have been passed under s. 109. If the order under s. 112 is made under s. 109, a final order cannot be made under s. 110. **U.B.R. (1897—1901), Vol. I, 24.**

(517)—*Ss. 109, 110 and 117—Proceedings under ss. 109 and 110—Separate trial.*—Under s. 117, a person called upon to give security under s. 109 and another under s. 110, cannot be dealt with in one and the same enquiry, each section dealing with a different matter. Hence, proceedings under ss. 109 and 112 should not be joined with those under ss. 110 and 112. **8 O.C. 91.**

(518)—*Ss. 109, 118—Order under—Subsequent conviction—Order for fresh security—Legality—Security for good behaviour.*—In this case, the accused was ordered to enter into a bond in the sum of Rs. 50, with three sureties, to be of good behaviour for one year. Soon after the furnishing of the security, the accused was convicted under s. 34, Police Act, and was fined Rs. 2. The Magistrate, thereupon, ordered the accused to be rigorously imprisoned for the remainder of the term of security, or till he furnished fresh security. and realized Rs. 50 from each of the sureties. *Held*, that the order committing the accused to prison was illegal. *Held, also*, that, under the above circumstances, the full amount of the bond should not have been recovered. **U.B.R. (1897—1901), Vol. I, 26.**

(519)—*Ss. 109, 123 and 397—I.P.C., s. 379—Concurrent sentence—Consecutive sentences.*—The accused was proceeded against under s. 109, Crim. Pro. Code, and sentenced under s. 123 of the Code to rigorous imprisonment for nine months in default of furnishing security for good behaviour, on the 6th July, 1909. He was then tried for the offence of theft committed by him in November, 1908, and was, on the 17th August, 1909, sentenced to suffer rigorous imprisonment for three months: the second sentence was directed to take effect on the expiry of the first sentence. *Held*, that the two sentences could not run consecutively, but must run concurrently. **12 Bom. L.R. 129.**

(520)—*Ss. 109, 110 (=Crim. Pro. Code, 1882, ss. 109, 110).*—Distinction between ss. 109, 110, Crim. Pro. Code—*See* L.B.R. (1872—1892), 420.

(521)—Ss. 109 and 239—*See* JOINT TRIAL, Rat. Un. Cr. C. 556.

(522)—Ss. 109, 435 (1 to 3)—*See* PRACTICE AND PROCEDURE, 7 M.H.C. App. 23.

(523)—Ss. 109, 118, 513—*See* SECURITY FOR GOOD BEHAVIOUR, Rat. Un. Cr. C. 671.

(524)—Ss. 109, 122, 125—*See* SECURITY FOR GOOD BEHAVIOUR, 1 C.W.N. 394.

(524-*a*)—S. 109—*See* Nos. 29, 299, *supra*.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

——**S. 110 (=1882, s. 110).**

(525)—*S. 110—Applicability of, and enquiries under.*—The above section can be applied only to the class of persons described therein. An enquiry in a security case under this section must be tried as a warrant case. **L.B.R. (1872—1892), 421.**

(526)—*S. 110—Applicability of, to person combining for cheating and bullying.*—S. 110 might be used against persons combining together for purposes of cheating and bullying. **4 Bom. L.R. 38 (41).**

(527)—*S. 110—Scope of.*—The fact that the accused has been arrested on suspicion of the commission of a dacoity and was released does not justify an order for security under s. 110, Crim. Pro. Code. **L.B.R. (1872—1892), 422.**

(528)—*S. 110—Security for good behaviour—Residence of sureties.*—It is in the power of the Court, in ordering securities to be given, to assign some geographical limit within which such sureties must reside. **24 A. 471.** (20 A. 206, *R.*) [*R.*, 1 S.L.R. 46 Cr., 11 O.C. 267].

(529)—*S. 110—Taking of security without personal bonds—Legality.*—There is no provision of law empowering a Court to call upon a person to provide sureties for good behaviour without his giving his own bond at the same time. **27 A. 262=1 A.L.J. 593=A.W.N. 1904, 230.**

(530)—*S. 110—Imprisonment in default of giving security—Allowing time to accused to reform himself on release—Whether two months after release from jail sufficient to give accused opportunity to show his willingness to adopt honest livelihood.*—In the case of a person imprisoned for three years, in default of finding security to be of good behaviour, a period of under two months from his release from jail is not a sufficient time to give an opportunity of showing his willingness to adopt an honest livelihood. **A.W.N. 1905, 34.**

(531)—*S. 110—Evidence necessary to support an order for security.*—In the absence of evidence of any complaint having been made to the police or to a Magistrate against a person called upon to find security to be of good behaviour, or that he had been arrested on a charge of having committed any offence, the facts that certain witnesses stated that he bore a bad character and that he was said by the police to have been suspected in several cases are not sufficient to warrant an order under ss. 110 and 118 being passed against him. **A.W.N. 1905, 34.**

(532)—*Ss. 110 and 118—Security for good behaviour—Successive orders, without giving sufficient* locus penitentiæ—*Legality.*—The petitioner who had undergone one year's imprisonment on failure to furnish security was, about 15 months after his release, again ordered to furnish security to be of good behaviour for one

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year. *Held*, that the order should be set aside as the petitioner had not had a sufficient *locus penitentiæ*, and the evil reputation, which he had before, permeated the evidence of many of the witnesses. **31 C. 783=8 C.W.N. 909.**

(533)—*Ss. 110, 118—Evidence necessary.*—The law requires that there should be evidence forthcoming, before any man can be called upon to furnish security for good behaviour, and that evidence must establish one or more points set out in s. 110. When the evidence against certain persons consisted mainly of the fact that they were Mewatis of a particular place, and that the Mewatis of that place were looked upon generally and collectively by the other inhabitants of the neighbourhood as bad characters and dangerous persons, *held*, that such evidence was not enough to support an order under s. 118, in the absence of specific evidence against each of the accused individually. **2 A.L.J. 174=A.W.N. 1905, 41.**

(534)—*S.110--Evidence of general repute, admissibility of.*—Vague and general statements that a man is a habitual offender is not sufficient evidence on which an accused person is liable to be bound down under s. 110. The evidence of the repute of an accused person must be the evidence of persons who are speaking to matters within their personal knowledge, and not from mere hearsay. **1 A.L.J. 616.**

(535)—*S. 110.*—Under the terms of s. 110, the reputation which the person is found to have must necessarily mean the reputation of the person in the neighbourhood in which he resides and the persons residing in that locality could best speak to his character. **27 C. 993=5 C.W.N. 29.**

(536)—*S. 110—Charge to be proved by definite evidence.*—The charge under cl. (*f*) of s. 110 cannot be proved by general reputation, but must be proved only by definite evidence. **29 C. 779.**

(537)—*Ss. 110, 117.*—The provision that, for the purpose of s. 117, Crim. Pro. Code, the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise, intends that the Magistrate should use a very large discretion as to the nature of the evidence he may admit in proceedings under s. 110 and other sections of the Code. **A.W.N. 1904, 140.**

(538)—Rumours that a man is of a bad character is not evidence of general repute Where the evidence for the defence to the effect that the accused is a man of good character is as weighty as, or weightier than, the evidence for the prosecution, it could not be held as proved that the accused is by general repute a bad charac ter. **A.L.J. 611.**

(539)—*S. 110—Admission of accused not sufficient to prove him to be habitual thief.*—A Magistrate called upon an accused to show cause why he should not furnish security for

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his conduct. The accused said he could furnish security, but stated that he was a bad character and had been in jail. On this evidence, the Magistrate ordered the accused to furnish security. *Held* that the Magistrate's order should be set aside, because, as the record stood, there was merely the accused's admission that he was a bad character and that he had been in jail, but he was nowhere shown that he was an habitual thief. **3 Bom. L.R. 269.**

(540)—*S. 110—Security for good behaviour from habitual offenders--Evidence required to prove the charge.*—In order to sustain a charge under s. 110 that certain persons are thieves and dacoits by habit and that they are so dangerous to the community as to render them being at large without security hazardous to the community, there must be proof of specific acts to show that these men, to the knowledge of any particular individual, are dangerous and desperate characters. It is not sufficient that respectable pleaders and Honorary Magistrates have deposed that they have heard it stated that they were thieves and dacoits by habit, when they have no personal knowledge in the matter, and when they cannot mention from whom they have derived their information. **29 C. 779.** [*F.*, 3 Cr. L.J. 290=9 O.C. 69].

(541)—*S. 110.*—In order to sustain an order under s. 110 against a person who is alleged to have been by habit a thief, the evidence must be of such a nature as would lead to a reasonable and definite ground for coming to the conclusion that he is an habitual thief. **8 C.W.N. 543.**

(542)—*S. 110 (=Crim. Pro. Code, 1882, s. 110).*—The fact that a person was convicted on a former occasion or occasions will not justify his being treated as a habitual offender under Ch. VIII, Act X of 1882, unless it be shown that, since his release, he has indicated an intention of returning to a dishonest course. Ch. VIII, Crim. Pro. Code, 1882, is not intended to enable a Magistrate to punish a person who has been tried on a specific charge and acquitted, but whom the Magistrate nevertheless believes to be guilty. **S.C. 70, Oudh.**

(543)--*S. 110—Security for good behaviour—Persons not residing within Magistrate's jurisdiction.*—It is only when a person within the limits of a Magistrate's jurisdiction, that is, who is residing within the limits of such jurisdiction is found to be a person of the description mentioned in s. 110, that the Magistrate can take action; and it is not contemplated that the Magistrate, in such a case, should issue a warrant so as to pursue the person concerned into another jurisdiction. **27 C. 993=5 C.W.N. 29.** [*F.*, 12 P.R. 1901 Cr.=91 P.L.R. 1901].

(544)—*S. 110—Jurisdiction of Magistrate—Person owning a residence and occasionally visiting the place—Institution of proceedings under the section at that place—Validity.*—A

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Magistrate has jurisdiction to take proceedings against a person under s. 110, when such person has a residential house and occasionally resides for the purpose of business within the local limits of the Magistrate's jurisdiction, and when the acts attributed to him are acts done by him while residing at that place. 31 C. 419.

(545)—*S. 110—Abetment of commission of offence involving a breach of the peace by a Zemindar.*—Where a Zemindar abets other people to commit offences involving a breach of the peace, in order to compel the raiyats to pay him enhanced rents, *held*, that the conduct of the Zemindar would come under s. 110 (*a*) of the Code, although the Zemindar is a person of considerable means. **31 C. 419.**

(546)—*S. 110 (=Crim. Pro. Code, 1882, s. 110)—Jurisdiction of first class Magistrate.*—It is not open to a Magistrate of the first class, who is not a District or Sub-Divisional Magistrate, unless he is specially empowered in that behalf, to take up cases under s 110, Crim. Pro. Code. **L.B.R. (1872—1892), 239.**

(547)—*S. 110—Imprisonment in default of furnishing security.*—An order for imprisonment, in default of furnishing security, is not a sentence of imprisonment. **U.B.R. (1897—1901), Vol. I, 375.**

(548)—*S. 110—Separate trial—Conduct before previous bond.*—In cases under s. 110, Crim. Pro. Code, each accused is entitled to an entirely independent examination of his own case. To take up facts, against an accused, of dates older than the previous security bond, is against law and justice, and cannot be made the ground for fresh proceedings. **4 Ind. Cas. 432 Cr.=25 P.W.R. 1909 Cr.=4 P.R. 1909=149 P.L.R. 1909.**

(549)—*Ss. 110, 112, 117 and 537—Trial of habitual offenders in same enquiry.*—A Magistrate cannot, under s. 117, cl. 4, deal with two or more persons, where they have not associated with themselves as habitual offenders, in the same enquiry, and he must deal with them, in separate enquiries. But if, in the absence of any information of their having been associated together, he does try them in the same enquiry, this illegality is not cured by s. 537 of the Code. **5 O.C. 243.**

(550)—*Ss. 110, 112, 190, 191—Transfer on the ground of Magistrate acting on private information.*—The language of ss. 110, 112, does not place any limit as to the sources from which a Magistrate may derive his information regarding the accused, and these sections are not controlled by ss. 190, 191, Crim. Pro. Code. That the Magistrate is acting on private information cannot, therefore, be a ground for applying for the transfer of such proceedings. **27 A. 172=1 A.L.J. 685=A.W.N. 1904, 206.**

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(551)—*S. 110*—Evidence of repute is not admissible in cases coming under cl. (*f*), s. 110, Crim. Pro. Code. **5 C.W.N. 249.** [*F.*, 9 O.C. 69=3 Cr. L.J. 290=11 C.W.N. 789.]

(552)—*Ss. 110, cl. (f), 117—Certain conduct held insufficient to justify demanding of security.*—Where the imputations were that the petitioners had, from some time past, made themselves very objectionable in the neighbourhood and that they had been annoying the villagers in various ways, by kicking at their doors at nights or throwing brickbats on the roof and annoying respectable women, *held*, that these imputations, even if proved, do not constitute conduct so as to render the petitioners liable to give security for good behaviour by reason of their being so desperate and dangerous as to render their being at large without security hazardous to the community. **5 C.W.N. 249.** [*R.*, 11 C.W.N. 789.]

(553)—*Ss. 110, 118—Enquiry as to sufficiency of surety, by whom to be made* —Where a person called upon to furnish security under s. 118 offers the security demanded, the Magistrate who has passed the order is not competent to delegate to another officer the decision of the sufficiency of the security, and to act upon his report. **25 A. 272=A.W.N. 1903, 36.** (A.W.N. 1898, 154). [*F.*, 1 A.L.J. 601=27 A. 293=A.W.N. 1904, 231, 18 P.R. 1906 Cr.=14 P.L.R. 1907=5 P.W.R. 1907=5 Cr. L.J. 148, 2 S.L. R. 11 Cr.].

(554)—*Ss. 110, 118—Delegation of functions, to subordinate officer to enquire into sufficiency of security.*—A Magistrate, who has passed an order under s. 118, requiring from a person security for good behaviour, cannot delegate his functions to a subordinate to enquire into the sufficiency or otherwise of the security tendered and decide the question on the report of the subordinate. The Magistrate, who passed the order, should himself make the enquiry and pass a decision as to the sufficiency or otherwise of the security offered. **27 A. 293=1 A.L.J. 601=A.W.N. 1904, 231.** (A.W.N. 1898, 154, 25 A. 272, *F.*). [*F.*, 14 P.L.R. 1907=18 P.R. 1906, Cr.=5 P.W.R. 1907 Cr.=5 Cr. L.J. 148, 2 S.L.R. 11 Cr.].

(555)—*Ss. 110, 122—Refusal to accept surety, grounds for.*—A Magistrate cannot refuse to accept a surety on the ground that he is unfit to control the party ordered to furnish security, or on the ground that he is not resident in the same village. The question in such cases is not whether or not a surety can supervise a person for whom he stands surety, but whether he is a person of sufficient means to warrant his being accepted. **6 C.W.N. 593.** [*R.*, 6 O.C. 199, 35 C. 400=13 C.W.N. 80=8 C.L.J. 243; *Diss.*, 1 S.L.R. 46 Cr.].

(556)—*Ss. 110, 123—Imprisonment in default of security—Period of imprisonment.*—It is not proper for a Court to order the detention of a

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person bound over under s. 123 for a period less than that for which he is called upon to give security. **23 A. 422 = A.W.N. 1901, 114.**

(557)—*Ss. 110, 123, 340—Reference to Sessions Judge under s. 123—Notice.*—A person against whom proceedings are taken under s. 110, or s. 123 is an accused person and has the right to be heard by a pleader. Such a right cannot be exercised by him unless a date is fixed for the hearing, and notice of such date is given. **25 A. 375 = A. W. N. 1903, 79.** (23 C. 493, 27 C. 656, *F*; A.W.N. 1898, 60, 21 A. 107, *R.*). [*R.*, 2 L.B.R. 43].

(558)—*Ss. 110 and 125—Security for good behaviour—Acceptance of security bond by Subordinate Magistrate—Subsequent cancellation of the same by the District Magistrate—Jurisdiction.*—Where, on receiving a police-report that the surety-bond (which had been furnished by a person bound over to be of good behaviour and accepted by the Magistrate) was unsatisfactory, the District Magistrate cancelled such security under s. 125 and made an order requiring fresh security, and directing imprisonment, in default, for the remainder of the term, *held*, that the Magistrate had no jurisdiction to make such an order. **29 C. 455 = 6 C.W.N. 291.**

(559)—*Ss. 110, 437—Discharge by a first class Magistrate of a person asked to furnish security—Power of District Magistrate to institute fresh proceedings.*—Where a Magistrate of the first class discharges a person called upon to furnish security for good behaviour, it is competent to the District Magistrate, after looking through the record, to institute fresh proceedings upon the same facts. **24 A. 148 = A.W.N. 1901, 206.** [*R.*, 2 L.B.R. 80].

(560)—*Ss. 110, 437—Further inquiry in a case under s. 110—Nature of proceedings under s. 110.*—The further inquiry which can be ordered under s. 437 is into a complaint which has been dismissed, or into the case of an accused person who has been discharged. Proceedings under s. 110 cannot be regarded as a case in which any accused person has been discharged, for the terms "accused person" and "discharged" in s. 437 refer to a person accused of an offence, who has been discharged of that offence within the terms of Ch. XIX of the Code. **6 C.W.N. 163.**

(561)—*Ss. 110, 112, 114, 118 (=Crim. Pro. Code, 1882, ss. 110, 112, 114, 118)—Detention pending enquiry.*—The accused was tried at Meerut for murder and acquitted. He was then sent to Delhi, and there committed for trial for murder and acquitted. Then, at the request of the Magistrate at Meerut, in order that proceedings under s. 110, Crim. Pro. Code, might be taken against him, he was sent in custody to that Magistrate, and, pending an enquiry by the police as to his character, he was confined in the lock-up. Sometime after, a Sub-Inspector

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was examined to supply the information required by s. 110, Crim. Pro. Code. That being done, it was ordered that pending further enquiries, the accused should not be released until he gave security in two sureties for Rs. 200 each. *Held* that the detention of the accused under the circumstances was illegal. **A.W.N. 1883, 204.** [*D.*, A.W.N. 1896, 73].

(562)—*Ss. 110 to 118 and 439—Defective notice—Chief Court's power of revision in a pending case and to quash defective proceedings. Held*, that the Chief Court is competent at any stage of a criminal case to interfere, in order to exercise its powers of revision, particularly where the case is of an exceptional nature. So where the proceedings of a Magistrate under s. 110, Crim. Pro. Code, are defective on one or more of the following grounds, the Chief Court has power to quash them at once, as where the accused has already been twice acquitted on similar facts and evidence, and nothing new is urged against him, and the original order is only initialled and not signed by the Magistrate, and neither the amount of security and the period for which it is required, nor the full particulars of the bad livelihood, are mentioned therein. A Magistrate is not justified in issuing unreasonably a warrant for the arrest of an accused person on excessive security, while the accused had reasonable excuse for not attending in obedience to the notice. **17 P.W.R. 1910 Cr.**

(563)—Ss. 110, 117, 118, 406—*See* BUR. ACT I OF 1899, s. 17, 3 L.B.R. 21 = 2 Cr. L. J. 378.

(564)—S. 110—*See* ACCUSED PERSON, 24 P.R. 1903 Cr.

(565)—S. 110, cl. (*f*)—*See* EVIDENCE, 11 C.W.N. 789 = 6 Cr. L.J. 1.

(566)—Ss. 110, 118—*See* HABITUAL OFFENDER, 11 C.W.N. 789 = 6 Cr. L.J. 1.

(567)—S. 110—Joint trial of several persons required to furnish security for good behaviour —*See* JOINDER OF CHARGES, 6 P.R. 1896 Cr.

(568)—S. 110, cl. (*d*)—*See* JOINDER OF CHARGES, 11 C.W.N. 789 = 6 Cr. L.J. 1.

(569)—Ss. 110, 192, 530—*See* MAGISTRATE, JURISDICTION OF, Rat. Un. Cr. C. 838.

(570)—S. 110—*See* PENAL CODE, s. 182, 11 Cr. L. J. 3 = 4 Ind. Cas. 477 = 3 S.L.R. 132 Cr.

(571)—Ss. 110, 113, 537—*See* SECURITY FOR GOOD BEHAVIOUR, A.W.N. 1891, 40.

(572)—Ss. 110, 117, 191—*See* SECURITY FOR GOOD BEHAVIOUR, 29 C. 392 = 6 C.W.N. 595.

(573)—Ss. 110, 117 (1, 2 and 3), 526 (8)—*See* SECURITY FOR GOOD BEHAVIOUR, 19 A. 291.

(574)—Ss. 110, 121, 514—*See* SECURITY FOR GOOD BEHAVIOUR, 21 A. 86.

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(575)—Ss. 110, 122, 122, sub-s. 3, 367 and 424—*See* SECURITY FOR GOOD BEHAVIOUR, 14 C.W.N. 49=37 C. 91=5 Ind. Cas. 29.

(576)—Ss. 110 to 123, 438, 439—*See* SECURITY FOR GOOD BEHAVIOUR, 6 P.W.R. 1907 Cr.=56 P.L.R. 1907.

(577)—Ss. 110, 123, 340—*See* SECURITY FOR GOOD BEHAVIOUR, 27 C. 656.

(578)—Ss. 110, 437—*See* SECURITY FOR GOOD BEHAVIOUR, 27 C. 662.

(579)—Ss. 110 and 439—*See* SECURITY FOR GOOD BEHAVIOUR, 23 P.L.R. 1907.

(580)—Ss. 110 and 498—*See* SECURITY FOR GOOD BEHAVIOUR, 4 N.W.P. 117.

(581)—Ss. 110, 514—*See* SECURITY FOR GOOD BEHAVIOUR, A.W.N. 1906, 13=3 Cr. L.J. 91.

(582)—Ss. 110 and 526—*See* SECURITY FOR GOOD BEHAVIOUR, A.W.N. 1907, 268, 16 A. 9.

(583)—Ss. 110, 123—*See* SESSIONS JUDGE, 27 C. 656.

(583-*a*)—S. 110—*See* Nos. 297, 299, 403, 434, 445, 479, 481, 485, 499, 501, 503, 506, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 520, *supra*, and No. 3579, *infra*.

——S. 112 (=1882, s. 112).

(584)—*S. 112 (=Crim. Pro. Code, 1861, s. 282)—Report of a Subordinate Magistrate—Credible information.*—The report of a Subordinate Magistrate is "credible information" which will justify the issue of a notice to show cause why the person to whom the notice was issued should not give a recognisance to keep the peace. **2 M.H.C. 240.** [*Appl.*, 1 Weir 51; *F.*, 6 B.H.C. Cr. 1].

(585)—*S. 112—Notice under the section without copy of the order.*—Where the requisition contained in the section, with reference to a notice being accompanied by a copy of the order, has not been complied with, the proceedings are invalid. **17 M.L.J. 438=6 Cr. L. J. 332.**

(586)—*Ss. 112, 114 and 115—Application by police for binding over dangerous characters—Procedure.*—Where a general report by the police against a number of persons is made to a Magistrate for the purpose of binding them over, the Magistrate should sift the case against each, and proceed to pass an order against each under s. 112 of the Code. Where a Magistrate, instead of doing this, issued non-bailable warrants wholesale under s. 114 of the Code and they were not accompanied, as required by s. 115, by copies of the order passed under s. 112, *held*, that the proceedings of the Magistrate were illegal. **2 Weir 55.**

(587)—*Ss. 112, 117, 118 (=Crim. Pro. Code, 1882, ss. 112, 117 and 118)—Order to give security for good behaviour.*—A person acquitted on a charge of dishonestly receiving stolen property, should not be ordered to give security under s. 118, Crim. Pro. Code, on the evidence taken on that trial; an order should be made under s. 112 and proceedings held under s. 117 of the Code. The amount of security demanded should be reasonable; and the Court should state whether the imprisonment in default of security is to be rigorous or simple. **S.C. 70, Oudh.**

(588)—*Ss. 112, 117, 118 (=Crim. Pro. Code, 1882, ss. 112, 117, 118)—Order under s. 118, when can be supported.*—An order under s. 118 cannot be supported, if the procedure prescribed by ss. 112, 117 of the Code, is not followed. **2 Weir 56.**

(589)—*Ss. 112, 118—Notice to give security for a certain period—Order to give security for longer period—Validity.*—Where the notice under s. 112, Crim. Pro. Code is to show cause why the defendant should not give security for good behaviour for three months, the order issued under s. 118 cannot require the furnishing of security for more than three months. **26 M. 471=2 Weir 56.**

(590)—*Ss. 112 and 122—Power to reject sureties—Discretion of Magistrate, how to be exercised—Record of reasons—Power of High Court to interfere with the order.*—In determining whether or not a surety is "respectable" within the meaning of that term as used in the order under s. 112, the Magistrate may fairly demand a reasonable degree of social importance and influence, and, if it be found, on proper enquiry, that the income of any surety offered is such as to make it reasonably certain that he does not possess that degree of social importance and influence, such surety may be rejected. What the standard of respectability should be in any particular case must be left to the Magistrate to determine. The Magistrate is justified in using and applying his knowledge of his division when acting under s. 122, and if he knows that the inhabitants generally of a village bear a bad character, he is justified in rejecting as unfit any such inhabitant who may be offered as a surety, provided that he records his reasons for so doing. The duty of the High Court is merely to see that the Magistrate has exercised his authority with reasonable discretion and has infringed no rule of law. **3 S.L. R. 168 Cr.**

(591)—*Ss. 112, 123, 406 (=Crim. Pro. Code, Act X of 1882, ss. 112, 123, 406)—Security—Order by Sessions Court—Appeal—Transfer to District Magistrate.*—Where a Sessions Judge, to whom an appeal was preferred from an order under s. 112 of the Crim. Pro. Code, passed by a Magistrate which the Judge had made absolute with some modification under s. 123, transferred the appeal to the District Magistrate, *held* that the appeal was virtually from an order of the Sessions Judge and that s. 426 did not apply. **A.W.N. 1891, 219.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(592)—Ss. 112, 118 and 439—*See* SECURITY FOR GOOD BEHAVIOUR, 11 P.W.R. 1907 Cr. =5 Cr. L.J. 219.

(593)—Ss. 112, 119 and 427—*See* SECURITY FOR GOOD BEHAVIOUR, 6 O.C. 262.

(594)—Ss. 112, 117 and 242—*See* SECURITY PROCEEDINGS, L.B.R. (1893—1900), 637.

(595)—Ss. 112, 243—*See* SECURITY PROCEEDINGS, 17 M.L.J. 438=6 Cr. L.J. 332.

(596)—Ss. 112, 118, 514—*See* SECURITY TO KEEP THE PEACE, 26 P.R. 1894 Cr.

(597)—Ss. 112 and 122—*See* SURETY, 8 Cr. L.J. 166=1 S.L.R. 46 Cr.

(597-*a*)—S. 112—*See* Nos. 293, 368, 435, 480, 481, 485, 515, 516, 549, 550, 561, *supra*.

——S. 113 (=1882, s. 113).

(597-*b*)—S. 113—*See* No. 571, *supra*.

——S. 114 (=1882, s. 114).

(598)—Ss. 114 and 496—*See* BAIL, 6 C.P. L.R. Cr. 31.

(598-*a*)—S. 114—*See* Nos. 241, 368, 561, 586, *supra*.

——S. 115 (=1882, s. 115).

(598-*b*)—S. 115—*See* No. 586, *supra*.

——S. 116 (=1882, s. 116).

(599)—*Ss. 116 and 121—Scope of section 116—Applicability of s. 205.*—The Code makes a marked distinction between bonds for keeping the peace and bonds for good behaviour, and s. 116 is limited to the former. S. 205 is not applicable to proceedings under Ch. VIII-B. Therefore a person called upon to show cause why he should not be bound over for good behaviour cannot be permitted to appear by an agent. **2 Weir 54.**

——S. 117, paras 1, 2 and 3 (=1882, s. 117); para 4, new.

(600)—*S. 117.*—Under s. 117, Crim. Pro. Code, a Magistrate is bound to inquire into the truth of the information, in the manner prescribed for conducting trials and recording evidence in warrant cases, though the accused may undertake to give security. **1 U.B.R. (1902—1903), Crim. Pro. Code, 1.**

(601)—*S. 117 (=Crim. Pro. Code, 1882, s. 117)—Evidence of general repute.*—Evidence of rumour is mere hearsay evidence of a particular fact. Evidence of repute is a totally different thing. A man's general reputation is the reputation which he bears in the place in which he lives amongst all the townsmen and if it is proved that a man who lives in a particular place is looked upon by his fellow-townsmen, whether they happen to know him or not, as a man of good repute, that is strong evidence that he is a man of that character. On the other hand, if the state of things is that the body of his fellow-townsmen, who know him, look upon him as a dangerous man and a man of bad habits, that is strong evidence that he is a man of bad character. But rumours in a particular place that a man had done particular acts or has characteristics of a certain kind are not evidence of general repute. **23 C. 621.** [*F.*, 1 L.B.R. 71, 1 L.B.R. 90, 23 A.W.N. 181; *R.*, U.B.R. (1897—1901), 228, 10 O.C. 132, 31 C. 783, 10 O.C. 168; *D.*, 12 C.W.N. 299=7 C. L.J. 177].

(602)—*Crim. Pro. Code (1898), s. 117 (3)—Security for good behaviour—Evidence of general repute.*—The power given by s. 110 is an extensive one, and one which requires to be exercised with discretion and with caution. For the purpose of ascertaining whether a person is an habitual offender, evidence of general repute may be accepted. **A.W.N. 1903, 131.** (23 C. 621, *F.*).

(603)—*Ss. 117 and 242—Proceedings under s. 117—Procedure—Failure to conform to provisions of s. 242—Revision.*—A Sub-Divisional Magistrate proceeding under s. 117 as nearly as practicable in the same way as under s. 242, Crim. Pro. Code, has to state to the accused the particulars of the matter against them, and ask them if they could show cause why they should not be required to execute bonds. An order of the Sub-Divisional Magistrate who failed to do so, being irregular, should be set aside. **7 M.L.T. 304.**

(604)—S. 117 (3)—*See* BUR. ACT I OF 1899, s. 17, U.B.R. (1897—1901), Vol. I, 228.

(605)—Ss. 117 (4), 537—*See* JOINDER OF CHARGES, 5 N.L.R. 65=9 Cr. L.J. 560=2 Ind. Cas. 240.

(606)—Ss. 117 and 145—*See* TRANSFER OF CRIMINAL CASES, 2 L.B.R. 80.

(606-*a*)—S. 117—*See* Nos. 297, 462, 463, 470, 478, 479, 485, 486, 486-*a*, 517, 537, 549, 552, 563, 572, 573, 587, 588, 594, *supra*, and No. 1914, *infra*.

——S. 118 (=1882, s. 118).

(607)—*S. 118 (=Crim. Pro. Code, 1882, s. 118)—Order under—Nature of.*—An order under s. 118, Crim. Pro. Code, clearly does not amount to a conviction of an offence. **L.B.R. (1872—1892), 490.**

(608)—*Ss. 118, 120, 123—Order under s. 123, when to be passed.*—S. 120 authorises that the period for which security is required in an order under s. 118 shall commence on the expiration of any sentence which the accused may be sentenced to or undergoing at the time when the order is made. But it is premature and illegal to pass against him an order under s. 123 while such imprisonment lasts. The order under s. 123 should not be passed until the expiry of any term of imprisonment which a person may be undergoing. **4 Bom. L.R. 934.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(609)—*Ss. 118, 123—Order for security for more than one year and imprisonment for two years on failure—Validity.*—Where a Magistrate ordered the accused to give security for a period of more than one year, and by the same order directed that, on failure to give security, he should be imprisoned for two years, *held*, that the order was made without jurisdiction and could not be cured by the District Magistrate reducing the period of security to one year and the period of imprisonment in default of giving security to one year. **2 Weir 57.**

(610)—*S. 118—Excessive security.*—The second proviso to s. 118 is that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive. Where, although upward of two and a half months had elapsed since the date of the Magistrate's order requiring security, the person asked to furnish security had not been able to do so and was in prison, the High Court reduced the amount of the sureties. **23 A. 80.**

(611)—*Ss. 118, 123, 128 (=Crim. Pro. Code, 1882, ss. 118, 123, 128)—Award of imprisonment passed in anticipation of failing to give security —Validity:*—S. 118 does not authorize the award of imprisonment in anticipation of the accused failing to give security. **Rat. Un. Cr. C. 395=Cr. Rg. 52 of 1888.**

(612)—*Ss. 118,123,397 (Crim. Pro. Code, 1882, ss. 118, 123, 397)—Imprisonment in default of giving security—Sentence on offender already sentenced for another offence.*—The imprisonment ordered in default of giving security is not a punishment for another offence. Therefore, when a sentence of imprisonment on conviction for an offence is passed upon a person already imprisoned for default of giving security under s. 123, the commencement of the sentence on the conviction ought not to be postponed until the termination of the imprisonment under the security order. **L.B.R. (1872—1892), 363.**

(613)—*Ss. 118, 123, 406, 439—Appeal or revision from orders requiring security for good behaviour—Irregularity.*—Where a Magistrate, acting under s. 118, Crim. Pro. Code, submitted his order requiring the accused to execute a bond with sureties for confirmation to the Sessions Judge, and the Sessions Judge, before whom the accused did not claim any right of appeal under s. 406, Crim. Pro. Code, confirmed the order, *held*, on revision, that orders under s. 118, Crim. Pro. Code, which embrace orders requiring the confirmation of the Sessions Judge under s. 123 and these not so requiring, being appealable under s. 406, Crim. Pro. Code, to the District Magistrate, the accused should have so appealed, and that, as he had been in no way prejudiced by the order of the Sessions Court, revisional interference was not necessary. **2 O.C. 307.**

(614)—*Ss. 118, 406—Appeal from an order to give security to keep the peace.*—Although s. 406 gives a right of appeal to the District Magistrate from an order to give security for good behaviour, there is no right of appeal from an order to give security to keep the peace. **27 A. 623=A.W.N 1905, 135=2 A.L.J. 716.**

(615)—*Ss. 118, 406 (=Crim. Pro. Code, 1882, ss. 118 and 406)—Appeal from an order under s. 118—Local enquiry.*—A Magistrate hearing an appeal from an order under s. 118, Crim. Pro. Code, made a local enquiry, but did not place on the record the information which he obtained in the course of such enquiry. *Held* that, as there was room to presume that the results of the enquiry would have influenced the mind of the Court either for or against the appellant, there was sufficient ground for ordering a re-hearing of the appeal. **A.W.N. 1896, 73.**

(616)—*Ss. 110, 118 and 437—Discharge—Further inquiry—"Accused person."*—A person against whom proceedings under Chap. VIII of the Crim. Pro. Code, are being taken is an "accused person" within the meaning of the s. 437 of the Code. A person against whom proceedings are taken under s. 110 of the Crim. Pro. Code may be considered to be in the position of an accused from the time that he appears before the Court till the conclusion of the proceedings, and, if not called upon to furnish security, he may be regarded as discharged. If his evidence has been called for and taken as sufficient to justify the Magistrate in declining to take security, he must still be regarded as discharged, and not as "acquitted." It is not desirable that the District Magistrate should exercise the power of revision arbitrarily or harshly in such cases, except under the safeguards provided by s. 437. If further evidence is forthcoming, it may just as well be taken and considered in the same proceedings, instead of waiting until further information is had. This constitutes the "further inquiry" contemplated by that section, and a necessary ingredient is that fresh evidence is forthcoming on the part of the prosecution. That another Magistrate should hear and decide the matter on the same evidence is not what is contemplated. **20 P.L.R. 1904.**

(617)—*Ss. 118 (3) and 562—Security proceedings—Minor need not execute personal bond —Burma Gambling Act, s. 17.*—Under cl. (3) of s. 118, Crim. Pro. Code, the personal bond of a minor is not required. It is sufficient if the bond is executed by his sureties. The provisions of s. 118, cl. (3) are generally applicable to bonds given in criminal cases, and would apply to bonds given under s. 562, Crim. Pro. Code and under s. 17 of the Burma Gambling Act. **2 L.B.R. 168.**

(618)—Ss. 118, 406—*See* BUR. ACT I OF 1899, s. 17, U.B.R. (1897—1901), Vol. I, 227.

(619)—Ss. 118 and 123—*See* APPEAL, 23 P.R. 1886 Cr.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(620)—S. 118—*See* PENAL CODE, s. 75, L.B.R. (1872—1892), 490.

(621)—Ss. 118, 123 (1 to 6 except 4), 438 (1) —*See* REFERENCE TO HIGH COURT, 23 C. 249.

(622)—Ss. 118, proviso (3), 562—*See* SECURITY FOR GOOD BEHAVIOUR, 4 L.B.R. 12=6 Cr. L.J. 123.

(623)—S. 118—*See* SURETY, 18 P.R. 1906 Cr.=14 P.L.R. 1907=5 Cr. L.J. 148=5 P.W.R. 1907 Cr.

(623-*a*)—S. 118—*See* Nos. 297, 438, 478, 487, 488, 489, 497, 518, 523, 532, 533, 553, 554, 561, 562, 563, 566, 587, 588, 589, 592, 596, 616, *supra*, and No. 2927, *infra*.

——S. 119 (=1882, s. 119).

(624)—*S. 119 (1) (c) (=Crim. Pro. Code, 1872, s. 142)—Petitions relating to criminal charges transmitted by post.*—It is not incompetent for a Magistrate to receive and to take action on petitions relating to criminal charges when transmitted to him by post. In such a case, the Magistrate must act upon his own discretion. **2 Weir 149.** [*D.*, 2 Weir 467].

(625)—*Ss. 119, 209, 253, 259, 437—Order of 'discharge under s. 119'—Jurisdiction of District Magistrate to direct 'further inquiry' under s. 437—Scope and applicability of s. 437—'Discharge'—Meaning.*—Where a Magistrate, after hearing the evidence adduced on behalf of an accused person, 'discharges' him under s. 119, Crim. Pro. Code, *held*, that a District Magistrate has no jurisdiction to order further inquiry under s. 437 of the Code. S. 437, Crim. Pro. Code, undoubtedly applies to disposals under ss. 253 and 259 and possibly to a disposal under s. 209 also. But the discharge under s. 119 is a different matter. The jurisdiction given by s. 437 should not be applied to cases under Ch. VIII, at any rate, to cases where before making an order under s. 119, the Magistrate has called on the person, into whose conduct the inquiry is made, to establish his defence. The term 'discharge' may have two meanings and s. 119 indicates that its meaning in that section is non-technical. The 'discharge' of s. 119 is merely 'a permission to depart.' **6 M.L.T. 133=33 M. 85=20 M.L.J. 137=4 Ind. Cas. 1057=11 Cr. L.J. 162.**

(626)—*Ss. 119, 437—Release or discharge—Fresh proceedings.*—An order under s. 119 of the Crim. Pro. Code disposing of a case on a finding that it was not necessary to order security to be furnished, whether it amounts to an order of discharge or release, is no bar, under s. 437, to the institution of a fresh security proceeding against the same person. **A.W.N. 1899, 203.** [*F.*, 24 A. 148; *R.*, A.W.N. 1900, 206, 6 O.C. 263, 2 A.L.J. 489].

(627)—Ss. 119, 209, 253, 259, 437—*See* FURTHER ENQUIRY, 6 M.L.T. 133.

(627-*a*)—S. 119—*See* Nos. 470, 490, 593, 486-*a*, *supra*, and No. 3006, *infra*.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

——S. 120 (=1882, s. 120).

(628)—*Crim. Pro. Code, ss. 110, 118, 120, cls. (1) (2), 123, 327—Postponement of order for security—Imprisonment in default of security.*—N.K., was, on the 7th April, 1900, ordered to execute a bond for his good behaviour, and, in default, to be rigorously imprisoned for one year. He failed to do so and was consequently imprisoned. On the 3rd May, 1900, N.K. was sentenced to undergo rigorous imprisonment for one year for an offence under s. 451, I.P.C., committed on the 27th December, 1899. The Magistrate ordered that "the unexpired portion of the award under s. 110, Crim. Pro. Code, will, under s. 120 (1), Crim. Pro. Code, be resumed on the expiry of the present sentence." *Held*, that s. 120 (1), Crim. Pro. Code, was inapplicable and that the order directing the unexpired portion of the imprisonment, ordered under s. 110, Crim. Pro. Code, to take effect after the substantive sentence or imprisonment, was illegal, as the person in respect of whom an order was made under s. 110, Crim. Pro. Code, was not, when the order was made, sentenced to, or undergoing a sentence of, imprisonment, and cl. (2) of the same section does not enable the Magistrate, who tried the offence under s. 451, I.P.C., to alter the date fixed by the Magistrate who made the order under s. 123, Crim. Pro. Code, for commencement of the period of imprisonment. **1 L.B.R. 14.** (L.B.R. 1872—1892, 364, *D.*).

(628-*a*)—S. 120—*See* Nos. 422, 608, *supra*.

——S. 121 (=1882, s. 121).

(629)—*S. 121—Bond for security for good behaviour—Subsequent unexplained possession of valuable clothes—Forfeiture.*—Where a person, who was ordered to give security for good behaviour, was found in possession of costly cloths for which he could not satisfactorily account and the police applied for an order for forfeiture of the security bond, *held*, that there was no breach of the bond. **2 Weir 57.**

(630)—*S. 121—Bonds for good behaviour—Grounds of forfeiture—Section exhaustive.*—Where an accused is not shown to have committed an offence, or to have attempted to do so, or to have abetted such a thing, *held*, his bond for good behaviour could not be forfeited under s. 121, Crim. Pro. Code. S. 121, Crim. Pro. Code, is explicit, and, so far as bonds for good behaviour are concerned, is exhaustive, though it might not be so as regards bonds for keeping the peace. **5 P.R. 1910 Cr.**

(631)—Ss. 121 and 367—*See* JUDGMENT, L.B.R. (1893—1900), 626.

(631-*a*)—S. 121—*See* Nos. 574, 599, *supra*.

——S. 122 (=1882, s. 122).

(632)—*S. 122—Sureties, grounds for refusing.*—A Magistrate should not refuse to accept as sureties persons otherwise fit, because those persons are relations of the person ordered to give security. On the other hand, it is a most

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

useful qualification in the persons tendered as sureties, if they be in other respects suitable. **25 A. 131.** [*R.*, 1 S. L.R. 46 Cr.].

(633)—*S. 122—Sureties for good behaviour.*— The fact that a proposed surety has, on one occasion, offended against the law and been punished for an offence under the Indian Penal Code, does not of itself render such person for ever afterwards unfit to be the surety of a party who is required to give security for good behaviour. **26 A. 189.**

(634)—*S. 122—Inquiry as to fitness of surety —Recording evidence on oath.*—A Magistrate holding an enquiry as to the fitness of a surety has power to record evidence on oath in the exercise of the power and duty conferred and imposed on him by s. 122. **26 A. 371=A.W. N. 1904, 52.** (A.W.N. 1898, 154 and A.W.N. 1903, 36, *R.*).

(635)—S. 122—*See* SURETY, 2 S.L.R. 15 Cr.=10 Cr. L. J. 230, 2 S.L.R. 11 Cr.=10 Cr. L.J. 225.

(635-*a*)—S. 122—*See* Nos. 524, 555, 575, 590, 597, *supra*.

——S. 123, paras, 1, 2, 3, 5 and 6 (=1882, s. 123); para 4, new.

(636)—*S. 123—Person imprisoned for failure to give security—When imprisonment begins*— While a person, who is committed to prison under s. 123, Crim. Pro. Code, for failure to give security to be of good behaviour, is sentenced to imprisonment on conviction of an offence, the term of imprisonment cannot be deferred but must commence at once. **6 Bom. L.R. 1098.**

(637)—*S. 123 (=Crim. Pro. Code, 1882, s. 123)—Security for good behaviour—Appeal.* —No appeal lies to the High Court from an order by a District Magistrate under s. 123 of the Crim. Pro. Code, confirmed by the Sessions Judge on reference, detaining a person in prison till he should provide security for good behaviour. **9 C. 878.** [*Compared*, L.B.R. (1893—1901), 381; *F.*, P.L.R. 1900 59=15 P.R. 1900 Cr.].

(638)—*S. 123 (=s. 123, Crim. Pro. Code, 1882—Jurisdiction of Joint Sessions Judge.*— A Joint Sessions Judge appointed to try "all cases which may be committed for trial by the Magistrates" of the District, has no jurisdiction to pass orders on a reference under s. 123, Crim. Pro. Code. **Rat. Un Cr. C. 830, F.B.= Cr. Rg. 73 of 1895.**

(639)—*S. 123 (=Crim. Pro. Code, 1882, s. 123)—Security to keep the peace or for good behaviour.*—There is nothing in s. 123, Crim. Pro. Code, 1882, which requires a Magistrate when he has ordered an accused person to give security for more than one year, to refer such order for confirmation to the Sessions Judge. The order is perfectly valid without such confirmation. **L.B.R. (1872—1892), 279.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(640)—*S. 123, sub-sec. (2)—Reference to Sessions Judge under—Disposal of case by Sessions Judge without notice to accused, legality of.*—A District Magistrate submitted a case to the Sessions Judge, under s. 123, sub-sec. 2 of the Code, and the Sessions Judge passed orders without giving any notice to the accused. *Held*, that the Sessions Judge was bound to fix a day for the hearing and to give reasonable notice to the accused and to hear him, if he wished to be heard, either personally or by pleader. **3 L.B. R. 43.**

(641)—*S. 123 (2)—Security for good behaviour—Imprisonment in default.*—When the period for which security is demanded exceeds one year, if security is not given, the Magistrate cannot award imprisonment in default. He must direct the detention of the accused pending the orders of the Sessions Judge to whom the proceedings must be submitted. **U.B.R. (1897—1901), Vol. I, 28.**

(642)—*S. 123 (2 and 3)—Power of Additional Sessions Judge to deal with a reference.*—An Additional Sessions Judge has no power to deal with a reference under s. 123, sub-sec. (2) and to pass orders under sub-sec. (3). The fact that in the Code of 1898 the Legislature has substituted the words "Sessions Judge" for the words 'Court of Session" seems to make it clear that it was the intention to limit the power of dealing with references under the section to the Sessions Judge. **2 L.B.R. 16.** (Rat. Un. Cr. C. 830, *F.*, L.B.R. (1893—1900), 245 and 381, *R.*)

(643)—*Ss. 123, 124 (=Crim. Pro. Code, 1882, ss. 123, 124)—Default in furnishing security—Term of imprisonment.*—Under s. 123, Crim. Pro. Code, it is not competent to a Magistrate to award a shorter term of imprisonment in default of security than that for which security is required, but if he thinks that the term ought to be shortened, the proper course is to report the matter to the District Magistrate with a view to his taking action under s. 124. **Rat. Un. Cr. C. 668=Cr. Rg. 25 of 1893.**

(644)—*Ss. 123 and 397—Committal to prison for failure to furnish security—Sentence of imprisonment.*—When a person is committed to prison under s. 123, Crim. Pro. Code, for failure to give security to be of good behaviour, he is not undergoing a "sentence of imprisonment" within the meaning of s.397, Crim. Pro. Code. **27 M. 525.** [*R.*, 6 Bom. L.R. 1098].

(645)—*Ss. 123, 397—"Undergoing" sentence of imprisonment—Commitment to prison for failure to give security for good behaviour.*— When a person is committed to prison under s. 123, for failure to give security for good behaviour, he is not undergoing a sentence of imprisonment within the meaning of s. 397. **2 Weir 452.** [*R.*, 2 Weir 452.]

(646)—*Ss. 123, 397—Detention in prison in default of giving security—"Undergoing a*

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

sentence of prisonment"—Imprisonment for substantive offence, when should commence.—"A person who has been committed to prison, or is detained in prison" under s. 123, Crim. Pro. Code, is not "undergoing a sentence of imprisonment" within the meaning of s. 397, Crim. Pro. Code. Where a man so committed or detained is convicted and sentenced to imprisonment for a substantive offence, the sentence should run concurrently with the period of detention imposed under s. 123. **11 Cr. L.J. 15=4 Ind. Cas. 603=3 S.L. R. 114 Cr.**

(647)—S. 123—*See* APPEAL, 9 C. 878.

(648)—Ss. 123, 396 and 397—*See* IMPRISONMENT, 2 L.B.R. 72.

(649)—Ss. 123, 397—*See* SECURITY FOR GOOD BEHAVIOUR, 30 A. 334=A.W.N. 1908, 133=5 A.L.J. 318=7 Cr. L.J. 427=4 M.L.T. 41, F.B., 3 S.L.R. 114 Cr.

(650)—S. 123—*See* SENTENCE, Rat. Un. Cr. C. 584.

(651)—Ss. 123, 397—*See* SENTENCE, Rat. Un. Cr. C. 970.

(652)—S. 123—*See* SESSIONS JUDGE, JURISDICTION OF, 24 C. 155.

(653)—Ss. 123, 193—*See* TRIAL, Rat. Un. Cr. C. 830.

(653-*a*)—S. 123—*See* Nos. 220, 422, 429, 488, 519, 556, 557, 575, 576, 577, 583, 591, 608, 609, 611, 612, 613, 619, 621, *supra*.

——S. 124, paras 1 and 3 (=1882, s. 124); para 2, new.

(654)—Ss. 124, 125 and 126—*See* SECURITY FOR GOOD BEHAVIOUR, 8 O.C. 245=2 Cr. L.J. 507.

(654-*a*)—S. 124—*See* Nos. 491, 643, *supra*.

——S. 125 (=1882, s. 125).

(655)—*S. 125—Power to cancel a bond.*—The provisions of s. 125 only gives the power to cancel any bond executed. Therefore, an order for cancelling a bond cannot be made before it has been executed. **32 C. 948=9 C. W.N. 860=2 Cr. L.J. 550.**

(656)—*S. 125—District Magistrate's power to cancel bond for keeping the peace.*—The jurisdiction conferred by s. 125 is not an appellate or revisional, but an original, jurisdiction. That is, if after a bond has been executed, it is made to appear that, by reason of the circumstances as they exist at the date of the application, that is, circumstances subsequent to the date of the execution of the bond, the continuance of the latter is no longer necessary, the District Magistrate may cancel it. In other words, while a District Magistrate may, in case of an executed bond, hold, for sufficient reasons, that it is no longer necessary and accordingly cancel it, he has no power to declare that it was never necessary. **32 C. 948=9 C. W.N. 860=2 Cr. L.J. 550.** [*Overruled*, 1 M. L.T 368=11 C.W.N. 25=34 C. 1=4 C.L.J. 428].

(657)—*Ss. 125 and 476—Power of the District Magistrate to cancel bail bonds under s. 125—Sanction to prosecute—Whether Magistrate acting under s. 125 has jurisdiction to sanction prosecution under s. 476.*—M and others having been bound down by the Sub-Divisional Magistrate in a proceeding under s. 107, Crim. Pro. Code, at the instigation of the petitioner who filed some rent receipts, the District Magistrate cancelled the bonds executed by them for keeping the peace, and, holding that the rent-receipts were forgeries, sanctioned, under s. 476, Crim. Pro. Code, the prosecution of the petitioner for an offence under s. 471, I.P.C. *Held* that, as the District Magistrate acted under s. 125, Crim. Pro. Code, the rent-receipts did not come before him in a judicial proceeding, and he had no jurisdiction to sanction prosecution under s. 476, Crim. Pro. Code. **14 C.W.N. 306.**

(658)—S. 125—*See* SECURITY BOND, 34 C. 1 =11 C.W.N. 25=4 C.L.J. 428=4 Cr. L.J. 399 =4 M.L.T. 368, F.B.

(658-*a*)—S. 125—*See* Nos. 482, 491, 524, 558, 654, *supra*.

——S. 126 (=1882, s. 126).

(658-*b*)—S. 126—*See* No. 654, *supra*.

——S. 127 (=1882, s. 127; 1872, s. 480).

(658-*c*) S. 127—*See* No. 3112, *infra*.

——S. 128 (=1882, s. 128).

(658-*d*)—S. 128—*See* No. 611, *supra*.

——S. 131 (=1882, s. 131).

(659)—Ss. 131, 133, 136 and 140—*See* NUISANCE UNDER CRIM. PRO. CODE, 18 M.L.J. 216=3 M.L.T. 403=31 M. 280=8 Cr. L.J. 151.

——S. 133 (=1882, s. 133; 1872, s. 521; 1861, s. 308).

(660)—*S. 133—Scope.*—The scope of the section is limited to injuries arising or likely to arise to the members of the general unascertained mass of the public whose ordinary avocations may take them to the neighbourhood of a building supposed to be in a dangerous condition. A Magistrate cannot, under the section, order the owner to repair his house standing in its own compound some little distance from the public road. **20 A. 501=18 A.W.N. 141.**

(661)—*S. 133—Section applicable to physical removable nuisances.*—S. 133 is an emergent section framed to deal with evils either existent or imminent. It is clearly applicable only to physical obstruction or nuisance which is

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capable of being removed; it must be a physical obstacle, and it must be actually *in situ*. Hence, it could not be made use of to put a stop to and prohibit certain objectionable accompaniments to ceremonies practised by a religious sect to the discomfort and annoyance of the majority of their fellow-townsmen. **A.W.N. 1901, 126.** [*Appr.*, 23 A. 247, 21 A. 441].

(662)—*S. 133*—Bona fide *dispute as to existence of public right—Applicability of section.*—The provisions of s. 133 and the following sections do not apply to cases where there is a *bona fide* dispute as to the existence of a public right; and s. 133 does not contemplate an enquiry into disputed questions of title. **4 Bom. L. R. 687.** (22 B. 988, 12 C. 137, 11 C. 8, *R.*).

(663)—*S. 133—Nuisance, what amounts to.*—Any obstruction on a public road is a nuisance, whether in point of fact it causes practical inconvenience or not. The motive, with which a public highway is obstructed, is absolutely irrelevant. **23 A. 159 = A.W.N. 1901, 30.**

(664)—*S. 133—Public nuisance—Public right of way.—Held*, that the fact that the residents of a particular village had a right to take their cattle across a field was not sufficient to constitute a public right of way. **A.W.N. 1906, 190 = 4 Cr. L.J. 65.**

(665)—*S. 133—Obstruction to highway—Reference to Jury*—Bona fide *question of title—Power of Magistrate to decide.*—It is not open to any person, illegally causing obstruction to public property, to set up a bogus question of title for the purpose of ousting the jurisdiction of a Magistrate; and, notwithstanding the raising of such a question, the Magistrate is entitled to hear the case sufficiently to make up his mind whether or not a *bona fide* question of title is raised. But, where a *bona fide* question of title is raised, the Magistrate ought not to proceed under s. 133, but should leave the matter to be decided by a Civil Court. **28 A. 98 = A.W.N. 1905, 202 = 2 A.L.J. 599 = 2 Cr. L.J. 517.**

(666)—*S. 133 (= Crim. Pro. Code, 1882, s. 133).*—Where there is a *bona fide* dispute between a private individual and the Government as to the right to the ground on which an encroachment is alleged to have been made by the former by building a wall, a Magistrate should not proceed under s. 133, until that dispute is settled. **Rat. Un. Cr. C. 378 = Cr. Rg. 29 of 1888.**

(667)—*S. 133.*—A Magistrate acting under s. 133, Crim. Pro. Code, should first of all satisfy himself as to the *bona fides* of the claim, if any, and then determine whether the parties should be referred to the Civil Court. Where the Magistrate, instead of doing so, proceeded to refer the following question to the jury: "Is

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there a public right of way at the points where the building, whose removal is ordered, stands?" *held*, that it was not a proper reference. **31 C. 979 = 9 C.W.N. 72.** [*R.*, 10 C.W.N. 845 = 4 Cr. L.J. 42].

(668)—*S. 133.*—In proceedings under s. 133 of Crim. Pro. Code, if the opposite party raises the contention that the way alleged to be obstructed is not one, which is or may be lawfully used by the public, the Magistrate should find whether the objection is a *bona fide* one, and if he finds that it is so, he should abstain from further action until the public right of way is determined by a competent Court. The jury, in such a case, is not competent to report that the way obstructed is used by the public, for, the decision of that matter, affects the right of the Magistrate to interfere under s. 133. It is only when the Magistrate is competent to pass an order under s. 133, that a jury can be appointed to see whether it is a reasonable and proper order. **3 C.W.N. 345.**

(669)—*S. 133.*—Where, in proceedings under s. 133, Crim. Pro. Code, it is contended that the way is not a public one, the only issue which arises for the Magistrate's decision is whether the objection so raised is a *bona fide* objection or a mere pretence. He has no jurisdiction, instead of coming to an express finding on this issue, to proceed to determine whether or not there is a public way. **7 C.W.N. 117.**

(670)—*S. 133.*—This section does not intend that a Magistrate should decide any question of title; it only authorises him to decide whether an obstruction on a public way is unlawful. When a question of title is involved, he should stay proceedings and refer the complainant to the Civil Court. **4 C.P.L.R. 142.**

(671)—*Ss. 133, 138 and 139—Obstruction to a pathway*—Bona fide *claim of right, Magistrate to decide the question of—Jury, function of.*—When a complaint is made to the Magistrate of an obstruction in a pathway, alleged to be public, and the opposite party appears and claims the pathway to be a private one, it is the duty of the Magistrate, before any proceedings are taken under s. 133, and before any reference is made to a jury appointed under s. 138, to himself determine whether the claim set up by the opposite party is *bona fide*, and whether the road or pathway is a public pathway. The jury appointed under s. 138, are simply persons selected by the parties to determine, in an informal way, whether the order, as passed by the Magistrate, for the removal of an obstruction, is or is not a reasonable order and it is not competent to the Magistrate to leave to the jury the decision of the question whether a pathway is public or not, and whether the claim of private pathway set up is *bona fide* or not. **10 C.W.N. 845 = 4 Cr. L.J. 42.**

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(672)—*Ss. 133, 137.*—When a jury is claimed and appointed, they have only to try the question whether the Magistrate's conditional order is reasonable and proper. **31 C. 979=9 C.W.N. 72.**

(673)—*Ss. 133, 138, 435 (=Crim. Pro. Code, 1882, ss. 133, 138, 435)—Decision of Jury—Power of District Magistrate to call for it under s. 435.*—The decision of a Jury, appointed under s. 138 of the Crim. Pro. Code, is not a proceeding in a Criminal Court which the District Magistrate can call for and examine and refer to the High Court under the provisions of s. 435 of the Crim. Pro. Code. **Rat. Un. Cr. C. 336=Cr. Rg. 25 of 1887.**

(674)—*Ss. 133, 139—Conditional order of Magistrate—Reference to jury—Majority of the jury against the order--Order absolute, validity of.*—Where, in showing cause against a conditional order under s. 133 being made absolute, the party, against whom the order was made, claimed the appointment of a jury, and the majority of them were against the order, *held*, that the order of the Magistrate making his conditional order absolute, upon the report of the jury, was neither reasonable nor legal. **5 C.W.N. 566.**

(675)—*S. 133—Jurisdiction of Magistrates—*Bona fide *claim of title—Duty of Magistrate.*—When the acts complained of against a person amount to a nuisance, it is a *prima facie* case, which a Magistrate has jurisdiction to deal with. Where an obstruction to a public right of way is complained of, if a Magistrate finds that there is a claim of title, which is *bona fide*, he should give an opportunity to the person raising that claim to establish it in a Civil Court. Failing his doing so, the Magistrate is bound to proceed with the case ; this limitation or restriction does not apply, when the case is one affecting the public health or safety. **8 C. W.N. 143.**

(676)—*S. 133*—Bona fide *claim of right—Jurisdiction of Magistrate.*—It does not follow that, because the land over which a right of way is claimed belongs to any particular person, therefore that person must necessarily be acting *bona fide*, when he denies that there is a right of way over his land. The question of *bona fides* is a matter of fact which has to be inquired into like any other question of fact. Where there is in fact a *bona fide* claim of right in a case in which a person is required to remove a nuisance, the Magistrate's jurisdiction is ousted, and he has no power to make an order under s. 133. **1 C. L. J. 434=2 Cr. L. J. 349.**

(677)—*S. 133—Respective duties of the Magistrate and of the Jury—Conviction under Indian Penal Code, s. 283, not conclusive.*—A Magistrate, passing an order against a person under s. 139, Crim. Pro. Code, cannot do so, relying merely upon a conviction of the person under s. 283, I.P.C., in respect of the same matter, but must follow the procedure laid down in s. 133 and the subsequent sections of the Crim. Pro. Code. Prior to the appointment of a jury, the Magistrate should himself determine the question, which is the most important question in proceedings under s. 133, Crim. Pro. Code, and which alone gives him jurisdiction, namely, whether the pathway, in which the obstruction is said to have been erected, was in fact a public pathway or not. Where the Magistrate referred the whole case to the jury and the jury returned a verdict that the order was a proper order, but that the road was a private road. *Held*, it was incumbent upon the Magistrate to determine the latter point and not leave it to the jury. **3 C.L.J. 360=3 Cr. L.J. 331.**

(678)—*S. 133—Encroachment on unmetalled portion of Government road.*—Where a person built a wall encroaching upon the unmetalled portion of a Government road, he might be properly proceeded against under s. 133, Crim. Pro. Code. **A.W.N. 1901, 25.**

(679)—*S. 133—Prescriptive right of public to user of way across a ford—Damming the stream by erection of a bund—Desuetude of a right to erect a bund—Competency of Magistrate to pass orders.*—Where the petitioner erected a bund in a fordable stream, thereby causing obstruction and nuisance to the public in the lawful enjoyment of the right of way through the stream, and it was found that the public had been exercising their continued right of way across the stream without obstruction for a period of over 20 years, *held*, that, even if the petitioner had previously a right to obstruct the stream by erecting the bund in question, it could only have been one of easement, and the petitioner had lost such right by long desuetude, while the public have acquired a prescriptive right of way across the stream. *Held*, also, that, even if the petitioner had a subsisting right to dam the river, such right should be exercised subject to the maxim *sic utere tuo ut alienum non laedas* and not so as to cause unjustifiable obstruction and nuisance to the public. The Magistrate was, therefore, competent to pass an order for the removal of the obstruction. **32 C. 930=2 Cr. L.J. 762.**

(680)—*S. 133 (=s. 521, Crim. Pro. Code. 1872,—Power of stopping proceedings—Revisional powers of High Court.*—Where a Magistrate is satisfied that there was no cause for acting under s. 521, he is at liberty to let the proceedings drop. The propriety of such a finding is not a matter for the consideration of the High Court. **1 C.L.R. 486.** [*F.*, 8 C. 883.]

(681)—*S. 133.*—On a Magistrate satisfying himself that there is no necessity for proceeding further under s. 521 of the Crim. Pro. Code, 1872, he can drop the matter. **8 C. 883.**

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(682)—*S. 133—Revival of proceedings under, after previous cancellation.*—There is no bar in law to the revival of a proceeding under s. 133 with regard to the same matter, which had been previously dropped, provided there are materials before the Magistrate upon which he could act *prima facie*. **5 C W.N. 173**.

(683)—*S. 133—Burial ground, order closing, if can be made under.*—An order prohibiting the use of a grave yard is not such an order as can be made under s. 133, Crim. Pro. Code. **12 C. W.N. 70.**

(684)—*S. 133—Opening a new market by the side of an old market—Order closing the new one.*—A person, who opens a new market close to an old one, cannot be held to be carrying on a trade or occupation that is injurious to the health or physical comfort of the community. Therefore, no order under s. 133 can be passed closing the new market. The mere fact that the people in one market are sometimes forcibly dragged from it to the rival institution will not support an order under s. 133, although the offenders can be prosecuted criminally for such assault. **14 M.L.J. 207.**

(685)—*Ss. 133, 137.*—Merely because there is already one market in a village, a man who opens another market close to it cannot be held to be carrying on a trade or occupation that is injurious to the health or physical comfort of the community; nor does the fact that the people in one market are sometimes forcibly dragged from it to the rival institution, justify an order under s. 133, Crim. Pro. Code. **2 Weir 62.**

(686)—*Ss. 133, 139—Houses of prostitutes, existence of, by the road-side.*—The mere existence of houses of prostitutes by the road-side, and the fact that they ply their trade in them, cannot affect the physical comforts of the passers-by. **5 C.W.N. 566.**

(687)—*S. 133 (=Crim. Pro. Code, 1872, s. 521)—Disobedience to order promulgated by a public servant—Penal Code, s. 188.*—Under s. 521, though a Magistrate is authorised to suppress a trade or occupation injurious to the health or comfort of a community, he cannot order pig-styes to be built at a certain distance from the *abadi*, and the disobedience to such an order cannot be punished under s. 188, I.P. C. **S.C. 60, Oudh.**

(688)—*S. 133 (3) (=Crim. Pro. Code, 1882, s. 133(3)—"Trade or occupation"—Proprietor of a cremation-ground.*—The proprietor of a cremation ground cannot be said to be carrying on any "trade or occupation" within the meaning of s. 133 (3), inasmuch as he merely puts his land at the disposal of any one who wishes to cremate a dead body and makes his profit by charging a high rent to a tenant who sells wood to the relatives of the deceased. **25 C. 425=2 C.W.N. 113.**

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(689)—*Ss. 133, 136, 140 (=Crim. Pro. Code, 1882, ss. 133 136 and 140)—Disboedience of order under s. 133 and under s. 140—Penal Code, s. 188.*—Where an order has been issued under s. 133, and the person on whom it has been served does not perform the act he is directed to do, or do what is open to him, namely, to appear on the date fixed and show cause against the order, or apply for the appointment of a jury, he is treating such order of a competent authority with contempt, and for such contempt, he renders himself liable to punishment under s. 188. If such order has been made absolute, and after the notice contemplated by that section and the refusal still by the person concerned to obey that order, that would be again punishable, and the person making it would have the power to enforce all the remedies mentioned in s. 140. When once an order has been made absolute under s. 136, it is incompetent for the party, against whom it has been made, to go behind it and question its validity in any way. **13 A. 577.** [*F.*, 18 M.L.J. 216=31 M. 280=3 M.L.T. 403; *D.*, 18 A.W.N. 141=20 A 501; *R.*, P.L. R. 1900, 24].

(690)—*Ss. 133, 136 (=Crim. Pro. Code, 1872, ss. 521, 525)—Order under s. 521, objection to—Taking evidence—Procedure.*—When the person to whom an order under s. 521 has been issued appears to show cause against it, the Magistrate is bound to take evidence. **8 C.L. R. 431.**

(691)—*Ss. 133, 137.*—If an accused, against whom an order is issued under the provisions of s. 133, Crim. Pro. Code, appears to show cause, the Magistrate is bound to proceed under s. 137, Crim. Pro. Code 1898, **1 Bom. L.R. 783.**

(692)—*Ss.133 137*—Before a conditional orde. passed under s. 133 of the Code of Crimina Procedure can be made absolute under s. 137, there must be evidence on the record, taken in the presence of the person called upon to show cause against the order, justifying the order. It is not merely necessary to hear the evidence for the defence, but the evidence on which the order is to be based must also be recorded. **147 P.L.R. 1901.** (24 C. 396, *F.*).

(693)—*Ss. 133, 137—Order without taking evidence—Waiver by party, effect of.*—In a case under section 133, if the party summoned appears and shows cause, the Court is to apply the provisions of s. 137, the language of which is mandatory, and the only course open to the Magistrate is to take evidence, even if the party agrees to abide by the decision of the Magistrate based, not upon evidence legally received but upon information gathered upon local enquiry for, no waiver on the part of the party can confer on the Magistrate authority to act in a manner not prescribed by the Legislature. **11 Cr. L.J. 1=4 Ind. Cas. 436=10 C.L.J. 482.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(694)—*Ss. 133, 137—Notice to show cause—Subsequent failure to produce evidence—Final order—Dispute between Government and a private individual.*—If a person to whom a notice has been issued under s. 133 appears and shows cause, his subsequent failure to produce evidence does not justify the final order under s. 137, until the Magistrate has satisfied himself from evidence recorded before him that there is an unlawful obstruction. The proceeding under s. 133 is not the proper procedure to follow when there is a dispute between the Government and a private individual. **2 Bom. L.R. 818.**

(695)—*Ss. 133, 137, 140—Penal Code (Act XLV of 1860), s. 88—Conditional order, vague and indefinite—Final order, scope of.*—An order under s. 133, Crim. Pro. Code, must be such that the persons, against whom it is directed, can learn from its terms what it is that they are to do for the purpose of complying with it. Where a conditional order made under s. 133, Crim. Pro. Code, was itself too vague and indefinite, the High Court set aside the final order passed under s. 137, Crim. Pro. Code, and decline to send back the case for retrial, on the ground that, under the latter section, the Magistrate could only decide on the reasonableness or propriety of the conditional order, and was not competent to go behind it. **11 C.L.J. 114.**

(696)—*Ss. 133, 137, 140—Conditional order by one Magistrate—Order absolute by another Magistrate with second class powers—Notice—Bona fide claim of title.*—Where a Deputy Magistrate required the petitioner to appear and show cause before a second class Magistrate why a conditional order under s. 133 should not be made absolute, *held*, that the latter Magistrate, and not the Deputy Magistrate, was entitled to make the order absolute, and to have the notice under s. 140, issued. Proceedings under ss. 133 to 140 are inapplicable to cases in which there is a *bona fide* claim of title. **2 Weir 61.**

(697)—*Ss. 133 and 140 (=ss. 133, 140, Code of 1882)—Power of Magistrate to order removal of burning ghat—Acts done by a private proprietor on his property—Notice.*—A Magistrate has no power, under s. 133, to direct the removal of a burning ghat. What he has jurisdiction to direct is that the proprietor should "remove the nuisance;" in other words, take such steps as would result in the cremation of corpses at the place ceasing to be a nuisance to the public. That is also the form in which the notice under s. 140, should be drawn up. Although a burning ghat or cremation ground may not in itself be a nuisance within the meaning of cl. 2, s. 133, still a Magistrate will have jurisdiction under that clause, if it is shown that such a ghat or ground is in such an offensive state or that cremation is carried on upon it in such an offensive manner as to be a source of injury, danger or annoyance to persons living in the vicinity. A private owner may be guilty of acts done on his private property, if it may give rise to a public nuisance to those living in the neighbourhood. Therefore, the owner of a cremation-ground may fairly be held to create a nuisance, if he allows the cremation of bodies upon that ground to be so performed as to annoy or endanger the lives and properties of persons living in the vicinity. In such cases a Magistrate has jurisdiction to proceed under the second clause of s. 133. **25 C. 425=2 C.W.N. 113.**

(698)—*Ss. 133, 138 (=Crim. Pro. Code, 1882, ss. 133, 138)—Application for appointment of Jury—Duty of Magistrate.*—Where a person, against whom an order under s. 133, calling upon him to remove an obstruction, had been communicated, applied for the appointment of a Jury, *held*, that the Magistrate had no discretion in the matter and should not make the order absolute without appointing the Jury. **2 Weir 63.**

(699)—*Ss. 133, 135, 138, 139, 141 (=Crim. Pro. Code, 1872, ss. 521, 523).*—Where a jury is demanded under s. 523, Crim. Pro. Code, 1872, the Magistrate is bound to appoint one and cannot decide the matter by local enquiry. **2 C.L.R. 509.**

(700)—*Ss. 133, 138—Verdict of jury given on mere local inspection—Legality.*—The verdict of a jury, appointed under s. 138, given on mere local inspection, without taking any evidence, is illegal. **6 C.W.N. 886.**

(701)—*Ss. 133, 139—Building encroaching on a public way*—Bona fide *claim of right, effect of, on jurisdiction.*—Where an encroachment is made on what is admittedly a public way, it is not necessary, in order to give jurisdiction to the Magistrate, that there should be a finding as to the *bona fide* character of any claim that might be made by the accused person to any particular piece of ground on which the encroachment is made. **6 C.W.N. 886.** (15 C. 564, 17 C. 562, 25 C. 278, *D.*).

(702)—*Ss. 133, 342, 488—Person against whom proceedings under s. 133, Crim. Pro. Code, are taken, whether accused person—Examination on oath—Penal Code, s. 193.*—Proceedings under s. 133, Crim. Pro. Code, are more of the nature of civil than of criminal proceedings, and a party to such a proceeding is not an "accused person" within the meaning of s. 342 of the Code. There is nothing, therefore, to prevent his being examined on oath, and if he gives false evidence, he may be prosecuted for an offence under s. 193, I.P.C. **9 C.W.N. 983=2 C.L.J. 149.**

(703)—*Ss. 133 and 437 (=Crim. Pro. Code, 1882, ss. 133, 437)—Power of District Magistrate to order further enquiry.*—Although a District Magistrate has no power under s. 437, to order a further enquiry in a proceeding under s. 133, the High Court will not set

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aside the whole of the proceedings upon this ground alone, if it appears that the High Court itself will have directed the Subordinate Magistrate to hold a further enquiry upon the matter being referred to it by a District Magistrate. **25 C. 425=2 C.W.N. 113.** [*R.*, 17 C.P.L.R. 127].

(704 and 705)—*Ss. 133, 487 (=Crim. Pro. Code, 1882, ss. 133, 487)—Order to remove branches of trees, on police report—Jurisdiction—Disobedience.*—On a police report, a notice was issued by a Deputy Magistrate to the accused to cut down the branches of a tree of his, which overhung a certain house and were thus dangerous in affording facility to thieves. *Held* that the Magistrates had no jurisdiction to make the order under s. 133, Crim. Pro. Code. A Magistrate who makes an order under s. 133, Crim. Pro. Code, for the removal of a nuisance, cannot himself try and convict the person to whom such order was directed and who has disobeyed it. **A.W.N. 1883, 222.**

(706)—*Ss. 133, 556—Magistrate issuing notice as Chairman of Local Board—Case should not be tried by him.*—It is highly undesirable that a Magistrate should judicially act in a case which he has himself extra-judicially investigated, and in which, upon facts so investigated, he has come to conclusions of fact adverse to the party against whom he subsequently initiates proceedings under the criminal law. Therefore, where a Magistrate, as the chairman of a certain Local Board, issued a notice calling upon the petitioner to remove a certain obstruction, and the petitioner submitted a representation which proved infructuous, and subsequently the Magistrate initiated proceedings against the petitioner under section 133 of the Criminal Procedure Code. *Held*, that the concern of the Magistrate with the case is not merely in a public capacity so as to take the case out of section 556 of the Crim. Pro. Code. **11 Cr. L.J. 2=4 Ind. Cas. 437=10 C.L.J. 484.** (5 A.L.J. 357, A.W.N. 1908, 95, 7 Cr. L.J. 393, *R.*).

(707)—S. 133—Effect of order under section. —*See* ACT I OF 1877, s. 42, 17 B. 293.

(708)—S. 133—*See* BOM. ACT VII OF 1867, s. 33, 6 Bom. L.R. 358.

(709)—Ss. 133, 147—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 4 M. 121=2 Weir 113.

(710)—S. 133—*See* INOCULATION, L.B.R. (1893—1900), 545.

(711 to 714)—S. 133—*See* JURISDICTION OF CIVIL COURTS, 11 W.R. 434=3 B.L.R. Ap. 43, 4 B.L.R. F.B. 24=12 W.R. F.B. 18, 7 W.R. 11, 47, 95, 6 C. 291=7 C.L.R. 433.

(715)—S. 133—*See* MAGISTRATE, JURISDICTION OF, L.B.R. (1893—1900), 574.

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(716)—Ss. 133, 135, 137, 138—*See* NUISANCE UNDER CRIM. PRO. CODE, 2 P.R. 1903 Cr., 4 P.R. 1897 Cr., 5 P.R. 1890 Cr., 39 P.R. 1889 Cr., 47 P.R. 1888 Cr., 17 P.R. 1888 Cr., 19 P.R. 1887 Cr., A.W.N. 1900, 204.

(717)—Ss. 133, 137, 437—*See* NUISANCE UNDER CRIM. PRO. CODE, 24 C. 395=1 C.W.N. 217.

(718)—S. 133—*See* PENAL CODE, s. 188, L.B.R. (1872—1892), 363.

(719)—Ss. 133, 144—*See* PENAL CODE, s. 188, Rat. Un. Cr. C. 81.

(720)—S. 133—*See* RIGHT OF SUIT, 6 C. 291 =7 C.L.R. 433.

(720-*a*)—S. 133—*See* Nos. 7, 8, 659, *supra*; and Nos. 760, 761, 762, 775, 776, *infra*.

——**S. 134 (=1882, s. 134; 1872, s. 522; 1861, s. 309).**

(721 and 722)—Ss. 134, 143, 144—*See* NUISANCE UNDER CRIM. PRO. CODE, 8 A. 99, 16 C. 9.

——**S. 135 (=1882, s. 135; 1872, s. 523; 1861, s. 310).**

(723)—*Ss. 135, 138—Reference to Jury.*—A Magistrate should not refer any question to the Jury, under s. 138, until it has been first determined that the place where the obstruction is alleged to have been caused is a public place. He may then require the Jury to determine whether the order is reasonable and proper. **2 Weir 64.**

(723-*a*)—S. 135—*See* Nos. 699, 716, *supra*.

——**S. 136 (=1882, s. 136; 1872, s. 525; 1861, s. 311).**

(723-*b*)—S. 136—*See* Nos. 659, 689, 690, *supra*.

——**S. 137 (=1882, s. 137; 1872, ss. 525, 527; 1861, ss. 311, 313).**

(724)—*S. 137 (=Crim. Pro. Code, 1882, s. 137)—Conditional order made absolute without examining witnesses.*—Where, on cause being shown why a conditional order under s. 133 should not be made absolute, the Magistrate referred the objectioon to a Subordinate Magistrate for report, and, on the report being favourable to the party concerned, the Magistrate made the order absolute on a personal inspection of the spot, without taking any evidence whatever, *held*, that the procedure was *ab initio* illegal. **2 Weir 62.**

(725)—S. 137—*See* ACT I OF 1877, s. 42, 15 C. 460, F.B.

(725-*a*)—S. 137—*See* Nos. 672, 685, 691, 692, 693, 694, 695, 696, 716, 717, *supra*.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

——S. 138, para 1 (=1882, s. 138; 1872, ss. 523, 524) and para 2, new.

(726)—*Ss. 138, 141--Extension of time to jurors for making their report.*—Where an application for extension of time within which to deliver their verdict is made by the jury, no proceedings can be valid, until it has been disposed of. The Magistrate appointing the jury has the discretion whether or not to extend the time to the jurors to give their verdict. Such an exercise of discretion is a condition precedent to the passing of an order under s. 141. The power to extend or refuse to extend time is expressly conferred by the last clause of s. 138. **23 A. 159 = A.W.N. 1901, 30.**

(727)—*Ss. 138, 141—Obstruction to highway —Verdict of jury appointed for that purpose.*—Although the verdict of a majority of the jury must be accepted by the Magistrate, this means that the jury should have heard together and tried the matter which had been referred to them; the decision of three of them acting in the absence of the other two is wholly invalid. **23 A. 159 = A.W.N. 1901, 30.**

(728)—S. 138 (1)—*See* PENAL CODE, s. 188, Rat. Un. Cr. C. 342 = Cr. Rg. 33 of 1887.

(728-*a*)—S. 138—*See* Nos. 8, 671, 673, 698, 699, 700, 716, 723, *supra*.

——S. 139 (=1882, s. 139; 1872, ss. 523, 526).

(728-*b*)—S. 139—*See* Nos. 8, 671, 674, 686, 699, 701, *supra*.

——S. 140 (=1882, s. 140; 1872, ss. 525, 526; 1861, ss. 311, 312).

(728-*c*)—S. 140—*See* Nos. 659, 689, 695, 696, 697, *supra*.

——S. 141 (=1882, s. 141; 1872, s. 523, para 4).

(723-*d*)—S. 141—*See* Nos. 699, 726, 727, *supra*.

——S. 143 (=1882, s. 143; 1872, s. 519; 1861, s. 63).

(729)—*S. 143—Penal Code (Act XLV of 1860) s. 290—Working husking-machines at night.*—When the Magistrate, in a case under s. 290, I.P.C., without recording evidence on the issue whether the use of the husking-machines complained of did or did not cause any common injury, danger or annoyance to the people in general occupying property in the vicinity, ordered the accused under s. 143 of the Crim. Pro. Code, not to continue the use of the machines during the night from 12 midnight to 5 A.M. *held*, that, though the Magistrate's proceedings were not without jurisdiction, they were irregular, as he was not justified in refusing to take the evidence tendered by the parties bearing on the question at issue. **34 P. L. R. 1903.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(730)—S. 143—*See* NUISANCE UNDER PENAL CODE, 8 A. 99.

(731)—S. 143—*See* PENAL CODE, ss. 188, 290, 19 M. 464 = 1 Weir 247 = 6 M.L.J. 181.

(732)—Ss. 143, 417—*See* PENAL CODE, ss. 188, 290, 7 M.L.J. 33, P.C.

(733)—S. 143—*See* PENAL CODE, ss. 268, 290, 69 P.L.R. 1904.

(733-*a*)—S. 143—*See* Nos. 313, 721, *supra*, and No. 762, *infra*.

——S. 144 (=1882, s. 144; 1872, s. 518; 1861, ss. 62 and 63).

(734)—*S. 144 (=Crim. Pro. Code, 1872, s. 518) —Scope of the section.*—The application of s. 518 is confined to the particular act from which danger is apprehended, and does not authorize an order prohibiting a course of conduct or an occupation involving a series of acts done at certain intervals and spreading over a period of time. It is expressly stated that the direction authorised is to abstain from a certain act, and that the section is intended to provide for cases when a speedy remedy is desirable, and when the procedure in s. 521 (s. 133) would be ineffective. **2 Weir 67.**

(735)—*Ss. 144, 145 and 146 (=ss. 144, 145, 146, Code of 1882)—Scope of the sections.*—Chapter XI of the Crim. Pro. Code, in which s. 144 appears, relates to inferference or dealing of some kind with the land itself or with something created or standing upon it; and the section is directed to the prevention or the direction by a prompt order of some definite act on the part of an individual, so that injury or nuisance may not be caused. Ss. 145 and 146, which are in the next chapter, deal with the possession of property, and are sections which may be appropriately referred to, where it is desired to prevent interference by one party with the collection of rent by another and matters of similar kind. **19 C. 127.**

(736)—*S. 144—Order under the section, when can be made—s. 188, I.P.C.*—Before a Magistrate can take action under s. 144, he must be of opinion that immediate prevention or speedy remedy is necessary, and when he has made up his mind that it is so, he must state the material facts in his order. **32 C. 935 = 9 C.W.N. 864 = 1 C.L.J. 216 = 2 Cr. L.J. 215.** [*R.*, 11 C.W.N. 223].

(737)—If a Magistrate apprehends a breach of the peace, he can restrain temporarily the exercise by any private persons of their lawful rights, to prevent that result, and disobedience to such an order is an offence under s. 188, Penal Code. **5 C.W.N. 329.** (10 B.L.R. 443, *F.*).

(738)—*S. 144 (=Crim. Pro. Code, 1872, s. 518) —To "abstain from a certain act," meaning of the expression.*—Where an order under s. 518 requires the petitioner to abstain from interference with a certain mutt and the

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

property appertaining to it, the order is an order to abstain from "a certain act," within the meaning of the section. **3 M. 354 = 2 Weir 90.**

(739)—*S. 144.*—Where, in a dispute between the members of the Hanifi and the Shafi sects about the use of a certain mosque, the Magistrate passed an order addressed to the members of both the sects which was to be observed in regard to the entry of the mosque by the members of the rival sects, *held*, that the order was one to "abstain from a certain act," although it was not so in form, and the order was therefore within the powers conferred by s. 144, Crim. Pro. Code. **24 M. 262 = 2 Weir 611.**

(740)—*S. 144 (= Crim. Pro. Code, 1861, s. 62.—Form of order under.*—An order under s. 62 of the Crim. Pro. Code, should be a written order addressed to a particular individual. **Rat. Un. Cr. C. 30 = Cr. Rg. 10—3—1870.**

(741)—*S. 144 (= Crim. Pro. Code of 1872, s. 518)—Nature of order under.*—A Magistrate cannot make an order, under s. 518 of the Crim. Pro. Code (of 1872), which has more than a temporary operation. The grant of what is, in effect, a perpetual injunction is entirely beyond his powers. **5 C. 7 = 4 C.L.R. 309, F.B.** (6 B.L.R. 74, F.B., 18 W.R. Cr. 47 = 10 I.L.R. 434, F.B., 2 C. 293, 6 N.W.P. 104, *R.*) [*F.*, 4 C.L.R. 410, 8 C. 580, 10 A. 115 = 8 A.W.N. 25, 19 C. 127, 30 C. 155, F.B., 17 A.W.N. 50.].

(742)—*S. 144 (= s. 521 of 1872).*—A Magistrate has no power to pass a perpetual injunction under s. 518 of the Code. **8 C. 580 = 11 C.L.R. 414.** (5 C. 7, *R.*) [*R.*, 17 A.W.N. 50].

(743)—*S. 144.*—A Magistrate is not competent to make an order under s. 144, which is not limited in time, but, on the face of it, purports to be of the nature of a perpetual injunction. **7 C.W.N. 140.** [*Disc.*, 6 C.L.J. 186 = 11 C.W.N. 942 = 34 C. 897].

(744)—*S. 144.*—A Magistrate has no power to make an order under s. 144 directing the petitioners who are cultivating raiyats to refrain from reaping the crops they have sown, unless they paid the rents claimed to be due from them to the Government or the Government farmer. **8 C.W.N. 373.** [*F.*, 13 C.W.N. 188].

(745)—*S. 144—Power of Magistrate to adjudicate upon questions of title.*—A Magistrate, under s. 144 of the Crim. Pro. Code, is to make an order with the object of preventing a breach of the peace if he considered a breach of the place was imminent. It is not his business, nor has he any jurisdiction, to adjudicate upon any question of title or possession. **2 Weir 93.**

(746)—*S. 144—Object of order—Prevention of pecuniary loss to a party—Remedy in Civil Court.*—S. 144 of the Crim. Pro. Code cannot apply to a case where the object of the order under the section appears to have been merely to prevent pecuniary loss to the opposite party. The proper remedy for the party aggrieved lies in the Civil Court. **11 Cr. L.J. 11 = 4 Ind. Cas. 577 = 13 C.W.N. 188 = 5 M.L. T. 92.**

(747)—*S. 144 (= Crim. Pro. Code, 1872, s. 518)—Order under—Protection of property.*—An order under s. 518 of the Crim. Pro. Code, 1872, cannot be made merely for the protection of property. **9 C. 103.** [*R.*, 19 C. 127].

(748)—*S. 144—Order to hold* hat *on certain days, whether legal.*—Although a Magistrate acting under s. 144 is empowered to make an order prohibiting a person from holding a *hat* on certain specified days of the week, the terms of the law do not empower a Magistrate to make a direction that the *hat* should be held upon certain days, leaving the party no option to hold his *hat* upon some other days than those on which his rival holds his *hat*. **31 C. 990 = 8 C.W.N. 781.**

(749)—*S. 144—Order prohibiting the holding of a* hat—*Legality.*—The object of s. 144 is not that the orders should be made proscribing the holding of *hats* indefinitely within a certain area for two months. Where an order under s. 144 enjoined the petitioner not to establish a rival market within a quarter of a mile of a certain market-place, *held*, that it was not a proper order, as it did not mention any limits of time, and there was nothing in the order to indicate whether the petitioner would be entitled to hold any market at any time within a quarter of a mile. **11 C.W.N. 223 = 5 Cr. L.J. 43.** [*R.*, 34 C. 897 = 11 C.W.N. 942 = 6 C.L.J. 186 = 6 Cr. L.J. 194, F.B.].

(750)—*S. 144—Power to make an order of irrevocable nature.*—The order of a Magistrate directing, under s. 144, the division of crops between the tenants and a rival Zemindar, is an order of an irrevocable nature, and such as the law does not empower him to make. **32 C. 154.**

(751)—*S. 144—Claim of right—Jurisdiction of Criminal Courts.*—Where a Raja applied for an order directing the petitioners to take certain idols in their possession to his house, and to perform the worship of the idol there, *held*, that a Criminal Court had no power to decide the question of any such rights as claimed by the Raja and to pass an order, thereupon, under s. 144. **8 C.W.N. 376.**

(752)—*S. 144—Prohibition of collection of rents—Penal Code, s. 188.*—A Magistrate has no power to pass an order, under s. 144, Crim. Pro. Code, directing certain persons to refrain from collecting rents from the tenants. Disobedience to such an order will not constitute an offence under s. 188, Penal Code. **9 C.W.N. 392.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(753)—*S. 144 —Stopping the erection of an embankment which may cause loss to others—Legality—Executive order—Magistrate's explanation supplementing the order passed.*—An order under s. 144, Crim. Pro. Code, cannot be passed where the object of the order is merely to prevent pecuniary loss to any person. Where the Deputy Commissioner ordered the petitioner to stop the erection of an embankment, on the ground that the erection might cause great loss to the opposite party, and in his explanation to the High Court submitted that his order was an executive order having for its object the prevention of a disturbance of the peace, *held*, that the order was illegal and should be set aside, inasmuch as it could not have been passed under s. 144, Crim. Pro. Code, its object being merely to prevent loss to the opposite party. **13 C.W.N 188=5 M.L.T. 92.**

(754)—*S. 144—Order directing a person to abstain from management of temple until the eviction of another person.*—Where an order passed under s. 144, Crim. Pro. Code, directed a person not to interfere with the management of a certain "*kovil*" and also directed him to abstain from taking any part in the management until another person should be duly evicted from the management by due course of law, *held*, that the first part of the order was an order to "abstain from a certain act" within the meaning of these words as used in the section and therefore made with jurisdiction. *Held*, further, that the second part contravened the provisions of s. 144, sub-s. 5 and to that extent was made without jurisdiction. **24 M. 45.** (19 C. 127, *Dist.*). [*R.*, 17 C.P.L.R. 133].

(755)—*S. 144 (=Crim. Pro. Code, 1861, s. 62) —Order directing removal of embankment.*—An order directing the removal of an embankment whereby the adjacent lands of the complainant are in danger of being flooded, cannot be made under s. 62, by a Subordinate Magistrate. **2 Weir 66=5 M.H.C. App. 19.**

(756)—*S. 144 (=Crim. Pro. Code, 1882, s. 144) —Right of public worship.*—Persons of whatever sect are at liberty to erect buildings and therein conduct public worship on their own land provided they neither invade the right of property enjoyed by their neighbours nor cause a public nuisance, and are also entitled to conduct religious processions through public streets if they do not interfere with the ordinary use of such streets by the public and subject to such directions as the Magistrate may lawfully give to prevent obstruction of the thoroughfare or breaches of the public peace. **2 Weir 70=5 M. 304.**

(757)—*S. 144—Magistrate's power to restrain the exercise of a legal right—Order of High Court allowing Hindus to pass a* masjid *in procession—Interpretation of the order.*—Although a Magistrate may, on an emergency, restrain temporarily the exercise of a legal right in order to preserve the peace, his authority to do so is co-extensive with such emergency, and, when it ceases, he should secure to every person the enjoyment of his legal right, and by means of proper precautions, deter those who seek to invade the right of others. Where the High Court held that the Hindus were entitled to pass or re-pass a *musjid* in procession, attended with music, on all lawful occasions and in a lawful manner, so as not to disturb the respondents or other persons assembled for the performance of religious ceremony, *held*, that the decree ought not to be interpreted so as to mean that the Hindus should be prohibited from passing in procession with music, merely because the respondents and other persons had assembled under the guise of religious worship, in order to prevent the playing of music by the Hindus. *Held*, further, that in such cases the respondents should fix certain hours for worship on those days in which the Hindu procession had to pass the mosque. **2 Weir 74.**

(758)—*S. 144 (=Crim. Pro. Code, 1882, s. 144)—Lawful use of public street.*—No persons have a right to obstruct others when making a lawful use of a public street, and a custom founded on religious intolerance cannot be recognised. If the members of any sect desire to prevent the use of the streets in the neighbourhood of their houses by members of any other sect, they should erect their houses on streets which are private property. **2 Weir 89.**

(759)—*S. 144—Extension of period of two months by repeating order.*—A Magistrate has no power to extend the period of two months prescribed by s. 144 of the Crim. Pro. Code by repeating the order on a subsequent date. **11 Cr. L.J. 12=4 Ind. Cas. 590=13 C. W.N. 195=5 M.L.T. 96.**

(760)—*Ss. 144, 133 (=Crim. Pro. Code. 1872, ss. 518, 521)—Orders regarding custody and guardianship of children.*—An order regarding the custody and guardianship of children cannot be made under s. 518 or under s. 521. **2 Weir 66.**

(761)—*Ss. 144, 133 (=Crim. Pro. Code, 1872, ss. 518, 521)—Scope of the sections.*—S. 518 is ancillary to s. 521 and, therefore, where s. 521 does not apply, s. 518 also is inapplicable. **2 Weir 66.**

(762)—*Ss. 144, 143, 133 (=Crim. Pro. Code, 1872, ss. 518, 519, 521)—Order prohibiting burials.*—An order prohibiting burials in certain places, on sanitary grounds, cannot be made under s. 521, Crim. Pro. Code, The order should be made either under s. 518 or s. 519. **2 Weir 64.** [*R.*, 1 Weir 247=19 M. 464].

(763)—*Ss. 144, 147 (=Crim. Pro. Code, 1861, ss. 62, 320)—Right to use a pathway—Right to flow of water—Power of Subordinate Magistrate to try cases under s. 320.*—The right to use a particular pathway is a real right

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869)—continued.

coming under s. 320 of the Code. Therefore, any Magistrate, other than a District Magistrate, has no power to makes an order under s. 62. **2 Weir 65=3 M.H.C. Ap. 23.**

(764)—A right to a flow of water and to have an order passed to have a sluice demolished comes under s. 320 (s. 147). The person to adjudicate upon this question of public right of user is, therefore, a person having the powers of the Magistrate of the District. The jurisdiction of Subordinate Magistrates is, therefore, barred. **2 Weir 65.**

(765)—*S. 144—Time during which prohibitory order to remain in force, not specified—Order, validity of.*—An order made under s. 144 is not bad, because it omits to state that its operation is confined to two months, or some shorter period from the making thereof. Under the provisions of cl. (5) to s. 144 of the Code, an order under s. 144 only enures for a period of two months, and, therefore, unless there is something to the contrary in the order, it must be presumed that the order is to be limited to the period of two months specified in the Code. **34 C. 897=6 C.L.J. 186=11 C.W.N. 942=6 Cr. L.J. 194, F.B.**

(766)—*S. 144—Order issuing notice under subsequent confirmation of the order on cause shown, whether extends the period of operation of the first order.*—Where the Magistrate made an order issuing a notice under s. 144, Crim. Pro. Code, against a person not to do a certain thing and directed him to show cause on a subsequent day against the order and, on such cause being shown, refused to withdraw the order, *held*, that the order issuing the notice was an order under s. 144, Crim. Pro. Code, and, as such, could remain in force for two months from its date, and the confirmation of the said order on a subsequent day on cause being shown could not extend the period of its operation beyond these two months. **13 C.W.N. 195=5 M.L.T. 96.**

(767)--*S. 144 (=Crim. Pro. Code, 1872, s. 518=s. 144 of the Code of 1882—Order under the section, duration of—Breach of orders some years thereafter—Penal Code, s. 188.*—The Magistrate is not empowered to pass an order under s. 518 of the Code of 1872, which would have more than a temporary operation, and the grant of what would be in effect an order for perpetual injunction is beyond the magisterial jurisdiction. The Code of 1882 has recognised the principle, and the omission to limit the duration of an order under s. 518 of 1872 has been supplied by s. 144 of the Code of 1882, which limits it to two months. Where an order, under s. 518 of the Code of 1872, passed in 1876, directing the *saraogis* to take the procession of their idol at a particular hour and in a particular direction, was not promulgated again in 1886, the *saraogis*, taking the procession in 1886, contrary to the order of 1876, could not be convicted under s. 188, I.P.C., as the order could have only a temporary effect. **10 A. 115.** [*R.*, 10 A. 150].

(768)—*S. 144 (=Crim. Pro. Code, 1872, s. 518)—Illegal order—Jurisdiction of Civil Courts.*--The powers conferred by the section are large, but they ought, like all other powers of discretion created by law, to be exercised in a reasonable manner; and a Magistrate is bound, before he issues an order, to satisfy himself upon reasonable grounds that his order is likely to prevent a riot or affray. Where a Magistrate fails to exercise reasonable discretion, or satisfy himself that his order is absolutely required for any of the purposes mentioned in the section, and the order made by him deprives a man of the right to deal with his properties in a lawful way for lawful ends, such an order may be set aside by the Civil Court as one that the Magistrate was not entitled to make. **6 N.W.P. 104.** [*R.*, 5 C. 7, **F.B.**]

(769)—*S. 144—Interdicting exercise of legal right—Penal Code, s. 188.*—The Magistracy may, under s. 144, Crim. Pro. Code, in circumstances where the public tranquillity is in danger, interdict for the occasion the exercise of a legal right, and disobedience to the order is punishable under s. 188, I.P.C. **18 B. 758.**

(770)—*S. 144 (=Crim. Pro. Code, 1882, s. 144)—Order made without jurisdiction—High Court's power of interference—Charter Act (24 and 25 Vic. Ch. 104), s. 15—"A certain act," meaning of.*—The High Court can interfere, under s. 15 of the Charter Act, with an order made by a Magistrate, under s. 144 of the Crim. Pro. Code, when the Magistrate has no jurisdiction to make the order. [*F.*, 19 C. 127, 25 C. 852, 26 C. 188; *R.*, 31 C. 990]. The words "A certain act" mean a definite act. Therefore, an order directing a person not to collect rents from the ryots generally, without mentioning any particular ryots, does not come within the terms "a certain act" in s. 144 of the Code, and should, therefore, be set aside. **16 C. 80.** [*F.*, 19 C. 127.].

(771)—*S. 144—Order under the section contrary to a decree of Civil Court, effect of.*—Where the landlord of a certain share in an estate had obtained a decree in a Civil Court for arrears of rent and for ejectment of his tenants, and obtained also possession under that decree, *held*, that the mere fact that the landlord was unable to point out the particular lands of which he had obtained possession under the decree, would not justify an order under s. 144, the effect of which would be to deprive the landlord of the lands to which he was entitled, and that it was on the tenants to show what lands they held from the landlord. **6 C.W.N. 466.**

(772)—*S. 144--Renewal of order on the expiry of two months.*—A Magistrate has no jurisdiction to make an order for the renewal of an order under s. 144, on the expiry of two months. **7 C.W.N. 140.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(773)—*S. 144—Order under the section—Appeal—High Court's Act, s. 15.*—An order which purports to be based upon the legal rights of the parties affected by the order, but which in fact proceeds upon a misconception of those rights, although there is nothing on the face of the order that it is beyond the powers conferred by s. 144 of the Crim. Pro. Code, is an order which ought not to be allowed to stand. The High Court has the power to set aside such an order under s. 15 of the High Court's Act.—*Per* White, C.J. It is doubtful whether the High Court, in the exercise of the powers of superintendence given to it by s. 15 of the High Court's Act, has the power to revise an order of a Magistrate passed under s. 144 of the Code. **2 Weir 94.**

(774)—*Ss. 144, 426, 439, 440 (=Crim. Pro. Code, 1872, ss. 518, 297)—Interference by High Court—Charter Act, s. 15.*—Orders under s. 518 not being judicial proceedings, the High Court cannot interfere with them under s. 297 of the Code; but the High Court can, under s. 15 of the Charter Act, set aside an illegal order made under s. 518. **8 C. 580=11 C.L.R. 414.** [*Appr.*, 19 C. 127].

(775)—*Ss. 144, 133 (=Crim. Pro. Code, 1861, ss. 62, 308)—Case falling under both sections—Non-observance of the provisions of the latter section—Jurisdiction of Civil Courts.*—If any part of the ground covered by s. 62 also falls within the scope of s. 308, Crim. Pro. Code, 1861, then the Magistrate must conform to the more particular directions of the latter section. If such procedure is not adopted, the Magistrate's order and proceedings can be questioned by a suit in the Civil Court. **1 N.W.P. 197.**

(776)—*Ss. 144, 133 (=Crim. Pro. Code, 1861 ss. 62, 308)—Public nuisances—Applicability of s. 62.*—Cases specially provided for in s. 308 (s. 133) are, according to a common principle of interpretation, taken out of the general provisions of s. 62 (s. 144). **2 Weir 58.**

(777)—*Ss. 144, 145 and 107—Discretion of Magistrate.*—Where the defendant is in actual possession of the land about which the dispute has arisen, the Magistrate has a discretion to proceed under s. 107 or ss. 144 and 145. **26 M. 471=2 Weir 56.** [*R.*, 10 C.W.N. 288=2 Cr. L.J. 709=32 C. 966, 1 S.L.R. 50 Cr.]

∞(778)—*Ss. 144, 435—Revisional power of High Court.*—If the orders passed by a Magistrate under s. 144 are within the scope of the section and he has jurisdiction to make them, it is not open to the High Court, as a Court of revision, having regard to the provisions of s. 435 (3), to consider their propriety. **8 C. W.N. 373.** [*R.*, 4 L.B.R. 75=6 Cr. L.J. 291.]

(779)—*Ss. 144, 435 (3)*—A Magistrate, acting under s. 144, Crim. Pro. Code, passed the following order:—"I direct the following persons *shevadharis, pujairs* and the public generally to abstain from interfering with the *badves* in the performance of the daily *puja* of the God Vithoba at Pandharpur, and direct the *badves* also to perform the same *puja*." *Held*, that the Magistrate had jurisdiction to pass the order, and that under cl. (3), s. 435, of the Code, the High Court had no power to interfere in revision. **4 Bom. L.R. 582.** (19 C. 137, 24 C. 527=2 Bom. L.R. 34, *Dist.*).

(780)—The High Court ought not to interfere with the order passed by a Magistrate, who had jurisdiction to make such order in case of need, under s. 144. Whether the order made was or was not the best that could have been made is not a question which it has to consider. **5 M. L.T. 217.**

(781)—*Ss. 144, 435, 476 (=Crim. Pro. Code, 1882, ss. 144, 435 and 476)—Magistrate making inquiry before passing order under s. 144—Stage of judicial proceeding—Power to order prosecution for giving false evidence in such inquiry—Taking evidence before coming to a decision.*—A Magistrate, making an inquiry before the issue of an order under s. 144, is acting in a stage of a judicial proceeding, and has, therefore, jurisdiction to take action under s. 476, if he is of opinion that false evidence has been given before him. Although a Magistrate acting under s. 144 may act on information received or on his own knowledge, yet, the proviso in the third clause of s. 144, which in certain cases authorises the Magistrate to pass an order *exparte*, seems to contemplate that, ordinarily, an order under the section should not be made, without an opportunity being afforded to the person against whom it is proposed to make it, to show cause, why it should not be passed. This necessarily implies the power to take evidence before coming to a decision, though a Magistrate is empowered to act upon what is not legal evidence in cases of special urgency. **19 M. 18=2 Weir 591.**

(782)—*Ss. 144 and 487—Penal Code, s. 188—Trial by Magistrate, who made an order under s. 144, of persons who had disobeyed such order.*—A Magistrate, who made an order under s. 144 of the Code of Criminal Procedure, is not competent to try a person for an alleged offence under s. 188, Penal Code, the offence being an alleged breach of the order made under s. 144, Crim. Pro. Code. **24 M. 262=2 Weir 611.** (10 B.H.C. 424, *R.*).

(783)—*S. 144 (=S. 518, Crim. Pro. Code, 1872)—Dispute as to collection of rents—Order prohibiting collection, till the right of any party is adjudged by a competent Court, illegal.*—Where there is a dispute between rival parties as to the collection of rents from tenants, a Magistrate is not empowered under s. 518, Crim Pro. Code, 1872, to make an order prohibiting such collection till such time as the right and title of both parties is established by the order of a competent Court. **3 J.G. 44.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(784)—*S. 144 (=s. 62, Crim. Pro. Code, 1861, Holding* Hauts—*Magistrate empowered to issue orders of prohibition.*—S. 62, Crim. Pro. Code, 1861, authorises a Magistrate, or other officer exercising the powers of a Magistrate, to issue an order prohibiting a land-holder from holding a *haut* on any particular spot on his estate on particular days, on the ground that such an order is likely to prevent a riot or an affray. **1 J.G. 23.**

(785)—*S. 144 (=Crim. Pro. Code, Act X of 1882, s. 144)—Killing votive animals in private houses.*—Where a Municipal bye-law provided that killing any cattle in any place not sanctioned by the committee or without the permission thereof was illegal and the Magistrate with a view to prevent breaches of the peace between Hindus and Muhammadans, prohibited the slaughter of even votive animals except in the slaughter-house, *held* that the order was not illegal. **A. W. N. 1885, 258.**

(786 and 787)—Ss. 144 and 145—*See* BREACH OF THE PEACE, 12 C.W.N. 1044=8 Cr. L.J. 230, 3 M.L.T. 18=30 M. 548=7 Cr. L.J. 28.

(788)—Ss. 144, 145, 192 (2) and 529—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 13 C.W.N. 530=36 C. 370=9 Cr. L.J. 399=1 Ind. Cas. 817.

(789)—S. 144—*See* FORGERY, 35 C. 820.

(790 and 791)—Ss. 144, 435—*See* HIGH COURT, JURISDICTION OF, Rat. Un. Cr. C. 967, A.W.N. 1882, 140.

(792 and 793)—Ss. 144, 545, 546—*See* MAGISTRATE, JURISDICTION OF, 17 A. 485, F.B., Rat. Un. Cr. C. 50.

(794)—S. 144—*See* MARKET, A.W.N. 1897, 59.

(795)—Ss. 144 and 435—*See* NUISANCE UNDER CRIM. PRO. CODE, 18 M. 402=2 Weir 91, 2 C.W.N. 572.

(796)—S. 144—*See* NUISANCE UNDER PENAL CODE, 14 B. 165.

(797)—S. 144—*See* PENAL CODE, s. 188, 32 C. 793=2 Cr. L.J. 760, 14 C.W.N. 234, 36 P. R. 1905 Cr.

(798)—Ss. 144, 145, 146, 435, 439—*See* REVISION, 19 C. 127.

(798-*a*)—S. 144—*See* Nos. 446, 464, 474, 492, 719, 721, 722, *supra*, and Nos. 1310, 2575, 2846, 2847, 3093, 3417, *infra*.

——S. 145 (=1882, s. 145, 1872, s. 530; 1861, s. 318).

(799)—*S. 145—Object of the section—Circumstances under which the section becomes applicable—Non-joinder—High Court's powers*

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

—Duty of Magistrate.—Under s. 145, a special jurisdiction is vested in the Subordinate Criminal Courts under special circumstantes and for a special purpose; when either the special circumstances do not exist, or when the order made under s. 145 does not attain the purpose for which the jurisdiction is created, then the special jurisdiction vested under the section falls to the ground. The circumstances under which the jurisdiction springs up are those which give rise to an apprehension of a breach of the peace, and if there is no such apprehension, there is no jurisdiction to make the order. The purpose the Legislature had in view was the prevention of a breach of the peace. If that object is not attained by an order purporting to be made under s. 145, it must be taken to have been without jurisdiction. [*R.*, 6 C.W.N. 101, 2 C.L.J. 271=10 C.W.N. 257=2 Cr. L.J. 670=33 C. 33.]. Non-joinder of persons concerned in a dispute, whose presence is necessary for the purpose of preventing an apprehended breach of the peace, involves a question of jurisdiction, and the High Court has power to set aside an order made in a proceeding under s. 145, Crim. Pro. Code, in which such persons are not made parties. **28 C. 446=5 C.W.N. 428.** [*F.*, 28 C. 709; *R.*, 30 C. 155, F.B.; *D.*, 22 A.W.N. 111 =24 A. 443].

(800)—The principal object which a proceeding under s. 145 aims at is the prevention of a breach of the peace. It cannot be achieved, if persons interested in the possession of the land, or at any rate interested in claiming it, are not made parties to the proceeding. (27 C. 892, 4 C.W.N. 613, 5 C.W.N. 428, *R.* [*R.*, 30 C. 155, 6 Cr. L.J. 113=24 P.W.R. 1907 Cr.=7 P.R. 1907 Cr.=71 P.L.R. 1908]. It is the duty of a Magistrate, before he initiates proceedings under s. 145, not only to be satisfied that a dispute exists, but also to ascertain as far as possible, who are the parties concerned in the dispute. **6 C.W.N. 101.** 24 C. 55, 1 C.W.N. 3, *F.*). [*R.*, 30 C. 155, 6 Cr. L.J. 113=24 P.W.R. 1907 Cr.=7 P.R. 1907 Cr.=71 P.L.R. 1908].

(801)—The object of s. 145 of the above Code is to preserve the public peace by allowing the Magistrate to determine, for immediate purposes, questions of the possession of immoveable property. The respective rights of the parties to the property in question would be for the decision of a Civil Court. **U.B.R. (1892—1896), Vol. I, 23.**

(802)—*S. 145—Enquiry into question of title —Object of section.*—A long and minute enquiry into questions of title, involving the consideration of voluminous documentary evidence necessarily causes an expenditure of time and labour, contrary to the intention of s. 145, Crim. Pro. Code, which is limited to the one issue of possession; the object aimed at is chiefly the immediate prevention of a breach of the public peace. **S.C. 127, Oudh.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(803)—*S. 145—Scope of the section—Order under sub-s. 1—Power of Magistrate to stay proceedings—Effect—Powers of High Court.*—The procedure provided by s. 145 is intended solely for the purpose of preventing a breach of the peace, where a dispute exists concerning land, or water, or the boundaries thereof, which dispute, if no proceedings were taken, would be likely to cause a breach of the peace. The institution of such proceedings is a matter entirely within the discretion of the Magistrate. The Magistrate, acting under the provisions of that section, should record an order stating the grounds of his being satisfied that a dispute likely to cause a breach of the peace in fact exists. Any inquiry as to possession, that is made under the provisions of that section, is made, not for the purpose of strengthening the position of the one party or of the other in the dispute between them, but because such an enquiry is necessary for the making of an order under sub-s. 6, declaring the party in possession to be entitled to retain it, until evicted from the property in due course of law, and forbidding all disturbance, until such eviction. A party to a proceeding under s. 145 is not in the position of a plaintiff in a civil suit, who has set the Court in motion, and has a right to require a decision upon the questions raised by him. It is competent to a Magistrate to cancel an order made under sub-s. 1 of s. 145, and to stay proceedings, if he becomes satisfied, whatever the source of his information may be, that the state of things does not exist which alone would give him jurisdiction to proceed with the inquiry. If a Magistrate cancels an order under s. 145, or refuses to make an order at all, no private person has any *status* to contest the propriety of his refusal to make an inquiry into the question of possession. An order striking off proceedings under s. 145 does not amount to an adjudication of the question of possession for the purposes of sub-s. 6 of s. 145. The High Court cannot direct the institution of proceeding under s. 145 or the revival of such proceedings, when they have been stayed by the Magistrate. **30 C. 112=6 C.W.N. 417.** (25 C. 559, 5 C.W.N. 71, 22 C. 297, *Dist.*). [*R.*, 17 C.P L.R. 133].

(804)—S. 145 was intended to provide a speedy remedy for the prevention of the breaches of the peace arising out of disputes relating to immoveable property. The Code contemplates a determination of the question of possession without any reference to the merits of the respective claims of the disputing parties to a right to possess the subject of dispute. The question of possession, moreover, has to be determined with reference to a specified point of time, namely, the date of the initial order, or, in the case of forcible dispossession, a date within 2 months next preceding such order. The Legislature could hardly have contemplated an elaborate and protracted investigation, the result of which might, in many instances, be

Crim. Pro. Code, (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

to defeat the very object in view, *viz.*, an effective prevention of a breach of the peace. The whole object might obviously be defeated, if the Court could be compelled to summon and re-summon witnesses at the choice of the parties. **32 C. 1093=2 C.L.J. 280=2 Cr. L.J. 679.**

(805)—S. 145 contemplates a dispute between two parties, each of whom asserts the right to hold actual possession of the property as against the other, and not a dispute between parties claiming to hold joint possession and neither contesting such right. **7 C.W.N. 118.** [*R.*, 7 C.W.N. 462, 8 C.W.N. 885=32 C. 249].

(806)—S. 145 contemplates a dispute as to the possession of a definite piece of land or the rents or profits issuing from a definite piece of land. A Magistrate cannot proceed under s. 145 in the case of a dispute about an undivided share in land or rent or profit issuing from an undivided share, because the subject matter of the dispute is uncertain and the boundaries of the land are undefined. **7 C.W.N. 462.** (23 C. 80, 4 C.W.N. 467, 7 C.W.N. 118, *Expl.*).

(807)—The term "land" in s. 145, Crim. Pro. Code, has a very wide signification and includes crops or other produce of land and even the rents and profits of land. The mere fact that the crops which are the subject of dispute have been removed from the land is not sufficient to oust the jurisdiction of the Magistrate under s. 145. **2 Weir 108.**

(808)—*S. 145 (3) and (4)—Scope of the clauses—Failure to comply with the provisions of clause 3—Effect.*—Cl. 3 of the section was intended to be only supplementary to cl. 1, and it was framed with the object of giving all persons interested in the dispute, notice of the proceedings before the Magistrate, so that they might have an opportunity of appearing and putting in their claims, if they have any; when the requirements of cls. 1 and 3 are complied with, the Magistrate is to take up the enquiry as provided by cl. 4. Cl. 3 further provides for the publication of a copy of the order in a conspicuous place at or near the subject of dispute, probably with the intention of guarding against collusive proceedings, as well as to give to any one interested, who may, through an oversight or otherwise, not have received a summons, an opportunity of coming in with his claim, and also to notify generally to all persons in the locality that a proceeding under the section has been set on foot. But the general invitation was not intended, any more than the power given to the Magistrate of summoning additional parties, to have the effect of altering the character of the enquiry. **30 C. 155=6 C.W.N. 737. F.B.** [*R.*, 33 C. 68 =9 C.W.N. 1046=2 C.L.J. 241, F.B.].

(809)—*S. 145 (3).*—The failure to publish a copy of the order, in accordance with the provisions of cl. (3) to s. 145, affects the jurisdiction

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

of the Court. **8 C.W.N. 590.** [*F.*, 9 C.W.N. 909; *Overruled.*, 9 C.W.N. 1046=2 C.L.J. 241 =33 C. 68.]

(810)—The publication of a notice locally under sub-s. (3) is a condition precedent to the exercise of a Magistrate's jurisdiction in an inquiry as to possession under sub-s. (4) of that section. **9 C.W.N. 909=2 Cr.L.J. 569.** [*R.*, 33 C. 68=9 C.W.N. 1046=2 C.L.J. 241=2 Cr. L.J. 618].

(811)—A Magistrate ought, before entering on an enquiry under cl. 4 of the section, to satisfy himself to the best of his ability on the information before him, as to who are the persons claiming to be in present possession of the subject of dispute, but he is not concerned to ascertain what persons have, or claim to have, mere rights to possession. **30 C. 155=6 C.W.N. 737, F.B.** (21 C. 29, *overruled.*).

(812)—The use of the word "then" in sub-s. 4, does not render the publication of the order mentioned in sub-s. 1, a condition precedent to the passing by the Magistrate of a final order under sub-s. 6. The word "then" applies only to the time or order of the Magistrate's proceedings, but does not deprive him of jurisdiction, if the notice has not been duly published. **33 C. 68=9 C.W.N. 1046=2 C.L.J. 241=2 Cr. L.J. 618.**

(813)—*Ss. 145, 435, 437—Failure to comply with procedure.*—Where a Magistrate has adopted none of the procedure required under s. 145, and has passed an order without reference thereto, such order is one really not under the section, and is open to revision under ss. 435, 439, Crim. Pro. Code. **2 P.R. 1899 Cr: F.B.**

(814)—*S. 145 (=Crim. Pro. Code, 1872, s. 530) —Enquiry as to right of possession—Powers of Magistrate—Applicability of section to temples —Attachment.*—The enquiry under s. 530 (s. 145) is limited, by the terms of the section, to the fact of possession "without reference to the merits of the claims of any party to a right of possession." The Magistrate has no power to decide the question of right, and he cannot restore a party who has been dispossessed except in the case provided in s. 534 (s. 522), where there has been a conviction of an offence accompanied by criminal force and the dispossession has been effected by means of such criminal force. **2 Weir 99.**

(815)—A temple may, for the purposes of s. 530 (s. 145), be wholly or partly private property, or, it may have been dedicated to purposes of public worship as to be no longer private property. **2 Weir 99.**

(816)—A dispute regarding the possession of a temple is a dispute relating to "tangible immoveable property," and is, therefore, within the provisions of s. 145. [*F.*, 2 Weir 112.] To attach property, such as a temple, does not

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necessarily mean that it must be closed altogether. Where third parties or the general community are interested in it, it is the duty of the Magistrate, when assuming charge of the property in order to preserve the peace, to make the best arrangements possible to preserve the rights of such third parties or the public, and to have the *puja* of the temple performed. **2 Weir 110.** [*F.*, 2 Weir 112.]

(817)—*S. 145—Initiatory Order—Omission by Magistrate to state the grounds of his being satisfied as to likelihood of breach of the peace.*—If the Magistrate omits, in the initiatory order under s. 145, cl. 1, to state the grounds of his being satisfied as to the likelihood of a breach of the peace, the final order directing one of the parties to be retained in possession is without jurisdiction and must be set aside. Even where a Magistrate acts upon a police report or upon other information, he is still bound to state the grounds upon which he is satisfied that there is a likelihood of a breach of the peace. In cases initiated upon a police report or other information which has been reduced to writing, reference can be made to the materials upon which the Magistrate acted to ascertain whether there were in fact grounds upon which he might have acted, but even then, it is the duty of the Magistrate to state the grounds upon which he was satisfied that there was a likelihood of a breach of the peace. **32 C. 771=9 C.W.N. 621=2 Cr. L.J. 342.** (20 C. 513, 20 C. 520, 27 C. 981, 28 C. 416, *F.*). [*R.*, 33 C. 352=9 C.W.N. 1065=2 C.L.J. 259, F.B.].

(818)—*S. 145—Orders under, nature and effect of—Onus of proof—Appeal.*—Orders under s. 145 are merely police orders made to prevent breaches of the peace. They decide no question of title; but the person maintained in possession by such an order can only be evicted in a suit by a person who can prove a better right to the possession himself. **29 C. 187=29 I.A. 24=6 C.W.N. 386, P.C.**

(819)—*S. 145—Dispute as to possession of land—Nature of possession.*—The possession contemplated by s. 145 is actual possession of the subject of dispute. The power or competency of the Magistrate to interfere, depends on the very fact that the possession of the land is in dispute. **9 C.W.N. 887=1 C.L.J. 331=2 Cr.L.J. 408.**

(820)—*S. 145 (=Crim. Pro. Code, 1872, s. 530)—Powers of Magistrate under.*—Where the dispute between two joint owners of land raised no question of possession, but whether one of them was at liberty to make use of the land, against the will of the other in such a manner as to cause annoyance, a Magistrate has no jurisdiction to interfere under s. 530, Crim. Pro. Code, 1872, and award exclusive possession of a portion to one of them. **3 C. 573=1 C.L.R. 352.**

rim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(821)—*S. 145—Parties jointly interested in subject-matter of dispute—Decision as to method of possession - Jurisdiction of Magistrate.*—A Magistrate has no jurisdiction to pass any order under section 145 of the Crim. Pro. Code in respect of the subject-matter of the dispute in which the parties claim to be jointly interested. He is entitled to decide which of the parties is in possession, but he cannot decide the method by which the possession is to be exercised, or the agency by which the person in possession is to collect the profits. M and K were jointly entitled to a property. K gave an agreement to M authorising him to make collections of the entire property and to divide the share at the close of each year. Subsequently K leased out his share to A who attempted to collect the share leased out to him. Proceedings under section 145 of the Crim. Pro. Code were then instituted with the result that the Magistrate declared M to be in possession. *Held*, that the Magistrate had no jurisdiction to take proceedings under the section. **11 Cr. L.J. 28=4 Ind. Cas. 696=36 C. 986.**

(822)—*S. 145—Procedure under, to be followed by Magistrates.*—An application was made to a Magistrate to take action under s. 145, Crim. Pro. Code. The Magistrate passed an order that the opposite party be summoned and the complainant produce his evidence. On the date fixed, the Magistrate merely examined the *patwari* and passed the final order. *Held*, that, as the Magistrate had not followed the procedure laid down in Chapter XII of the Code, his order was without jurisdiction. **5 Ind. Cas. 128.**

(823)—*S. 145—Claim to separate possession—Applicability of section.*—Where a dispute relates to the exclusive possession of land, and not to joint possession, s. 145 is applicable to such a dispute. **6 C.W.N. 883.**

(824)—*S. 145—Order of Magistrate—Duty of Magistrate to record grounds for holding a likelihood of breach of peace—Opportunity to adduce evidence—Interference by High Court.*—A Magistrate's order, in instituting proceedings under s. 145, ought to set out the ground on which he is satisfied that a dispute likely to cause a breach of the peace existed, and he should also give the parties to the proceedings, an opportunity of adducing their evidence. [*R.*, 9 C.W.N. 1065=33 C. 352=2 C.L.J. 259, 2 Cr. L.J. 342=9 C.W.N. 621=32 C. 771, 6 Cr. L.J. 113=24 P.W.R. 1907 Cr. =71 P.L.R. 1908=7 P.R. 1907 Cr.] The High Court has no power of interference with proceedings under Ch. XII of the Code, except under the powers of superintendence conferred upon it by Charter Act (24 & 25 Vic. C. 104, s. 15). **28 C. 416.** [*R.*, 5 O.C. 1, 17 C. P.L.R. 133].

(825)—*S. 145 (=Crim. Pro. Code, 1882, s. 145)—Dispute likely to cause a breach of the peace.*—The existence of a dispute likely to cause a breach of the peace is the foundation of the jurisdiction conferred by s. 145. Omission to find the existence of such a dispute is a fatal defect, and a Magistrate's order without such a finding should be set aside. **6 P.R. 1885 Cr.**

(826)—*S. 145—Order under the section, effect of, on the powers of a Civil Court— Civ. Pro. Code, ss. 503, 505.*—The Code of Civil Procedure and the powers of Civil Courts under that Code are in no way fettered by an order that may be passed by a Magistrate under s. 145 of the Crim. Pro. Code. The Magistrate's order under s. 145 is only intended to control any period up to the time when the Civil Court takes seisin of the matter and passes such orders as may be necessary for the protection of the property. The powers of a Civil Court to appoint a Receiver in respect of certain immoveable property are, in no way, affected by the order of a Magistrate under s. 145, maintaining possession on behalf of one of the litigants. **22 A. 214.**

(827)—*S. 145—Application for revision at instance of party not entitled to immediate possession—Maintainability.*—In a dispute for mutation of names between the widow and the daughter's son of the deceased, a compromise was agreed to, whereby it was settled that the widow should be entered in the *khewat* as owner for her life time, and that the grandson should be entered as her manager. It was also laid down that the widow had not reserved the right to remove the grandson from his possession. On the widow granting a lease of certain villages of the estate, proceedings were initiated at the instance of the grandson under s. 145. The Magistrate passed no order deciding the possession of either one or the other of the disputants, holding that the grandson had in effect no *locus standi* to claim possession at all, as he was himself only an agent and manager, and had in himself no right to possession whatever. *Held*, that he was not entitled to be heard in revision, as he had then no possible right on his own behalf to present possession. **24 A. 443.**

(828)—*S. 145—Order without jurisdiction.*—It is manifest that, for the making of an order under s. 145, it is essential that the provisions of the section should be complied with. Where a Magistrate has failed to do so, his omission is something more than an irregularity, and his order must be deemed to be an order without jurisdiction. **25 A. 537=A.W.N. 1903, 102.** [*R.*, 26 A. 144; *D.*, A.W.N. 1907, 50=4 A.L.J. 91; *R.*, 1 S.L.R. 50 Cr.=8 Cr. L.J. 170.] 24 B. 527, 27 C. 981, 7 C.W.N. 174, *F.*

(829)—*S. 145—Penal Code, s. 434—Order to set up boundary marks, by means of pillars—Removal of the boundary marks.*—The authority of the public servant, referred to in s. 434, I.P.C., must be understood to mean the lawful authority of a public servant. A Magistrate has no authority, under s. 145, Crim.

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Pro. Code, to order the property, the subject of dispute, to be demarcated by boundary pillars, defining the limits of the possession of the respective parties. A person removing the boundary marks is not liable to be convicted under s. 434, I.P.C. **27 A. 300=1 A.L.J. 619 =A.W.N. 1904, 264.**

(830)—*S. 145 (2)—"Crops or other produce of land"—Crops severed from the land not within the definition.*—The words "crops or other produce of land" in s. 145, (2), Crim. Pro. Code, do not include crops severed from the land upon which they grew. A Magistrate cannot, hence, attach under s. 146 of the Code a crop of *mahua*, no longer growing on the trees. **A.W.N. 1905, 278=28 A. 266=3 A.L.J. 13.** (30 C. 110, *F.*).

(831)—*S. 145—Apprehension of a breach of the peace—Order in writing, absence of—Effect.*—Where a Magistrate has recorded no order in writing under s. 145, stating the grounds of his being satisfied that a dispute likely to cause a breach of the peace exists concerning immoveable property, his proceedings are not such as are justified by Ch. XII of the Code, and may be set aside in revision as entirely without jurisdiction. **2 A.L.J. 272.** [*D.*, 4 A.L.J. 91=A.W.N. 1907, 50=5 Cr. L.J. 117].

(832)—*S. 145—Grounds for holding existence of likelihood of breach of the peace—Power of High Court to examine the ground—Proceedings founded on Police Report.*—The High Court should not ordinarily exmine whether the grounds upon which the Magistrate was satisfied of the existence of a likelihood of a breach of the peace afford a reasonable ground for his conclusions. (22 W.R. 879, 25 W.R. 82, 20 C. 513, *Diss.*). It is essential for the assumption of jurisdiction under s. 145, that the Magistrate should be satisfied, either from a police report, or from other information that there is a likelihood of a breach of the peace. He ought not to take action upon a mere expression of opinion by the police, but should have a statement of facts before him so that he may form his own opinion and be satisfied as to the necessity or otherwise for the initiation of proceedings under the section. A reference by the Magistrate in the initial order to a police report, which clearly sets out the likelihood of a breach of the peace, is a sufficient statement of the reasons for his being satisfied of the existence of a dispute likely to cause such breach of the peace. But the police report, upon which the Magistrate bases his initial order, should contain a statement of facts from which the Magistrate may be satisfied of the existence of a likelihood of a breach of the peace. But there is no inflexible rule that the police report must show that the disputing parties are actually assembling men or doing other specific overt acts. No rule can be laid down so as to specify the sufficiency of the materials upon which he takes action, but he must form his own judgment and not proceed upon a mere expression of opinion by the police. **33 C. 33 =10 C.W.N. 257=2 C.L.J. 271=2 Cr.L.J. 670 F.B.** (6 C. 835, 28 C. 446, 2 C.L.J. 259, *F.*).

(833)—*S. 145—Grounds to satisfy Magistrate as to necessity of taking proceedings—Omission to state grounds—Reference in the order to police report whether substantial compliance with law.*—An initial order made by a Magistrate under s. 145, cl. 1, of the Code of Criminal Procedure, is not defective, because it is not self-contained and does not state in express terms the grounds upon which he is satisfied that a dispute likely to cause a breach of the peace exists, when such grounds appear in the police report on which the order is founded and to which it makes reference. [*F.*, 32 C. 1093=2 C.L.J. 280, 17 M.L.J. 449; *R.*, 1 S.L.R. 50 Cr. 5 C.L.J. 611]. It is a substantial compliance with sub-s. 1 of s. 145 of the Code of Criminal Procedure to refer in the initial order to the police report upon which the order is based, when such police report states the grounds of the existence of a likelihood of a breach of the peace. **33 C. 352=9 C.W.N. 1065 =2 C.L.J. 259 F.B.** [*F.*, 33 C. 33=10 C.W.N. 257=3 Cr. L.J. 670=2 C.L.J. 271].

(834)—*S. 145—Question of possession—Evidentiary value of decrees of Civil Court and orders of Criminal Courts—Action under, when could be taken—Interference by High Court.*—The question of possession under s. 145 has to be determined with reference to a specified point of time; upon this question, every previous decree of a Civil Court or order of a Criminal Court is not conclusive; the evidentiary value to be attached to such decree or order must depend upon the circumstances of each particular case. (26 C. 625, 32 C. 796, 5 C.W.N. 563, 8 C.W.N. 719, *R.*). To justify a Magistrate to institute initiatory proceedings under the section, it is not essential that the dispute should be of a character which renders a breach of the peace imminent. It is sufficient if there be a likelihood of a breach of the peace. (4 C. 650, 28 C. 446, *R*; 7 C.L.R. 352, 7 C. 385, *F.*). [*R.*, 1 S.L.R. 50, Cr.]. The High Court will not interfere under s. 15 of the Charter Act, unless it is satisfied that the person who seeks its interference has been prejudiced by the proceedings of the Courts below. Where an initial order under s. 145 does not set out sufficient facts to justify an apprehension of a breach of the peace, the High Court is not bound to set aside the proceedings under the section, when it is proved that a breach of the peace was likely at the date of the initial order. **33 C. 33=10 C.W.N. 257=2 C.L.J. 271=2 Cr. L.J. 670, F.B.** (2 C.L.J. 241, *F.*).

(835)—An order under s. 145 is to be justified only when there is an immediate danger of a breach of the peace. **8 C.W.N. 590.** [*Diss.*, 33 C. 33=10 C.W.N. 257=2 Cr. L. J. 618=2 C.L.J. 271].

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(836)—S. 145 gives the Magistrate power to institute proceedings, when he finds that a dispute likely to cause a breach of the peace exists, concerning any land or water or the boundaries thereof within the local limits of his jurisdiction. Where a *jalkar*, the subject of a proceeding under s. 145, is situate partly within and partly without the local limits of a Magistrate's jurisdiction, the order of the Magistrate, with regard to that portion which lies outside it, is *ultra vires*. If the proceedings have been taken with regard to the *jalkar* as a whole, the entire order should be set aside. **1 C.L.J. 329=2 Cr. L.J. 406.**

(837)—A Magistrate, who purports to act under s. 145, Crim. Pro. Code, should record a finding that there is a dispute likely to cause a breach of the peace. **2 Weir 117.**

(838)—*S. 145 (=Crim. Pro. Code, 1882, s. 145)—Possession.*—The possession referred to in s. 145 means actual possession at the time the proceedings were instituted, and not at the date of the passing of the Magistrate's order. Possession, therefore, though obtained by wrongful means but complete at the time of inquiry, must be treated as actual possession. **5 P.R. 1897 Cr.**

(839)—*S. 145.*—Where the plaintiff sued for possession of land, which the defendant had been declared to be in possession by an order under s. 145, and has made good his title to the satisfaction of the High Court, it is for the defendant (appellant) to show that the judgment of the Court is wrong. It is not enough for him to show that the plaintiff's title is not free from doubt, but he must give some acceptable explanation of the circumstances which led the Court below to its conclusion. **29 C. 187=29 I.A. 24=6 C.W.N. 386, P.C.**

(840)—*S. 145 (=Crim. Pro. Code, 1882, s. 145)—Possession of landlord.*—The possession of a landlord by receiving rents from his tenants is "actual possession" within the meaning of s. 145. **19 P.R. 1884 Cr.**

(841)—*S. 145 (2) and (3)—Meaning of "then."*—The word "then" in the 2nd and 3rd paragraphs of s. 145, Crim. Pro. Code, refers to the time when the Magistrate "received the information," which leads him to exercise his powers under s. 145, Crim. Pro. Code. **S.C. 115, Oudh.**

(842)—*S. 145—Dispute regarding possession of land—Decree of Civil Court—Duty of Magistrate.*—The object of s. 145 is to enable a Magistrate to intervene and pass a temporary order in regard to the possession of the property in dispute to have effect until the actual rights of one of the parties have been determined by a competent Court. It is consequently his duty, when the right has deen declared within a time not remote from his taking proceedings under s. 145, to maintain any order which has been passed by any competent Court; and, therefore, to take proceedings, which necessarily must have the effect of modifying, or even cancelling, such orders, is to assume a jurisdiction which the law does not contemplate. This rule applies, however, where there is no doubt whatever as to what the Civil Court has done, that is, where it cannot be disputed that a certain party has been declared owner and put in possession by a Civil Court. **6 Bom. L. R. 246.** (25 B. 179=2 Bom. L. R. 88, *R*; 26 C. 625, *F.*)

(843)—A Magistrate is not justified in disregarding the decree of a Civil Court. It is his duty to uphold and carry out that decree so far as lies in him to do so. A Civil Court decreed redemption of a certain share in a zemindari. The mortgagee claimed to remain in cultivatory possession of certain plots of land, contending that the decree of the Civil Court did not affect his rights as a tenant. Upon a dispute for possession arising between the tenant and the mortgagor's representative, *held*, that the Magistrate had jurisdiction to pass an order under s. 145, and that, therefore, the High Court could not revise his order. **2 A.L.J. 274 =2 Cr. L. J. 236.** [*R.*, 6 A.L.J. 113=31 A. 150].

(844)—An order of a Magistrate under s. 145 is meant to be only a temporary or tentative order, and is to be operative so long only as the rights of the parties are not determined by a Civil Court. Where the rights of parties have been determined by a Civil Court, the Magistrate is not competent to ignore the decree of the Civil Court. Where delivery of possession was given by a Civil Court to the first party on the 9th September, and proceedings under s. 145, Crim. Pro. Code were instituted by the second party on the 3rd December and the Magistrate maintained the possession of the second party, *held*, that the Magistrate should have maintained the possession in accordance with the decree of the Civil Court. **29 C. 208=6 C.W.N. 38.** (26 C. 625=3 C.W.N. 461, *R.*).

(845)—The duty of a Criminal Court, in a case under s. 145, where there is a decree of a Civil Court for possession in respect of the disputed land, is to find which party held such Civil Court decree, and then to maintain that party in possession. It is not necessary that such decree must be one for possession as between the parties to the proceedings under s. 145. **5 C.W.N. 563.** [*F.*, 7 C.W.N. 118; *D.*, 33 C. 33=10 C.W.N. 257=2 Cr. L.J. 670=2 C.L. J. 271].

(846)—In a proceeding under s. 145 with respect to certain property which had been purchased by the petitioner at an execution sale, and of which possession had been given by the Civil Court, the opposite party, who were members of a joint Hindu family subject to the *Mitakshara* law with the person whose property was sold, objected to the decree, on the ground

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that only the share of the judgment-debtor was affected by the decree. *Held*, that as the writ of possession of the Civil Court showed that the whole property was delivered to the auction-purchaser, it was not open to the Criminal Court acting under s. 145 to adjudicate upon the rights of the second party, and to decide that the shares in it, whatever they may have been, could not have been included in the delivery of possession, because they were not parties to the civil suit. **6 C.W.N. 841.**

(847)—Where one of the parties to a dispute regarding a land is actually put in possession of the same by a Civil Court as the result of a sale under the decree, it is the duty of a Criminal Court to uphold the status of that party as established by the Civil Court. **7 C.W.N. 118.**

(848)—*S. 145—Possession found by Criminal Court, nature of--Possession given by Civil Courts.*—In proceedings under s. 145, Magistrates have always upheld the possession given by the Civil Courts; otherwise, a person, who had obtained a decree declaring his right to possession and had been put in possession, might find himself again forced to litigate his title. But the possession found by a Criminal Court cannot be treated in the manner in which recent possession given under a decree of a Civil Court is treated in cases under s. 145 of the Code. **2 C.L.J. 147=2 Cr. L.J. 572.**

(849)—*S. 145—Omission to record source of information of a likelihood of a breach of the peace—Effect of—Object of drawing up proceeding prior to notice under section.*— Where a Magistrate holds an inquiry in the presence of the parties and satisfies himself by inquiry that there is a likelihood of a breach of the peace, and then directs proceedings under s. 145 to be taken, they are not invalid. merely because the Magistrate, has not stated the source of the information, the parties being already aware of that in the course of the inquiry. (27 C. 981, 6 C.W.N. 923, *R.*). The object of drawing up a proceeding prior to the issue of notice under s. 145 can only be to inform the parties of the grounds or the information which satisfy the Magistrate that a dispute exists. **7 C.W.N. 599.**

(850)—*S. 145—Whether Magistrate can consider dispute on its merits--Magistrate to decide only fact of possession—Parties,, if can be required to file written statements.*—A Magistrate is not at liberty to go into the merits of the claim of any of the parties to the dispute, to a *right* to possess the subject thereof. He can only decide the *fact* of possession at the date of the order requiring them to put in their statements. The parties cannot be called upon in these proceedings to furnish a statement of their rights, nor can the Magistrate take, as the basis of any action he may finally decide upon, any conclusion at which he may arrive, or at

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which he may have arrived, as to the respective titles of the parties. **25 B. 179=2 Bom.L.R. 755.**

(851)—*Ss. 145, 522 (=Crim. Pro. Code, 1872, ss. 530, 534)—Enquiry as to possession, nature of—Possession of wrong-doer—Duty of Magistrate.*—It is the duty of the Magistrate under s. 530 (s. 145), Crim. Pro. Code, to ascertain who, at the time of the enquiry, is in possession. He is to make this enquiry without any reference to the merits of the claim of any party to a right of possession. S. 534 (s. 522), which enables the Magistrate to deprive a wrong-doer of possession, is limited to cases in which possession has been obtained by criminal force attending an offence, and the wrong-doer has been convicted of such offence. **2 Weir 98.**

(852)—*S. 145—Addition of parties, when can be made—Fresh proceedings, whether necessary —High Court's powers of interference.*—Where parties are added after the initiation of the proceeding under the section, there is no necessity for a fresh proceeding in consequence of such addition, if the party added was concerned originally in the dispute which is the foundation of the proceedings. Up to the time of the beginning of the inquiry. parties may be added. If they are added after it has begun, it would amount to an irregularity. But it would not be necessary, in consequence, to initiate a fresh proceeding, but evidence, previously taken, ought, if the parties so added require it, to be again taken in their presence. (24 C. 55=1 C. W.N. 3, *overruled*). [*F.*, 10 C.W.N. 1095.] Only in cases in which a Magistrate has acted without jurisdiction, or improperly declined to exercise his jurisdiction, the High Court has the right to interfere with proceedings taken by the Magistrate under s. 145 of the Crim. Pro. Code. **30 C. 155=6 C.W.N. 737, F.B.** [*R.*, 2 L.B.R. 239].

(853)—A Magistrate has not the power, after recording the proceeding, as he is required to do under the first paragraph of the section, to add, in the course of the investigation, any new party as concerned in the dispute. **5 C.W.N. 900.** (1 C.W.N. 3=24 C. 55, 3 C.W. N. 329, 4 C.W.N. 613=27 C. 892, *F.*).

(854)—*S. 145—Effect of Magistrate's order as to possession on possessory suit before Mamlatdar.—Bombay Act III of 1876, (Mamlatdars' Courts), s. 10.*—The fact that a Magistrate had passed an order as to possession under s. 145, Crim. Pro. Code, does not deprive a Mamlatdar of his jurisdiction to entertain a possessory suit, for, the Magistrate finds who was in possession *on* a particular date and the Mamlatdar decides who was in possession *before* such date. **26 B. 353=3 Bom. L.R. 919.**

(855)—*S. 145—Order under the section—Reports and maps referred to such orders, admissibility and value of, as evidence—Evidence Act, s. 13.*—Orders of Magistrates under s. 145 are admissible in evidence on general

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principles as well as under s. 13, Evidence Act, to show the fact that such orders were made. This necessarily makes them evidence of the following facts, all of which appear from the orders themselves, *viz.*, who the parties to the dispute were; what the land in dispute was; and who was declared entitled to retain possession. For this purpose and to this extent, such orders are admissible in evidence for and against every one, when the fact of possession at the date of the order has to be ascertained. If the lands referred to in such orders are described by metes and bounds, or by reference to objects or marks physically existing, these must necessarily be ascertained by extrinsic evidence, *i.e.*, the testimony of persons who know the locality. If the orders refer to a map, that map is admissible in evidence to render the order intelligible; and the actual situation of the objects drawn or otherwise indicated in the map must, as in all cases of this sort, be ascertained by extrinsic evidence. Reports accompanying the orders or maps and not referred to in the order may be admissible as hearsay evidence of reputed possession. But they are not otherwise admissible, unless they are made so by s. 13 of the Evidence Act. **29 C. 187=29 I.A. 24=6 C.W.N. 386, P.C.** [*R.*, 30 C. 155, F.B.; *D.*, 7 O.C. 122.].

(856)—*S. 145—Persons claiming possession of land or portion of land—Omission to add them as parties when they are not concerned in original dispute—Validity of proceeding.*—Proceedings, under s. 145, are not without jurisdiction, because some person claiming to have possession, in some way, of the lands, or of a portion of the lands, in dispute had not been made a party, when he was not one of the parties in the dispute likely to cause a breach of the peace, so far as appeared from the information on which the Magistrate acted, and when such person does not appear and raise any objection. Proceedings under s. 145 are not without jurisdiction, because some of the parties are concerned with possession only of a portion of the lands in dispute. **30 C. 155=6 C. W. N. 737, F.B.**

(857)—*S. 145—Dispute as to land—Report by police officer of a different district—Jurisdiction of Magistrate.*—The Magistrate of one district can properly institute proceedings, under s. 145, on a police report drawn by a police officer of another district in respect of such portions of the land within his jurisdiction. **29 C. 885=6 C.W.N. 378.** [*F.*, 1 C.L.J. 329].

(858)—*S. 145—Proceedings under Ch. XII—Summons cases—Process against witnesses—Duty of Magistrate—Refusal to summon or examine witnesses—Interference by High Court.*—It cannot be laid down as a rule of law that proceedings under Ch. XII of the Code should be regarded, as to procedure, as summons cases. S. 145 of the Code enjoins the Magistrate "to receive the evidence produced" by the parties and to take such further evidence, if any, as he thinks necessary; but this does not mean that the parties shall produce their own evidence, or absolve the Magistrate from the duty of assisting the parties in procuring the attendance of material witnesses, when it is shown that their attendance cannot be enforced without such assistance. (11 C. 762, 21 C. 29, *Expl*). [*F.*, 2 C.L.J. 286 (n); *Diss.*, 2 C.L.J. 280=32 C. 1093.] A mere refusal to summon or examine a particular witness or witnesses cited by a party in proceedings under Ch. XII, Crim. Pro. Code, is not necessarily a ground for interference by the High Court. Each case must be determined upon its own circumstances. **30 C. 508=7 C.W.N. 404.**

(859)—Where the Magistrate, in a proceeding under s. 145, refused to examine some witnesses of the first party who were present in Court and declared the possession of the second party, *held*, that the Magistrate's refusal was in direct contravention of the provisions of law contained in Cl. (4), s. 145 of the Code and that the order should therefore be set aside. **31 C. 685.** [*F.*, 2 C.L.J. 286 (n); *R.*, 32 C. 1093=2 C.L.J. 280; *Expl.*, 3 C.L.J. 478].

(860)—*S. 145—Receiver appointed by Court—Nature of his possession—Party to proceedings under s. 145—Right to collect toll from partitioned half of market, dispute re—Applicability of proceedings under section.*—When a Receiver is appointed by the Court, his possession is the possession of the Court, and he cannot be interfered with except with the leave of the Court. The Receiver can neither sue, nor be sued, without the leave of the Court. He is the officer through whom the Court exercises its powers of management. Such an officer cannot be correctly described as a "party interested in a dispute likely to cause a breach of the peace" within s. 145, Crim. Pro. Code. Even if such officer can be so described, there will be no jurisdiction in the Magistrate to make any order on him under s. 145, without the sanction of the Court appointing him. [*F.*, 30 C. 721.] Where there was a dispute about the exclusive right to collect the entire toll from one partitioned half of the market, which was alleged by one party and denied by the other, *held* that, in such a case, proceedings under s. 145 could be had. **30 C. 593=7 C.W.N. 390.**

(861)—*S. 145—Magistrate, after receipt of information, making as parties persons who are actually in dispute—Omission to add persons interested in the subject matter of the dispute as parties—Jurisdiction of Magistrate—"Parties concerned," meaning of the expression.*—Proceedings under s. 145 would not be without jurisdiction, because the Magistrate, on information before him, has made as parties to such proceedings only those who are actually in dispute and who are likely, by such dispute, to cause a breach of the peace, although, in the course of the proceedings, it is brought to his notice that some other person is interested in

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the subject matter of the dispute, *i.e.*, is likely to be affected by the order to be passed in respect of the possession of the land in dispute, nor is the Magistrate bound to stay such proceedings. The words "parties concerned in such disputes" in cl. 1, s. 145, are intended to indicate all persons claiming to be in possession at the time of the initial order under cl. (1), and not that all parties interested in, or claiming a right to, the property in dispute are entitled to be or should be made parties to the proceedings. A claim merely to a right to possession, as distinguished from a claim to be in possession, would be outside the scope of the enquiry. **30 C. 155 =6 C.W.N. 737, F.B.** [*R.*, 31 C. 48.]

(862)—*S. 145—Dispute as to possession of land —Manager or agent, if order can be made in favour of.*—There is jurisdiction, under s. 145, to make an order in favor of a person who claims to be in possession of the disputed land as agent to, or manager for, the proprietors, when the actual proprietors are not residents within the appellate jursdiction of the High Court. **31 C. 48=7 C.W.N. 825, F.B.** (7 C.W.N. 208, *overruled*). [*R.*, 32 C. 287.]

(863)—*S. 145—Partnership property—Claims of exclusive possession by a partner, as manager.*—Where there are several partners, the claim of one of them to the exclusive possession of the partnership property, as manager, is a question outside the purview of s. 145, Crim. Pro. Code. **32 C. 249=8 C.W.N. 855.** [*R.*, 10 C.W.N. 1088].

(864)—*S. 145—Parties to the proceedings— Manager and not the employer made a party— Validity of the proceeding—Intermittent encroachment, how affects title of superior landlord.*—Where, in a proceeding under s. 145, the Magistrate makes the manager as a party instead of his employer, the zemindar, the course adopted by the Magistrate is a mere irregu arity, or, at most, an error of law, which does not affect his jurisdiction. Where a person claims no easement or customary right, any intermittent encroachment on his part does not affect the title or possession of the superior landlord. **32 C. 287.**

(865)—*S. 145—Delegation of questions as to actual possession to arbitrators, whether legal.* —The procedure laid down under s. 145 does not contemplate that the question as to who is in actual possession should be delegated, even by the consent of the parties, to arbitrators. The section directs the Magistrate himself to receive the evidence adduced by the parties and, on a consideration thereof, to come to a decision. **32 C. 552=2 Cr. L.J. 347=1 C.L.J. 432.**

(866)—*S. 145—Proceedings under the section —Applicability of procedure prescribed for summons cases—Summons for attendance of witnesses—Duty of Magistrate—High Court's powers of interference—Charter Act (24 and 25 Vic. c. 104) s. 15.*—There is no provision in the

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Crim. Pro. Code, which makes the procedure laid down for summons cases, applicable to proceedings under s. 145, and the parties cannot claim it as a matter of right that the Magistrate should assist them to produce their evidence by issuing summons or other processes to their witnesses. The powers of superintendence vested in the High Court by s. 15, of the Charter Act should, in cases under s. 145, be exercised with caution, and the High Court ought not to interfere, unless it is satisfied that the party has been prejudiced by the proceedings in the Court below. **32 C. 1093= 2 C.L.J. 280=2 Cr. L.J. 679.**

(867)—*S. 145—Omission to publish copy of the initiatory order near the subject of dispute —Jurisdiction of Magistrate—Powers of High Court—Held, by the Full Bench, (Ghose, J. dissenting).*—The provision as to the publication of the order mentioned in sub-s. 3 to s. 145 is directory and a matter of procedure only, and an omission to comply with it does not destroy the jurisdiction of the Court, which arises as soon as the provisions of sub-s. 1 have been complied with. The object of publishing a notice on the suoject of dispute is to reach all the persons interested therein, and, unless it be shown that some one interested has been materially prejudiced by the omission to serve the notice, the High Court ought not to interfere under s. 15, Charter Act. Such an omission is not an illegality which deprives the Magistrate of his jurisdiction. Per Ghose, J., *dissentiente*:—The procedure laid down in sub-s. 3 is mandatory and a Magistrate acts illegally in the exercise of his jurisdiction by omitting to follow that procedure. The High Court in such a case may interfere under the Charter Act, but, it is not obligatory on the High Court to interfere, and it may refuse interference when nc prejudice has been occasioned or is likely to be occasioned by the omission. [*F.*, 32 C. 1093=2 C.L.J. 280; *R.*, 33 C. 352= 9 C.W.N. 1065=2 C.L.J. 259, 1 S. L. R. 50 Cr.] The power of superintendence, which the High Court possesses under s. 15 of the Charter Act, vests in it a power somewhat analogous to that of the King's Bench Division in the Supreme Court in England to interfere by Mandamus. Such power of interference is discretionary and ought, in relation to cases under s. 145. Crim. Pro. Code, to be exercised with every caution. If the Subordinate Court has proceeded with irregularity, the High Court will not interfere unless some one has been materially prejudiced thereby; if, however, the Subordinate Court has acted without jurisdiction, the High Court will interfere. **33 C. 68=9 C.W.N. 1046=2 C. L.J. 241=2 Cr. L.J. 618.** 9 C.W.N. 909=2 Cr. L.J. 569 *R.*, [*R.*, 33 C. 33=10 C.W.N. 257=2 C.L.J. 271, 5 C.L.J. 611.]

(868)—*S. 145—Failure of one party to file a written statement—Competency of Magistrate to decide in favour of the party filing the statement—Power of Magistrate to issue warrant.*—

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In a case under s. 145, a Magistrate cannot, on the failure of one party to file a written statement, summarily pass an order declaring possession with the party who has done so, without taking evidence in proof of such statement. The High Court set aside such order of the Magistrate and directed that the case must be tried in accordance with law. [*D.*, 30 C. 112.] A Magistrate has no jurisdiction to issue a warrant to compel the attendance of a party in a proceeding under s. 145. **5 C.W.N. 71.**

(869)—*S. 145—Joint possession.—Jurisdiction of Magistrate under section.*—Where the lands in dispute are not in the joint possession of the contending parties, the Magistrate has jurisdiction in taking action under s. 145. **5 C.W.N. 105.** [*R.*, 32 C. 449=8 C.W.N. 885].

(870)—*S. 145—Specification of land, when necessary.*—The main question which the Criminal Courts have to determine under s. 145 is as to the possession of the disputed land, and the land should be thoroughly ascertained. But where the parties are not at dispute upon the question as to what the disputed lands are, the real question being which party is entitled to the possession of the disputed land under a Civil Court decree for possession, the want of a proper specification will not vitiate the proceedings. **5 C.W.N. 563.**

(871)—*S. 145—Joint trial of several matters of dispute—Legality.*—The joint trial, in one proceeding, of several matters of dispute under s. 145 would be at most an irregularity, which, in the absence of prejudice, would not vitiate the inquiry. **5 C.W.N. 710.**

(872)—*S. 145—Jurisdiction of Magistrate to treat subsequent proceeding as continuation of earlier proceedings in disputes as to immoveable property—Joinder of parties—Duty of Magistrate.*—A Magistrate cannot treat a subsequent proceeding as a continuation of an earlier one, and he cannot refer back to the possession held by one or the other of the parties upon the date of the earlier proceeding, in determining which of them should be declared to be in possession on the date of the subsequent proceeding. In a proceeding under s. 145, Crim. Pro. Code, it is the duty of the Magistrate to find out, in the first instance, which parties are concerned in the dispute that has arisen, and to serve his order upon such parties, and, when the matter comes before him for trial, he should determine which of such parties, namely, the parties as mentioned in the first paragraph of s. 145, Crim. Pro. Code, is in actual possession. A Magistrate is entitled to allow a third party to come in in the course of the proceeding only for the purpose of shewing that no dispute likely to cause a breach of the peace really existed or exists. *Quære*:—Whether such third party should be made a party to the proceeding. **5 C.W.N. 900.**

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(873)—*S. 145—Order in favour of persons, some of whom had no claim over the property.*—An order under s. 145 made in favour of four persons, two of whom claim no interest in the property in dispute, is bad for want of jurisdiction. **6 C.W.N. 104.** [*R.*, 30 C. 155].

(874)—*S. 145—Dispute between tenants—Zemindars whether necessary parties—Separate disputes, how to be dealt with.*—In a proceeding under s. 145 instituted upon a dispute between two sets of tenants, the omission to add the Zemindars as parties to the dispute will not vitiate the proceedings, if the Zemindars, not being concerned in the dispute, do not move in the matter themselves. Although it may be desirable in proceedings under s. 145 to deal with each separate dispute separately, it is impossible to apply to such proceedings the strict rule of procedure observed in civil actions. **6 C.W.N. 206.** (15 C. 31, 16 C. 513, 10 C.L.R. 523, *R.*).

(875)—*S. 145—Successive defective police reports—Maintainability of proceedings under.*—Where proceedings under s. 145 were dropped, because the police report did not contain the boundaries of the lands in dispute and where fresh proceedings were instituted on another report which did not state that there was any apprehension of a breach of the peace, *held*, that the latter report, which was the only report to be considered in the case, did not contain sufficient materials to give the Magistrate jurisdiction under the section. **6 C.W.N. 340.**

(876)—*S. 145—Refusal to allow intervention of party claiming interest in and actual possession of land—Charter Act, s. 15.—Per* Banerjee, J:—If the Magistrate refuses to allow the intervention of a party claiming an interest in, and actual possession of, the subject of dispute, not on the ground of his having no such interest, but on the ground of the law not authorising the addition of any such party, he declines a jurisdiction vested in him by law, and his order is open to revision by the High Court under s. 15, High Court's Act (24 and 25 Vic. c. 104). **6 C.W.N. 737=30 C. 155.**

(877)—*S. 145—Crops cut by Magistrate's order—Deposit of the price in Court—Civil suit for damages—Finding as to the title of the plaintiff—Magistrate's order making the deposit over to the plaintiff—Powers of High Court.*—Where, in a proceeding under s. 145, the Magistrate ordered the cutting of the crops growing on the disputed land, and deposited the price in the Court, and one of the parties suing for damages got his title to the crops recognised by the Court, but was refused damages, as the act of cutting the crops was that of the Magistrate, *held*, that the High Court had no power to interfere with the order of the Magistrate, subsequent to the decision in the civil suit, making over the deposit to the plaintiff, as the Magistrate was not exercising any judicial power in making the order. **6 C.W.N. 882.**

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(878)—*S. 145—Revival of proceedings—Fresh materials.*—Where proceedings taken under s. 145 have been struck off, and it is intended to take fresh proceedings upon new materials, it is necessary for the Magistrate to record such materials in his order renewing the proceedings. **6 C.W.N. 923.** (20 C. 687, *F.*) [*D.*, 7 C.W.N. 599.]

(879)—*S. 145*—Exparte *order in a proceeding under s. 145—Taking of evidence—Refusal by Magistrate to grant time for filing written statement.*—Although a Magistrate can proceed *ex parte* in a proceeding under s. 145, he should take some evidence to show that the party who is present is entitled to an order in his favour. **6 C.W.N. 925.**

(880)—An order under s. 145, on the written statement of one of the parties and upon the failure of the other party to file it, without some evidence on the part of the party filing the statement in support of it, is without jurisdiction. A Magistrate has a discretion to refuse an application for time to file a written statement. **8 C.W.N. 642.**

(881)—*S. 145—Order in favour of a manager —Legality.*—An order under s. 145 in favour of the manager of an indigo concern is without jurisdiction. **7 C.W.N. 208.** [*Overruled.*, 7 C.W.N. 825=31 C. 48.]

(882)—*S. 145—Recording evidence, when necessary—Admission by vakil.*—Although it is necessary, ordinarily, to record evidence in a case under s. 145, before passing final orders, it cannot be said that it is indispensable to do so when the case is completely given up by the opposite party. An admission by the party's legal practitioner is sufficient for that purpose. **7 C.W.N. 351.** [*D.*, 30 C. 918.]

(883)—*S. 145—Reference to arbitration—Duty of Magistrate.*—Where, on the request of the parties to a proceeding under s. 145, the Magistrate referred the question of possession for the decision of an arbitrator, *held*, that the Magistrate ought to take finding of the arbitrator into consideration in bringing the proceedings under s. 145 to their proper legal termination. **7 C.W.N. 461.**

(884)—*S. 145—Dispute as to possession of land —Civil suit regarding the same land, effect of—Jurisdiction of Magistrate.*—A Magistrate, under s. 145, has power to intervene and pass a temporary order in regard to the possession of the land in dispute only until one or other of the parties applies for or obtains a determination of his rights in a Civil Court. If one of the parties, by bringing a suit for the recovery of possession admits that the other party is in possession, there is no question to decide in a proceeding under s. 145. If the Magistrate thinks it necessary that he should take steps to preserve the peace, it is open to him to take proceedings under the provision of the law other than s. 145. As a proceeding under s. 145 drawn up by a Magistrate gives him jurisdiction to determine the question of possession of the land in dispute, so, in that proceeding, he is bound to ascertain and define the land in dispute and had no jurisdiction to determine, under that proceeding, a dispute regarding lands which are not covered by it. **7 C.W.N. 558.**

(885)—*S. 145—One of the parties not knowing the place of trial—Order under section, validity of.*—Where one of the parties to a proceeding under s. 145 was not able to ascertain, where the Magistrate, who had been moving about from place to place, was holding his camp and so failed to procure the attendance of his witnesses for the trial, *held* that an order directing the other party to continue in possession was bad. **7 C.W.N. 705.**

(886)—*S. 145—Notice of proceeding and copy of order drawn up under s. 145 (1), service of—Magistrate's duty.*—A Magistrate, before proceeding under s. 145, Crim. Pro. Code, is bound to satisfy himself that the notice of the proceeding and the copy of the order under cl. (1) of that section drawn up by him were duly served upon the party alleging non-receipt of the notice. **8 C.W.N. 76.**

(887)—*S. 145—Costs incurred in giving evidence in proceedings under the section—Suit for such costs.*—The order of a Magistrate refusing to give a witness the costs incurred by him in appearing to give evidence before him in proceedings under s. 145, Crim. Pro. Code, and referring him to a Civil Court, will not operate as *res judicata* in bar of a suit in the Civil Court for such costs. **8 C.W.N. 178.**

(888)—*S. 145—Partition suit —Declaration that property is joint—Order under section, when to be made.*—Where the Civil Court, in which a suit for partition is pending, had declared certain properties to be joint, and ordered partition to be effected, the properties must, until the jointness is disturbed by actual partition in the suit, be treated as having been declared by the Civil Court to be joint properties. No order such as is contemplated by s. 145, Crim. Pro. Code, can be made in such a case. **8 C.W.N. 485.** [*R.*, 10 C.W.N. 1088.]

(889)—*S. 145—Order under the section based on a decree, without examination of witnesses—Legality—Proof of service of notice—Order under section, when justifiable.*—Where a Magistrate, considering that a decree in favour of one of the parties was conclusive on the question of possession, refused to receive the oral evidence offered by the other party, *held*, that the Magistrate did not act properly in so doing. Where one of the parties to a proceeding under s. 145 denies the service of an order under s. 145 (1), the written return of the serving peon is not a sufficient proof of the service. (*R.*, 33 C. 83=10 C.W.N. 257=2 C.L.J. 271.) Where a Magistrate passed an order under s. 145 in a

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very summary manner, examining only a person who was not a witness of either of the parties, *held*, that the order was bad. **8 C.W. N. 719.**

(890)—*S. 145—Order by Magistrate under—Omission to expressly state the grounds for the order—Reference by Magistrate to a petition containing such grounds, effect of.*—In an order made under s. 145 (1) of the Code, the Magistrate omitted to state, in detail, the grounds for his conclusion that there was a likelihood of a breach of the peace. It was, however, recorded by the Magistrate that, upon information received by him and upon the petition presented by one of the parties to the proceedings, it appeared there was a likelihood of a breach of the peace and there was no denial of the same by the counter-petitioners. *Held*, that there was substantial compliance with s. 145 (1) of the Code and that there was no irregularity which would affect the validity of the order. **16 M.L.J. 148=3 Cr. L.J. 487.** [*R.*, 30 M. 548=3 M.L.T. 18=7 Cr. L.J. 28].

(891)—*S. 145 (=Crim. Pro. Code, 1872, s. 530)—Order based upon evidence recorded by another Magistrate—Legality.*—An order under s. 145, in regard to possession, based upon evidence recorded by another Magistrate is illegal. **2 Weir 97.** [*R.*, 17 M.L.J. 535=6 Cr. L. J. 384=3 M.L.T. 108=31 M. 82.]

(892)—*S. 145 (=Crim. Pro. Code, 1882, s. 145)—Indefinite order—Amendment.*—Where the order of a Magistrate under s. 145, deciding that one of the parties was entitled to possession, did not specify by metes and bounds the exact portion of each number of the land to which he was entitled to possession, *held* that a party to the proceeding should apply to have the order amended, and that the High Court would not interfere on revision. **2 Weir 107.**

(893)—*S. 145—Power of succeeding Magistrate to cancel order of his predecessor.*—A Magistrate has jurisdiction to cancel the order of his predecessor and to stay further proceedings. He has also the power to order the restitution of the property placed, after attachment, in the hands of a receiver. **2 Weir 108.**

(894)—*Ss 145, 146, Crim. Pro. Code, 1872, ss. 530 and 531)—Joint possession—Possession of separate rooms in same building—Competency of Magistrate to pass orders under.*—Where it was found that each party to the dispute was in possession of separate dwelling rooms in the same house, *held*, that the Magistrate was competent to pass an order that the separate possession of each party should continue. Where a Magistrate found that the parties to the dispute were in joint possession of certain rooms in which the family documents and other valuables were kept and ordered that the rooms should not be opened, except in the presence of certain public officers, *held*, that the order was not sanctioned by s. 531 (s. 146). **2 Weir 108.**

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(895)—*S. 145—Possession—Order of Criminal Court as to—Non-observance of procedure—Illegality.*—Proceedings under the above section are without jurisdiction, unless the procedure prescribed therefor is strictly adhered to. Where, therefore, the copy of the initiatory order was neither served on the parties, nor affixed at or near the subject of dispute, and all the parties interested were not heard or evidence taken, *held*, that the proceedings must be set aside. **7 P.R. 1907 Cr.=24 P.W.R. 1907 Cr.=71 P.L.R. 1908=6 Cr. L.J. 113.**

(896)—*S. 145—Postponement of case* sine die *—Solenamah deciding right to possession—Whether Magistrate bound to follow.*—A Magistrate has jurisdiction to postpone a proceeding under s. 145 of the Crim. Pro. Code *sine die*, when he expected that settlement proceedings in respect of the land in dispute were soon to commence. When a previous *solenamah* between the parties did not decide possession but the right to possession, the Magistrate is not bound to act in accordance with it in a proceeding under s. 145, Crim. Pro. Code. **11 Cr. L.J 7=4 Ind. Cas. 537=13 C.W.N. 601.**

(897)—*S. 145 (1)—Order not complying with provisions of section—High Court's powers of revision.*—Where an order purporting to be passed under s. 145 (1) gave no information as to the subject of dispute and it left the persons, to whom the notice was issued, quite in the dark as to the property in regard to which they had to set forth their respective claims, merely stating that the Magistrate was satisfied from the evidence that a breach of the peace would occur, *held*, that the order was wholly incomplete and failed to comply with the requirements of the law, and that the High Court had power to interfere in revision and to set it aside. **27 A. 296=A.W.N. 1904, 234.** (27 C. 981, 30 C. 443, *F*). [*R.*, A. W.N 1907, 50=4 A.L.J. 91, A.W.N. 1907, 265=4 A.L.J. 705= 30 A. 41=6 Cr. L.J. 352].

(898)—*S. 145, sub-s. 1—Proceedings under section—Necessity for a formal order under sub-s. 1.*—The making of a formal order under sub-s. 1 of s. 145, Crim. Pro. Code, is absolutely necessary to the initiation of proceedings under the section, and an omission to make such an order and to draw up a proceeding under sub-s. 1, is a question of jurisdiction which renders all the proceedings invalid. **32 C. 552=1 C.L. J. 432=2 Cr. L.J. 347.**

(899)—The recording of a proper order under sub-s. 1, s. 145 is essential to give the Magistrate jurisdiction under the section. **6 C.W.N. 923.** [*D.*, 7 C.W.N. 599].

(900)—*S. 145, cls. 1 and 3—Irregularities in proceedings—Effect.*—A Magistrate, who commits a mistake (1) by not having in his order under s. 145, Crim. Pro. Code, stated the grounds for his belief that there was likely to be a breach of the peace and (2) by not having,

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under cl. 3 of that section, served a copy on the applicant, does not divest himself of jurisdiction, these being mere irregularities in the proceedings, which do not in the least affect, the jurisdiction. **7 O.C. 334.** (27 C. 981, *Diss.*).

(901)—*S. 145 (=Crim. Pro. Code, 1872, s. 530)—Death of one of the parties, before the termination of proceedings—Procedure.*—The High Court refused to set aside an order under s. 530, on the death of one of the parties, in whose favour the order had been passed, just before the termination of the proceedings, on the ground that there was another in whose favour that order still remained, the order being in favour of the deceased and another person. The High Court also observed that it would have been more regular, had the Magistrate postponed the case so as to enable some representatives to the deceased to appear. **2 C.L.R. 264.** [*R.*, 21 C. 404; *D.*, 21 C. 404].

(902)—*Ss. 145 and 146—Attachment of cut and stored crops, whether legal.*—The words "crops and other produce of land" in sub-s. 2, of s. 145, mean crops or other produce of land attached to the land and not to crops which have been severed. Therefore, a Magistrate has no jurisdiction under s. 146 to attach crops which have been cut and stored. **30 C. 110 = 6 C.W.N. 881** [*F.*, A.W.N. 1905, 278=3 A.L.J. 13=28 A. 266].

(903)—*Ss. 145 and 146—Possession delivered by Civil Court—Dispute concerning lands so delivered—Attachment of land by Magistrate, legality of.*—Where the petitioner was put in possession of certain lands in execution of a decree obtained by him in the Civil Court establishing his right to them, *held*, that a Magistrate was not competent to pass an order directing the attachment of those lands under s. 146 and it was the duty of the Magistrate to have found possession in accordance with the decree of the Civil Court. **32 C. 796 = 2 Cr. L.J. 761.** [*R.*, 33 C. 33=10 C.W.N. 257 =2 Cr. L.J. 670=2 C.L.J. 271].

(904)—*Ss. 145 and 146—Dispute between landlords as to possession of land—Order of attachment of crops belonging to tenants, validity of.*—In a dispute between rival landlords, a Magistrate is not competent to attach the crops on the land belonging to the tenants. **5 C.W.N. 105.**

(905)—*Ss. 145 and 146—Power of Magistrate to make order regarding component parts of the subject matter of the dispute.*—The subject-matter referred to in ss. 145 and 146 may be read as referring to the whole or to any component parts thereof. If that component part is distinct and separable from the rest, it cannot rightly be held that, because the Magistrate cannot find possession of one of the component parts of the subject-matter in dispute with either party, he is bound to attach the whole, although that component part is distinct and separable from the rest. If the subject-matter in dispute is indivisible, and must be dealt with as a whole, it must be dealt with in such a way as to make, in regard to it, one order either under s. 145 or s. 146 of the Code, as the circumstances may require. **5 C.W.N. 710.**

(906)—*Ss. 145 and 146—Attachment under s. 146—Written statements, failure to file in time—Evidence, omission to adduce.—Jurisdiction of Magistrate to attach under s. 146 when the parties did not adduce evidence on the appointed date.*—Where the parties to a proceeding under s. 145, Crim. Pro. Code, did not file their written statements or adduce evidence, though more than two months had expired from the date the proceeding was drawn up, but applied for time to file the written statements. *Held* that the Magistrate did not act without jurisdiction in refusing to grant time and in attaching the disputed land under s. 146, Crim. Pro. Code, on the failure of the parties to adduce evidence. **14 C.W.N. 80=5 Ind. Cas. 40.**

(907)—*Ss. 145, 146—Order under the sections—Applicability to persons not parties to the proceedings.*—Where the tenants of the disputants were directed by the Magistrate, without having made them parties, to vacate the house in dispute which had been attached under s. 146 and were told that any claims they might have should be settled in a Civil Court, *held*, that the order was *ultra vires*. **2 Weir 106.**

(908)—*Ss. 145, 146 (=Crim. Pro. Code, 1882, ss. 145, 146)—Dispute regarding the performance of puja in a temple—Order for attachment and closing of temple—Validity.*—Where, in a dispute arising between two *pujaries* regarding the right to perform the *puja* in a certain temple, the Magistrate placed it under attachment and ordered it to be closed, the High Court, setting aside the order relating to the closing of the temple, directed that some provisional arrangements should be made by the Magistrate for the continuance of the public worship. **2 Weir 112.**

(909)—*Ss. 145, 146 and 435—Proceedings under Ch. XII, Crim. Pro. Code—High Court's jurisdiction—Order regarding management of property attached, under s. 446.*—S. 435 places proceedings under Ch. XII beyond the powers of the High Court in revision, leaving the parties to their remedies in the Civil Court. The High Court can, however, under the powers conferred by the Charter Act, take cognisance of such matters, if it is shown that the proceedings are without jurisdiction. But, where a Subordinate Magistrate passed an order under s. 146 attaching certain lands, the subject-matter of the proceedings, under s. 145, and in the management of the property granted a lease, and the District Magistrate had cancelled the lease and made another arrangement, *held*, that the High Court could not interfere with an order relating to the management of the property under attachment by reason of an order under s. 146, and that, if anything was done during the attachment, to

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which a party to the proceedings had any objection, he should have recourse to the Civil Court, which would deal with the whole question and remedy anything done, likely to injure the party who might ultimately succeed in obtaining possession of the property. **29 C. 382=6 C.W.N. 469.** [*R.*, 17 C.P.L.R. 133.]

(910)—*Ss. 145, 147—Reference by District Magistrate under s. 147—Procedure—Right to perform* puja.—Where a District Magistrate, on being satisfied that there existed a dispute likely to cause a breach of the peace, referred the case to a Magistrate for enquiry, *held*, the latter was bound under s. 147 "to enquire into the matter in the manner provided by s. 145," Crim. Pro. Code. Where the subject-matter of a dispute is the right to perform a religious ceremony or *puja*, the case comes under s. 147, Crim. Pro. Code. **3 Bom. L.R. 416.** (24 B. 527=2 Bom. L.R. 88, 11 M. 323, 8 I.A. 123, 11 I.A. 42, 25 B. 179=2 Bom. L.R. 755, *R.*).

(911)—*Ss. 145 and 147—Dispute as to right to remove and appropriate sandalwood paste on idol, jurisdiction of Magistrate to enquire into.* —The *Badves* of a temple applied to a Magistrate under s. 147, Crim. Pro. Code, saying that the right to take sandalwood paste, when removed from the person of the idol, belonged to them, but, as this right was disputed by the *pujaris*, there was a likelihood of the breach of the peace. The Magistrate held that he had no jurisdiction under the section, as the right in question was already adjudicated upon by a Civil Court; but the Magistrate ordered that the *pujaris* should hand over the sandalwood paste after removing it from the idol, to the *Badves*, who had a right to the same. *Held* (1) that the Magistrate had no jurisdiction to pass the order; (2) that, if the Magistrate was of opinion that the dispute might have occasioned a breach of the peace, he ought to have proceeded under Ch. VIII, Crim. Pro. Code; (3) that ss. 145 and 147, Crim. Pro. Code, did not apply, as there was no dispute concerning the right of use of any land or water as defined in s. 145 of the Code, or of any right of way or easement over the same; and (4) that the sandalwood paste does not fall within the description given in s. 145 (2), Crim. Pro. Code, as forming the profits of immoveable property, as it in no way arises or emanates from the temple building or can in any manner be held to be properly arising from immoveable property. **4 Bom. L. R. 438.**

(912)—*Ss. 145 and 147—Order made against one party on written statement by the other—Order under the sections unsupported by evidence—Validity.*—An order under s. 145 or s. 147 cannot be made merely on the written statement of one of the parties, without evidence of facts justifying such order, where the party who, in the ordinary course of things, would oppose the order, does not expressly admit the allegation made by the other party in the written statement. Where the second party, in a proceeding under s. 147, having failed to file a written statement, the Magistrate declined to extend the time for filing the written statement and passed an order against him on the written statement of the first party only, and in the absence of an express admission of the second party, *held*, that the order was bad, as there was no evidence in proof of the allegation contained in the written statement. **30 C. 918=7 C.W.N. 510.** (7 C.W.N. 315, *Expl.*).

(913)—*Ss 145 and 147—Dispute concerning land—Duty of Magistrate—Improper orders under the sections* --It is the duty of a Magistrate, before he interferes in the exercise of rights, to consider whether he cannot protect persons in the enjoyment of their rights by taking a caution bond from the persons from whom or at whose instigation the breach of the peace may be apprehended. But, if a probability of a breach of the peace is established and a Magistrate, instead of taking security, acts under s. 145 or s. 147, then, although the other course might be the wiser and the more politic, the High Court could not, as a Court of revision, disturb his order on that ground only, if the case was one in which, on other ground, such an order would be legal. Nor would it be a good ground for objection to the Magistrate's order that a Civil Court has refused an injunction. [*R.*, 15 M.L.J. 394=29 M. 97]. Where an order under s. 145 or s. 147 is not made between the parties to the proceeding, or when neither of the parties to the proceeding establishes that he is in possession, *held* that the order is not properly made. **7 M. 460=2 Weir 101.**

(914)—*Ss. 145 and 148—Proceedings under section—Questions of title—Removal of a* bundh *—Jurisdiction of Magistrate to award costs and damages.*—In a case under s. 145, the Magistrate dealt with the matters as if he had to try a question, solely, of title and not one of possession. He also directed that a bundh which was in dispute should be removed and that one of the parties should pay to the other compensation for damage done to crops as well as costs in the case. *Held*, that the entire order should be set aside, including the order as to costs. **32 C. 602=9 C.W.N. 862=2 Cr. L.J. 552.**

(915)—*Ss. 145, 148 (=Crim. Pro. Code, 1882, ss. 145, (1, 4, 5, 6,) 148)—Powers of a Magistrate—Delegation of enquiry.*—Under s. 148, Crim. Pro. Code, a Magistrate is at liberty to depute any local enquiry he thinks necessary to a subordinate Magistrate, but should not depute to such Magistrate the whole investigation. On receipt of the report from the latter, the Magistrate should take written statements from the parties and receive the evidence produced and any further evidence he thinks necessary, and conclude the investigation under s. 145. **2 Weir 118.** [*R.*, 17 M.L.J. 535=31 M. 82=3 M.L.T. 108=6 Cr. L.J. 384.]

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(916)—*Ss. 145, 192, 529 (f)*—Bona fide *transfer of a case under s. 145 by a Magistrate not so empowered.*—Where a senior Deputy Magistrate, to whom a case under s. 145 was transferred by a District Magistrate, transferred the case to another Deputy Magistrate, and it was contended that he had no such power, *held*, that, as the order was made in good faith, it could not be set aside, merely on the ground that the Magistrate had no power to transfer the case. **5 C.W.N. 686.** [*F.*, 2 C.L.J. 614 = 3 Cr. L.J. 83].

(917)—*Ss. 145, 355, 356—Refusal to issue process for attendance of witnesses in proceedings under Ch. XII, Crim. Pro. Code—Arbitrary exercise of discretion—High Court's powers of interference—Charter Act, 24 and 25 Vic., C.104, s.15.*—The arbitrary exercise of discretion does not necessarily amount to acting without jurisdiction so as to justify the High Court in interfering in all cases where discretion has been arbitrarily exercised. Where, however, the refusal of a Magistrate to assist one of the parties to a proceeding under Ch. XII, Crim. Pro. Code, in procuring the attendance of his witnesses, deprives that party of hearing on the only question for the determination of the Court, and so amounts to a denial of justice, the Magistrate, in refusing process, acts without jurisdiction. Even if it cannot be said in strictness that the Magistrate, in such a case, has acted without jurisdiction or declined jurisdiction, such a case is one in which the High Court ought to interfere in the exercise of the general powers of superintendence vested in it, under ss. 24 and 25 Vic., C. 104, s. 15. **30 C. 508=7 C.W.N. 404.** [*R.*, 17 C.P.L.R. 133, 31 C. 685].

(918)—*S. 145, sub-s. 5 and s. 434 (3)—When an order under s. 145 is final.*—The order, to which finality is given under s. 145, must be an order which not only purports to be, but is in reality an order under the section, and has been passed with jurisdiction. Where the Court has exceeded its jurisdiction in making the order, it is null and void, and the High Court, in the exercise of its revisional jurisdiction, is competent to interfere with it. **25 A. 537=A.W.N. 1903, 102.** (24 B. 527, 26 C. 188, 18 M. 41, *R.*). [*R.*, 26 A. 144; *D.*, A.W.N. 1907, 50=4 A.L.J. 91; *R.*, 1 Sind L.R. 50=8 Cr. L.J. 170].

(919)—*Ss. 145 and 435—Emergent order—Omission of Magistrate to comply subsequently with provisions of s. 145.*—A Magistrate, having made an emergent order for the possession of immoveable property under s. 145 (4), subsequently omitted to follow out the procedure prescribed by the section and make an enquiry, on evidence, into the fact of possession. But the High Court ordered the Magistrate to make such inquiry, holding that the order was not absolutely without jurisdiction, and, therefore, not exempted from the application of s. 435 (3) of the Code. **A.W.N. 1901, 154.**

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(920)—*Ss. 145 and 435—Application for revision at instance of party who could not in his own right be entitled to possession.*—A Magistrate, after entertaining proceedings under s. 145, declined to make any order declaring one or other of the contending parties to be in possession. The High Court refused to interfere in revision at the instance of a person who, though apparently the next reversioner to the estate, could, for the time being, have no possible right on his own behalf to represent possession. **A.W.N. 1902, 111.** (27 C. 892 and 28 C. 446, *D.*).

(921)—*Ss. 145, 435—Revision of proceedings under s. 145—Duty of Magistrate.*—Proceedings under s. 145 are, by s. 435, expressly excluded from the class of proceedings liable to be dealt with on revision. In all cases in which the High Courts have interfered with proceedings purporting to have been taken under Ch. XII, that interference has been justified by the fact that the orders revised were not really orders under that chapter at all, but would have required, to validate them, powers which the Legislature has not seen fit to confer on any one. [*R.*, 5 O.C. 1]. Sub-s. 4, s. 145, provides that a Magistrate is not at liberty to go into the merits of the claims of the parties to the dispute to a right to possess the subject thereof. He can decide only the fact of possession at the date of the order requiring them to put in their statements. The sub-section implies that it is not necessary for him to formulate a decision even on that point if it should present insuperable difficulties. Parties cannot be called upon in these proceedings to furnish a statement of their rights, nor can the Magistrate take, as the basis of any action he may finally decide upon, any conclusion at which he may arrive or may have arrived, as to the respective titles of the parties. **25 B. 179=2 Bom. L.R. 755.** [*R.*, 3 Bom. L.R. 416, 6 Bom. L.R. 246, 1 S.L.R. Cr. 40].

(922)—*Ss. 145, 435.*—An order under s. 145 of the Code, which merely purports to have been made under it but is not really so, is subject to the revisional powers of the High Court, as the words "proceedings under Ch. XII," in s. 435, Crim. Pro. Code, mean proceedings which are, as a matter of fact, under that chapter, and not those which are really not so and for which there may be no authority in the Code. **5 O.C. 1.**

(923)—*Ss. 145, 435*—Where the proceedings before a Magistrate under s. 145 are in intention, in name and in fact, proceedings under Ch. XII of the Code, by a Magistrate duly empowered under that chapter, the High Court has no power to call for the records of those proceedings either under the Code or under s. 15 of the High Courts Act, as, by the amendment introduced in s. 435, the power of the High Court to call in revision for the records of proceedings under Ch. XII has been

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curtailed. So the High Court cannot interfere, in revision, with an order under s. 145 passed by a Court having jurisdiction. **26 A. 144 = A.W.N. 1903, 212.** (26 C. 188, 25 A. 537, *R.*). [*F.*, 6 A.L.J. 113 = 31 A. 150; *R.*, 1 S.L.R. 50 Cr. = 8 Cr. L.J. 170].

(924)—The power of revision to be exercised by the Court in proceedings under s. 145, is limited to matters of jurisdiction, *i.e.*, to cases in which it is found that the Magistrate taking proceedings under Ch. XII has acted without jurisdiction. **24 A. 315 = A.W.N. 1902, 74.** (26 C. 625, *F.*) [*R.*, 4 L.B.R. 75 = 6 Cr. L.J. 291].

(925)—*Ss. 145, 439.*—A Magistrate having properly passed an order under s. 145, Crim. Pro. Code, the High Court declined to interfere in revision upon the ground merely that the preliminary order did not set forth, as explicitly as it might have set forth, the reasons which satisfied the Magistrate that there was a likelihood of a breach of the peace, as there was a substantial compliance with the requirements of s. 145 of the Code. **A.W.N. 1905, 260.**

(926)—*Ss. 145, 439*—Where the initial order in writing made by a Magistrate under s. 145 (1), Crim. Pro. Code, is defective, but both sides are fully cognisant of the matter in dispute and there is a danger of the breach of the peace, the High Court will not interfere in revision with the final order passed by the Magistrate. **7 A.L.J. 53.**

(927)—*Ss. 145, 439—Revisional powers of High Court—Costs.*—The Court, in dealing as a Court of revision under s. 439, Crim. Pro. Code, with an application to revise proceedings under s. 145 of the same Code, can make no order as to the costs of such application. **S.C. 227, Oudh.**

(928)—*Chap. XII, ss. 145 and 435, cl. (3)—Proceedings under the chapter—Sessions Judge's power of revision or reference.*—Proceedings under Ch. XII of the Code are not proceedings with regard to which a Sessions Judge has any power of revision or reference. There is no provision of law which gives the Sessions Judge the power to call for the record in such proceedings. **28 C. 416.**

(929)—*Ss. 145, 526, 435 and 439—High Court's power to transfer cases under s. 145—Charter Act, s. 15—Letters Patent, s. 29—Grounds for transfer—"Criminal case," meaning of.*—*Per* Ghose, J.—Although it may be doubted, whether the Legislature meant to confer on the High Court the power to make a transfer in a case other than strictly criminal, *i.e.*, in a case in which a person is charged with an offence, yet the High Court has the power to make an order for transfer of a case under s. 145 under the provisions of s. 15 of the Charter Act.

Per Taylor, J.—It is doubtful whether the High Court has power, under s. 526, to transfer

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cases which do not relate to matters which may strictly be described as "criminal," *i.e.*, as relating to crime or offences under the law. But that power exists under s. 29, Letters Patent, for in the Letters Patent, the expression "*criminal case*" appears to be used without the distinction which apparently exists in the Code of Criminal Procedure in respect of cases tried by a Criminal Court as opposed to civil cases. **28 C. 709 = 5 C.W.N. 749.** [*R.*, 10 C.W.N. 1095; *Expl.*, 2 C.L.J. 614; *D.*, 5 P.R. 1905 Cr. = 85 P.L.R. 1905 = 2 Cr. L.J. 40].

(930)—*Ss. 145, 526*—A criminal case, like a criminal appeal, must arise out of and deal with some crime already committed. It does not include proceedings taken for the prevention of crime. The provisions of s. 526 do not, therefore, confer a power to direct the transfer of any proceedings initiated under s. 145, Crim. Pro. Code. [*Diss.*, 26 M. 188 = 12 M.L.J. 391 = 2 Weir 678, 2 C.L.J. 614 = 3 Cr. L.J. 83, 10 O.C. 61; *R.*, 28 C. 709, 5 C.W.N. 749, 23 P.R. 1902 Cr. = 85 P.L.R. 1905 = 2 Cr. L.J. 40, 2 L.B.R. 239; *D.*, 10 C.W.N. 1095 = 4 Cr. L.J. 223]. In transferring a case from one Magistrate to another, the Court ought not to be guided by the impression produced in its own mind as to the impartiality of the Magistrate, but must look to the effect likely to be produced in the minds of the parties and their witnesses, by the selection of a Magistrate whose personal antecedents or circumstances have, however unavoidably, connected him with either the one party or the other. **25 B. 179 = 2 Bom. L.R. 755.** [*R.*, 6 Bom. L.R. 480].

(931)—A case under s. 145, Crim. Pro. Code, is a "criminal case," and the High Court has power to transfer the case under both s. 526, Crim. Pro. Code, and cl. 29, Letters Patent. **26 M. 188 = 12 M.L.J. 391 = 2 Weir 678.** (25 B. 179, *Diss.*).

(932)—*Ss. 145, 437—Refusal by Subordinate Magistrate to take proceedings under s. 145—Power of District Magistrate to take proceedings after such refusal.*—Where, on receipt of a police report to the effect that there was a breach of the peace likely to take place between certain persons in consequence of a dispute concerning land, the Magistrate found that there was no sufficient ground for proceeding under the section, and, therefore, declined to take proceedings, *held*, that the District Magistrate would be competent to institute proceedings under the section, if he was of a different opinion. **29 C. 242 = 6 C.W.N. 290.** (20 C. 729, *D.*).

(933)—*Ss. 145, 522 (= Crim. Pro. Code, 1872, ss. 530, 534)—Order, after conviction for rioting, for delivery of a land to certain person, when can be made.*—Where a Magistrate, after convicting and sentencing certain persons of rioting, passed an order, in the latter part of his judgment under s. 534, directing that one of the witnesses be in possession until ouste

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by a Court of competent jurisdiction, *held*, that the order was not one under s. 534, as there was no evidence of dispossession by criminal force, nor was the order one under s. 530 (s. 145), inasmuch as a proceeding under that section should be separate from the trial for riot. **2 Weir 674.**

(934)—*Ss. 145, 530—Incompetency of Magistrate to whom case under s. 145 was transferred, to make order under that section.*—S. 530 refers only to a case, where a Magistrate is not competent, by virtue of the position he holds or powers vested in him, to try a case of the character mentioned in s 145. But where a Magistrate is competent to try a case under s. 145, the fact that he has not local jurisdiction over the matter will not make the case come within s. 530. **5 C.W.N. 686.**

(935)—*Ss. 145, 537—Proceedings in respect of several plots of lands—Separate proceedings, necessity of.*—The taking of one proceeding in respect of several plots of lands claimed to be in the possession of different persons, will not be prejudicial to the interest of the parties, if the course taken by the Magistrate does not preclude any of the parties from adducing evidence in the case concerning the different plots of land. **5 C.W.N. 544.** [*F.*, 5 C.W.N. 710].

(936)—S. 145—If award under section bars possessory suit—*See* ACT I OF 1877, 20 W.R. 12.

(937)—S. 145—*See* ACT I OF 1877, s. 9, 7 C. L.J. 547, 8 W.R. 386.

(938)—S. 145 - *See* ACT XV OF 1877, Art. 47, 9 W.R. 480 Cr., 6 C.L.R. 93, 23 C. 731, F.B., 19 C. 646, 6 C 709=8 C.L.R. 154, 3 N.W.P. 171, 7 N.W.P. 35.

(939)—S. 145—*See* BOM. ACT III OF 1876, s. 10, 26 B. 353=3 Bom. L.R. 919.

(940)—S. 145—*See* CRIMINAL TRESPASS, 2 A. 465, 2 N.W.P. 82.

(941)—Ss. 145, 146, 439—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 46 P.L.R. 1903.

(942)—Ss. 145 (1, 4, 5, 6), 192 and 528 (1, 2, 3)—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 22 C. 898.

(943)—Ss. 145, 429—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 27 C. 892=4 C.W.N. 613.

(944)—Ss. 145, 435—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 26 C. 188=3 C.W.N. 49, 7 Bom. L.R. 475=2 Cr. L.J. 451, 27 C. 259=4 C.W.N. 420, 27 C. 261, Note=4 C.W.N. 421 Note, A.W.N. 1907, 49, 4 A.L.J. 91=A.W.N. 1907, 50=5 Cr.L.J. 117, A.W.N. 1901, 154.

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(945)—Ss. 145 and 526—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 11 O.C. 61=7 Cr. L.J. 423, 12 M.L.J. 391=2 Weir 678.

(946)—Ss. 145 and 537—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 4 A.L.J. 705, A.W.N. 1907, 265=6 Cr. L.J. 352=30 A. 41.

(947)—S. 145—*See* EJECTMENT, SUIT FOR, 4 C. 339.

(948)—S. 145 (1, 4, 5, 6)—*See* HIGH COURT, JURISDICTION OF, 2 C. 293, F.B.

(949)—S. 145—*See* JOINDER OF PARTIES, 20 C. 520.

(950 and 951)—S. 145—*See* JURISDICTION OF CIVIL COURTS, 12 W.R. 199=3 B.L.R. A. C. 305, 5 C.W.N. 71, 6 C. 835=8 C.L.R. 217.

(952)—S. 145—*See* NOTICE, 4 C. 650=3 C. L.R. 551.

(953)—S. 145 (1, 4, 5, 6)—*See* PENAL CODE, s. 188, 7 C.L.R. 291.

(954)—S. 145—*See* REVISION, A.W.N. 1905, 160.

(955 and 956)—Ss. 145, 192, 528 and 529 (*b*)—*See* TRANSFER OF CRIMINAL CASES, 2 C.L.J. 614=3 Cr. L.J. 83, 4 C.W.N. 821.

(956-*a*)—S. 145—*See* Nos. 48, 53, 54, 119, 439, 446, 447, 448, 449, 450, 451, 452, 453, 474, 475, 484, 493, 606, 735, 777, 787, 788, 798, *supra*, and No. 3456, *infra*.

——S. 146 (=1882, s. 146; 1872, s. 531; 1861, s. 319).

(957)—*S. 146—Condition essential for order under section—Likelihood of breach of the peace—Jurisdiction of Magistrate.*—A necessary preliminary to an order under s. 146 is that proceedings should have been taken and an order made under s. 145 of the Code. Where, from the record, it appeared that the procedure prescribed by s. 145 was not followed by a Magistrate, no order in writing, as required by that section, having been made by him, *held*, that the Magistrate's order attaching the property was an order without jurisdiction and one which cannot be deemed to have been passed under Ch. XII, Crim. Pro. Code, as there was nothing to indicate that there was a dispute likely to cause a breach of the peace. **2 A.L.J. 149.**

(958)—*S. 146—Power conferred by the section, when exercisable.*—The power conferred by s. 146, Crim. Pro. Code, upon a Magistrate, can only be exercised when the Magistrate decides that none of the parties is in possession, or is unable to satisfy himself as to which of them was in possession. He cannot take action under the section, merely because he is unable to satisfy himself as to which of the parties is entitled to possession or has a right to the property. Inability to decide on the right to

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the property cannot, therefore, justify the attachment of the property under s. 146. **6 Bom. L.R. 723.**

(959)—*S. 146—Power to attach property, when could be exercised.*—A Magistrate can attach property only on the ground that he cannot satisfy himself as to which of the parties is in possession. **7 Bom. L.R. 18=2 Cr. L.J. 28.**

(960)—*S. 146—Order for attachment, when valid.*—Where each party is found to be in possession of different portions of a disputed land, a Magistrate has no jurisdiction to order attachment under s. 146 (1). **9 C.W.N. 887= 1 C.L.J. 331=2 Cr. L.J. 408.**

(961)—*S. 146—Effect of attachment—Limitation Act, 1877, s. 28.*—Where a Magistrate, acting in due course of law, either because he found neither party was in possession, or because he was unable to satisfy himself as to which of them was in possession, simply attached the property, *held* that such attachment operated in law, for the purposes of limitation, simply as detention or custody of the property by the Magistrate who, pending the decision by a Civil Court of competent jurisdiction, holds it merely on behalf of the party entitled, whether he be one of the actual parties to the dispute before him or any other person. For purposes of limitation, the seizin or legal possession will, during the attachment, be in the true owner and the attachment by the Magistrate will not amount either to dispossession of the owner, or to his discontinuing possession. Under s. 146, Crim. Pro. Code, the Magistrate is bound to continue the attachment and have statutory possession of the lands for the purposes of continuing the attachment, until a competent Civil Court determines the rights of the parties to the dispute before him, or the person entitled to the possession of the lands and he cannot deliver the property to any of the parties or other person without an adjudication by a Civil Court. During the continuance of the attachment, the legal possession for purposes of limitation will constructively be in the person who had the title at the date of the attachment and such title cannot be extinguished by the operation of s. 28, Limitation Act, 1877, however long such attachment may continue. **26 M. 410.**

(962)—*S. 146—Disobedience to an order under the section—Penal Code, s. 188.*—Disobedience to an order passed under s. 146, Crim. Pro. Code, is not an offence punishable under s. 188, Penal Code. The order under s. 146 is an order to a police officer to take possession of the lands and not an order to any other person. **8 M.L.J. 253.**

(963)—*S. 146 (=Crim. Pro. Code, 1882, s. 146)—Object of the section.*—The special provision contained in s. 146 is not meant to relieve the Magistrate from the duty of deciding the case on the merits, but only allows an

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order for attachment to be made when it is not possible to decide which party is in possession. An order of a Magistrate under s. 146 was set aside on the grounds, first, that, although the petitioner cited a number of witnesses, they were not examined, and, in the second place, the order did not show that it was not possible, on the evidence, to decide as to the fact of possession, but would rather seem to indicate that the Magistrate could not or would not decide, whether the witnesses on the one side or those on the other were to be believed. **2 Weir 110.**

(964)—*Ss. 146 and 435—Attachment under s. 146, if valid where Magistrate unable to satisfy himself who was in possession—High Court's power of interference with order under s. 146, Crim. Pro. Code.*—The High Court, cannot, under s. 435, Crim. Pro. Code, 1898, interfere with orders passed under s. 146 of the Code. But an order, which merely purports to be under s. 146, Crim. Pro. Code, but exceeds the powers given thereby, is one with which the High Court is not precluded, by s. 435, from interfering in revision. The powers given by s. 146, Crim. Pro. Code, would justify attachment only on the Magistrate's inability to satisfy himself as to which of the parties was in possession of the subject of dispute, and would not justify attachment merely because the Magistrate could not decide upon the rights of the parties. For the purposes of s. 146, the Magistrate is neither called upon nor empowered to consider the question of rightful possession. **7 Bom. L.R. 18.**

(965)—*S. 146 (=Crim. Pro. Code, 1872, ss. 530, 531)—Jurisdiction.*—A Magistrate is not at liberty to proceed under s. 530, or s. 531, Act X of 1872, unless he is satisfied that a dispute exists likely to produce a breach of the peace, and unless he records a proceeding stating the grounds of his being so satisfied. **A.W.N. 1881, 46.**

(966)—*S. 146 (=Crim. Pro. Code, 1882, s. 146)—Attachment of property—Subsequent Civil Court decree—Profits of property during attachment.*—Where immoveable property, the subject of dispute between rival claimants, has been attached by the Magistrate under s. 146, Crim. Pro. Code, and a decree regarding that property has been subsequently passed by the Civil Court, the Magistrate is bound to return the profits, derived from such property during the attachment, to the person who has been successful in the Civil Court. **A.W.N. 1893, 100.**

(967)—S. 146—*See* ACT XV OF 1877, Arts. 47, 142, 144, 20 A. 120.

(968)—S. 146—Possession—Lands under attachment by Magistrate—*See* ACT XV OF 1877, Art. 144, 1 C.W.N. 569.

(969)—S. 146—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 1 C.L.R. 86, 15 A. 394, 1 C.L.R. 273.

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(970)—Ss. 146, 537—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 12 C.L.R. 221.

(971)—S. 146—*See* PENAL CODE, ss. 188, 447, 8 M.L.J. 253.

(971-*a*)—S. 146—*See* Nos. 452, 735, 798, 894, 902, 903, 904, 905, 906, 907, 908, 909, 941, *supra*.

——S. 147 (=1882, s. 147; 1872, s. 532; 1861, s. 320).

(972)—*S. 147—Scope of section—Right to fish—Parties to enquiries under.*—There is nothing in s. 147 to limit its operation only to easements. The words "the right to do anything in or upon tangible immoveable property" includes also the right to fish in a *bhil*. The only reference to easements is in the marginal note to the section, which is no part of the enactment. [*F.*, 23 C. 557.] In an enquiry under s. 146 of the Code, it is sufficient if persons who claim for themselves the right to fish, though that right is derived from others, are made parties. It is not necessary that proprietors in the *bhil* should be added as parties. **23 C. 55.** [*R.*, 2 C.W.N. 670].

(973)—It is doubtful whether s. 147, Crim. Pro. Code, applies to a dispute relating to the right to use a public highway. S. 145 does not apply to such a case. **2 Weir 117.**

(974)—*S. 147 - Enquiries under the section—Conditions requisite for them—Parties entitled to notice.*—Magistrates ought not to embark on enquiries under s. 147 of the Code, in which it is certain that injustice may be done from defective procedure, unless they are satisfied that a real danger of the evil, for the prevention of which the procedure is devised, does in fact exist. They would not be acting wisely to use this procedure in a case involving a long and complicated enquiry, and the presence of a great number of people, when such an effective remedy as binding few persons is ready to his hand. [*F.*, 23 C. 557; *R.*, 2 C.W.N. 670.] The enquiry contemplated under s. 147 of the Code is a judicial enquiry and the opinion to be formed must be a judicial one, founded upon the evidence legally before the Magistrate under s. 356 of the Code. The evidence before the Magistrate would not be legally before him, if it had been taken behind the backs of the persons who claimed or denied the right, in the sense that they not only were not represented at the enquiry, but had no notice of it. It could not be held that notice given to servants is notice given to the master, and that servants would sufficiently represent their master in such proceedings. **21 C. 727.** [*F.*, 2 C.W.N. 670; *R.*, 31 C. 48; *D.*, 23 C. 55].

(975)—*S. 147—Obstruction to right of way—Order for its removal.*—A Magistrate is competent to direct the removal of an obstruction to a right of way caused by the owner of the land, if there be a likelihood of a breach of the peace in consequence of such obstruction. **5 C.W.N. 335.**

(976)—*S. 147 (=Crim. Pro. Code, 1872, s. 532)—Carrying of corpse on a highway.*—Except when danger to the public health is occasioned, the conveyance of a corpse along a highway is not an unlawful use of the highway; but when the conveyance of a corpse by a particular route is unnecessary and is repugnant to the feelings of the inhabitants, a Magistrate may properly exercise his influence to induce the persons concerned to abandon that route. *Held*, that the order of the Magistrate prohibiting Hindus to carry corpses through a certain route on the ground that Mahomedans objected to it and directing that they should be carried by the nearest route to the burning ghat was not a legal order. **7 M. 49=2 Weir 115.**

(977)—*S. 147 (=Crim. Pro. Code, 1882, s. 147)—Right to privacy.*—The right to privacy is not a right, in the assertion of which a person can be justified in entering upon the premises of another and closing the windows and doors, nor is it a right to prevent the doing of anything in or upon any tangible immoveable property within the meaning of s. 147 of the Crim. Pro. Code. **Rat. Un. Cr. C. 357.**

(978)—*S. 147 (=Crim. Pro. Code 1882, s. 147)—Prohibiting religious procession.*—A Magistrate is not authorised to pass an order prohibiting a religious procession under s. 147 of the Crim. Pro. Code, where he has not found that the right to prevent such a procession exists in the complaining party. **Rat. Un. Cr. C. 548.**

(979)—*S. 147 (=Crim. Pro. Code, 1882, s. 147)—Questions regarding the right to use a highway—Applicability of the section.*—It is open to question, whether s. 147, Crim. Pro. Code, applies to cases of dispute regarding the right of carrying corpses along a public highway. **6 M.L.J. 193.**

(980)—*S. 147—Right to irrigate from tank, dispute as to.—Held*, that a Magistrate can take action under s. 147, Crim. Pro. Code, if he be satisfied that a dispute regarding the right to irrigate from a tank is likely to cause a breach of the peace. **S. C. 64, Oudh.**

(981)—*S. 147—Exercise of right in dispute within the periods mentioned in section.*—Where it is proved that the *thikadar* and zemindar have had an uninterrupted use of water of a *nala* for 20 years, which they have enjoyed as an easement and as of right, and the erection of a bund has led to a dispute, there is then a sufficient finding that the right in dispute has been exercised within either of the periods mentioned in the priviso to s. 147. **8 C.W.N. 67=28 C. 734.**

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(982)—*S. 147—Dispute regarding a bund—Competency of Magistrate to order its removal—Addition of parties—Effect.*—Where the plaintiff had a right to the flow of water for purposes of irrigation from a certain channel passing through a village of the defendant, who obstructed such flow by erecting bunds, *held*, that the Magistrate was competent, under s. 147, to direct the removal of the obstruction. [*F.*, 5 C.W.N. 335.] A Magistrate is not competent to add parties to a proceeding under s. 147, any more than he can to proceedings under s. 145. An order made after the addition of parties is null and void only as against the added party, but is binding on those to whom it is properly directed. **5 C.W.N. 67=28 C. 734.**

(983)—*S. 147—Right of tenant to enclose land by wall—Action under section, if legal—Scope of section.*—The enclosing by a tenant of agricultural land, in his possession, with a wall instead of a hedge, would not *prima facie* interfere with the landlord's right. The case is one in which the High Court ought not to interfere in revision, as the dispute is really a civil suit between the parties, which ought to be settled by a Civil Court. But, in cases like this, it would be proper for the Magistrate to take security from the party from whom a breach of the peace is apprehended, though it is not illegal for the Magistrate to act under s. 147. The words "a dispute concerning the use of any land" cannot be qualified and the section construed as if it contained words that the user to which the dispute relates is a user by a party other than the person in possession. **29 M. 97 =15 M.L.J. 394=3 Cr. L.J. 31.**

(984)—*S. 147(=Crim. Pro. Code, 1861, s. 320) —Right of way, dispute regarding.*—A right of way is a right to the use of land within the meaning of s. 320, Crim. Pro. Code, 1861. **4 M. H.C. App. 11.**

(985)—*Ss. 147, 203, 437 and 438 (=Crim. Pro. Code, 1882, ss. 147, 203, 437 and 438).—Further enquiry after dismissal of complaint—Reference.*—A District Magistrate ought himself to take action under s. 437, Crim. Pro. Code, if, in his opinion, further enquiry should be made into a complaint that has been dismissed under s. 203, Crim. Pro. Code; and, when a case is reported under s. 438, Crim. Pro. Code, the reference should set forth the points on which orders are required. **S.C. 64, Oudh.**

(986)—S. 147—*See* ACT XV OF 1877, Art. 47. 1 M. 309.

(987)—S. 147—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 11 B. 584, 14 B. 25, 5 C. 194=4 C.L.R. 324, 23 C. 557, 2 C.W.N. 670, 11 M. 323=2 Weir 117, 4 M.H.C. App. 24.

(988)—Ss. 147, 439—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 105 P.L.R. 1909.

(989)—S. 147—*See* EASEMENT, 11 C. 13.

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(990)—S. 147, Ch. VII—*See* MAGISTRATE, JURISDICTION OF, Rat. Un. Cr. C. 462.

(991)—S. 147—*See* PENAL CODE, s. 188, 1 Weir 143.

(991-*a*)—S. 147—*See* Nos. 465, 476, 709, 763, 910, 911, 912, 913, *supra*.

——S. 148 (=1882, s. 148; 1872, s. 533).

(992)—*S. 148—Order for costs—Assessment without notice to party affected by Magistrate—Jurisdiction.*—A Magistrate is not competent to make an order for the payment of costs and to assess the same in the absence of, and without notice to, a party who is, by that order, made liable for the same. **28 C. 302=5 C.W.N. 291.** [*F.*, 10 C.W.N. 1030].

(993)—*S. 148—Costs—Magistrate's jurisdiction to pass order for damages.*—A Magistrate is not entitled to make an order as to costs other than those incurred for witnesses or pleader's fees or both. He has no jurisdiction to award to a party compensation for damages done to his crops. **32 C. 602=9 C.W.N. 862= 2 Cr. L.J. 552.**

(994)—*S. 148 (3)—Additional costs.*—Additional costs incurred for extra fees and travelling and other expenses of a like nature incurred by reason of bringing pleaders or counsel from a distance ought not to be allowed. **9 C.W.N. 887=1 C.L.J. 331=2 Cr. L.J. 408.**

(995)—*S. 148 (3)—Order for costs.*—A wide discretion as to costs is given to a Magistrate by s. 148 (3), and the High Court has no power, in revision, to interfere with his exercise of that discretion. **9 C W.N. 887=1 C.L.J. 331= 2 Cr. L. J. 408.**

(996)—*S. 148 (3), award of costs under, when could be made.*—In the usual course, an award of costs under s. 148 (3), should almost invariably be contemporaneous with the decision of the main question and the order passed thereon under s. 145. But the fact that such an award has not been made at the very time the substantial question in the proceeding is disposed of, does not necessarily render the award invalid, and when the circumstances of a case really required it, the disposal of the question of costs may be postponed; but no order in the matter should be passed except within a reasonable time after the disposal of the principal subject of the proceedings and in the presence of both the parties. **29 M. 373=4 Cr. L.J. 232.**

(997)—S. 148—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 23 C. 37, 7 C.L.R. 352, 22 C. 387.

(998)—Ss. 148, 202, 293, 294, 556—*See* LOCAL INQUIRY, 14 C.W.N. 422.

(998-*a*)—S. 148—*See* Nos. 914, 915, *supra*, and No. 1534, *infra*.

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——S. 154 (=1882, s. 154; 1872, s. 112; 1861, s. 139).

(999)—*S. 154—First information, when should be recorded.*—The law does not contemplate that, when, in the course of investigation, something has been elicited, which shows that an offence has been committed, a first information can be recorded. In every trial. it is important that it should be known to the judicial officer what are the facts given out immediately after the occurrence and reported to the police, and the object of the first information is to render him so acquainted. For that purpose the diary in which the first information is recorded is admissible in evidence, as also any memorandum by the police officer of what the informant said. **7 C.W.N. 345.** [*R.*, 8 C.W.N. 218].

(1000)—*S. 154—First information, nature and use of.*—The first information, if recorded, as directed by s. 154, at the time that it is made, is of considerable value at the trial, because it shows on what materials the investigation commenced and what was the story then told. Any statement, recorded several days after the commencement of the investigation and after there has been some development, is not only no first information, but has very little or no value at all as the original story, because it can be made to fit into the case as then developed. **11 C.W.N. 554=6 Cr. L.J. 86.**

(1001)—*S. 154—Information given to a police officer of a cognizable offence.*—Where oral information is given to a police officer in charge of a station as to the commission of a cognizable offence, and it is reduced to writing by him under s. 154, Crim. Pro. Code, such writing is a "public document" under s. 74, Evidence Act; and its contents may be proved by a certified copy under s. 77, Evidence Act. A police officer is a "public officer" under s. 74. The certified copy should be given by the police officer having the custody of the document as provided in s. 76. Evidence Act. **U B.R. (1892—1896), Vol. I. 24.**

(1002)—*Ss. 154 and 155 (3)—Informant reproducing statements made by another—Admissibility.*—Where the statement, which was alleged to be the first information, was the reproduction by the person making it of the statement said to have been made by another person, *held*, that the statement was inadmissible as the first information and that, although the evidence given by that person who furnished the information to the informant could be contradicted by the evidence of the latter, it could not, under s. 155 (3), be contradicted by what the police recorded as the first information. **8 C.W.N. 218.**

(1003)—*Ss. 154, 157, 250—"Information," meaning of—Compensation—Order, if can be made against servant for information given on behalf of master—Information subsequent to the original complaint.*—The question whether a servant can be held responsible under s. 250, Crim. Pro. Code, for an information lodged on behalf of his master, is a question of fact and depends on the question whether the servant is merely the mouthpiece of the master and is merely giving expression to his master's accusation, or whether he joins personally in the accusation himself. In the former case no order of compensation should be made against the servant under s. 250, Crim. Pro. Code. "Information" referred to in s. 250, Crim. Pro. Code, need not necessarily be the information on which the case is instituted. Where a person making a complaint against an accused person subsequently gives information leading to the accusation of others in the case, he may be dealt with under s. 250, Crim. Pro. Code, in respect of his subsequent information. The words "from information received" in s. 157, Crim. Pro. Code, refer to the information given in s. 154, Crim Pro. Code. **14 C.W.N. 326.**

(1004)—*Ss. 154, 162—Complaint presented to a Village Magistrate and passed on to a Station House Officer—Penal Code, s. 182—Giving false information to a Village Magistrate.*—Giving false information, of an alleged offence, to a Village Magistrate (a public servant) amounts to an offence under s. 182 of the Penal Code. Such information given to the Village Magistrate, which it was his bounden duty to pass on to a Police Station House Officer, must be considered as having been given to the latter, so that a complaint in writing, subsequently taken by him from the accused, is covered by s. 154, Crim. Pro. Code, and cannot be regarded as having been taken by the police officer under s. 162, Crim. Pro. Code. *Held*, therefore, that the acquittal, by the lower Court, of the accused in the present case, on the ground that, as the false information in question was given in the first instance only to the Village Magistrate, the complaint, subsequently taken from the accused by the Station House Officer, was not admissible in evidence, as recorded under s. 162, and not under s. 154, was erroneous and unsustainable in law. **28 M. 565.**

(1005)—S. 154—Admissibility of statement made by dying person—*See* EVIDENCE ACT, s. 32, 6 C.W.N. 921.

(1006)—S. 154—*See* FALSE CHARGE, 27 M. 127=1 Weir 192.

——S. 155 (=1882, s. 155; 1872, ss. 110, 113; 1861, s. 133).

(1007)—*S. 155—Power of Magistrate to direct police investigation.*—S. 155, Crim. Pro. Code, is conversant only with the powers of police officers. It confers no power or authority on Magistrate to direct a local investigation by the police. **12 B. 161.**

(1008)—*Ss. 155, 156, 164, 190, 476—Magistrate referring a matter to the police for*

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

investigation—Report by the police—Examination on oath of the suspected person—Perjury—Sanction to prosecute.—The complainant appeared before a Magistrate and stated certain circumstances, whereupon the latter referred the matter to the police with authority to investigate and report. The police submitted, in due course, a report as to the result of their investigation. The Magistrate then made a further inquiry and examined S (the suspected person) on solemn affirmation. During the course of his examination, S made certain statements which appeared to the Magistrate to be false. The Magistrate, thereupon, acting under s. 476 of the Code, sent S to another Magistrate for enquiry whether S had committed the offence of perjury in respect of statements made before him. The Sessions Judge referred the case to the High Court, being of opinion that the order passed by the Magistrate was unsustainable, first because the Magistrate had no jurisdiction to refer the matter to the police, there being no complaint before the Magistrate as required by s. 202 of the Code and no examination of the complainant by him; and, secondly, because S was illegally sworn, he being an accused person at the time when he was examined by the Magistrate. *Held*, that the Magistrate was empowered to refer the matter to the police for investigation, under s. 155, cl. 2 of the Code, in cases of non-cognizable offences, and under s. 156. cl. 3 of the Code, in cases of cognizable offences; that the statements taken by the Magistrate were in a stage of the inquiry, which was being conducted under the provisions of the Code; and that he had, therefore, power, under s. 164 of the Code, to administer an oath to S, and a charge of perjury could be framed with regard to the statements made before him on oath. **8 Bom. L.R. 589=4 Cr. L.J. 183.** (27 C. 455, 16 M. 421, *R.*).

(1009)—*Ss. 155 (2), 190, 256, 529 (b) and Schs. III, II (2)—Jurisdiction of Magistrate to order investigation without taking cognisance under s. 190—Procedure—Cross-examination of prosecution and defence witness, whether can be reserved.*—When a police officer receives information of the commission of a non-cognisable offence, he can, instead of referring the informant to a Magistrate under s. 155, cl. (1), report the case to a Magistrate for orders under cl. (2), and the Magistrate can in such circumstances order an investigation, without first taking cognizance of the offence under s. 190. S. 155 (2), read with s. 529 (*b*) and schedules III, II (2) of the Crim. Pro. Code, leave no doubt on the point. The Court has a discretion, for sufficient reasons, to allow the cross-examination of the defence witnesses to be reserved until the chief examination of all of them is over, there being no provision of law to the contrary. The defence has the right under s. 256, Crim. Pro. Code, to recall and cross-examine any of the prosecution witnesses. **6 M.L.T. 259.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1010)—Ss. 155, 202, 203—*See* COMPLAINT, 12 B. 161.

(1011)—Ss. 155, 161—*See* FALSE EVIDENCE, 8 B. 216.

(1012)—Ss. 155, 202—*See* NON-COGNISABLE OFFENCE, Rat. Un. Cr. C. 77.

(1012-*a*) S 155—*See* POLICE ENQUIRY, 21 P.R. 1868 Cr.

(1012-*b*)—S. 155—*See* Nos. 64, 70, 1002, *supra*.

——S. 156, paras 1 and 2 (=1882, s. 156); and para 3, new.

(1013)—*Ss. 156, 159, 200, 202 and 203—Dismissal of complaint without examining the complainant and without local investigation—Jurisdiction of Magistrate.*—A complaint was made to a Sub-Divisional Magistrate, who, without examining the complaint, sent the petition of complaint to the police for enquiry under s. 156 (3), Code of Criminal Procedure, and upon receipt of the report of the police, directed a Sub-Deputy Magistrate to make a preliminary enquiry under s. 159, Crim. Pro. Code. Upon receipt of that report, the Sub-Divisional Magistrate, not being a satisfied with it, cross-examined the complainant and some of his witnesses, examined three witnesses set up by the police, and dismissed the complaint and also ordered the complainant's prosecution under s. 211, I.P.C. *Held*, that inasmuch as there was no local investigation in this case ordered under s. 202, Code of Criminal Procedure, and no examination of the complainant by the Magistrate, the Magistrate had not jurisdiction, on the materials before him, to deal with the case or to dismiss it under s. 203, Code of Criminal Procedure, and that upon receipt of the report of the preliminary enquiry under s. 159, Crim. Pro. Code, he should have proceeded to deal with the case in the same way as he would have dealt with it upon receipt of a report from a police-officer. **30 C. 923=7 C.W.N. 525.** [*R.*, 9 C.W.N. 199].

(1014)—*Ss. 156, 190—Sessions Judge—Jurisdiction to direct an investigation by police.*—S. 156 only gives power to a Magistrate empowered under s. 190 to direct an investigation by the police into cognizable cases. So a Court of Session has no power to order such an enquiry, and such an order, if made, would be *ultra vires*. **11 P.R. 1910 Cr.**

(1014-*a*)—S. 156—*See* Nos. 64, 70, 298, 1008, 1013, *supra*.

——S. 157 (=1882, s. 157; 1872, ss. 114, 116, 117; 1861, ss. 135, 136, 137).

(1015)—*Ss. 157 and 159—Inquiry under section, when can be made.*—An inquiry can be made under s. 159 only on a report submitted within the terms of s. 157. **4 C.W.N. 351.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1016) —*Ss. 157, 159, 169, 170, 173 and 190 (1) (c)—Magistrate's power to order prosecution of a person not arrested by the police.*—A was sent up by the police for an offence of criminal trespass before a Magistrate. The Magistrate acquitted A, and, at the end of the judgment stated, that the police will take action against H, who, in his opinion, committed the trespass. H was, thereupon, sent up by the police and convicted. The Magistrate was not empowered under s. 190 (1) *(c)* of the Code to take cognizance of offence of his own motion. *Held*, that though the Magistrate was not so empowered, he had the powers, on receipt of information from the police, to order the prosecution of any person, who, in his opinion, ought to be put upon his trial; *a fortiori* he can, after taking evidence, know whom the police ought to put up before him and order such person to be put up before him. **4 L.B.R. 137=7 Cr. L.J. 414.**

(1017)—*Ss. 157, 159, 476—Police report after investigation that offence has been committed —Further enquiry of Magistrate—Order for prosecution of witnesses examined in Magistrate's enquiry—Penal Code, s. 193.*—Where a Deputy Magistrate held a magisterial enquiry into a case, after the police had made an investigation at the direction of the District Magistrate, and subsequently ordered the prosecution for perjury of the witnesses examined before him, *held*, that the enquiry held by the Deputy Magistrate was without legal sanction, and that the orders for prosecution were consequently without jurisdiction. **6 A.L.J. 963=32 A. 30.**

(1018)—*Ss. 157, 158, 190, 203 (=Crim. Pro. Code, 1872, ss. 117, 141 and 147)—Police report, effect of, on jurisdiction of Magistrates.*—A police report under s. 117 would give jurisdiction to a Magistrate to enter upon an enquiry. But the Magistrate is not bound to enter upon an enquiry in all cases. He may determine, as he thinks expedient, either to take no further steps, or to entertain the complaint under s. 141 or s. 147, Crim. Pro. Code, 1872. **2 Weir 119.** [*F.*, 2 Weir 246].

(1019)—Ss. 157, 159 and 476—*See* FALSE CHARGE, 4 C.W.N. 351.

(1020)—Ss. 157, 159, 202—*See* FALSE EVIDENCE, A.W.N. 1899, 87.

(1021)—Ss. 157, 159, 476—*See* FURTHER ENQUIRY, 6 A.L.J. 963.

(1021-*a*) S. 157—*See* Nos. 1003, 1018, *supra*.

——S. 159 (=1882, s. 159; 1872, s. 115; 1861, s. 135).

(1022)—*Ss. 159, 190, 191, 476.*—In this case, A gave information of theft to a police station and the police, under s. 173, Crim. Pro. Code, reported it mistaken and the Magistrate on reading the report held a preliminary enquiry and sent A for trial before another Magistrate under s. 211, I.P.C. His proceedings purported to be under ss. 159 and 476, Crim. Pro. Code. It was held that those sections do not apply, but that the proceedings were lawful under ss. 190 and 191, Crim. Pro. Code. **U.B.R. (1904), 1st Qr., Cr. P.C. 4.** (14 W.R. 41, 14 C. 707, 26 C. 786, *R.*).

(1022-*a*)—S. 159—*See* Nos. 1015, 1016, 1017, 1019, 1020, 1021, *supra*.

——S. 160 (=1882, s. 160; 1872, s. 118; 1861, s. 144).

(1023)—*S. 160—Accused's disobedience to police officer's requisition to appear—Penal Code, s. 174.*—S. 160, Crim. Pro. Code, does not authorise a police officer to require the attendance of an accused person with a view to his answering the complaint made against him. The disobedience to such an order, therefore, cannot fall within s. 174, Penal Code. **4 Bom. L.R. 644.** (7 M. 274, *R.*).

(1024)—*S. 160 (=s. 160, Code of 1882)—Scope of section—Powers of police officer to require attendance of accused to answer the charge against him.*—S. 160 does not authorise a police officer to require the attendance of an accused person with a view to his answering the charge made against him. The intention of the Legislature seems to have been only to provide a facility for obtaining evidence, and not for procuring the attendance of the accused, who may be arrested at any time, if necessary, without a warrant. **7 M. 274, F.B.=2 Weir 120.** [*F.*, 4 Bom. L.R. 644; *R.*, L.B.R. (1893—1900), 317].

(1025)—*S. 160 (=Crim. Pro. Code, 1882, s. 160)—Scope of the section.*—An order in writing cannot be made under s. 160 requiring the attendance of an accused person, as a person appearing to be acquainted with the circumstances of the case, but the section applies to the case of witnesses or possible witnesses only. Where an order under s. 160 of the Code of Crim. Procedure was issued by the Station House Officer to an accused person charged with kidnapping, and on his failure to obey the order, he was taken into custody by the police, *held*, that the police was guilty of wrongful confinement, although the police would have been justified in arresting without a warrant upon the original charge made against the complainant. **2 Weir 121.**

(1026)—*Ss. 160, 161 (=Crim. Pro. Code, 1872, ss. 118 and 119)—Proper procedure of police in cases of suspected wrongful confinement —Obstruction.*—The servants of a woman, whom the police suspected to have been wrongfully confined by her servants, obstructed their entry into their lady's house when they went there to enquire into the matter. *Held*, that the obstruction was no offence and that the proper procedure was to obtain an interview by a written order under s. 118 of the Code. **Colm. Dig. Cr. 72 of 1877.**

(1027)—S. 160—*See* ACCUSED PERSON, L.B.R. (1893—1900), 317.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1028)—S. 160—*See* CRIMINAL INTIMIDATION, Rat. Un. Cr. C. 850.

(1029)—Ss. 160, 161 and 162—*See* FALSE EVIDENCE, 7 C. 121=8 C.L.R. 300, F.B.

(1030)—S. 160—*See* PENAL CODE, s. 174, 4 Bom. L.R. 644, 1 Weir 86.

(1031)—Ss. 160, 161—*See* PENAL CODE, s. 179, Rat. Un. Cr. C. 92.

(1032)—Ss. 160, 161, 436, 438 (1)—*See* REFERENCE TO HIGH COURT, Rat. Un. Cr. C. 133.

(1032-*a*)—S 160—*See* No. 328, *supra*.

——S. 161 (=1882, s. 161; 1872, ss. 118, 119, 121; 1861, ss. 144, 145, 147).

(1033)—*S. 161 (=Crim. Pro. Code, 1882, s. 161)—Notes of statements made to police officer, use to be made of.*—The record made by the police officer investigating a case of the statements made to him by various persons, examined in the course of such investigation, can only be used after proper proof of them and of the circumstances under which they were recorded, and under the direct sanction of the District Judge. Copies of such statements should not be made over to the accused or their Counsel without question and as a matter of course. **16 A. 207.** [*R.*, 9 C.P.L.R. 33 Cr., 19 A. 390=17 A.W.N. 174, F.B].

(1034)—*S. 161 (=Crim. Pro. Code, 1882, s. 161)—Admissibility of special police diaries in evidence—Held by Edge, C.J., Knox, Blair and Burkitt, JJ. (Banerji and Aikman, JJ., dissenting).*—A police officer who is making an investigation under Chap. XIV of the Code may lawfully reduce to writing in the special diary the full and unabridged statement made to him by a person whom he is examining or has examined under s. 161; when the special diary contains such statements, the record of such statements, being part of the special diary, is as much privileged as any other entry. *Per Burkitt and Banerji, JJ., contra.*—A police officer investigating a case under s. 161, Crim. Pro. Code, is not authorised to record the statements made before him in the special diary. If he does so, such statements are not privileged. But, a mere summary of facts ascertained by the investigating officer from the examination of a number of witnesses is protected. Sessions Judges should not issue a general order directing the police diaries in every case committed for trial to the Court of Sessions, and every criminal appeal, to be transmitted to them simultaneously with the Magistrate's records of the cases. They are only authorised to send for the diaries of cases under trial before them, if they think it necessary in such cases to peruse the diaries, but the order must be one *ad hoc*, confined to cases actually pending before them, and not a general order as to all cases. **19 A. 390, F.B.** [*F.*, 4 A.L.J. 811=A.W.N. 1908, 22=7 Cr. L.J. 3; *R.*, 21 A. 159].

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1035)—*S. 161 (=Crim. Pro. Code, 1882, s. 161)—Penal Code, s. 193—False statement before police officer.*—S. 161, Crim. Pro. Code, binds a person questioned by the police to tell the truth, though his signature may not be taken to his statement; and if he fails to tell the truth, he renders himself liable to punishment under the latter clause of s. 193, I.P.C. **11 B. 659.**

(1036)—*S. 161—Statements of a person preliminary to his arrest taken by police officer—Nature of such statement—Evidence Act, s. 25.*—When a police officer has evidence before him, sufficient to justify the arrest of a person, he should not, preliminary to the arrest, examine him and record his statement. Such statement cannot be regarded except as a confession to a police officer, and is inadmissible in evidence under s. 25 of the Evidence Act. **27 C. 295=4 C.W.N. 129.**

(1037)—A person examined under s. 161 of the Crim. Pro. Code, by the police in respect of an offence of which he may himself be charged, is not bound to speak the truth. He cannot be convicted under s. 193 of the Penal Code for not speaking the truth. **Rat. Un. Cr. C. 619=Cr. Rg. 43 of 1892.**

(1038)—*Ss. 161, 162 (=Crim. Pro. Code, 1872, s. 119)—Statements of witnesses to police officer during investigation—Evidence—Refreshing memory.*—Documents, wherein statements of persons examined by a police officer during an investigation have been, under s. 119 of the Crim. Pro. Code, reduced to writing, may be used to refresh such police officer's memory, when giving evidence; but the documents themselves cannot be used as evidence in being read out to a jury to point out discrepancies. **9 C. 455=11 C.L.R. 569.** [*R.*, 22 B. 596, U. B.R. (1897—1901), Vol. I, 31, 16 C.P.L.R. 122].

(1039)—*Ss. 161, 162 (=ss. 161, 162, Code of 1882)—Statement to a police officer investigating the case by a witness—Such statement, how to be used.*—A statement to which s. 162 applies may be proved to contradict a witness called for the defence of the accused, that witness having been first cross-examined on that point. But such a statement should not be used as evidence against the accused. Where, but for the defect that a defence witness was contradicted and discredited by the previous statement which he had made to the police officer investigating the case, the Magistrate would have acquitted the accused, *held*, that the conviction should be set aside as having been made on evidence, which, as against the accused, was excluded by reason of s. 162 of the Code **15 A. 25.** [*F.*, 27 A. 469=A.W.N. 1905, 64; *R.*, 19 A. 390=17 A.W.N. 174, F.B.].

(1040)—*Ss. 161, 162*—Statements, other than dying declarations, made to a police officer, by persons, in the course of an investigation by him, cannot be legally used as evidence against

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

the accused. Such statements can only be used in favour of the accused, when they are legally brought as evidence before the Court, that is to say, a witness having been cross-examined as to a statement, it may be shown by the evidence of the police officer, that he did make a statement favourable to the accused, which the witness denies having made ; and, if the statement was at the time reduced into writing by the police officer, the officer would be allowed to refresh his momory by referring to it ; but the written statement itself, when it has been reduced into writing (according to the section, it must not be signed by the person making it) cannot be used as direct evidence of what was stated by the witness to the police officer. **17 A. 57.** [*R.*, 19 A. 390].

(1041)— *S. 161—Statements reduced into writing under the section—Police officer—Penal Code, s. 167.*—In this case the accused, a police sergeant, reduced to writing under the above section the statements of certain witnesses in such a way as to make it appear that the person accused in the case under investigation had committed an offence, although the witnesses in reality had not said what they were represented as saying. *Held* that, if reduction to writing is made, it is not for the mere personal benefit of the investigating police officer, but is an act done in his official capacity ; and that the police officer is required to make a true record, if he makes any at all. Hence, a conviction under s. 167, Penal Code, was upheld. **U.B.R. (1897—1901), Vol. I, 29.** (16 C. 610, 4 M. 144, *R.*).

(1042)—*S. 161 (=Crim. Pro. Code, 1872, s. 119) —Penal Code, s. 182—Term "information" explained.*—A statement, under s. 119 of the Crim. Pro. Code, is included in the word "information" as used in s. 182 of the I.P.C. **Rat. Un. Cr. C. 124.**

(1043)—*S. 161—Penal Code, s. 193, Expl. 2. —Investigation by police officer, if a judicial proceeding.*—An investigation by the police, under s. 161, Crim. Pro. Code, is a stage of a judicial proceeding within the meaning of the explanation 2 to s. 193, Penal Code. **U.B.R. (1897—1901), Vol. I, 31.**

(1044)—*Ss. 161 and 162—Statements of witnesses to the police during investigation entered in the special diary—Copies of, when can be granted.*—In the trial of an accused on a charge of criminal breach of trust, the accused applied to the Magistrate for the production of the statements made by certain prosecution witnesses to the police during investigation and entered in the special diary. The Magistrate then ordered the police to produce the statements of those witnesses, but passed the following order : "The statements in no way contradict the evidence given and I return them." *Held*, that the Sessions Judge, who upheld the conviction, ought to send for and consider the statements of the witnesses, and,

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

if he found that there was anything in them, upon which the petitioner would be advantaged by being allowed to cross-examine, he should also re-summon the witnesses and submit them for cross-examination, after supplying copies of their statements to the accused. **36 C. 560 = 2 Ind. Cas. 591.**

(1045)—*Ss. 161, 172—Police officer making investigation—Statement of witnesses—Right of accused—Police diaries—Privilege.*—Where a police officer, making an investigation under s. 161 of the Crim. Pro. Code, took statements from persons who were afterwards called as witnesses, *held*, that the accused person would be entitled to call for and inspect such documents and cross-examine the witnesses thereon, as such statements would not amount to a portion of the diary. *Held*, also, that an omission to do so would not invalidate the trial, unless it was proved that injustice had been done to the accused by the exclusion of this evidence. **16 C. 610.** [*F.*, 9 C.P.L.R. 33 Cr., U.B.R. (1897—1901), 29 Cr.; *R.*, 7 M.L.J. 167 = 20 M. 189, F.B., 19 A. 390 = 17 A W.N. 174, F.B.]

(1046)—*Ss. 161, 172.*—S. 161 of the Code provides for the taking down of statements of witnesses by the police. Such statements are not privileged, and s. 172 is not intended to include such statements. The mere fact that such statements are inserted in the special diary would not make them privileged. **20 C. 642.** [*F.*, 16 A.W.N. 793 ; *R.*, 9 C.P.L.R. 33 Cr.]

(1047)—*Ss. 161, 172.*—The statements of witnesses recorded by the police under s. 161 of the Crim. Pro. Code are not privileged. The privilege extends to statements recorded in the diary made under s. 172. **L.B.R. (1893—1900), 47.**

(1048)—*Ss. 161 and 172 (=Crim. Pro. Code, 1882, ss. 161, 172).*—The statements of witnesses recorded by a police officer, under s. 161 of the Code, form no portion of the police diary referred to in s. 172. There is no enactment protecting such statements and they are admissible in evidence. The mere fact that statements taken under s. 161 are embodied in the diary referred to in s. 172 cannot affect the case in any way. **9 C.P.L.R. Cr. 33.** (16 C 610, 20 C. 642, 16 A. 207, *R.*).

(1049)—*Ss. 161, 172 and 537 (=ss. 161, 172, 537, Code of 1882)—Statement made by witnesses before the investigating officer—Right of accused to call for and inspect such statements.*— Under s. 172, a police diary is a privileged document, and neither of the parties has any right to ask for its production. Statements of witnesses taken by an investigating police officer under s. 161 of the Code, and reduced to writing, although misdescribed as "a diary" can be, under certain conditions, used as evidence for the purpose of contradicting those witnesses or the police officer under s. 145 of

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

the Evidence Act. So the accused is entitled to an order for the production of such statements. If a Magistrate refuses to sanction the production of such statements, it is an error on his part which, if it has caused a failure of justice, would make the judgment liable to be set aside. **16 C. 612 Note**. [*R.*, 19 A. 390=17 A.W.N. 174].

(1050)—*Ss. 161, 174—Refusal by witnesses to answer questions put by police—Whether witnesses punishable for refusal—Penal Code, ss. 176, 179 and 187.*—A refusal to answer questions, asked by a police officer under s. 161, Crim. Pro. Code, is not punishable under ss. 176, 179 and 187, Penal Code. S. 174, Crim. Pro. Code, is intended to be applied to cases in which an inquest is necessary. **27 P.R. 1908 Cr.=9 Cr. L.J. 105.**

(1051)—*Ss. 161, 172(=Crim. Pro. Code, Act X of 1882, ss. 161, 172)—Police diaries—Privilege—Practice.*—The privilege given by s. 172 of the Crim. Pro. Code, does not extend to statements taken under s. 161 of the Crim. Pro. Code but recorded in the diary under s. 172 of the Code. **A.W.N. 1896. 193**. (20 C. 642, *F.*) [*R.*, 19 A. 390, F.B.=A.W.N. 1897, 174].

(1052)—S. 161—*See* BRIBERY, Rat. Un. Cr. C. 488.

(1053)—S. 161—*See* CRIMINAL PROCEEDINGS, 6 M.L.T. 133.

(1054)—Ss. 161, 162—*See* EVIDENCE, 8 C. 154=10 C.L.R. 51.

(1055 and 1056)—Ss. 161, 162—*See* FALSE CHARGE, 1 Weir 193, 31 M. 506.

(1057)—S. 161—*See* FALSE EVIDENCE, 15 A. 11, Rat. Un. Cr. C. 518=Cr. Rg. 40 of 1890, 10 C. 405, 16 C. 349, 23 M. 544=1 Weir 112, 23 M. 544, foot-note=1 Weir 166.

(1058)—Ss. 161, 162, 195, 236 and 437—*See* FALSE EVIDENCE, 1 L.B.R. 101.

(1059)—S. 161—*See* INSPECTION OF DOCUMENTS, S.C. 189, Oudh.

(1060)—S. 161—*See* PENAL CODE, S. 179, 1 Weir 111.

(1061 and 1062)—S. 161—*See* PENAL CODE, ss. 191, 193, 8 C.L.R. 236, 6 C.L.R. 47.

(1063)—Ss. 161, 195—*See* SANCTION TO PROSECUTE, 11 B. 659.

(1063-*a*)—S. 161—*See* Nos. 298, 1011, 1026, 1029, 1031, 1032, *supra*, and No. 1156, *infra*.

——S. 162 (=1882, s. 162; 1872, ss. 119, para 3, 121 ; 1861, s. 147).

(1064)—*S. 162—Statements madeby witnesses to police—Corroborative evidence—Evidence Act, s. 157.*—Statements made by witnesses to the police cannot be admitted as corroborative evidence against the accused. The positive prohibition under s. 162, Crim. Pro. Code, cannot be nullified by reference to s. 157, Evidence Act. **22 B. 596.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1065)—*S. 162—Statement made by a witness to a police officer in the course of investigation and recorded by latter—Admissibility in evidence—Evidence Act, s. 35—"Record."*—The statement of a witness to a police officer, under the provisions of s. 162, Crim. Pro. Code, though reduced into writing, is not a public or official document and the writing in question cannot be used as evidence in any proceeding to prove that the statements contained therein were, in fact, made, there being nothing in s. 162, Crim Pro. Code, which limits the prohibition of the use of such a document as evidence only in the matter of the charge, which is actually under investigation. Such a document is not a "record" within the meaning of s. 35 of the Indian Evidence Act, and the document in question is not, therefore, admissible in evidence under the provisions of that section. **28 C. 348=5 C.W.N. 65.**

(1066)—A statement made by an accused person to a police officer is not admissible in evidence against him when he is on his trial for the offence he is charged with. **11 P.L.R. 1905.**

(1067)—*S. 162 (=s. 162, Code of 1882)—Statements made to investigating officer—Evidence.*—It is contrary to the provisions of s. 162, Crim. Pro. Code, 1882, to allow the admission in evidence against the accused of a statement made by the chief constable of what the alleged complainant and his wife had said to him. **Rat. Un. Cr. C. 935=Cr. Rg. 44 of 1897.**

(1068)—*S. 162—Police reports—Admissibility in evidence.—Held*, that s. 162 of the Crim. Pro. Code, forbids the use of police reports as evidence against an accused person and prescribes the only way in which they can be properly used. **27 P.L.R. 1902.** (71 P.L.R. 1900 Cr., *R.*).

(1069)—*S. 162—Bombay City Police Act (IV of 1902), s. 163—Indian Evidence Act, ss. 24 and 167—Admissibility in evidence of a statement made by witness to, and taken down in writing by, a police officer—Confession, admissibility of.—Held*, unanimously, that, having regard to s. 162 of the Code of Criminal Procedure (corresponding to s. 63 of the Bombay City Police Act, IV of 1902), a statement, taken down in writing, of a witness for the prosecution, and recorded by a police officer cannot be admitted or used in evidence against the accused. *Per* Russel, Ag. C.J.—Such a document might be used to contradict the witness, not by putting the statement in as evidence, but by putting it in the hands of the police officer who has taken down the statement, to refresh his memory therefrom and thereby to enable him to contradict the statement of the witness. *Per* Chandavarkar, J.—The use of the *writing* as evidence against the accused is opposed to the express terms of the section, but the statement contained in the writing could be used to

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impeach the credit of such witness in manner provided by the Indian Evidence Act. *Per* Batty, J.—The writing may be used for the purpose of refreshing the memory of the witness cross-examined as to the fact of the statement either on behalf of the prosecution or on behalf of the defence, provided that it was treated by the prosecution only for the purpose of impeaching the credit or in corroboration of the witness who made it. *Per* Beaman, J.—The statement ought not to have been admitted at all, or its contents to have been allowed to be used by the prosecution, even for the nominal purpose of contradicting the witness. The distinction between the "writing" and the "statement" which is embodied in the writing is a distinction of form rather than of substance. If the "statement" might properly be admitted and used to contradict the prosecution witness who made it, then there is no reason in principle why that statement should not be provable in the usual way and by the best evidence of it, namely, the written record of it. Section 162 plainly constitutes an exception to the ordinary rule of evidence. The proviso engrafts an exception upon the exception. Before the present section was amended, statements made by witnesses to the police and recorded by the police might not be used as evidence against the accused, but there was nothing to prevent them from being used in favour of the accused. He can only obtain access to written statements made by the prosecution witnesses to the police, at the discretion of the Court. It is no longer a matter of right. The proviso is clearly limited to the purpose of this single concession, in derogation of the universal prohibition contained in the body of the section, to the accused. He can get a copy of the recorded statements of the witnesses for the prosecution, for the only purpose of breaking down the evidence of the prosecution witnesses. The proviso does not cover the case of a witness for the defence, whose statement may have been recorded by a policeman, nor allows the prosecution to impeach the credit of such a witness by examining him upon any written statements he may have made to the police. A *fortiori* the proviso could never have been intended to allow the prosecution to impeach the credit of its own witnesses for its own purposes, and against the wish of the accused, by reference to the police testimony. **9 Bom. L.R. 789. F.B.=6 Cr. L.J. 164=2 M.L.T. 414=32 B. 111.**

(1070)—*Ss. 162 and 164—Authority of police officer to have witness's statement recorded by Magistrate not competent to deal with the case.* —A police officer has no authority to place a witness before a Local Magistrate not competent to deal with the case and to get the statement recorded under s. 164. Such course will defeat the object of s. 162, which declares that a police officer shall not record any statement made to him by a person under

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examination. Where the police officer has reasons to believe that the witness is likely to be gained over by the accused, the proper course is to send the accused and the witness to the Magistrate having jurisdiction without delay. **29 C. 483=6 C.W.N. 596.** [*R.*, 7 C.L.J. 246].

(1071)—*Ss. 162, 164—Statements recorded by Magistrate—Right of accused person to have copies of such statements—Evidence Act, ss. 74, 76.*—Before the commencement of the preliminary inquiry against an accused person under remand, he is not entitled, either under the general principles of the common law or under the Code, to copies of statements of various persons recorded by a Magistrate, under ss. 162 and 164 of the Code. The question, whether he is entitled to such copies, cannot be determined with reference to the question, whether the statements are public documents within the definition of the s. 74 of the Evidence Act, because s. 76 only provides the means of proof of public documents which any person has the right to inspect; and whether any person has a right to inspect any particular public document is a question not dealt with by the Evidence Act and altogether outside its scope. **30 M. 466=17 M.L.J. 471=3 M.L.T. 14=6 Cr. L. J. 346.**

(1072)—*Ss. 162, 172—Police diaries—Special diary—Witnesses, statements of, recorded in special diary—Effect—Production of statements, for cross-examining witnesses—Proper procedure —Police officer, if can be compelled to refresh memory from such statements—Use of diaries by Court—Rioting, abetment of—Penal Code (Act XLV of 1860), ss. 148, 114.*—No oral statements of witnesses should be recorded in the 'special' diary kept by a police officer under s. 172 of the Code of Criminal Procedure. The practice, in the mofussil, of incorporating such statements in the 'special' diary condemned. Whether incorporated or not, in the 'special' diary, records of statements of witnesses taken by the police fall under s. 162, Crim. Pro. Code, and are liable to be produced, but only under the conditions laid down under that section, *i.e.*, the accused may, at the time the witness appears before the Court, ask the Court to refer to them, and the Court may, if it thinks expedient, in the ends of justice, furnish him with copies of such statements for the purpose of impeaching the credit of the witness. But the police officer, who recorded the statements, cannot be cross-examined under s. 145 or s. 161 of the Evidence Act, with regard to such statements, such cross-examination being allowable only with regard to the entries properly recorded in the diary kept under s. 172, Crim. Pro. Code, if the police officer refers to such entries for the purpose of refreshing his memory. It is doubtful whether a police officer can refresh his memory, as to statements recorded by him under s. 162, Crim. Pro. Code, unless the writing is already in and had been

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put to the witness, who is alleged to have made the statements. In this case, the Court had not been moved, under s. 162, Crim. Pro. Code, when the prosecution witness, whom it was subsequently desired to test by reference to his statements recorded in the special diary, appeared in the box; but, after all the prosecution witnesses had been examined, the defence, with the above object, applied to the Court to summon the Sub-Inspector of Police to appear with his diary as a witness for the defence. *Held*, that the application could not be granted and was rightly refused. But in such a case, the Court ought to send for and peruse the statements recorded in the diary. And if, on such perusal, it thinks that it would be expedient in the ends of justice to allow the accused to use such statements for the purpose of impeaching the credit of the witness, it would be open to the Court to furnish the accused with copies of the statements even at such a late stage, and to recall the witness, and permit further cross-examination. But nothing but the clearest conviction in the mind of the Court that a miscarriage of justice would otherwise result would justify the adoption of such an unusual and highly inconvenient step. *Quære* —Whether there can be "abetment of a riot." **10 C.W.N. 890=4 Cr. L.J. 79=33 C. 1023.**

(1073)—*Ss. 162, 172 (=Crim. Pro. Code, 1882, ss. 162 and 172)—Case-diary, admissibility of statements in.*—Statements of witnesses appearing in the case-diary of the police, cannot be used as corroborative evidence contrary to the provisions of ss. 162 and 172, Crim. Pro. Code. If it is intended to make use of the statements of witnesses as corroborative evidence, the police officer who took them down should be called to give evidence of their purport, and of the time when, and the circumstances in which, they were made, refreshing his memory from the case-diary if he desired to do so. **7 C.P.L.R. Cr. 22.**

(1074)—*Ss. 162, 172—Evidence Act, ss. 157 and 161—Statements made by a witness to a police officer, admission in evidence of—Refreshing of memory by police officer from statements recorded by him—Crim. Pro. Code, s. 172.—Held*, that the express provisions of s. 162 of the Code of Criminal Procedure override the general provisions of s. 157 of the Indian Evidence Act. *Held* further, that the written record of statements made by a witness to a police officer cannot be used for the purpose of corroborating the testimony of those witnesses. Nor can the police officer be allowed to depose to the statements made to him by refreshing his memory by reference to the record made by him of such statements. **13 O.C. 7.**

(1075)—*Ss. 162, 173—Statements under s. 162—Accused whether entitled to copies of such statements.*—There is no provision similar to s. 173 of the Crim. Pro. Code, which prohibits

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statements made under s. 162 to be used as evidence; if a witness at the preliminary enquiry has made previously a statement under s. 162, such statement may be put in to contradict him, when it will become part of the record, and the accused will be entitled to a copy after commitment. **30 M. 466=17 M. L.J. 471=3 M.L.T. 14.**

(1076)—*Ss. 162, 238—Offence of abduction from lawful guardianship in order to commit murder, whether a minor offence.*—Where a person was charged with the murder of a child, but the evidence disclosed that the accused abducted the child from lawful guardianship in order that it might be murdered, *held* that the accused could not be convicted of the latter offence, as he was not charged with that offence, and as the offence could not be considered a minor offence with the meaning of s. 238, Crim. Pro. Code. **2 Weir 302.**

(1077)—*Ss. 162 and 367—Judgment—Heads of charge to jury when to be recorded—Evidence before police, if admissible as corroboration—Evidence Act (I of 1872), s. 157—Misdirection—Depositions, if must be read out to jury.*—The heads of charge to the jury should be written out by the Judge as soon as possible after its delivery and while the facts are still fresh in his mind. S. 377 of the Code does not make it obligatory that the charge should be written out before delivery. S. 162 of the Code does not control s. 157 of the Evidence Act. Oral evidence may be given of the statement made to the police by a witness, in order to corroborate him at the trial. It is not incumbent on the Judge to read out the whole of the depositions of witnesses to the jury. **13 C.W.N. 197 =5 M.L.T. 97=9 C.L.J. 198=36 C. 281=9 Cr. L.J. 452=1 Ind. Cas. 970.**

(1078)—S. 162—*See* BOM. ACT IV OF 1902, s. 63, 9 Bom. L.R. 789, F.B.=6 Cr.L.J. 164= 2 M.L.T. 414=32 B. 111.

(1079)—S. 162—Admissibility of, taken by a Head Constable—*See* DYING DECLARATION, 7 C.P.L.R. Cr. 14.

(1080)—S. 162—*See* EVIDENCE, 9 Bom. L. R. 895=6 Cr. L.J. 224.

(1081)—S. 162—*See* EVIDENCE ACT, ss. 155, 159, 11 B. 657.

(1081-*a*)—Ss. 162, 172—*See* POLICE DIARIES, 17 P.R. 1894 Cr.

(1082)—S. 162—*See* POLICE INVESTIGATION, Rat. Un. Cr. C. 488.

(1083)—S. 162—*See* POLICE OFFICER, 15 P.R. 1886 Cr., 5 P.R. 1891 Cr.

(1084)—Ss. 162 and 537—*See* EVIDENCE, 9 Bom. L.R. 366=5 Cr. L.J. 353.

(1084-*a*)—S. 162—*See* Nos. 1004, 1029, 1039, 1039, 1040, 1044, 1054, 1056, 1058, *supra*.

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——S. 163 (=1882, s. 163; 1872, ss. 120, 184; 1861, ss. 146, 98).

(1085)—*Ss. 163, 61 (=Crim. Pro. Code, 1861, ss. 146, 152)—Remand of accused for more than 24 hours, when allowable.*—Circumstances may exist in which a special order of the nature contemplated in s. 152, Crim. Pro. Code, may properly be passed. For instance, if, in a case the police were enquiring into, the suspected or confessing person had voluntarily offered to conduct the police to a place where the stolen property would be found, and such offer could not be carried into execution within the limited period of 24 hours, the power which the above-mentioned section confers on a Magistrate could be lawfully exercised. But to return accused persons to the police, so that they might be forced to give a clue to an offence, is to abuse the provisions of s. 152, with a view to the breach of the injunctions of s. 146. **3 N.W.P. 275.**

(1086)—S. 163—*See* CONFESSION, L.B.R. (1872—1892), 289, 8 P.R. 1882 Cr.

(1087)—S. 163—*See* EVIDENCE ACT, ss 8, 24 to 27, 6 A.L.J. 839, F.B.

—— S. 164 (=1882, s. 164; 1872, s. 122), and Explanation, new.

(1088)—*Ss. 164, 363, 342, 346 (=Crim. Pro. Code, 1872, ss. 122, 341, 345)—Scope.*—S. 122 contemplates two distinct cases: one is that of the person coming forward to state what he knows; the other is that of a person accused by a police officer of an offence, who comes forward to confess his guilt. With regard to the former, the section provides that the statement made by him shall be recorded in the manner prescribed for recording evidence, that is to say, under s 341, Crim. Pro. Code; whereas, in the case of an accused person confessing to an offence of which he is accused, the Code, by s. 345, enacts that neither oath nor affirmation shall be administered to him. **2 B. 643.** [*F.*, 2 C.W.N. 702; *R.*, 16 M. 421].

(1089)—*S. 164—Statements of witnesses recorded under the section, Magistrate, when to record.*—The evidence of witnesses who are sent up by the police for the purpose of having their statements recorded under s. 164, Crim. Pro. Code, and who have been presumably in police custody until their production before the Magistrate, should not be recorded by such Magistrate, unless he has some assurance that their attendance and statements were voluntary. **7 C.W.N. 345.** (4 C.W.N. 49, 4 C.W.N. 129=27 C. 3, *F.*).

(1090)—*S. 164—Statements under, admissibility of.*—The dead body of a boy was found buried beneath a wall of the accused. One of the persons suspected of murder absconded. The accused was examined as a witness under s. 164 and deposed that the absconder had committed the crime. The accused and the absconder were subsequently tried, and the former withdrew her statement, saying that she was coerced into making it. *Held*, that her statement was not admissible in evidence against the other accused, nor did that statement amount to a confession of her own guilt. **2 A.L.J. 100=2 Cr. L.J. 59.**

(1091)—*S. 164—Duty of Magistrate to observe the provisions of section.*—Under s. 164, a Magistrate is bound to make a memorandum at the foot of the confession to the following effect:—"I believe that this confession was voluntarily made. It was taken in my presence and hearing and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him," and that should be signed by the Magistrate. The Magistrate must, if such confessions are to be received, observe the provisions of the Code. It would not be fair to the prisoners to receive a confession, unless the Magistrate or the Court is perfectly assured that it was voluntarily made. **2 Weir 140.**

(1092)—*S. 164 (=Crim. Pro. Code, 1872, s. 122)—Procedure to be followed by Magistrate under.*—The proper course for a Magistrate to pursue when an accused person is brought under the above section of the Code before him is to ask him, if he wishes to make any statement or confession. If he says he does not, the Magistrate should not proceed to interrogate him. If he does, the Magistrate should write down the statement or confession (as the case may be) and ask the accused such questions as may be necessary to show clearly or ascertain clearly what his meaning is. The examination of the accused must not be made with a view to eliciting, by constant questions, the truth out of his mouth, as though he were a witness. **5 C.P.L.R. Cr. 13.**

(1093)—*S. 164—Statement of an accused other than a confession, record of.*—It is neither expressed nor implied in the section that the statement of an accused person cannot be recorded, unless it is a confession. The distinction made in the section is between statements that are confessions and statements that are not, and not between the persons by whom statements of either character are made, the object being to prescribe different modes of recording. It is discretional with a Magistrate to act under s. 164 and prepare a record. **2 P.R. 1893 Cr.**

(1094)—*S. 164—False evidence—Penal Code, s. 193—Prosecution in alternative in respect of statements made under s. 164 of the Crim. Pro. Code and subsequently as a witness in Court.*—A complaint was made to the police charging T. S. and a third person with having committed an offence under s 420 of the Indian Penal Code. During the investigation, T was examined on oath by a Magistrate under

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the provisions of s. 164 of the Code of Criminal Procedure. As the result of the police investigation, S was placed on his trial, and T appeared as a prosecution witness and made a statement which appeared to the Court to be contradictory to his statement previously made under s. 164. *Held* that there was no legal objection, if the two statements were in fact contradictory, to the prosecution of T on a charge in the alternative under s. 193 of the Indian Penal Code. **A.W. N. 1908, 73=7 Cr. L.J. 302.**

(1095)—*S. 164 (3)—Duty of Magistrate before recording confession.*—It is the imperative duty of a Magistrate, before recording a confession, to carefully examine the accused person and, to the best of his ability, ascertain that he is not wishing to speak owing to inducement, threat or promise, but that his confession is purely voluntary. The omission of the Magistrate to question the accused, before recording the confession, is a fatal defect rendering the confession inadmissible. **3 L.B.R. 213=4 Cr. L.J. 385.**

(1096)—*S. 164 (=Crim. Pro. Code, 1872, s. 122)—Recording of confession by a Magistrate.* —A Magistrate is not debarred from recording the confession of an accused person under s. 122 of the Crim. Pro. Code, by the circumstance that it may afterwards be that Magistrate's duty to hold a preliminary inquiry under Chap. XV of the Code. **Rat. Un. Cr. C. 121.**

(1097)—*S. 164 (3)—Confession—Record of confession—"Records," meaning of.*—The word, 'record,' in s. 164, cl. (3) of the Code, must necessarily mean "making a part of judicial record" and not merely writing out. **8 Bom. L.R. 950=5 Cr. L.J. 4.**

(1098)—*S. 164 (=Crim. Pro. Code, 1872, s. 122)—Confessions made before a Court outside British India—Admissibility.*—A confession made before a Court outside British India, even if it is certified in accordance with s. 122 of the Code, cannot be used as evidence, unless it is sworn to like confessions made to private individuals. **2 Weir 125.**

(1099)—*S. 164—Confession of accused—Accused able to write—when thumb impression is a signature—Act X of 1897 (General Clauses), s. 3, cl. 52.*—Under s. 3, cl. 52 of the General Clauses Act, a mark is to be considered a signature only in the case of a person unable to write his name. The confession of an accused person, who is able to write, not signed by him, but having a thumb mark, is not a valid confession under s. 164, as the thumb mark, in such a case, does not amount to a signature. **32 C. 550=2 Cr. L.J. 405.**

(1100)—*S. 164—Confession made after improper questions by Magistrate.*—Where a Magistrate asked a person who was charged with an offence "what offence are you going to confess," instead of ascertaining whether the accused wished to say anything at all, *held*, that the Magistrate had not acted properly. **2 Weir 507.**

(1101)—*S. 164 (=Crim. Pro. Code, 1882, s. 164)—Questions tending to incriminate—Confessions—Duty of Magistrate.*—Certain questions put to the accused persons by the Magistrate, *e g.*, "so you had better relate what you know about the fact," were held to be improper, on the ground that they tended to incriminate the accused. A Magistrate should ascertain whether a confessional statement is made voluntarily, at the beginning of the statement, and not at the end. **2 Weir 136.**

(1102)—*S. 164 (=Crim. Pro. Code, 1882, s. 164)—Confession—Improper inducement by a Magistrate—Improper questions.*—Where after the prisoner had made a long confessional statement, he was told by the Magistrate that, if he stated all that he knew, he would then be examined as an approver and a witness, *held*, that the conduct of the Magistrate was highly improper. Where a Magistrate questioned an accused person thus:—"It appears that you have committed murder and absconded by escaping from custody; you have now come: what have you to say?," *held*, that the question was extremely improper, and the statement made by the accused thereupon was held to be inadmissible on the ground that such a statement could not be treated as voluntarily made. **2 Weir 137.**

(1103)—*Ss. 164 and 350—Confession made on inducement—Evidence Act, s. 24—Commitment by Magistrate on evidence partly taken by him and partly by another who had not ceased to exercise jurisdiction, irregularity of.*—Under s. 164, Crim. Pro. Code, and s. 24, Evidence Act, a confession made under an inducement to confess is not a voluntary confession, and, as such, inadmissible in evidence. A commitment by a Magistrate on evidenee partly taken by him and partly by another, who had not ceased to exercise jurisdiction, is irregular and s. 350, Crim. Pro. Code, is not applicable to such a case. Witnesses for the prosecution examined by the committing Magistrate must be tendered for cross-examination at the trial if their attendance can be procured. **L.B.R. (1893—1900), 52.**

(1104)—*Ss. 164 and 364 (=Crim. Pro. Code, 1882, ss. 164, 364)—Recording of confessions in narrative form—Admissibility.*—Where the confession of a prisoner was taken down in a narrative form by the Magistrate, instead of every question put to and answer given by him being recorded in full, in accordance with law, and where the Magistrate omitted to say whether he believed the confession to have been voluntary, the Court of Sessions was directed to examine the Magistrate as a witness, as to whether he believed the confession to have been voluntary. **S.C. 102, Oudh.**

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(1105)—Confessions made in simple narrative form without showing questions and answers may be allowed in evidence, where it appears that the accused had not been prejudiced by the failure to comply strictly with the law. But, under certain circumstances, such irregularity might be very prejudicial to the accused affected by it, and the Magistrate, who committed it, would incur grave responsibility. It would be possible, for instance, that the whole story in a confession might be constructed by putting questions to the accused, which would suggest every circumstance and particulars entered in the statement, and, in such a case, the omission of the questions from the record would have the false and misleading effect of making the confession appear as a spontaneous and genuine effusion from the accused's own lips. **U.B.R. (1897—1901), Vol. I, 47.**

(1106)—*S. 164—Oral confession to Magistrate—No provision for admission in evidence of confession not recorded in compliance with law.*—There is no provision for the admission in evidence of a confession made to a Magistrate, unless it is recorded in the manner prescribed by law; and even if such confession may, under special circumstances, be proved otherwise, where the confession of the accused is shown to have been made under inducement, such fact deprives the evidence of its value. A conviction based on such evidence would be reversed. **U.B.R. (1897—1901), Vol. I, 41.**

(1107)—*S. 164—Recording statement of accused before evidence for prosecution is taken.*—The above section does not empower the Judge to record the statement of the accused before any evidence for the prosecution is taken down, and criminal proceedings should not be commenced by subjecting the accused, who has not offered to make a confession, to a searching cross-examination. **7 O.C. 191.**

(1108)—*Ss. 164, 202 and 364—Enquiry under s. 202—Statement of the person complained against—Admissibility.*—Where, during an enquiry under s. 202 of the Code, the Magistrate recorded a statement made by a person against whom the complaint was filed, *held*, that the statement cannot be regarded as having been recorded under s. 164 or s. 364 of the Code. It was a statement made during an enquiry under s. 202 of the Code when the person was not in the position of an accused person and as such cannot be admitted in evidence against the accused. **32 C. 1085=10 C.W.N. 51.**

(1109)—*Ss. 164 and 288—Recording statement of witnesses with a view to fix them to such statements—Subsequent withdrawal—Effect.*—S. 164 does not enable a police officer, who has obtained a statement incriminating the accused made by some person, to send such person to a Magistrate, practically under custody, to have him examined and his statement recorded before the judicial enquiry or trial for fixing

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him down to that statement in the subsequent judicial proceedings; and the law does not require that, in the case of a witness so examined, there should be a certificate after proper enquiry that it has been voluntarily made. The statement so obtained raises a suspicion that it has not been voluntarily made. If such statement is retracted at the sessions trial, the Sessions Judge is not justified in admitting such evidence, under s. 288, without making some enquiry into the truth of the reasons alleged for retracting from the statement. **27 C. 295=4 C.W.N. 129.** [*F.*, 7 C.W.N. 345].

(1110)—*Ss. 164, 289, 342, 364, 367 and 533—Plea, withdrawal of—Entry of plea—Judgment in sessions case—Charge to assessors, incorporation in judgment—Legality—Confession of accused—Recording of confession—Narrative form—Language of record—When to be signed by accused—Police officer—Illegality—Irregularity—Examination of accused, in Court of session, not imperative.*—A Sessions Judge should not incorporate in, and treat as part of, his judgment, his summing up of the case to the assessors; but if he does so, it is not an illegality. It is not absolutely necessary for a Magistrate recording the confession of an accused person to put down all the questions put by him to the accused, if such questions were merely formal The confession is not rendered inadmissible, if the accused has not been prejudiced, merely because it is taken down in narrative form. The irregularity, if any, is cured by the examination of the Magistrate, under s. 533, Crim. Pro. Code. It is not necessary for the Magistrate to warn the accused that he was speaking to a Magistrate, if, from the circumstances of the case, the accused must have known that he was speaking before one. S. 164, Crim. Pro. Code, absolutely prohibits the employment of a police officer to take down the confession of an accused person. A police officer cannot be employed even as a scribe to take down such a confession. The statement of the Magistrate in his examination under s. 533 must be taken as conclusive that it was impracticable to record it in the language in which it was made It is not absolutely illegal to take the signature of the accused to his confession *immediately* after it is recorded. It is not obligatory for the Sessions Judge to examine the accused under s. 342, Crim. Pro. Code, more specially where the accused has not challenged the evidence. S. 289 of the Code makes such examination optional with the Judge, not imperative. If, in an examination of the accused by the Magistrate, some of the questions put are considered inquisitorial or in the nature of a cross-examination, that does not make the whole statement inadmissible. *Semble*, where a plea of "guilty" is not accepted, a plea of "not guilty" ought to be entered before the trial is proceeded with. **9 C.L.J. 55.**

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(1111)—*Ss. 164, 342—Power of Magistrate to examine the accused during a police investigation.*—Under s. 164, in the course of a police investigation, the Magistrate is entitled to record any voluntary statement made by the accused person, but he is not entitled to examine the accused person in respect of the facts of the case. **5 C.W.N. 864.**

(1112)—*Ss. 164, 342, 364 and 533—Evidence Act, s. 80—Statement of the accused recorded in English and not in vernacular—Admissibility in evidence of such statements* —The Sessions Judge, who tried a dacoity case, admitted in evidence statements in the nature of confessions recorded in English by a Joint Magistrate under the provisions of s. 164, Crim. Pro. Code. There was no evidence that it was not practicable to record them in the language in which they were made, and the Joint Magistrate was not examined as a witness, nor was evidence taken that the accused duly made the statements so recorded—*Held* that, as it could not be presumed without some evidence that the statements had to be recorded in English as they could not be recorded in the language in which they were made, there was no justification for their being recorded in English, and no presumption under s. 80 of the Evidence Act could be made in respect of the record made in English; and, as no evidence was taken to prove that the accused had actually made those statements, the Sessions Judge was wrong in admitting such a record of the statements against the accused. **10 O.C. 112=6 Cr. L.J. 94.**

(1113)—*Ss. 164, 364, 533 (=Crim. Pro. Code, 1882, ss. 164, 364, 533).*—The error committed by a Magistrate recording a confession under s. 164, Crim. Pro. Code, in English, instead of in the language of the accused, although it was not impracticable to record it in that language was held to be curable by s. 533, which is wide enough to cover a failure to comply with the provision of s. 364 regarding the language in which the accused's statement should be recorded. **S.C. 277, Oudh.** (A.W.N. 1892, 60, *F.*).

(1114)—*Ss. 164 and 364—Confession not recorded according to—Conviction—Legality.*—Where the accused pleads not guilty, a conviction cannot be based on a confession which is not recorded in the manner prescribed in ss. 164 and 364 of the Crim. Pro. Code. **11 Cr. L.J. 41=4 Ind. Cas. 759=U.B.R. 1909, I Evidence, 3.**

(1115)—*Ss. 164, 364, 533 (=Crim. Pro. Code, 1882, ss. 164, 364 and 533)—Defect in certificate to be appended to examination of accused, how curable.*—A defect in the certificate to be appended to the examination of an accused person by a Magistrate oannot be rectified by examining a witness to prove that the confession was in the hand-writing of the Magistrate. S. 533, Crim. Pro. Code, provides, that, in such a case, evidence shall be taken that the accused person "duly made the statement recorded," and the proper course is to examine either the Magistrate himself or some other person who was present when the statement was recorded. **8 C.P.L.R. Cr. 6.**

(1116)—*Ss. 164, 364 and 533—Confession inadmissible owing to incurable defects.*—A Magistrate, who recorded a confession under s. 164, Crim. Pro. Code, did not question the accused under s. 164 (3) as to whether he was confessing voluntarily. The confession was subsequently retracted. *Held*, that the confession was inadmissible in evidence and that the defect could not, under s. 533, be cured by the evidence of the Magistrate that the confession was voluntarily made. **U.B.R. (1902—1903), Crim. Pro. Code, 13.** (10 H.C. 175, 21 B. 495, 23 B. 221, 17 C. 862, 2 C W.N. 702, *R.*; 25 B. 543, *F.*).

(1117)—*Ss. 164 and 533 (=Crim. Pro. Code, 1882, ss. 164, 533)—Omission to record memorandum to a confession—Admissibility of the confession in evidence.*—The failure of a Magistrate to make a memorandum at the foot of a confession as required by s. 164 would not make the confession inadmissible in evidence in the Sessions Court. The Sessions Judge should proceed under s. 533, Crim. Pro. Code, "to take evidence that the accused duly made the statement recorded," and he should then admit the statement, "if the error of the Magistrate had not injured the accused as to his defence on the merits." Where a Magistrate recorded a confessional statement by an accused person, but did not make a memorandum as required by s. 164, and did not file the confession as a part of the record, on the ground (1) that the accused had been in the police lock-up for 5 days before he was produced before him and (2) that there was a proposal on the part of the police to treat the accused as an approver but there was no evidence that the proposal was communicated to the accused, *held*, that the grounds mentioned were not valid grounds and that the Judge, who tried the sessions case, ought to have proceeded, in the absence of the memorandum, under s. 533, to take evidence whether the confession was duly made. But as the Judge had not done any such thing and the evidence as to the circumstances under which the confession was made was left uncertain, the High Court refrained from expressing an opinion on the admissibility of the confession. **22 M. 15=2 Weir 705.**

(1118)—*Ss. 164, 533—Penal Code, s. 302—Murder.*—The provisions of s. 533, Crim. Pro. Code, render it necessary on a Court to take evidence that an accused person has duly made a statement recorded under s. 164, when the provisions of that section (s. 164) have not been complied with by the Magistrate, although the accused may admit making the statement. **U. B. R. (1892—1896), Vol. I, 205.**

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(1118-*a*)—S. 164—*See* ACT X OF 1873, 10 C.P.L.R. Cr. 16, 2 P.R. 1893 Cr., 16 M. 421 =1 Weir 175.

(1119)—S. 164—*See* APPROVER, 12 O.C. 418.

(1120)—S. 164—*See* CHARGE TO JURY, 7 C.L.J. 246=7 Cr. L.J. 315.

(1121)—S. 164—*See* CONFESSION, 18 A. 78, 1 B. 219, 6 B. 288, 11 B. 702, F.B., 25 B. 168 =2 Bom. L.R. 761, 1 Bom. L.R. 357, Rat. Un. Cr. C. 720, 5 C. 954=6 C.L.R. 297, F.B., 5 C.L.R. 238, 6 C.L.R. 289, 2 C.W.N. 702, 3 P.R. 1894 Cr., 8 P.R. 1907 Cr.=33 P.W.R. 1907=6 Cr. L.J. 337=46 P.L.R. 1908, L.B.R. (1872—1892), 497, 2 L.B.R. 19.

(1122)—Ss 164. 193 and 337—*See* CONFESSION, L.B.R. (1893—1900), 8.

(1123)—Ss. 164, 364—*See* CONFESSION, 14 C. 539, 2 M. 5=2 Weir 123, 36 P.R. 1887 Cr. F.B., L.B.R. (1872—1892), 423, 4 Cr. L.J. 198=3 L.B.R. 173.

(1124)—Ss. 164, 364, 533—*See* CONFESSION, 21 B. 495, 18 C. 549, 3 C.W.N. 387, 9 M. 224=2 Weir 125, 2 P.R. 1909=7 P.W.R. 1909=1 Ind. Cas. 444, 7 P.R. 1899 Cr., L.B.R. (1893—1900), 70, 20 P.R. 1881 Cr., 21 P.R. 1881 Cr., A.W.N. 1883, 238, 3 A. 338, 4 C. 696=4 C.L.R. 137, 5 C. 958=6 C.L.R. 353, 15 C. 595, 17 C. 862, 5 C.L.R. 209.

(1125)—Ss. 164, 364, 538 (1)—*See* CONFESSION, 10 B.H.C. 166.

(1126)—Ss. 164, 533—*See* CONFESSION, 4 Bom. L.R. 785, 2 L.B.R. 317, 9 M. 224=2 Weir 125.

(1127)—S. 164—*See* FALSE EVIDENCE, A.W.N. 1899, 39.

(1128 and 1129)—Ss. 164, 288—*See* FALSE EVIDENCE, 468.

(1129-*a*)—S. 164—*See* Nos. 1008, 1070, 1071, *supra*, and No. 3532, *infra*.

——S. 165 (=1882, s. 165; 1872, s. 379; 1861, s. 142).

(1130)—*S. 165, sub-s. (3)—Public servant acting without authority—Penal Code, s. 99.*—If a constable goes for search without any written authority, he does not, under s. 165, sub-s. (3), lawfully exercise the power of a public servant. To such a case, s. 99, I.P.C., contemplating certain acts against which there is no right of private defence, has no application. **6 C.L.J. 753=6 Cr. L.J. 439.**

(1131)—S. 165—*See* PENAL CODE, ss. 224, 225, 332, 353, 114 P.L.R. 1903.

(1132)—S. 165—*See* PUBLIC SERVANT, A.W.N. 1892, 1.

(1133)—S. 165—*See* SEARCH, 17 M.L.J. 323 =6 Cr. L.J. 105.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869)—continued.

(1134)—Ss. 165, 102—*See* UNLAWFUL ASSEMBLY, 7 N.W.P. 209.

(1135)—S. 165—*See* WITNESS, 24 C. 288.

(1135-*a*)—S. 165—*See* Nos. 64, 70, 294, 374, 383, *supra*.

——S. 167 (=1882, s. 167; 1872, s. 124, paras 2, 4 and 5; 1861, s. 152).

See REMAND.

(1136)—*S. 167—Remand of accused to police custody, period.*—The period for which a Magistrate can authorize the detention of the accused in police custody is fifteen days on the whole. **23 B. 32.**

(1137)—*S. 167—Scope.*—S. 167 applies to investigations under Ch. XIV, and gives no authority to remand an accused person in custody in proceedings under Ch. VIII, in order to enable the police to trace other persons to be proceeded against under that chapter. **5 Bom. L.R. 27.**

(1138)—*S. 167—Detention in police custody.*—A Magistrate should not sanction the detention of an accused person without recording sufficient reasons as required by law. The fact, that the accused is wanted by the police for individually pointing out the places through which he passed on his way to commit a dacoity, or for the purpose of obtaining his identification in the village, is not a sufficient reason for sanctioning such detention. **7 C.W.N. 457.**

(1139)—*S. 167 (3)—Detention of accused by police during investigation.*—By requiring a Magistrate to record his reasons for authorising detention in police custody, the law contemplates that a Magistrate should consider whether, on the facts placed before him, there are good grounds for allowing such detention. There should be at least something to satisfy the Magistrate that the presence of the person arrested, while the police investigation was being held, would assist in some discovery of evidence, and that his presence was indispensable for the purpose. In ordering further detention in police custody, when there are good reasons for such an order, a Magistrate should invariably limit the term as much as possible to what may be necessary for the object in view. **11 C.W.N. 554=6 Cr. L.J. 86.**

(1140)—*Ss. 167 and 337—Remand, limit of—Pardon—Power to withdraw when exercisable—Evidence—Statement of approver when pardon is withdrawn when inadmissible in evidence—Approver to be detained in custody when not on bail.*—Section 167 of the Crim. Pro. Code prescribes a period of fifteen days in all as the limit of time for which an accused person shall remain in custody before his trial is formally begun. When before the trial of the case, on the motion of the District Superintendent of Police, the District Magistrate withdrew a pardon granted to one of the accused

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persons, after recording a statement by the District Superintendent of Police, and an admission by the accused, which appeared to have been made under pressure, that his previous statement was false, *held*, that the action of the District Magistrate was not illegal, though not justified under the circumstances of the case. When the pardon granted to an accused person is withdrawn before the trial of the case, statements made by him as an approver are inadmissible in evidence at his trial. Clause (3) of s. 337 of the Crim. Pro. Code requires an approver, if not on bail, to be detained in custody till the end of the trial. **136 P.L.R. 1902.**

——**S. 168 (=1882, s. 168).**

(1141)—*Ss. 168, 476, 477, 487 (=Crim. Pro. Code, 1872, ss. 468, 471, 472, 473)—Offences against public justice—Jurisdiction.*—S. 473 is not intended to include offences, which, under the Penal Code, are classed as offences against public justice, in contradistinction to offences in contempt of the Court's authority. But a Magistrate, before whom an offence under s. 196, I.P.C., has been committed, may not, under s. 271, himself try the accused person for that offence. **1 A. 129.** [*Overruled*, 1 A. 625, F.B.; *Diss.*, 1 B. 311, 1 B. 339].

——**S. 169 (=1882, s. 169; 1872, s. 125; 1861, s. 153).**

(1142)—Ss. 169, 173—*See* BAIL, Rat. Un. Cr. C. 121.

(1143 and 1144)—S. 169—*See* ESCAPE FROM LAWFUL CUSTODY, 6 A. 129.

(1144-*a*)—S. 169—*See* No. 1016, *supra*.

——**S. 170 (=1882, s. 170; 1872, ss. 123, 127, 130; 1861, ss. 151, 155, 158).**

(1145)—*S. 170 (2) and (4)—Bond from witness, when to be taken—Day fixed in the bond.*—A bond under s. 170, Crim. Pro. Code, can only be taken from a witness when the accused has been arrested and is either being forwarded to a Magistrate or is released on security being given for his appearance. The day fixed in the bond is also to be the day whereon the accused person is to appear, if security for his appearance has been taken, or the date on which he will probably reach the Magistrate's Court. **L.B.R. (1893—1900), 478.**

(1146)—*Ss. 170, 188—Offence committed outside British India—Certificate from the Political Agent—Penal Code (Act XLV of 1860), s. 328—Grievous hurt.*—The complainant was assaulted by the accused with the Baroda territory, and his leg was completely broken in that territory. He was brought into a hospital within the British territory in consequence of this injury, where he was detained for 57 days, during which period he was unable to follow his ordinary pursuits. He filed a complaint for grievous hurt in a British Court. The Magistrate sought to obtain the certificate from the Political Agent at Baroda, as required by s. 188 of the Crim. Pro. Code. On his failing to obtain it, he ordered the papers in the case to be filed under s. 203 of the Crim. Pro. Code. The complainant, thereupon, applied to the High Court contending that the Magistrate ought to have proceeded with the trial under s. 179 of the Crim. Pro. Code: *held*, that the s. 179 of the Crim. Pro. Code did not apply, since the injury that was done, *viz.*, the fracture of the leg, was complete within the Baroda territory. **8 Bom. L.R. 513=4 Cr. L.J. 54.**

(1147)—Ss. 170, 190 (*c*)—*See* COGNISANCE OF OFFENCE, Rat. Un. Cr. C. 951.

(1147-*a*)—S. 170—*See* No. 1016, *supra*, and Nos. 1284, 2387, *infra*.

——**S. 171 (=1882, s. 171; 1872, ss. 130, 131, paras 1 and 2; 1861, s. 159).**

(1148)—Ss. 171, 288—*See* WRONGFUL RESTRAINT, 4 C.W.N. 49.

——**S. 172 (=1882, s. 172; 1872, s. 126; 1861, s. 154).**

(1149)—*S. 172 (=Crim. Pro. Code, 1882, s. 172)—Scope of the section.*—S. 172 of the Code is not exhaustive. It includes a statement by a police officer that he examined certain witnesses and the statement of circumstances ascertained from the examination of the witnesses; but it does not include the actual statements of the witnesses. **20 C. 642.** [*R.*, 20 M. 189=2 Weir 763=7 M.L.J. 167, F.B., 19 A. 390=17 A.W.N. 174, F.B.]

(1150)—*S. 172—Police diaries—Their nature—Admissibility as evidence—When police proceedings could be placed before jury.*—Police diaries cannot be placed before the jury; as provided by s. 172, they are useful, not as evidence, but to aid a Court in the trial so as to enable it to make a thorough enquiry on all material points, and to elicit, in the examination of the witnesses and especially of police witnesses, the real facts of the case. A Sessions Judge cannot rely on police proceedings or put the same to the jury, without examining police officers as witnesses to explain such proceedings. **27 C. 295=4 C.W.N. 129.**

(1151)—*S. 172—Police diaries—Use by Court—Admissibility in evidence.*—Facts and statements written in the police diaries cannot be used as materials to help the Court in a criminal trial to come to a finding on the evidence in the case. What the Court should do with the Police diaries is to discover, out of them, any matter of importance bearing upon the case and then call for the necessary evidence to have that matter legally proved. **10 C.W.N. 600=3 Cr. L.J. 408.**

(1152)—*S. 172 (=Crim. Pro. Code, 1872, s. 126)—Police diaries and occurrence reports—Their evidentiary value.*—Occurrence reports and station reports by the Station Officer may be used by the Court for the purposes

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mentioned in s. 126. They are not evidence of matters stated in them. They will be admissible as evidence, if the persons who wrote them are examined as witnesses as to the facts stated in such report. **2 Weir 142.**

(1153)—*S. 172 (=Crim. Pro. Code, 1872, s. 126)—Police diaries.*—Diaries kept by police officers are not original evidence. **2 Weir 143.**

(1154)--*S. 172 (=Crim. Pro. Code, 1882, s.172)—Police diaries.*—S.172 does not authorise a Court to bring matters contained in police diaries upon a judgment and to treat them as though they were evidence which has to be disposed of one way or another. If the statements in a diary can be used as evidence, they can only be used when they are brought upon the record and properly made evidence in the case. When not so treated, they should not find any place in a trial beyond that which is given them in s. 172, Crim. Pro. Code. **A.W.N. 1894, 155.**

(1155)—*S. 172 (=Crim. Pro. Code, 1882, s. 172)—General order by appellate Court for production of police diaries—Evidence.*—A Court of Sessions has no power to make any general order that police diaries shall be produced before it in criminal appeal. Any order which a Court of Sessions as a Court of criminal appeal considers it necessary to make, for the production before it, in an appeal, of police diaries, must be an order made in and confined to the particular case. The Sessions Judge is not empowered to draw any presumption against the regularity of the procedure of the police from the non-production before him of the police diary or diaries, more specially when he has not specifically called for the same. When a Court, under the authority conferred on it by s. 172, Crim. Pro. Code, uses a police diary to aid it in an enquiry or trial, it must be careful to bear in mind that the diary in itself is not evidence and does not supply in itself any evidence on which a Court can act in such enquiry or trial. **A.W.N. 1894, 118.**

(1156)—Ss. 172, 161—*See* POLICE DIARY, 8 C. 739=12 C.L.R. 233.

(1157)--S. 172—*See* WITNESS, L.B.R. (1893—1900), 42.

(1157-*a*)—S. 172—*See* Nos. 1045, 1046, 1047, 1048, 1049, 1051, 1072, 1073, 1074, 1081-*a*, *supra*.

——S. 173 (=1882, s. 173; 1872, ss. 125, 127; 1861, ss. 153, 155).

(1158)—*Ss. 173, 200 and 202—Case entered as true, but judicial enquiry declined—Right of accused to be examined and his case tried.*—On an information given to the police, that the accused assaulted the complainant and forcibly carried off grain of considerable value, the police investigated and made a report to the Sub-Divisional Magistrate who, thereupon directed the case to be entered as true, recording the offence under s. 147, Penal Code, but declined to order a judicial enquiry, because he was of opinion that there was no chance of a conviction. The complainant then petitioned the District Magistrate, who ordered a judicial enquiry to be held by a Subordinate Magistrate. On receipt of a report from the latter, the District Magistrate recorded that, in his opinion, it was useless to consider the evidence tendered by the complainant and that the Sub-Divisional Magistrate had already passed final orders in the case, namely, "enter true." *Held*, that the complainant was entitled to be examined under s. 200, Crim. Pro. Code, and that, as his complaint had already been recorded as true he was entitled to a process against the accused and for the attendance of his witnesses. **29 C. 410.**

(1159)—*Ss.173, 437 (=Crim. Pro. Code, 1882, ss. 173, 437)—Police report—Striking off case—Review.*—A Magistrate's order directing a case reported to him by the police, under s. 173 of the Crim. Pro. Code, to be struck off, is not a judicial order dismissing a complaint which can be reviewed by the Sessions Judge under s. 437 of the Crim. Pro. Code. **Rat. Un. Cr. C. 521=Cr. Rg. 47 of 1890.**

(1159-*a*)—S.173—*See* Nos. 1016, 1075, 1142, 1144, *supra*, and Nos. 1232, 1284, *infra*.

——S. 174 (=1882, s. 174; 1872, s. 133; 1861, s. 161).

(1160)—Ss. 174 and 259—*See* DISCHARGE OF ACCUSED, 2 L.B.R. 165.

(1161)—Ss. 174, 435 (1, 2 and 3)—*See* INQUEST, 3 C. 742.

(1162)—Ss. 174, 435—*See* REVISION, Rat. Un. Cr. C. 843.

(1162-*a*)—S. 174—*See* No. 1050, *supra*, and No. 1415, *infra*.

——S. 176 (=1882, s. 176; 1872, s. 135).

(1163)—*S. 176 (=Crim. Pro. Code, 1872, s.135)—Enquiry and report by Magistrate under the section, whether a judicial proceeding.*—An enquiry under S. 135 is directed more to elucidate the facts of violent and unnatural death, before there is any reasonable suspicion of the commission of any offence. It forms no part of a judicial proceeding. The High Court has, therefore, no power to send for the report of the Magistrate made after an enquiry under s. 135. **3 C.L.R. 59.**

——S. 177 (=1882, s. 177; 1872, s. 63, para 1; 1861, s. 26, except proviso).

See JURISDICTION OF CRIMINAL COURTS.

See MAGISTRATE, JURISDICTION OF.

(1164)—*Ss. 177, 182 (=ss. 177, 182, Crim. Pro. Code, 1882)—Different offences committed in the same transaction—Jurisdiction.*—Where two different offences are committed in the course of the same transaction, the case should

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be tried by a Magistrate who has jurisdiction to try both the offences, and not by a Magistrate who has jurisdiction over one of them only, for it would be highly inconvenient that the two offences should be tried by different officers. **2 Weir 144.**

(1165)—*Ss. 177, 252—Arrest in Native State of its subject without intervention of that State.* —Where the subject of a Native State, who, having committed an offence in British India, escaped into the Native State, was arrested by the British police without the intervention of that State, *held*, that the subsequent trial and conviction of the accused were not affected by the irregularity. **6 P.R. 1899 Cr.** (6 P.R. 1897 Cr.).

(1166)—S. 177—*See* ACT XIII OF 1859, ss. 1 and 7, 12 P.W.R. 1910 Cr.

(1167)—Ss. 177, 531—*See* COMMITMENT TO SESSIONS COURT, 8 B. 312.

(1168)—Ss. 177, 179, 531—*See* JURISDICTION OF CRIMINAL COURTS, 44 P.R. 1885 Cr.

(1169)—Ss. 177, 488—*See* JURISDICTION OF CRIMINAL COURTS, 13 P.R. 1885 Cr.

(1170)—Ss. 177, 179—*See* JURISDICTION OF CRIMINAL COURTS, 7 P.R. 1910 Cr.

(1171)—Ss. 177, 488 (1 to 6)—*See* MAINTENANCE, 24 C. 638=1 C.W.N. 577.

(1171-*a*)—S. 177—*See* No. 84, *supra*, and Nos. 1457, 3523, 3527, *infra*.

——S. 178 (=1882, s. 178; 1872, para 2 of s. 63).

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See MAGISTRATE, JURISDICTION OF.

(1172)—S. 178—*See* BUR. ACT XVII OF 1875, 10 C. 643.

(1173)—S. 178—*See* TRANSFER OF SESSIONS CASES, L.B.R. (1872—1892), 263.

(1173-*a*)—S. 178—*See* No. 3527, *infra*.

——S. 179 (=1882, s. 179; 1872, s. 65; 1861, s. 27).

See MAGISTRATE, JURISDICTION OF.

(1174)—*S. 179—Construction of section—Place of trial where act is done or where consequence ensued.*—In this section, the words "anything which has been done" mean some act constituting the offence, and the words "any consequence which has ensued" mean some consequence modifying or completing the act. Where, therefore, the complaint was that the accused, to whom certain articles were consigned from Fyzabad to the Central Provinces, misappropriated a portion thereof at the latter place, *held* that the charge against them was not, under s. 179, Crim. Pro. Code, triable at Fyzabad. **4 O.C. 376.**

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(1175)—*S. 179—"Any consequence has ensued"—Loss which ensues on a criminal breach of trust.—Held*, that the words "any consequence has ensued" in s. 179, Crim. Pro. Code, mean some consequence modifying or completing the act or acts constituting the offence; and the loss to an employer resulting from criminal breach of trust by a servant is not a consequence of that description. **67 P.L.R. 1901.** (19 A. 111, *R.*).

(1176)—*S. 179—"Consequence"—Interpretation.*—The consequence referred to in s. 179 must be one of the facts to be proved to establish the offence. It must form an integral part of the offence, but must not be a consequence arising from it. **5 L.B.R. 57=2 Ind. Cas. 546.**

(1177)—*S. 179—Accused triable in district where act is done.*—The mere fact that a person, on whom hurt had been inflicted in one district, was treated in a hospital in another district would not render the offence triable in the latter district. **U.B.R. (1897—1901), Vol. I, 53.**

(1178)—*Ss. 179, 181 (2) and 190 (c)—Indian Penal Code, ss. 409 and 477-A—Fabrication of accounts—Criminal breach of trust—Place of inquiry—Jurisdiction.*—S. 179, Crim. Pro. Code, applies only when a person is accused of the commission of any offence by reason of anything which has been done and of any consequence which has ensued. The offence defined in s. 477-A, I.P.C., is complete, when accounts are falsified with intent to defraud; and a person accused of the falsification of accounts made in one place cannot be tried in another place on account of any offence by reason of any consequence which has ensued within the meaning of s. 179, Crim. Pro. Code. But the offence under s. 409, I.P.C. (criminal breach of trust) can, under s. 181 (2), Crim. Pro. Code, be tried by a Magistrate within whose jurisdiction the property embezzled has been received or retained. *Obiter.*—A Magistrate, not specially empowered under s. 190 (*c*) cannot issue a warrant for the arrest of a person in the absence of a complaint, and on the information contained in a telegram to him from a would-be complainant. **4 M.L.T. 481=9 Cr. L.J. 92.**

(1179)—*Ss. 179 and 185—Jurisdiction—Place where consequence of act ensues—Alleged fraudulent realization of money on hundis.*—Where a complaint was made before a Magistrate at Aligarh, the substance of which was that the person complained against had dishonestly and fraudulently, two days after he had become an insolvent, realized at Calcutta the moneys due in respect of certain hundis which the complainant had purchased, it was *held*, on an application under s. 185 of the Code of Criminal Procedure, that the offence alleged should be inquired into at Calcutta and not at Aligarh. **A.W.N. 1908, 115=5 A.L.J. 333 =7 Cr. L.J. 394.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1180)—*Ss. 179, 222, 235 to 239, 531 and 537 —Jurisdiction—Money recovered from a Bank at Bombay by D on a forged draft of a Bank at Amritsar—I also recovered money on a similar draft from a Bank at Multan with D's help—I resided at Amritsar and D at Lahore—Head Office of Multan Bank at Lahore—No branch of Bombay Bank in the Punjab—Accused tried jointly at Lahore—Misjoinder of charges and accused—Cheating explained—Forgery—Evidence of an expert—Theft—Consequence ensued —Indian Penal Code (Act XLV of 1860), ss. 109, 379, 411, 415, 420, 463 and 467—Indian Evidence Act (of 1872), ss. 45, 46 and 47.*—On the 2nd October, 1905, one D, of Lahore, presented a forged draft of Rs. 10,000 and got it cashed at the Bombay office of the Mercantile Bank of India having no branch in the Punjab. On 26th October, 1905, one I, of Amritsar, presented another forged draft for Rs. 7,000 and got it cashed with the help of D, at the Multan Branch of the Punjab National Bank. Both these drafts purported to be signed by M, as manager of, and to have been issued by, the Amritsar Branch of the said Punjab National Bank, which has no branch at Bombay and of which the Head office is at Lahore. It was not proved by whom and where the drafts and advices in question were forged or, as alleged by the prosecution, the forms on which these were written were stolen from the Head Office of the said Punjab National Bank. Both the accused D and I were jointly tried by a Magistrate of and sitting at Lahore. As regards the Multan fraud, the Magistrate convicted I under ss. 379/109, 420 and 467, Indian Penal Code, and D under ss. 379/109, 420/109, and 467/109, Indian Penal Code. As regards the Bombay fraud, D's convictions were under ss. 411, 467/109 and 420, I.P.C. On appeal to the Chief Court, Punjab, the conviction of D was only upheld under s. 420, Indian Penal Code, as regards the Bombay case and under ss. 420/109 as regards the Multan case. The conviction of I also was only confirmed under s. 420, I.P.C. It was contended that the trial was bad in law inasmuch as the Magistrate at Lahore had no jurisdiction and that there was misjoinder of charges and accused: *Held*, that, under s. 179 of Crim. Pro. Code, 1898, the Lahore Court had jurisdiction inasmuch as the consequence (*i.e.*, loss to the Bank) contemplated in this section ensued at Lahore where the Head Office of the Punjab National Bank is situate. The loss occurs at the place where the accounts of the Bank are made up and its business as a company is transacted. *Held*, also, that s. 179 applies not only to cases in which the offence is completed by reason of a consequence ensuing within the local limits of another jurisdiction (as *e.g.*, the case of a man being wounded in one district and dying in another), but also to cases in which the fact of a consequence ensuing in another jurisdiction is the cause of the offender being accused of the offence. *Held*, also, that the illustrations to s. 179, Crim. Pro. Code, 1898, are not exhaustive and to hold that all the consequences prescribed by the Legislature in framing the section as conferring jurisdiction are *ejusdem generis* with the consequences specified in the illustration is not justified by the language of the section. *Held*, also, that there is neither misjoinder of charges nor of accused where the offences charged form parts of one transaction and were committed by several persons acting together. *Held*, also, that the offence of cheating as defined in s. 415, Indian Penal Code, contains two parts. *First* comes the main part "whoever, by deceiving any person—," words which obviously apply to the whole section. Then comes the first part "fraudulently, or dishonestly induces the person so deceived to deliver any property to any person or to consent that any person shall retain any property." Then comes part 2, which is an alternative to sub-part 1, *viz.*, "or intentionally induces—mind, reputation or property." Then come the closing words "is said to cheat." The words "and which act or omission—reputation or property" form a portion of part 2 and are not applicable to part 1 at all. *Held*, further, that although the evidence of an expert is relevant and valuable on the question of the identification of the hand-writing, it is dangerous to convict a person of forgery simply on the strength of that evidence. *Held*, further, that where an offender is convicted of several offences in one trial and a joint sentence is passed against him for all the offences with which he is charged and in appeal the conviction for some of the offences is set aside and is upheld as regards the rest, it is not illegal to maintain the sentence in full and it does not amount to an enhancement of the sentence, provided the sentence maintained does not exceed the maximum punishment which could be awarded for the offence or offences for which the conviction is upheld. **18 P.W.R. 1908 Cr.=8 Cr. L.J. 75.**

(1181)—S. 179—*See* JURISDICTION OF CRIMINAL COURTS, 19 A. 111.

(1182)—Ss. 179, 181, 182, 183—*See* JURISDICTION OF CRIMINAL COURTS, 35 P.R. 1880, Cr.

(1182-*a*)—S. 179—*See* Nos. 1168, 1170, *supra*, and No. 3523, *infra*.

——S. 180 (=1882, s. 180; 1872, s. 66; 1861, ss. 28, 31, 31-A).

See JURISDICTION OF CRIMINAL COURTS.

See MAGISTRATE, JURISDICTION OF.

(1183)—S. 180—*See* ABETMENT, 1 Weir 155.

(1184)—S. 180—*See* JURISDICTION OF CRIMINAL COURTS, 9 A. 523, 18 A. 350.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1185)—S. 180—*See* KIDNAPPING, A.W.N. 1883, 67.

(1185-*a*) S. 180—*See* No. 3523, *infra*.

——**S. 181, paras, 1, 2, 3 (=1882, s. 181; 1872, s. 67; 1861, s. 32); and para (4), new.**

See JURISDICTION OF CRIMINAL COURTS.

See MAGISTRATE, JURISDICTION OF.

(1186)—*S. 181 (4)—Penal Code, 1860, s. 3—Jurisdiction—Kidnapping.*—A girl was enticed away in the Faridkot State from the lawful guardianship of her husband by the accused and was found being conveyed by them by rail from that State to a station in the Bhawalpur State at the Railway Station of Abohar in the British territory. *Held* that, as the act of kidnapping was complete outside British India and there was no concealment or detention in British territory, the British Courts had no jurisdiction to try and convict the accused. The words 'was conveyed' in s. 181 (4), Crim. Pro. Code, do not import any separate or distinct offence, where the offence of kidnapping is complete previous to such conveying. The 'consequence' contemplated by s. 197, Crim. Pro. Code, is a consequence "modifying or completing the act." **121 P.L.R. 1901.** (10 B.H.C. 356, 30 P.R. 1889, Cr. 7 P.R. 1894 Cr., *R.*).

(1187)—*Ss. 181, 182 (=Crim. Pro. Code, 1872, s. 61)—Offence committed at sea—Jurisdiction.*—The complainant and the accused sailed from Bombay at Honawar in a boat. The latter threw overboard a box belonging to the former during the voyage within 9 miles of the Janjira State. On arrival at Honawar, the complainant charged the accused before the Magistrate at that place with having committed mischief. *Held* that, under s. 67, illus. (*a*), Crim. Pro. Code, 1872, the Magistrate at Honawar, through whose jurisdiction the accused passed on the voyage, had jurisdiction to try the offence. **Rat. Un. Cr. C. 181=Cr. Rg. 16—3—1882.**

(1188)—*Ss. 181 (2) and 531—Penal Code, ss. 408, 409—Criminal breach of trust by servant and agent—Jurisdiction to try—Defect of jurisdiction*—The Ferozepur branch of Messrs. McHinch and Co., a firm dealing in grain, with headquarters at Karachi, engaged accused Nos. 1 and 2, as their purchasing agents at Sangala in the Jhang District and the agents employed accused No. 3 as their servant. On the accused's failure to pay the balance of their account, accused No. 1 was convicted by the additional District Magistrate, Ferozepur, of criminal breach of trust as agent, under s. 409, I.P.C., and accused No. 3 of criminal breach of trust as servant, under s. 408, I.P.C. Accused No. 2 had died in the course of the proceedings. *Held*, that the balance claimed being payable at Ferozepur, the offence fell within the provisions of s. 181 of the Crim. Pro. Code, and the Court at Ferozepur had jurisdiction to try the case. *Held*, also, trying a case in a District not within local jurisdiction is not a defect of jurisdiction but only of venue and can be cured by s. 531 of the Crim. Pro. Code. *Held*, further, that accused No. 3 was not guilty of the offence of which he was convicted, as it was not proved that the Ferozepur branch had ever entrusted him with any money in his personal capacity and not as representing the firm of his masters, accused Nos. 1 and 2. **9 P.L.R. 1902.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1189)—Ss. 181 (1 to 3) and 182—*See* JURISDICTION OF CRIMINAL COURTS, 1 M. 171.

(1190)—Ss. 181, 182, 183—*See* JURISDICTION OF CRIMINAL COURTS, 5 P.R. 1881 Cr.

(1191)—Ss. 181 (1 to 3), 182 and 531—*See* JURISDICTION OF CRIMINAL COURTS, 5 M. 23 =1 Weir 1.

(1192)—Ss. 181, 188—*See* JURISDICTION OF CRIMINAL COURTS, Rat. Un. Cr. C. 870.

(1193)—S. 181—*See* PENAL CODE, ss. 392, 411, A.W.N. 1906, 52=3 A.L.J. 146=3 Cr. L. J. 247=28 A. 372.

(1193-*a*)—S. 181—*See* Nos. 1178, 1182, *supra*, and No. 3523, *infra*.

——**S. 182 (=1882, s. 182; 1872, s. 67; 1861, s. 29).**

See MAGISTRATE, JURISDICTION OF.

(1194)—*Ss. 182, 531—Jurisdiction—Place at which consequence of act ensues—Criminal breach of trust—Penal Code (Act XLV of 1860), s. 408.*—The accused in the case was employed as an agent by a firm in Mirzapur. Goods were entrusted to him for sale in various districts in Lower Bengal, and, from time to time, as he sold goods, he remitted money to his employers at Mirzapur. When called upon to furnish accounts, he offered to furnish Rs. 500 as a deposit, but did not submit any account. The embezzlements complained of occurred at various places in Lower Bengal. *Held* that the Magistrate at Mirzapur had jurisdiction to try the case. *Held* further that, even if there were any irregularity, s. 531, Crim. Pro. Code, covered it, and that the offence was not one of a civil nature, as the conduct of the accused disclosed a dishonest intention. **7 A.L.J. 319.**

(1195)—S. 182—*See* ABETMENT, 8 P.R. 1894 Cr.

(1196)—S. 182—*See* COUNTERFEITING TRADE MARK, 25 C. 639=2 C.W.N. 450.

(1197)—S. 182—*See* JURISDICTION OF CRIMINAL COURTS, 25 C. 858=2 C.W.N. 577. L.B.R. (1893—1900), 81.

(1198)—Ss. 182, 183, 526—*See* JURISDICTION OF CRIMINAL COURTS, A.W.N. 1883, 88.

(1199)—Ss. 182, 531—*See* JURISDICTION OF CRIMINAL COURTS, 16 C. 667.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) --continued.

(1199-*a*)—S. 182—*See* Nos. 1164, 1182, 1187, 1189, 1190 and 1191, *supra*.

——S. 183 (=1882, s. 183 ; 1872, s. 67, ill (a).)

(1200)—S. 183—*See* JURISDICTION OF CRIMINAL COURTS, 1 C.L.J. 334=2 Cr. L.J. 411.

(1200-*a*)—S. 183—*See* Nos. 1182, 1190, 1191, 1198, *supra*, and No. 3523, *infra*.

——S. 185 (=1882, s. 185 ; 1872, s. 69 ; 1861, s. 34).

(1201)—*S. 185—Application of—Courts subordinate to two different High Courts—Concurrent jurisdiction to try offence—High Court within whose jurisdiction offender actually is, its power to decide Court of trial.*—Where Courts of two Magistrates subordinate to two different High Courts have jurisdiction to try an offence, the High Court, within the local limits of whose jurisdiction the offender actually is, may decide by which Court the offence shall be tried. S. 185 is not restricted to cases in which there is doubt as to whether one Court or another has jurisdiction, but is applicable also to cases in which the doubt is on the point whether the choice between the two Courts, both of which have jurisdiction, should be decided on the ground of public convenience. **5 L.B.R. 17=9 Cr. L.J. 581=2 Ind. Cas. 361.**

(1202)—S. 185—*See* COMMITMENT TO SESSIONS COURT, 13 P.R. 1887 Cr.

(1202-*a*)—S. 185—*See* No. 1179, *supra*.

——S. 186 (= 1882, s. 186 ; 1872, ss. 157, 174 ; 1861, ss. 74, 88).

(1203)—Ss. 186, 187—*See* MAGISTRATE, JURISDICTION OF, Rat. Un. Cr. C. 97.

——S. 187 (=1882, s. 187 ; 1872, s. 175).

(1203-*a*)—S. 187—*See* No. 1203, *supra*.

——S. 188 (=1882, s. 188).

See MAGISTRATE, JURISDICTION OF.

(1204)—*S. 188 (=Crim. Pro. Code, 1882, s. 188)—Offence committed outside British India—Political Agent's certificate, necessity for.*—A charge of kidnapping committed in Nepal cannot be enquired into in British India without the Political Agent's certificate, as required by s. 188. **19 A. 109.** [*R.*, 24 B. 287=1 Bom. L.R. 678].

(1205)—*S. 188—Certificate of Political Agent, to be obtained before beginning of inquiry.* The obtaining of the certificate of the Political Agent, as provided for by s. 188, is a preliminary requisite to the holding of an inquiry in British India of an offence committed outside British India. A commitment made without such certificate before the beginning of the enquiry is illegal, although it is subsequently obtained. **24 A. 256.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1206)—*S. 188—Native Indian subjects committing offences outside British India—Jurisdiction of British Courts.*—Where Native Indian subjects of Her Majesty were charged with committing offences under s. 407 and ss. 407 and 109, I.P.C., at a place beyond the limits of British India, *held*, that they could, under the provisions of s. 188, be dealt with in respect of such offences, as if they had been committed at any place in British India at which they were found. If there is no Political Agent, no certificate is necessary. **13 B. 147.** [*R.*, Rat.Un. Cr. C. 773, 24 B. 287=1 Bom. L.R. 678].

(1207)—*S. 188 (=s. 188, Code of 1882)—Political Agent's sanction.*—If there is no Political Agent in a place outside British India, no preliminary sanction as required by s. 188, Crim. Pro. Code, is necessary. **14 B. 227.** [*R.*, Rat. Un. Cr. C. 773, 1 Bom. L.R. 678=24 B. 287].

(1208)—*S. 188 (=Crim. Pro. Code, 1882, s. 188)—Certificate by Political Agent—Recalling.*—Where a District Magistrate, in the capacity of Political Agent, once grants a certificate, under s. 188, for the trial of a case by a second-class Magistrate of the District, the latter is legally seized of the case, and the Political Agent has no authority, thereafter, to recall his certificate or to issue, as District Magistrate, a warrant for the arrest of the accused on the requisition of the State authorities and to order his removal to the Native State. **Rat. Un. Cr. C. 253=Cr. Rg. 13 of 1886.**

(1209)—*S. 188—Offence committed outside British India.*—Where an offence is committed outside British India, a commitment made without the Political Agent's certificate, as required by s. 188, is *ultra vires* and all proceedings taken by the Judge on such commitment are wholly void. **2 Weir 148.**

(1210)—*S. 188—Effect of want of Political Agent's certificate where offence committed in foreign territory.*—An accused person enticed away a married girl under 16 years of age from her father's house in Kashmir territory. He was ultimately arrested with her near Gujrat. He then induced her to file a petition at Gujrat stating that she was without a guardian and was about to settle there to practise prostitution and rented a shop for her. No certificate was obtained from the Kashmir Political Agent as required by s. 188, Crim. Pro. Code, but no objection was taken for the accused in the lower Courts which convicted him under s. 366, Penal Code. A Full Bench *held* that, though the subsequent actions of the girl were voluntary, yet, as her leaving her home and her consent were due to the accused's deceitful persuasions, the accused was guilty under s. 366, Penal Code, and that the defect, due to the want of the Political Agent's certificate not being pointed out at the trial, was cured by s. 537, Crim. Pro. Code, as no prejudice to the accused was either alleged or proved. **4 P.R. 1902 Cr., F.B.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1211)—*S. 188—Jurisdiction of Magistrate.* —A Magistrate cannot try a Native Indian Subject for an offence committed beyond British territory, without procuring the certificate of the Political Agent of the territory within which the offence was committed to the effect that the charge ought to be inquired into in British India. **L.B.R. (1872—1892), 334.**

(1212)—*Ss. 188 and 537*—In an inquiry, before the committing Magistrate, into an offence committed outside British India, the certificate from the Political Agent required by s. 188 of the Code, was not received until after some witnesses on behalf of the prosecution were examined: but the certificate was received before the commitment was made. It was objected that the commitment was irregular and the trial that ensued was void. *Held*, overruling the objection, that there was nothing to show that the word "charge" was used in s. 188 of the Code in the sense in which it was used elsewhere in the Code. Assuming that it would be more regular for the committing Magistrate to have re-called the witnesses, whom he had examined before the certificate was issued, nevertheless, it had not been shown that the accused had in any way been injured or prejudiced. **8 Bom. L.R. 507=4 Cr.L.J.49.**

(1213)—S. 188—*See* ABETMENT, 19 B. 105, 24 B. 287.

(1214)—S. 188—*See* JURISDICTION OF CRIMINAL COURTS, A.W.N. 1884, 85, 35 P.R. 1888 Cr., 16 B. 178, 19 B. 105, 24 B. 287=1 Bom. L.R. 678.

(1215)—Ss. 188 and 532—*See* JURISDICTION OF CRIMINAL COURTS, 13 M. 423=2 Weir 147.

(1216)—Ss. 188, 537—*See* JURISDICTION OF CRIMINAL COURTS, 11 P.R. 1889 Cr., 35 P.R. 1888 Cr.

(1217)—S. 188—*See* SESSIONS JUDGE, JURISDICTION OF, Rat. Un. Cr. C. 773.

(1217-*a*)—S. 188—*See* Nos. 1146, 1192, *supra*.

——**S. 190 (=1882, s. 191; 1872, ss. 23, 25, 27, 140, 141, 142, para (2); 1861, ss. 65, 66, 68).**

See COMPLAINANT.

See COMPLAINT.

(1218)—*S. 190 (c) (=Crim. Pro. Code, 1882, s. 191).—Cognizance of case by Magistrate on personal knowledge—Transfer.*—Where a Magistrate takes cognizance of a case under s. 191 (*c*) on his own personal knowledge, he should, on an application being made by the accused, transfer the case to another Magistrate or commit the accused to the Sessions. **13 A. 345.**

(1219) ***Ss.190, 191 and 555—Duty of Magistrate taking cognizance of an offence on his own personal knowledge.*** A cantonment Magistrate

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

warned the accused that he must not leave his buffaloes in a certain spot. The accused persisted. Finding the place to have been rendered insanitary, the Magistrate sent for the accused and fined him without taking any independent evidence. *Held*, that the conviction and sentence were illegal, the Magistrate not having informed the accused that he was entitled to have the case tried by another Magistrate, and the case being one taken cognizance of on his own personal knowledge.

Held, also, that, though it was not incompetent for the Magistrate to take cognizance of the offence on the ground of his inspection of the locality, he ought to have acted on independent evidence. **8 P.R. 1905 Cr.**

(1220)—*S. 190 (=Crim. Pro. Code, 1882, s. 191)—Power under section not affected by s. 82, Bombay District Municipal Act (VI of 1873).*—S. 82 of Bom. Act, VI of 1873, deprives neither a Magistrate of the power conferred by s. 191, Crim. Pro. Code, of taking cognizance of an offence created by the Act upon complaint or upon a police report, or upon information, etc., nor a police officer of the power conferred by s. 28 of the Police Act (Bom. Act VII of 1867). **Rat. Un. Cr. C. 355=Cr. Rg. 44 of 1887.** [*R.*, Rat. Un. Cr. C. 629].

(1221)—*S. 190 (=Crim. Pro. Code, 1882, s. 191)—Cognisance of an offence on suspicion—Penal Code, s. 211—Prosecution for false charge—Proper procedure—Application for enquiry—Complaint.*—A Magistrate ought not, as a matter of sound judicial discretion, to take cognizance of an offence under s. 191, and direct that the persons suspected should be tried, until some person aggrieved has complained, or until he has before him a police report on the subject based on investigation directed to the offence to be tried; and in cases of alleged false charges until it is clear that the original charge has been either heard and dismissed or abandoned. In order to show conclusively that such a charge has been abandoned, the person who made the false charge should be offered an opportunity of supporting it or abandoning it, before the order to prosecute for the false charge is made. [*F.*, 7 C.P.L.R. 6 Cr.; *F. & Criticised*, 2 C.L.J. 228=10 C.W.N. 158=33 C. 228; *Applied*, U.B.R.(1904), 1st Qr., Crim. Pro. Code, 6; *R.*, 19 A.W.N. 90, 6 C.W.N. 295]. Where the police, making enquiries upon an information laid before them, reported a case as false, an application by the informant to the Magistrate for the investigation of the case and for summoning his witnesses would be a "complaint" within the meaning of s. 191 of the Crim. Pro. Code, which should be enquired into by the Magistrate. The Magistrate could not avoid the responsibility of making the enquiry by accepting the conclusion of the police on the subject. **14 C. 707, F.B.** [*F.*, 5 C.W.N. 254; *Affirmed*, 35 C. 141=7 Cr. L.J. 10 = 7 C.L.J. 49; *R.*, 8 C.W.N. 17].

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1222)—*S. 190—Cognisable offence, complaint of—Some of the accused sent up by police—Trial and conviction by Deputy Magistrate—Magistrate of the District, jurisdiction of, to order prosecution of remaining accused—Cognisance of complaint against them—Order, propriety of.* —On a complaint of a cognisable offence, the police sent up some only of the accused persons, who were tried and convicted by a Deputy Magistrate; subsequently, the District Magistrate or Deputy Commissioner, while inspecting the police outpost, made a note that the remaining accused should be sent up; and, thereupon, the remaining accused were sent up for trial and the case was made over to the same Deputy Magistrate. *Held*, that nothing was made over to the Deputy Magistrate at first except the case of some of the accused, who had been previously tried and convicted. *Held*, also, that the proceedings taken against the remaining accused without any one formally taking cognisance of the case were irregularly instituted and should be set aside **3 C.L.J. 8=3 Cr. L.J. 209.**

(1223)—*S. 190—Complaint presented by complainant to a Magistrate who records on it that he has taken cognizance of the case under that s. 190 (c) of the Code—Whether Magistrate has taken cognizance of the case under cl. (a) or cl. (c) of sub-s. 1 of s. 190—Information received from any person other than a police-officer—Whether it means only such information as does not constitute a complaint or a police report—Whether under the Burma Municipal Act (III of 1898) the Magistrate has no jurisdiction to take cognizance under cl. (c)—Whether he must be deemed to have taken cognizance under cl. (a).*— The question referred was: when a complaint, as defined in s. 4 of the Crim. Pro. Code, is presented by the complainant to a Magistrate, and the Magistrate records on it that he takes cognizance of the case under s. 190 (*c*) of the Crim. Pro. Code, has the Magistrate taken cognizance of it under cl. (*a*) or cl. (*c*) of sub-s. (1) of s. 190? *Per Irwin, O.C.J.*—The Magistrate has taken cognizance under cl. (*a*) of s. 190 (1). The expression "information received from any person other than a police officer" in s. 190 (1) (*c*) clearly means only such information as does not constitute a complaint nor a police report. *Per Ormond, J.*—If the Magistrate had jurisdiction to take cognizance of the offence either under cl. (*a*) or cl. (*c*), he must be deemed to have taken cognizance of the offence under cl. (*c*), as stated by him. Ordinarily when a complaint is submitted, the Magistrate would take cognizance of the offence under cl. (*a*). But the fact that a complaint has been submitted to a Magistrate does not preclude the Magistrate from taking cognizance of the offence under cl. (*c*), provided he exercises a sound discretion. In the present case, the Magistrate, under the Municipal Act, has no jurisdiction to take cognizance of the offence under cl. (*c*). In these circumstances, the Magistrate must be deemed to have taken cognizance under cl. (*a*). **14 Bur. L.R. 250=4 L.B.R. 300.**

(1224)—*S. 190—Written information by police officer, not a police report.*—A written information given by a police officer, who is neither himself a witness, nor examined as a complainant, is not a "police report," such as is meant in s. 190, Crim. Pro. Code. The "police report" is a report made by a police officer in a case which he may investigate under Ch. XIV. **1 L.B.R. 59.** [*Overruled*, 2 L.B.R. 146].

(1225)—*S. 190—Magistrate not empowered under—Issue of summons under s. 61 of Stamp Act—Validity of proceedings.*—In this case, a Magistrate of the second class, not empowered under the said section, issued a summons under s. 61 of the Stamp Act, on receipt of the sanction of the Collector to prosecute given under s. 69. The Magistrate was not acting under the said section of the Code, because there was no police report. *Held*, that he must, therefore, have been acting under cl. (*a*), s. 190 (1), on complaint, and that consequently the Magistrate's procedure should have been regulated by the provisions of s. 200, Crim. Pro. Code, and he ought to have examined the complainant. **U.B.R. (1897—1901), Vol. I, 55.**

(1226)—*S. 190, cls. (b) and (c)—Cognizance of case not upon first information, but upon a subsequent police report.*—Where a Magistrate issued warrants against persons not named in the complaint or in the first information, but named in a report subsequently made by the police after investigation, *held*, that the Magistrate took cognizance of the case under cl. (*b*) and not under cl. (*c*) of the section. **8 C.W.N. 864.**

(1227)—*S. 190, cl. (c)—Cognizance of case against persons not originally complained against.* —Where a complaint is made against some persons, and the Magistrate takes cognisance of the offence, it is the duty of the Magistrate to deal with the evidence brought before him and to see that justice is done in regard to any person who might be proved by the evidence to be concerned in the offence. **4 C.W.N. xlv.** [*F.*, U.B.R. (1897—1901), 56 Cr.]

(1228)—*S. 190 (c)—Omission by Magistrate to inform accused of his right to have case tried by another Magistrate.*—Where a Magistrate takes cognisance of an offence under s. 190 (*c*), but does not inform the accused that he is entitled to have the case tried by another Court, the omission may be a ground for having the proceedings set aside, but it is no ground for making an order for transfer. **2 Weir 151.** [*D.*, 1 L.B.R. 86.]

(1229)—*Ss. 190 (1) (b), 4 (1) (h)—Written report from police officer in non-cognizable case, neither*

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

a police report, nor report of a police officer—Information and complaint—Police Act, s. 24—Burma Gambling Act, s. 10.—Where a 1st class Magistrate receives a written report from a 1st class constable that gambling, punishable under s. 10, Burma Gambling Act, had taken place, and the Magistrate purporting to act under s. 190 (1) (*a*), issues summonses to the persons named in the report, such report is neither a police report within the meaning of s. 190 (1) (*b*), nor the report of a police officer within the meaning of s. 4 (1) (*h*), Crim Pro.Code. The expressions "police report" and "report of a police officer," as used in these sections, refer to reports by police officers under Ch. XIV, Crim. Pro. Code, and more especially under s. 173. Where, without a reference from a Magistrate, and otherwise than in a report under s. 173, a police officer makes a report on a non-cognizable case, such report may be regarded as an information laid in pursuance of the provisions of s. 24, Police Act, or it may, in certain cases, be treated as a complaint. **1 L.B.R. 18.** [*Overruled*, 2 L.B.R. 146].

(1230)—*S. 190 (1) (c)—Cognizance of offence upon private information—Duty of Magistrate to record information—Magistrate interested in his capacity as Collector—Competency to issue warrants.*—When a Magistrate takes cognizance of an offence on information from any person other than a police officer, under s. 190 (1) (*c*) of the Code, he should at least record the information on which he has acted, though it may not be obligatory upon him to disclose the sources of that information. Where the Deputy Commissioner, as Collector and, as such, representing the Court of Wards, which was part proprietor of a bazaar, granted a lease with other co-proprietors on certain terms to one C, and from certain information lodged to him as Collector, ordered, in his capacity as Magistrate, the issue of warrants against C and others on the ground that there was *prima facie* evidence of an offence under ss. 465 and 468, I.P.C., having been committed by C with respect to the lease and that he was abetted therein by other shareholders in the bazaar: *Held* that the Deputy Commissioner, as Magistrate, was not competent to act on that information and to issue the warrants, as, by such action, he was practically making himself a judge in his own case. **10 C.W.N. 775=3 Cr. L.J. 473,** [*F.*, 12 C.W.N. 1075=8 Cr. L.J. 235=35 C. 1076].

(1231)—*S. 190 (1) (c)—Institution of proceedings.*—A Magistrate of the second class cannot institute proceedings under s 190 (1) (*c*) of the Code of Criminal Procedure upon his knowledge or suspicion; the Punjab Government Notification No. 99, dated 3rd February, 1883, authorizes Magistrates of the first and second class to take cognizance of offences upon information, and not on their own knowledge or suspicion. **186 P.L.R. 1901.**

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(1232)—*Ss. 190 and 173—Police report if should set forth the information—Form, defective—Cognizance of a case, taking of, on police report—Accused's right to know the nature of the information against him at the initial stage.*—The police report under ss. 173 and 190, Crim. Pro. Code, should set forth the nature of the information against the accused. Where the police report, on which the Magistrate took cognizance of the case, did not set forth the nature of the information against the accused: *Held* that, in the circumstances of the case, the prosecution instituted against the accused on the police report should be set aside. **14 C.W.N. 304.**

(1233)—*Ss. 190 and 191—Cognizance of offence in a trial.*—Where a Magistrate who was clearly seized with the trial of an offence of theft found that the accused was not guilty, but another person was, *held*, that the Magistrate could be competent to try him, as he took cognizance of the offence under cl. (*a*) and not cl. (*c*) of sub-s. 1 of s. 190. **32 P.R. 1904 Cr.** (4 C.W.N. 367, 26 C. 786, *F.*).

(1234)—*Ss. 190 (1) (c), 191—Cognizance of a case triable exclusively by Court of Sessions under s. 190 (1) (c)—Jurisdiction to commit—Duty of Magistrate.*—What s. 191 provides is that, if a Magistrate takes cognizance of an offence under sub-s. (1), cl. (*c*) of s. 190, and if, before any evidence is taken, the accused objects to being tried by such Magistrate, he may either transfer the case to another Magistrate or commit the case to the Court of Sessions. He cannot make a commitment without holding a preliminary enquiry, so that the section distinctly empowers him to hold a preliminary enquiry, even in cases triable by himself. It necessarily follows that he is competent to hold a preliminary enquiry in cases exclusively triable by a Court of Sessions. **21 A. 109.**

(1235)—*Ss. 190, 191.*—Where a Magistrate takes cognisance of an offence under s. 190 (*c*). he is bound to take further proceedings under s. 191. **6 C.W.N. 202.**

(1236)—*Ss. 190 (1), 191.*—Where the Magistrate took cognizance of an offence, apparently, of his own knowledge under s. 190, sub-s. (1), cl. (*c*), he was bound by s. 191 to inform the accused that he was entitled to be tried in another Court. **U.B.R. (1897—1901), Vol. I, 59.**

(1237)—*Ss. 190 (1) (c) and 191.*—When a Magistrate takes cognizance of an offence under sub-s. 1, cl. (*c*) of s. 190 of the Code, he is bound under s. 191 to inform the accused that he is entitled to a transfer or commitment, and shall give effect to any objection which may be raised on his behalf. The jurisdiction of the Magistrate to try the case is contingent, therefore, on the accused being informed of and waiving the right vested in him by the Code. **13 C.P.L.R. Cr. 191.** (13 A. 345, *R.*).

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(1238)—*Ss. 190 (1) (c) and 191—Applicability to the appellate Court—Appeal, part of a trial.* —A Magistrate, passing orders for the issue of summons against the accused in a case placed before him by an order of the Collector to the effect that the case should be put up before the Magistrate for the issue of necessary orders, takes cognizance of the case under s. 190 (1) (*c*). A Subordinate Magistrate, who took cognizance of a case under s. 190 (1) (*c*), Crim. Pro. Code, could not, after becoming District Magistrate, hear an appeal from a conviction in the case which was tried by another Subordinate Magistrate, without following the procedure laid down by s. 191, Crim. Pro. Code, an appeal being part of the trial for an offence. **12 C.W.N. 438=7 Cr. L.J. 224.**

(1239)—*Ss. 190 (1) (c) and 191—Application for transfer from file of Magistrate who had taken cognisance of case.*—After the institution of a complaint, the names of some more accused persons, which were not in the original complaint, were added by the Public Prosecutor under instructions from the District Magistrate. The accused did not at all appear before the Magistrate. *Held*, that the Magistrate could not act under s. 191 for transferring it to some other Magistrate under him and that the application for transfer was premature. *Held*, also, that the case against the newly added accused was taken cognisance of by the District Magistrate under s. 190 (1) (*c*), Crim. Pro. Code, and that s. 191 applied to the case. Neither for the above reason, nor because the District Magistrate entertains a complaint in the face of a standing order in force that all complaints should be presented to the Senior Magistrate of the District, nor again because the District Magistrate appoints a Public Prosecutor to conduct the case, can it be held that he has prejudged it, so as to entitle a party to claim its transfer to a Court outside the District. **14 Bur. L.R. 327=9 Cr. L.J. 64.**

(1240)—*Ss. 190 (a), (c), 191—Cognizance of offences by Magistrate on receiving a complaint of facts—Right to claim a transfer.*—Where a person complained against three persons to a Magistrate charging them with having committed certain offences, and the Magistrate, having examined the complainant on oath and some witnesses on her behalf, ordered summonses to be issued against the three persons mentioned in the petition of complaint as well as against a fourth person not named in the petition, for an offence other than those mentioned in the petition, *held*, that the Magistrate took cognisance of the offence as against all the persons under s. 190 (*a*) and not under 190 (*c*), and consequently the Magistrate was not by s. 191 debarred from trying the case. **26 C. 786=3 C.W.N. 491.** [*F.*, 32 P.R. 1904 Cr.= 68 P.L.R 1904; *R.*, U.B R. (1897—1901), 56 Cr.]

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(1241) *Ss. 190 (a), (c) and 191—Taking cognisance of offence by Magistrate upon receiving complaint of facts.*—Upon evidence recorded by a Magistrate trying a case of theft, it appeared that the present petitioner was guilty of the offence of theft, and the petitioner, having been tried and convicted of the same by the Magistrate, urged on revision that the Magistrate should not have tried the case himself. *Held* that the contention had no force. **68 P.L.R. 1904.** (4 C.W.N. 367, 26 C. 789, *F.*).

(1242)—*Ss. 190, 191, 260 and 537—Act XI of 1890, s. 5—Summary trial—No complaint—No evidence—Conviction based on Magistrate's observation, legality of.*—The petitioner was convicted of an offence under s. 6 of Act XI of 1890, after a summary trial. It was found that there was no complaint against the petitioner and that the conviction was based on the trying Magistrate's own observation of the condition of a certain horse belonging to the petitioner and on no other evidence. *Held*, that the conviction was illegal. The omission to follow the procedure prescribed by s. 190 (*c*) and s. 191 of the Code, and the omission to hear evidence, are both irregularities, which cannot be cured by s. 537. The brevity permitted in a summary trial does not mean that there shall be no trial at all, or that an accused can be heavily fined at a Magistrate's discretion, on a personal knowledge, notwithstanding that the law gives the accused the right of demanding that the case should be tried by another Court. **31 P. L.R. 1905=2 Cr. L.J. 187.**

(1243)—*Ss. 190, 191, 351—Proceedings under s. 190 (c)—Non-compliance with the terms of s. 191—Effect—Proceedings under s. 351—Not controlled by terms of ss. 190, 191.*—*Held*, that the competency of a Magistrate to try a person for an offence of which he has taken cognizance under cl. (*c*) of sub-s. (1) of s. 190 is contingent on a strict observance of the provisions of s. 191 and that these provisions are mandatory and neglect to conform to them makes the trial null and void. *Held*, that s. 351, Crim. Pro. Code, 1898, is self-contained and complete in itself and quite independent of the provisions of s. 190, and necessarily of s. 191 of the Code; for, the accused against whom action is taken under s. 351, Crim. Pro. Code, has full information as to the source and particulars of the materials upon which the Magistrate acts. He can, if he likes, displace by argument or counter-evidence the probative effect of these materials so far as they affect him injuriously. He is thus not placed under a disability to combat the effect of the suspicious circumstances operating upon the mind of the Magistrate and influencing his judgment, as in the case of a proceeding taking its rise under cl. (*c*) of sub-s. (1) of s. 190. **5 N.L.R. 113.**

(1244)—*Ss. 190, 191, 423 (1) (6) and 528—Jurisdiction of appellate Court to try a case*

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itself, instead of ordering a re-trial by subordinate Court.—Where a second class Magistrate convicts an accused charged by the police, the Sub-Divisional Magistrate, as the Court hearing appeals from the second class Magistrate, has jurisdiction under s. 423 (1) and (6) to reverse the finding and sentence of the second class Magistrate and to "order a retrial by a Court of competent jurisdiction subordinate" to him. These latter words, when read with s. 528, are not to be taken as words of limitation, and do not exclude the appellate Court from itself trying the offender, if the offence is one within the ordinary jurisdiction of the Sub-Divisional Magistrate. The Sub-Divisional Magistrate, so acting, takes cognizance of the case not under s. 190 (1), cl. (*c*), but under cl. (*b*), as he has before him the police charge sheet stating all the facts. **30 M. 228 = 16 M.L.J. 546 = 2 M. L.T. 46 = 5 Cr. L.J. 104 = 6 Cr. L.J. 133.**

(1245)—*Ss. 190, 191, 528—Notice to accused before transfer when necessary—Failure to record reasons for transfer, effect of.*—Where a Sub-Divisional Magistrate listened to information given by the police, and ordered them to *chalan* the accused under s. 143, I.P.C. *Held* that the Magistrate really proceeded under s. 190 (*b*) and not under s. 190 (*c*), and so was not bound under s. 191 to give the accused any option as to whether they would be tried by him or not. The mere fact that the Magistrate asked the police to *chalan* the accused is absolutely no ground for any fear that they would not be impartially dealt with. *Held*, also, that, where the District Magistrate *suo motu* transfers a case, no notice to the accused is necessary. Where the reascns for a transfer are not recorded under s. 528 (3), the result cannot be the absolute cancelment of the order; only the superior Court will call for reasons. **3 P.R. 1910 Cr.**

(1246)—*Ss. 190, 191, 537—Omission of Magistrate to inform accused of his right to be tried by another Court.*—The meaning of s. 191, Crim. Pro. Code, is that a Magistrate, taking cognisance of an offence under s. 190 (*c*), is not competent to try the case unless and until he has informed the accused, before taking any evidence, that he is entitled to have his case tried by another Magistrate. The omission to inform the accused of his rights is not a mere irregularity. S. 537 was never intended to apply to a case where the Magistrate had neglected to comply with the provisions of s. 191. **28 A. 212 = A.W.N. 1905, 258 = 2 A.L.J. 745 = 2 Cr. L.J. 809.**

(1247)—*Ss. 190 (1) (c), 191, 556—Whether report of Akunwan is complaint—Personal interest.*—An *akunwan* submitted a report to his Deputy Commissioner stating that, from the enquiry he was ordered to make, there was a *prima facie* case against a *thugyi*, showing that he had collected revenue in excess of the authorised amount by means of falsified receipts made by him, and had committed offences under ss. 417 and 477-A, Indian Penal Code. The Deputy Commissioner took up the report in his capacity as a Magistrate, and issued a warrant against the applicant under s. 477-A, Penal Code. *Held*, that the District Magistrate's procedure was not correct, as he should have examined the *akunwan* on oath before issuing a warrant, but that this omission was a curable error in procedure. The report of the *akunwan* is a complaint, and the action taken by the District Magistrate was taken under cl. (*a*) and not under cl. (*c*) of s. 190 (1). *Held*, that the fact that the District Magistrate was also the Collector, did not bar him from trying the case, as he had not initiated the proceedings or taken an active part in cellecting evidence against the accused, and that the Deputy Commissioner was entitled to accept the report as a complaint, in his capacity as a District Magistrate and to take proceedings under the provisions of Crim. Pro. Code. **1 U.B.R. (1902—1903), Criminal Procedure, 21.** (U.B.R. 1900, Criminal Procedure Code, 113, *R.*).

(1248)—*Ss. 190, 192, 195, 476—Submission of record by Assistant Collector to the District Collector for initiation of proceedings under s. 193, I.P.C.*—An Assistant Collector of the second class trying a rent suit came to the conclusion that the plaintiff had committed an offence under s. 193, I.P.C. He thereupon submitted the record to the District Collector for starting a case under the section. The District Collector ordered the initiation of a case under s. 193, and made it over for decision to a first class Magistrate. *Held*, that the order of the Assistant Collector was not an order under s. 476, but his intention was to make an allegation to the Collector of the District with a view to the latter taking action under the Code of Criminal Procedure, and that the fact that the District Collector took action upon it, not as a Collector, but as the District Magistrate, did not affect his jurisdictiou to pass the order which he had passed. **26 A. 514 = A.W.N. 1904, 90.** (A.W.N. 1904, 15, *R.*; 23 A. 249, *F.*).

(1249)—*Ss. 190, 192 and 254—Cognizance of case by District Magistrate otherwise than upon complaint—Validity of procedure.*—A certain person, F.M. sent an application to the District Magistrate alleging that the accused had taken Rs. 30 from him with the object of bribing the Magistrate in whose Court F.M. was being prosecuted and that the accused had declared that he had paid the amount to the Magistrate, which he had not really done. The District Magistrate, after recording F.M.'s statement and questioning some of his witnesses, transferred the case undes s. 192, Crim Pro. Code, to another Magistrate for proceedings under s. 162, Penal Code. *Held*, that a District Magistrate could take cognizance of a case otherwise than upon a complaint, ss. 190, 192 and 254, Crim. Pro. Code, clearly validating the proceedings taken, and that the fact, that there was no complaint made before the

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District Magistrate by some person having a personal knowledge of the fact that a bribe was offered, did not render the proceedings bad. **1 S.L.R. 119 Cr.**

(1250)—*Ss. 190,195,198 (= Crim. Pro. Code, 1872, ss. 140 (c), 467 to 470—Sanction to prosecute.*—The sanction by a Court, under ss. 467, 468, 469 and 470, signifies that, in the opinion of the Court, a criminal offence has been committed. The complaint of a private person, prosecuting under s. 140, cl. (*c*), must receive special sanction by the Court under the above sections. But the sanction is sufficient to justify the Magistrate in proceeding *proprio motu* on suspicion that an offence has been committed. **S.C. 49, Oudh.**

(1251)—*Ss. 190, 195, 439 and 476—Distinction between sanction and complaint—High Court's power to revise order made under s. 476.*—S. 190 applies to offences mentioned in s. 195 as well as to others, *i.e.*, a Magistrate can only take cognizance of an offence mentioned in s. 195 in one of the three ways specified in s. 190, and s. 195 further declares that, except where the Court or public servant concerned is the complainant, its or his sanction is necessary. The Code does not contemplate a Court or public servant giving sanction, where no application for sanction has been made. If a Court or public servant thinks it necessary to initiate a prosecution, the proper course is to make a complaint. As far as Civil, Criminal and Revenue Courts acting in the course of a judicial proceeding are concerned, the procedure to be followed is prescribed in s. 476, and in that case, the Magistrate, who takes cognizance of the offence, is not required to examine the complainant on oath (see s. 200). Other Courts or public servants are not specially provided for. They are in the category of ordinary complainants. Granting sanction implies that some one wishes to prosecute, but cannot do so without the sanction prescribed by s. 195; because no Court will take cognizance without it. Where it is the Court or public servant itself or himself that wishes to prosecute, sanction is not required. All that is wanted is the complaint of that Court or public servant, and the question of sanction does not arise. The distinction between a sanction and a complaint is important, because the provisions relating to revocation of sanction in s. 195 (6) do not apply to complaints. A complaint under s. 476 is clearly an order within the meaning of ss. 435 and 439 read with s. 423, and the Chief Court has power to set it aside in revision, where there is manifest injustice or where the Court acting under s. 476 has not exercised its discretion in a proper way. **U.B.R. 1907, Crim. Pro. Code, 1=6 Cr. L.J. 25.**

(1252)—*Ss. 190, 200 (= Crim. Pro. Code, 1861, s. 66)—Voluntary appearance of accused—Want of summons or complaint—Ministerial Acts.*—Where the accused appears voluntarily to answer a charge, the want of a summons or of a complaint in order to tha issue of a summons becomes immaterial. The taking of a complaint and issuing summons are not, however, ministerial acts. **Rat. Un. Cr. C. 8.**

(1253)—*Ss. 190, 200 and 202—Authority to direct previous local investigation by a Subordinate Magistrate.*—In the case of a complaint taken cognisance of by a Magistrate under s. 190, it is competent to him under s. 202 to direct a previous local investigation to be made by a Subordinate Magistrate; but he can do so only if he distrusts the truth of the complaint and before issuing a process compelling the attendance of the person complained against. When cognisance is taken of an offence under cl. (*b*) or (*c*) of s. 119, sub-s. 1, the provisions of s. 200 are not applicable thereto. **2 Weir 241.**

(1254)—*Ss. 190 and 202—Dismissal of complaint without examining complainant, and sanction to prosecute.*—Where an accusation against a police officer was dismissed by the District Magistrate without examining the complainant on oath and sanction was given to prosecute him, *held*, that the words "may take cognizance of an offence" in s. 190 of the Code, do not mean that a Magistrate is not bound to take cognizance of an offence on receiving a complaint of such facts constituting such offence and that he could treat it as a "miscellaneous application" or as mere "information" of an offence, upon which he could take action or not just as he might choose, and upon which, if he chose to take action, he could take such action as he chose; on the other hand, it is incumbent on the Magistrate under s. 200 of the Code, if he did not transfer the case under s. 192, to at once examine the complainant; he could only order an enquiry or investigation into the case in accordance with the provisions of s. 202, and he could not make over the case to the police for enquiry; *held*, therefore, that the complaint was not tried out, not being dismissed on evidence recorded by the District Magistrate or obtained by him in manner prescribed by s. 202, and that the order sanctioning the prosecution was without jurisdiction. **4 O.C. 127.** (27 C. 921, *F.*).

(1255)—*Ss. 190, 203 (= Crim. Pro. Code, 1872, ss. 141 and 147—Complaint in the form of police report—Dismissal without examining witnesses.*—A complaint made in the form of a police report or charge sheet may be dismissed without examining the witnesses. **2 Weir 246.** [*F.*, 2 Weir 246].

(1256)—*Ss. 190, 204 and 65—Cognisance of offence by Magistrate—Arrest of the accused in the presence of the Magistrate.*—Where a Magistrate has not taken cognisance of an offence in one or other of the only three modes according to which he can take cognisance of the same, but merely proceeds upon an

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oral complaint not recorded under s. 200, the Magistrate is not competent to issue a warrant for the arrest of the accused and to remand the accused to custody. **2 Weir 241.**

(1257)—*Ss. 190 (1) (a) (b) (c), 251, 253, 529, 530—Irregular proceedings by third class Magistrate, effect of—Sub-divisional Magistrate's jurisdiction—"Trial of an offender," meaning of.*—A third class Magistrate, who has no jurisdiction to try a case under s. 411, Indian Penal Code, took cognizance of such a case on a police report, and discharged the accused, but directed the arrest of another, who was present in Court, as he thought from the evidence that he ought to be prosecuted under s. 489, in connection with the same transaction. The Sub-Divisional Magistrate, seeing the irregularities of the third class Magistrate's proceedings, directed the discharged person to be re-arrested and tried; thereupon, the arrested person applied for revision stating that the Sub-Divisional Magistrate took cognizance of the charge against him under s. 190 (1) (*c*) of the Code, and that, as he did not comply with s. 191, his proceedings were void. *Held*, that the irregular proceedings of the third class Magistrate, in reference to the two persons, could not affect the Sub-Divisional Magistrate's jurisdiction. As regards the first person, the order of discharge, even if valid, did not need to be set aside, and its existence was no bar to further proceedings. As regards the second, the Sub-Divisional Magistrate must be held to have taken cognizance of the offence under s. 190 (1) (*b*). When a Magistrate has taken cognizance of an offence on a complaint or on a police report, and finds, from the evidence before him, that certain persons, not already accused, should be tried for being concerned in it, he is justified in making them accused persons in the case, and is not debarred from trying it. It is not necessary that a complaint or a police report should expressly charge an accused person, to give the Magistrate jurisdiction to deal with him under cl. (*a*) or cl. (*b*). "Trial of an offender" is not defined in the Code. The trial seems to begin when the accused is called upon to plead to a charge and a Magistrate's proceedings, before this stage is reached, are in the nature of an enquiry. This view is supported by the language of the ss. 177, 184, 209, 253, 254, 256, 347, 403, 451. If, in this view, a Magistrate's proceedings in a warrant-case, down to the discharge of the accused, do not amount to the *trial* of an offender, the third class Magistrate's proceedings in regard to the first accused are covered by s. 529 (*e*) and being taken in good faith, though erroneously, are not void. If, on the other hand, he is considered to have *tried* the first accused, his proceedings are void under s. 530 (*p*). In either case, there is nothing to interfere with further proceedings against him before the Sub-Divisional Magistrate. As regards the second accused, the third class Magistrate was

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not competent to try an offence punishable under s. 489, and he was not therefore empowered by s. 65 to arrest him in his presence, but the third class Magistrate must be presumed to have taken cognizance of the charge against him, on the police report, under s. 190 (1) (*b*). **U.B.R. 1905, Crim. Pro. Code, 41.**

(1258)—*Ss. 190, 253—Cases initiated by police report—Magistrate's powers.*—A Magistrate is entitled to refuse to initiate proceedings on the report of the police, where there is no complaint. Such an order, if the case is not a warrant case, cannot be made under s. 253. Even if the order is made under s. 253, it should be taken as one under s. 190, and the High Court will not interfere with such order, even if it is wrong. **1 A.L.J. 609.**

(1259)—*Ss. 190, 351 (=Crim. Pro. Code, 1882. ss. 191, 351)—Cognizance of an offence against a witness.*—A Magistrate taking cognisance of an offence against a witness in a case, which is pending before him, upon the facts disclosed by the evidence of another witness, does so under s. 191, cl. (*c*), and not under s. 351, Crim. Pro. Code. **1 C.W.N. 105.**

(1260)—*Ss. 190, 437—Jurisdiction of Magistrate to try persons whom the evidence discloses to be offenders.*—The action of a Magistrate is in no way limited in regard to proceedings against persons concerned in an offence by his powers in regard to taking cognizance of the offence, as it may be originally disclosed. Having taken cognisance of the offence, he has jurisdiction to hold judicial proceedings in regard to all persons who, the evidence shows, are the offenders. **4 C.W.N. 560.**

(1261)—*S. 190 (1) (c)—Jurisdiction of a Magistrate to act on information transmitted to him in another public capacity—Cognizance of an offence of mischief under s. 426, Penal Code—Order of attachment—Legality.—Held, Per Stephen, J.—(Carnduff, J., dubitante)* that a Magistrate is not competent to act under s. 190 (1) (*c*), Crim. Pro. Code, on any information which has been transmitted to him in another public capacity. *Held*, also, a Magistrate, who takes cognizance of an offence of mischief by cutting timber from the forest, has no jurisdiction to pass an order of attachment of the trees, which form the subject of the alleged offence. **37 C. 221=14 C.W.N. 589=11 C.L.J. 415=6 Ind. Cas. 276.**

(1262)—S. 190—*See* ABSCONDING OFFENDER, 29 C. 417=6 C.W.N. 680.

(1263)—Ss. 190, 497—*See* ACT XVIII OF 1850, 3 B.H.C. (A.C.) 36.

(1264)—S. 190 (*c*)—*See* ACT X OF 1873, s. 5, 27 C. 455.

(1265)—Ss. 190, 200—*See* ACT III OF 1877, s. 83, 4 B.L.R. Ap. 69=15 W.R. Cr. 21.

(1266)—S. 190—*See* ACT I OF 1878, s. 3, Rat. Un. Cr. C. 375.

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(1267)—Ss. 190, 195, 535 and 537 (*b*)—*See* ACT XI OF 1878, ss. 19 and 29, 4 L.B.R. 247 =8 Cr. L J. 65.

(1268)—S. 190—*See* ACT VI OF 1882, s. 82, 1 Weir 720.

(1269)—Ss. 190 and 191—*See* ACT XIII OF 1889, s. 167, cl. (*j*), 3 A.L.J. 694=4 Cr. L.J. 374=A.W.N. 1906, 303.

(1270)—S. 190 (1) (*b*)—*See* ACT IX OF 1890, s. 122, U.B.R. (1897—1901), Vol. I, 54.

(1271 and 1272)—S. 190 (*b*)—*See* ACT XII OF 1896, ss. 36, 37, 45 and 57, 8 P.R. 1901 Cr., 22 P.R. 1900 Cr.

(1273)—S. 190—*See* BEN. ACT III OF 1884, s. 133, 22 C. 131.

(1274)—Ss. 190 and 191—*See* COMMITMENT TO SESSIONS COURT, 2 S.L.R. 9 Cr.=10 Cr. L.J. 224, 22 M. 148=2 Weir 150.

(1275 to 1286)—Ss. 190, 191, 195, 196, 198, 199, 200, 170, 173, 203, 537—*See* COMPLAINT, 18 A. 465, 13 C. 334, 24 P.R. 1894 Cr., 4 C.W.N. 367, 825, 3 C.W.N. 65, 27 P.R. 1902 Cr., 16 P.R. 1890 Cr., 1 C.L.R. 523, 15 P.R. 1878 Cr., 20 P.R. 1882 Cr., 3 P.R. 1882 Cr., 17 P.R. 1881 Cr., 23 P.R. 1895 Cr., 8 B.H.C. Cr. 113, 11 P.R. 1872 Cr., 4 M.H.C. 162, 8 B.L.R. 19.

(1287)—Ss. 190, 203—*See* CONVICTION, 3 B.H.C. Cr. 34.

(1288)—Ss. 190, 197—*See* DEFAMATION, 19 B. 51.

(1289)—S. 190—*See* DISMISSAL OF COMPLAINT, Rat. Un. Cr. C. 491.

(1290)—Ss. 190, 192, 435—*See* DISTRICT MAGISTRATE, 30 C. 449.

(1291)—Ss. 190, 90, 342—*See* MAGISTRATE, JURISDICTION OF, 7 M.H.C.R. App. 2.

(1292)—Ss. 190 and 191—*See* MAGISTRATE, JURISDICTION OF, A.W.N. 1907, 93=5 Cr. L.J. 275.

(1293)—S. 190—*See* POLICE REPORT, U.B.R. 1904, 3rd Qr., Crim. Pro. Code, 25, 1 L.B.R. 60.

(1294)—S. 190—*See* BUR. REG. XIV OF 1887, U.B.R. (1892—1896), Vol. I, 328.

(1295)—Ss. 190 and 556—*See* RIOTING, 8 O.C. 418 (*B*)=3 Cr. L.J. 27.

(1296 to 1299)—Ss. 190, 195, 198, 478, 535, 537 (*b*)—*See* SANCTION TO PROSECUTE, 5 P.L.R. 1903, 9 Bom. L.R. 212=5 Cr. L.J. 202, 4 L.B.R. 247=8 Cr. L.J. 65, 4 C. 712.

(1300)—Ss. 190, 260 (1), 355—*See* SUMMARY TRIAL, 6 N.W.P. 254.

(1301)—Ss. 190, 528—*See* TRANSFER OF CRIMINAL CASES, 5 C.W.N. 488.

(1302)—Ss. 190, 200, 202—*See* TRIAL, 10 W.R. Cr. Cir. 1.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1302-*a*)—S. 190—*See* Nos. 38, 42, 46, 76-*a*, 79, 242, 243, 244, 313, 331, 372, 550, 1008, 1009, 1014, 1016, 1018, 1022, 1147, 1178, 1292, *supra*, and Nos. 1506, 1514, 1521, 1522, 1523, 3183, 3482, *infra*.

——S. 191 (=1882, s. 190, para 4).

See COMPLAINANT.

See COMPLAINT.

(1303)—*S. 191—Scope of.*—The terms of the above section are imperative, and disregard of them is a material defect which invalidates the proceedings, not a merely formal irregularity of procedure. **U.B.R. (1897—1901), Vol. I, 56.**

(1304)—*Ss. 191 and 537— Non-compliance with—Effect.*—The omission of the Magistrate to comply with the imperative rule of law laid down in this section is a defect, which would invalidate the whole trial. **U.B.R. (1897—1901), Vol. I, 224.**

(1305)—*Ss. 191, 534.*—A Magistrate taking cognizance of an offence under s. 190 (1) (*c*), is bound to inform the accused of his right to have the case transferred. If he omits to inform the accused and tries the case himself, the conviction should be set aside and a retrial ordered. **13 P.R. 1898 Cr.**

(1306)—The omission, on the part of a Magistrate, to inform an accused person, to whom the provisions of s. 191 of the Code of Criminal Procedure are applicable, of his right to have the case tried by another Court amounts to more than a mere irregularity to which s. 537 of the Code will apply, but a Magistrate taking cognizance of an offence, under s. 190, cl. (*c*) of the Code, is not competent to try the case unless and until he has informed the accused, before taking any evidence, that he is entitled to have his case tried by another Court. **A.W.N. 1905, 258=2 A.L.J. 745=2 Cr. L.J. 809=28 A. 212.**

(1307)—*S. 191—Transfer or commitment on application of accused.*—Under s. 191, all that the accused is entitled to is to have the case tried by another Court. The section gives the accused no right to select or determine for himself by what other Court the case is to be tried. **7 Bom. L.R. 637=2 Cr. L.J. 582.**

(1308)—*S. 191—Application to transfer a case —Valid grounds—Objection to trial by Magistrate.*—The mere fact that a Magistrate, in stating the grounds on which he took cognisance of a case, mentioned that the general character of the accused was bad, was held not to be a sufficient ground for making an order transferring the case to another Magistrate.

(1309)—A Magistrate, when a valid objection is taken under s. 191 of the Crim. Pro. Code, is not bound to transfer the case, but may elect to commit it to Sessions. **2 Weir 150.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1310)—*Ss. 191 and 144—Oral order by Magistrate to stop nuisance—Magistrate taking action on his own knowledge—Conviction, legality of.*—The accused quarried from a hill for a Railway. Owing to a certain accident, which happened in the quarry, the District Magistrate issued an order, orally, to stop work, which was disobeyed. Thereupon, the District Magistrate, without informing the accused of his right to have the case tried by some other Magistrate, took action on his own knowledge of facts, and convicted the accused nnder s. 188, I.P.C., after a summary trial. *Held*, that the conviction was illegal. The order directing the accused to stop work should have been in writing under s. 144, Code of Crim. Procedure and must be duly served or promulgated to the public as required by the section. Where a Magistrate takes action against an accused on his own knowledge of facts, the accused must be informed of his right to have the case tried by another Magistrate under s. 191 of the Code; otherwise, the conviction would be illegal. **84 P.L.R. 1905=2 Cr. L.J. 365.**

(1311)—*Ss. 191 (c) and 200—"Police report," meaning of.*—A Magistrate, not empowered under s. 191 (*c*) of the above Code, requires for the hearing of a case, a complaint or a "police report." A "police report" is, as mentioned in Chap. XIV of the above Code, a report to a Magistrate arising out of a cognizable case or a case which the police may investigate. The mere fact that a written application or information proceeds from a police officer, does not make it a "police report." When a complaint made by a police officer is not a "police report," it must be on sworn information as in the case of other complaints. **U.B.R. (1892—1896), Vol. 1, 28.**

(1312)—*Ss. 191 (c) and 260—Accused challanned at the instance of the Magistrate—Jurisdiction to try—Summary trial when not expedient.*—Where a Magistrate, at whose instance the accused were challanned under s. 147, Penal Code, tried them summarily and convicted them of an offence under s. 323, Penal Code, the Chief Court set aside the conviction on the ground that, though the cognizance of the offence was apparently taken on the challan, it was really the Magistrate who had originated the proceedings. *Held*, that the Magistrate should not have tried the case summarily, s. 147, Penal Code, being not so triable, though s. 323, Penal Code, under which the accused had been convicted, was, and that it was expedient to try the case in the ordinary way, as it was likely to create some sensation. **116 P.L.R. 1903.**

(1313)—Ss. 191, 193—*See* SANCTION TO PROSECUTE, 2 A.L.J. 836=3 Cr. L.J. 45.

(1314)—Ss. 191, 193, 195—*See* SANCTION TO PROSECUTE, 2 A.L.J. 836=3 Cr. L.J. 45.

(1315)—S. 191—*See* SENTENCE, Rat. Un. Cr. C. 906.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1315-*a*)—S. 191—*See* Nos. 79, 80, 313, 550, 572, 1022, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1269, 1274, 1277, *supra*.

——S. 192 (=1882, s. 192; 1872, s. 44; 1861, s. 273).

See COMPLAINANT.

See COMPLAINT.

(1316)—*S. 192—What cases may be transferred under.*—A Magistrate can, under the above section, transfer to his subordinate Magistrate only such cases as he has taken cognizance of and not others. **5 O.C. 164.** (26 B. 150, *R.*)

(1317)—*S. 192 (=Crim. Pro. Code, 1861, s. 273)—Transfer of case referred by Munsiff to District Magistrate—Validity—Perjury and forgery—Joint trial.*—Where a case had been specially sent by a Munsiff to a District Magistrate for investigation, the District Magistrate was held not to be competent to transfer the case to a Subordinate Magistrate. In respect to a charge of perjury, each of the accused should be separately charged and tried in respect of the alleged perjury; but, with respect to a charge of forgery, or abetment thereof, so many of the accused as are committed on this charge may be tried collectively. **2 N.W.P. 21.**

(1318)—*S. 192—Transfer of case to Subordinate Magistrate—Dismissal of case against one accused—Summons against other—Cognizance of case—Jurisdiction.*—Where a complaint was lodged against several accused persons and the Magistrate, after examining the complainant, issued summons against one of the accused only and transferred the case for trial to a Subordinate Magistrate. *Held*, that the whole case of the complainant was transferred and the Subordinate Magistrate was quite competent, in discharging the accused before him, to order summons to issue for the attendance of some other accused person against whom the complaint seems to him to be well founded. *Semble*: Under s. 192 of the Crim. Pro. Code, the whole case must be transferred. **7 C.L.J. 249=7 Cr. L.J. 318.**

(1319)—*S. 192 (=Crim. Pro. Code, 1872, s. 44)—Power of Subordinate Magistrate to refer a case referred to him to another Magistrate.*—S. 44 of the Code of 1872 confers no authority on one Subordinate Magistrate to refer to another Subordinate Magistrate a case referred to him for disposal. **2 Weir 151=7 M H.C. App. 33.**

(1320)—*S. 192—Transfer of a case to Subordinate Magistrate after part-trial—Re-hearing of evidence.*—Where a Magistrate, to whom a complaint of an offence is made, finds, after hearing the evidence, that an offence triable by a Subordinate Magistrate has been committed, he should not transfer the case to a Subordinate Magistrate, but should himself

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dispose of it. A Magistrate to whom a case has been transferred after having been tried partly, should re-hear the evidence and frame a fresh charge. **2 Weir 152.**

(1321)—*S. 192—Powers of Magistrate to refer case for trial by village-headman—Headman not a Magistrate under the Code—Penal Code, s. 324.*—A Sub-Divisional Magistrate cannot refer a case for trial to a village headman. His powers of transfer under s. 192, Crim. Pro. Code, 1898, permit of reference to a Subordinate Magistrate, and a village headman is not a Magistrate under the Code. Further, a headman has no authority to try an offence under s. 324, Penal Code. **1 L.B.R. 59.**

(1322)—*Ss. 192, 204 and 528—Transfer of case to Subordinate Magistrate—Refusal to issue process by such Magistrate—Process, whether can be issued by any other Magistrate.*—The police sent up a report in B form to the Joint Magistrate against certain persons, and subsequently on the order of the Joint Magistrate, on an A form against some of them. The case was made over for disposal to the Deputy Magistrate, and the Deputy Magistrate convicted the latter class of persons. An application for processes against the remaining persons mentioned in the original B form was refused by the Deputy Magistrate as unnecessary. *Held*, that a subsequent order by the Joint Magistrate for the issue of processes against these persons was without jurisdiction. *Per Henderson, J.*—The order made by the Deputy Magistrate refusing to issue processes as unnecessary amounted to a discharge. The order making over the case to the Deputy Magistrate was an order making over the whole case mentioned in the original Police report to the Deputy Magistrate. Until the Joint Magistrate, who was acting for the District Magistrate, had withdrawn the case so made over from the file of the Deputy Magistrate to that of his own Court, he had no power to make any order save an order for further enquiry under s. 437, Crim. Pro. Code. *Per Geidt, J.*—The case having been transferred to the Deputy Magistrate, that officer alone had jurisdiction to deal with an application for summons until the case was withdrawn from his cognizance. **32 C. 783=9 C.W.N. 810=2 Cr. L.J. 524.**

(1323)—*Ss. 192, 349 (=Crim. Pro. Code, 1861, ss. 273, 277)—Reference to Divisional Magistrate under s. 277—His duty.*—In a case referred to a Divisional Magistrate under s. 277, he is bound to form his own judgment and pass sentence. **2 Weir 424=5 M.H.C. App. 43.** [*F.*, 2 Weir 424].

(1324)—*Ss. 192, 349, 350 (=Crim. Pro. Code, 1882, ss. 192, 349, 350)—Transfer of a case by a Subordinate Magistrate to the District Magistrate—Decision by the latter on evidence recorded by former.*—Where a criminal trial, pending in the Court of a third class Magistrate, and which had gone to the length of all the witnesses being examined for the prosecution and for the defence, was sent to the District Magistrate, not because the third class Magistrate could not pass a severe sentence, but for a totally different reason, and the District Magistrate convicted the accused on the evidence recorded by the Subordinate Magistrate, *held*, that neither under s. 349, nor under s. 192, was there any transfer to the District Magistrate, that s. 350 was not applicable, and that, therefore, the conviction should be set aside. **12 A. 66.**

(1325)—*Ss. 192, 529 (f)—Transfer of case by Magistrate not authorised under s. 192—Irregularity whether cured by s. 529 (f).*—If a Magistrate had no power to transfer a case from the file of one Magistrate to another, the irregularity in so transferring is one cured by s. 529, cl. (*f*). **36 C. 869.**

(1326 and 1327)—S. 192—*See* MAGISTRATE, JURISDICTION OF, 1 N.W.P. 306, 2 N.W.P. 401.

(1328)—Ss. 192, 202, 203 and 204—*See* MAGISTRATE, JURISDICTION OF, 27 C. 798.

(1329)—S. 192—*See* SANCTION TO PROSECUTE, 6 A. 101.

(1330)—S. 192—*See* TRANSFER OF CRIMINAL CASES, 19 A. 249, 23 C. 442, 14 A. 346, 1 L.B.R. 86, 1 L.B.R. 301, F.B.

(1330-*a*)—S. 192—*See* Nos. 32, 66, 466, 569, 788, 916, 942, 955, 956, 1248, 1249, 1290, *supra*, and Nos. 2997, 3184, *infra*.

——S. 193 (=1882, s. 193; 1872, ss. 17, 18, 231; 1861, s. 359).

See COMPLAINANT.

See COMPLAINT.

(1331)—*Ss. 193, 195, 465, 471, 476—Offences committed in suit before Assistant Collector—Prosecution directed by District Magistrate—Illegality.*—Where offences under ss. 193, 465, 471, were alleged to have been committed before an Assistant Collector of the first class in a suit for profits, and the District Magistrate directed the prosecution in respect of those offences. *Held*, that the District Magistrate's order was entirely without jurisdiction, and cannot be justified either under s. 195 or 476, Crim. Pro. Code. **9 Cr. L.J. 180=1 Ind. Cas. 220.**

(1332)—*Ss. 193, 287, 288, 339 and 349 (=Crim. Pro. Code, 1882, ss. 193, 287, 288, 339, 349)—Conditional pardon to approvers—Withdrawal of the pardon by Sessions Judge and their trial along with other prisoners—Admissibility of their confessional statements and depositions.*—Certain persons were charged with having committed dacoity. During the pendency of the case before the Magistrate, two of those accused made a confessional

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statement and the District Magistrate tendered a conditional pardon to them, who were, thereupon, examined by the Magistrate as witnesses. They were sent up to the Sessions Court as witnesses against the other accused, who were committed to the Sessions. In the Sessions, the two persons denied that they had been taken as approvers and the Sessions Judge thereupon placed them in the dock along with the other accused, and called upon them to plead. In the trial, the Sessions Judge refused to admit their confessional statements, but admitted and read out to the jury the deposition given by those persons as approvers. *Held*, that the trial of the two persons, who had not been duly committed to the Court was *ultra vires*. *Held*, also, that the Sessions Judge committed an irregularity in refusing to place on record their confessional statements. *Held*, further, that the Judge acted improperly in having admitted their depositions as approvers without having given the other accused an opportunity of cross-examining them as to the truth or otherwise of the depositions. **15 M. 352=2 Weir 394.**

(1333)—*Ss. 193, 285, 337 (=Crim. Pro. Code, 1882, ss. 193, 288, 337)—Conditional pardon to prisoner—Its withdrawal—Trial with other prisoners—Validity—Statement and deposition made by co-accused turned into approver—Admissibility against co-accused—Evidence Act, s. 24.*—During the preliminary enquiry of two persons on a charge of murder, the Magistrate offered a pardon to one of them under the provisions of s. 337 of the Code and the tender having been accepted, her deposition was recorded, and she was sent up to the Court of Sessions as a witness for the prosecution. In the Court of Sessions, she was the first witness examined, and as she deviated from the statement made by her to the Magistrate, the Sessions Judge stopped her examination and made an order that she should be tried for the offence in respect of which the pardon was tendered, and placed her on trial with the other accused and the trial proceeded as against both the accused jointly and both were convicted. *Held*, that her conviction was bad as she was never committed to the Sessions by any competent Magistrate and as it was unfair to put an approver, whose conditional pardon had been cancelled, on trial along with the other prisoner, in the course of whose trial such approver had given evidence. [*R*., A.W.N. 1907, 178; *F*., L.B.R. (1893—1900), 536.] The other accused mentioned *supra* was convicted upon statements made by the female accused to the Magistrate and her deposition given before the Magistrate after she was treated as an approver. *Held*, that as her trial in the absence of any commitment was bad in law, her statements were not admissible against the other accused. *Held*, also, that her deposition was not admissible, because, if it be treated as evidence under s. 288 of the Code, it ceased to be evidence as soon as she was withdrawn from the witness-box and placed in the dock, and as no opportunity was given to cross-examine her on the deposition, or, if it be treated as a confession, it was inadmissible for the further reason that it was irrelevant under s. 24 of the Evidence Act, it having been made after the tender of pardon. *Held*, also, that the confession of the accused himself was, under the circumstances of the case, not a free and voluntary admission of guilt. The conviction of this accused was set aside as there was no other sufficient evidence beside those statements to justify the conviction. **22 C. 50.**

(1334)—S. 193—*See* APPROVER, L.B.R. (1893—1900), 536.

(1335)—Ss. 193, 337, 339, 477 and 537—*See* COMMITMENT TO SESSIONS COURT, 42 P.R. 1884 Cr.

(1336)—Ss. 193 and 423 (1)—*See* COMMITMENT TO SESSIONS COURT, A.W.N. 1907, 178=6 Cr. L.J. 7.

(1337)—S. 193—*See* MAGISTRATE, JURISDICTION OF, 6 M.H.C. App. 16.

(1338)—S. 193 (2)—*See* SESSIONS JUDGE, JURISDICTION OF, 9 B. 352.

(1339)—Ss. 193, 476, 477—*See* SESSIONS JUDGE, JURISDICTION OF, 4 C. 570=3 C.L.R. 599.

(1339-*a*)—S. 193—*See* Nos. 98, 99, 101, 653, 1122, 1313, 1314, *supra*.

——S. 195 (=1882, s. 195; 1872, ss. 467, 468, 469, 470; 1861, ss. 168, 169, 170, 171, Presidency Magistrate's Act, 1877, s. 41).

See COMPLAINANT.

See COMPLAINT.

(1340)—*S. 195 (=Crim. Pro. Code, 1882, s. 195)—Registrar acting under s. 73 of Act III of 1877, whether a "Court."*—A Registrar acting under ss. 72 to 75 of the Registration Act is not a "Court" within the meaning of the word as used in s. 195. **15 A. 141.**

(1341)—*S. 195—Application for sanction to prosecute—Rejection by Magistrate—Independent application to Sessions Judge—Procedure, validity of.*—An application for sanction to prosecute the complainant, on dismissal of complaint, was made to a Magistrate, who rejected it. Without preferring an appeal or revision, the applicant made an original application to the Sessions Judge for such sanction. The Sessions Judge refused to entertain the application. On this, the application was renewed in the High Court under s. 195. *Held*, that the High Court could not interfere, as the applicant had not adopted the proper procedure. **25 A. 126=A.W.N. 1902, 197.**

(1342)—*S. 195—Sanction to prosecute—Necessity for application by some definite person.*—Sanction under s. 195 should be given only on an application made for it by some person who

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may desire to complain of the particular offence, and whose complaint could not be entertained without such sanction. **27 C. 820.** [*R.*, 9 C. W.N. 277=32 C. 351; *Diss.*, 1 M.L.T. 47=3 Cr. L.J. 227=8 Bom. L.R. 32].

(1343)—*S. 195 (=Crim. Pro. Code, 1882, s. 195)—Document given in evidence.*—A document is given in evidence within the meaning of s. 195, Crim. Pro. Code, when it is handed over by the person tendering it to the Court, though the Court may reject it as evidence for insufficiency of stamp or want of registration. **Rat. Un. Cr. C. 242=Cr. Rg. 10 of 1886.**

(1344)—*S. 195 (=Crim. Pro. Code, 1882, s. 195)—Refusal of sanction by Subordinate Magistrate—Power of District Magistrate to entertain complaint.*—A District Magistrate is not precluded from taking cognizance of offences under s. 193, merely because a Subordinate Magistrate in whose Court the evidence had been given had refused to give sanction to prosecute under s. 195, Crim. Pro. Code. It is not a necessary part of the definition of the word sanction that it is a permission to prosecute given to a private person. As the sanction merely allows operation to the ordinary criminal law, it can, as a matter of law, be given before any complainant or other person applies for it. **Rat. Un. Cr. C. 683.**

(1345)—*S. 195—Sub-Deputy Collector in proceedings under Land Registration Act—Judicial proceedings—Court—Penal Code, s. 193.—Quære*—Whether the proceeding under the Land Registration Act is a "judicial proceeding" within the meaning of s. 193, Penal Code; and whether the Sub-Deputy Collector in that proceeding is a "Court" within the meaning of s. 195, Crim. Pro. Code. **9 C.W.N. 127.**

(1346)—*S. 195 (=Crim. Pro. Code, 1882, s. 195)—District Registrar registering a document whose execution is admitted, whether a "Court."*—Although it has been held that a Registrar acting under ss. 72 to 75 of the Registration Act is a Court within the meaning of s. 195, it has never been held, and there seems no reason for so holding, that a Registrar in exercising his ordinary functions of registering a document, the execution of which is not denied, is a "Ccurt" within the meaning of s. 195. **2 M.L.J. 286.**

(1347)—*S. 195 (=Crim. Pro. Code, 1872, s. 470)—Sanction to prosecute—Duty of officer granting sanction.*—The officer whose duty it is to give or refuse a sanction should consider and determine whether or not a prosecution is called for in the interests of public justice, and if he arrives at the conclusion that it is called for, there must be, in however general terms, a distinct sanction for the institution of the proceeding. **2 Weir 171.**

(1348)—*S. 195—Magistrate to whom police subordinate.*—The only Magistrate to whom

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the District Police are "subordinate" within the meaning of s. 195 of the Code is the District Magistrate. **6 O.C. 1.**

(1349)—*S. 195 (b)—Report to police not followed up by complaint to Court—Penal Code, ss. 182, 211.*—S. 195 (*b*), Crim. Pro. Code, does not apply to a case where a person makes a report to the *thana*, but does not follow it up by a complaint to any Court. By making a report, no offence is committed in or in relation to any proceeding. **30 A. 52=A.W.N. 1907, 288=4 A.L.J. 790=6 Cr. L.J. 396.**

(1350)—*Ss. 195, 198, 423—Power of appellate Court to alter finding.*—There are no words in s. 423, limiting the appellate Court's right to alter the finding or prescribing any preliminaries, (such as a sanction, or a complaint by a person aggrieved), to its taking cognizance of an offence other than that of which the Court of original jurisdiction had convicted. On an appeal from a conviction under s. 182, I.P.C., the appellate Court is competent to alter the conviction to one for an offence under s. 500, I.P.C., notwithstanding that there was no complaint by an aggrieved person. **25 A. 534=A.W.N. 1903, 100.** [*R.*, 3 L.B.R. 232].

(1351)—*Ss. 195, 198, 476 (=Crim. Pro. Code, 1872, ss. 467, 468, 469, 471)—Trial for offences against public justice—Jurisdiction.*—The Magistrate before whom an offence under s. 193 is committed is himself competent to try the case. **1 A. 193.** [*Overruled*, 1 A. 625, F.B.]

(1352)—*Ss. 195 and 200—Scope of s. 200—Duty of Presidency Magistrate to record evidence of authority a person prosecuting under sanction given to another.*—The examination referred to in s. 200 of the Code, and which a Presidency Magistrate is not obliged to reduce to writing, is an examination of the subject-matter of the "complaint," which, as defined in s. 4 (*h*), means the allegation that some person has committed an offence. Where a prosecution is initiated by a person acting under the sanction given to another person, the Presidency Magistrate is bound to place on record the necessary evidence of the complainant's authority from that person. **8 C.W.N. 883=32 C. 469.** [*D.*, 35 C. 141=7 Cr.L.J. 10=7 C.L.J. 49].

(1353)—*Ss. 195 and 256 (=Crim. Pro. Code, 1882, ss. 195, 256)—Sanction to prosecute—Recall and cross-examination of witnesses for prosecution.*—On a complaint of theft being dismissed as false, sanction to prosecute the complainant under s. 211, Penal Code, was given by the District Magistrate. *Held*, that the sanction of the Magistrate who took up the complaint of the complainant was perfectly complete and sufficient, but that the Magistrate, who tried the complainant, acted illegally in stopping the cross-examination of a witness, and in refusing to allow the recall for cross-examination of the witnesses for the prosecution as soon as the accused was formally charged. **S.C. 119, Oudh.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1354)—*Ss. 195, 366, 367—Order under s. 195—Applicability of s. 367.*—S. 367, Crim. Pro. Code, is not applicable to an order passed under s. 195, as s. 367 relates to such judgments as are referred to in s. 366, that is to say, to judgments in trials. **6 Bom. L.R. 897.**

(1355)—*Ss. 195, 404, 439 (= Crim. Pro. Code, 1882, ss. 195, 404, 439)—Sanction to prosecute—No appeal—Revision only possible.*—No appeal lies from orders under s. 195, Crim. Pro. Code. Such orders can be interfered with only in the exercise of the powers of revision. **15 A. 61.** [*F.*, 23 B. 50; *Discussed*, 26 A. 244 = A.W.N. 1904, 10].

(1356)—*Ss. 195 and 407—Courts to which appeal ordinarily lies, meaning of.—Held* by the Full Bench, (Benson, J, *dissenting*).—A Magistrate, who has been directed and empowered to hear appeals under the provisions of s. 407 (2) of the Crim Pro. Code, is not the "Court to which appeals ordinarily lie" within the meaning and for the purposes of s. 195 (7) of the Code. **26 M. 656 = 2 Weir 202, F.B.**

(1357)—*Ss. 195 (6), 407 (2)—Sanction to prosecute—Revocation of sanction by a Court specially authorised to hear appeals under s. 407 (2), whether valid—Scope of the expression "Courts to which appeals ordinarily lie," in s. 195.*—The Court of a First Class Magistrate, who has been specially authorised to hear appeals from the sentence of a Magistrate of the second or third class under s. 407 (2), Crim. Pro. Code, is not the Court to which appeals from such Subordinate Courts ordinarily lie within the meaning of s. 195 (7), Crim. Pro. Code. Where, therefore, a Joint Magistrate in the exercise of the powers conferred upon him under s. 407 (2), Crim. Pro. Code, revoked a sanction for prosecution granted by an Assistant Magistrate with second class powers, *held*, that the revocation was without jurisdiction. **30 C. 394 = 7 C.W.N. 114.** [*F.*, 27 M. 124, 3 N.L.R. 50].

(1358)—*Ss. 195, 423, 439, 476 (= Crim. Pro. Code, 1882, ss. 195, 423, 439, 476)—Jurisdiction of High Court, in revision, to interfere with the orders of Subordinate Courts.*—The High Court is competent, in the exercise of its powers of revision, to interfere with an order under s. 476, as also to interfere with a matter in which a Deputy Magistrate, having tried a case, makes an order sending the record with an invitation to the District Magistrate to prosecute. Under s. 439, the High Court has the power, conferred on a Court of Appeal by s. 423, to alter or reverse an order of the lower Court. **16 C. 730.** [*F.*, 20 C. 349, Rat Un. Cr. C. 895; *R.*, 5 C.P.L.R. 78, 16 A. 80, 9 C.P.L.R. 27, 23 C. 610, 21 M. 124 F.B. = 2 Weir 593, 26 B. 785, 26 A. 249, F.B.; *D.*, 97 P.L.R. 1903].

(1359)—*Ss. 115, 476—Witness giving false evidence—Power to commit—Procedure.*—S. 476 does not permit a Magistrate to order the

Crim. Pro Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

arrest of a witness who has, in his opinion, fabricated false evidence, with a view to commit him to the Court of Sessions. The Magistrate, however, must, if the proceeding before him satisfies him that there is ground for enquiry into any offence referred to in s. 195, and if he thinks that no further preliminary enquiry is necessary, send the case to the nearest First Class Magistrate. **3 Bom. L.R. 185.**

(1360)—*Ss. 195, 476—Offence under s. 211, I.P.C.—Sanction.*—In the course of civil proceedings before the District Judge of Poona, it appeared that a person had committed an offence under s. 211, I.P.C., in the Court of the City Magistrate of Poona. The District Judge considering that there were grounds for enquiring into that offence, sent the case under s. 476, Crim. Pro. Code, to the nearest Magistrate of the First Class. When the Magistrate proceeded with the case, it was objected that he was precluded by s. 195 (1), Crim. Pro. Code, from taking cognizance of the offence, in the absence of a valid sanction. *Held* that, as there was neither the sanction nor the complaint of the Court in which the offence was alleged to have been committed, or of the Sessions Court to which the Court was subordinate, the offence was not, according to the express provisions of s. 195, Crim. Pro. Code, cognizable at that stage. That the fact that the District Court and the Sessions Court were represented by one and the same individual did not, in the circumstances of the case, make any difference. **4 Bom L.R. 750.** [*R.*, 28 A. 142 = A.W.N. 1905, 231 = 2 Cr. L.J. 598].

(1361)—*Ss. 195, 476 (= Crim. Pro. Code, 1872, ss. 470, 471)—Proceedings different.*—There is a distinction between a sanction given under s. 470 of the Crim. Pro. Code and the institution of proceedings by a Court of its own motion under s. 471. **7 C. 208 = 8 C.L.R. 267.** [*R.*, 10 M. 232, F.B. = 2 Weir 183, 13 B. 109].

(1362)—*Ss. 195 and 476—Judicial proceedings—Delivery of possession in execution of decree—Resistance—Jurisdiction of Court passing decree to direct prosecution for the resistance.—Per Harrington and Henderson, JJ., (Pargiter, J., dissenting)*:—Delivery of possession of land to the decree-holder by a Nazir in execution of a decree is not a "judicial proceeding" within the meaning of s. 476, Crim. Pro. Code, but is a purely ministerial act; and when the Nazir is resisted, in the course of such delivery of possession, no action can be taken under s. 476 of the Crim. Pro. Code, directing the prosecution of the person under s. 476 by the Court executing the decree, as such act cannot be said to have been brought to its notice "in the course of a judicial proceeding." **32 C. 367 = 9 C.W.N. 364 = 1 C.L.J. 161.** [*F.*, 35 C. 133; *D.*, 10 C.W N. 55, 28 A. 89 = A.W.N. 1905, 195 = 2 A.L.J. 717].

(1363)—*Ss. 195 and 476—Order for prosecution—Power of successor-in-office to make order—"Court," meaning of.*—Held by the Full

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

Bench :—It is the Judge who tries the case who alone can exercise the summary power conferred by s. 476, and such power is exerciseable only at or immediately after the conclusion of the trial in which the offence is alleged to have been committed. But an application for sanction to prosecute under s. 195 can be made to a Judge who is the successor in office of the Judge who tried the case. The expression "Court" in s. 476 means the particular Judge who tried the case and does not include his successor in office. *Per* Geidt, J.—S. 476 contemplates that the desirability of prosecuting the offender must be present to the mind of the Court during the proceeding in the course of which the offence was committed or brought to the Court's notice. It was not intended that it should be suggested to the Court by an application made after the proceedings had terminated, and passed beyond its ken. The word "Court" in that section need not, however, necessarily mean the same judicial officer. An order under the section would be bad if it were passed after a long time, even if the presiding officer had remained the same. It would not matter if the actual order be passed by his successor in office, if the previous officer had left some indication of his opinion to order a prosecution. **34 C. 551=5 C.L.J. 508=11 C.W.N. 568=5 Cr. L.J. 398=2 M.L.T. 298, F.B.** [*F.*, 35 C. 114, 3 M.L.T. 79=17 M.L.J. 584; *R.*, 35 C. 133; *Diss.*, 10 Bom. L.R. 28].

(1364)—*Ss. 195, 476—Penal Code, s. 211—Order for prosecution under section on mere police report.*—A Magistrate does not exercise a proper discretion who, on receipt of a police report that the complaint is false, forthwith orders the complainant to be prosecuted under s. 211, I.P. Code. The complainant should be given a reasonable time and full opportunity to prove his case before sanction is given for the prosecution. He can then proceed under s. 476, Crim. Pro. Code, and direct a prosecution. **5 C.W.N. 106.** (4 C.W.N. 35, *D.*)

(1365)—*Ss. 195 and 476—Sanction to prosecute whether can be given for offences in relation to future proceedings.*—The words "any offence referred to in s. 195," in s. 476 of the Code do not include the manner in which the offence may have been committed and mean "any offence punishable under any of the sections of the Penal Code mentioned in s. 195." Hence, an offence under s. 206 of the Penal Code may be said to be committed "in relation to a proceeding in Court," although it is committed not in relation to a pending proceeding but in relation to a future proceeding. **5 O.C. 46.**

(1366)—*Ss. 195 and 476—Sanction to prosecute.*—The preliminary enquiry referred to in s. 476 of the above Code should be made by the District Magistrate before he orders the prosecution for making a false complaint. **U.B.R. (1892—1896), Vol. I, 26.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1367)—*Ss. 195, 476, 90, 342 (=Crim. Pro. Code, 1861, ss. 171, 273)—Reference to Magistrate for investigation—Power of the latter to transfer case.*—When a Civil or Criminal Court sends a case for investigation to a Magistrate under s. 171, Crim. Pro. Code, the Magistrate to whom the case is sent must himself hold the investigation. **6 M.H.C. App. 2.**

(1368)—*Ss. 195, 476, 487 (=Crim. Pro. Code, 1882, ss. 195, 476, 487)—False evidence, offence of, committed before a Sessions Judge—His jurisdiction to try offence.*—Where a Sessions Judge directed the trial of a person for the offence of giving false evidence committed in the course of a judicial proceeding before him of a criminal nature, he cannot try the case himself. **14 A. 354.** (7 A.W.N. 139, *D.*) [*R.*, U.B.R. (1897—1901), 127].

(1369)—*Ss. 195 and 477—Scope of s. 477—Procedure to be observed under the section—Necessity for framing a charge.*—S. 477 is an empowering section, and authorises a Court of Session, when an offence referred to in s. 195, Crim. Pro. Code, has been committed before it or brought under its notice as mentioned in the section, to charge the offender and to commit, or admit to bail and try him upon its own charge. The word "may" in s. 477, ought not to be read as "must." Having regard to the phraseology of the section, if a Court of Sessions proceed to take action under s. 477, it must, in the first instance, frame a charge so as to enable the accused to know the nature of the offence he is alleged to have committed. After framing the charge the Sessions Court may then either commit the accused for trial upon a charge so framed, or admit him to bail for the same purpose. **28 C. 434=5 C.W.N. 609.**

(1370)—*Ss. 195, 477 (=Crim. Pro. Code, 1882, ss. 195, 477)—Power of Sessions Court regarding offences mentioned in s. 195, committed before itself.*—S. 477, Crim. Pro. Code, enacts that the person charged shall be committed for trial, or held to bail to take his trial, on the charge, and not that the Court of Sessions shall try offences referred to in s. 195 committed before itself summarily. A trial and conviction for having given false evidence, as soon as the trial before the Court of Sessions was concluded, without giving the accused a fair opportunity to prepare his defence was held to be bad as the irregularity occasioned a failure of justice. **S.C. 303, Oudh.**

(1371)—*Ss. 195, 478—Scope of sections distinguished.*—It is not permissible to a Court to hold, in the course of the same proceedings, a dual kind of enquiry, one under s. 195, and the other under s. 478. Proceedings under s. 195 are distinct from those under s. 478. The former are of a summary character, and a Court proceeding under the section is not bound to hold an enquiry. In the case of the latter, the enquiry has to be as nearly as possible under Ch. XVIII of the Code. **6 Bom. L.R. 578.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1372)—*Ss. 195, 478 (=Crim. Pro. Code, 1882, ss. 195 and 478)—False document filed in Court but not given in evidence—Commitment for trial.*—The words 'any such offence' in s. 478 mean an offence referred to in s. 195, and not an offence qualified by the circumstances under which it is committed, that is, as described in cl. (*c*) of sub-s. (1) of s. 195, by a party to any proceeding in any Court, in respect of a document given in evidence in such proceeding. Where a Munsif, suspecting that a certain document filed in a suit pending before him, but not given in evidence, had been tampered with, held an enquiry and committed the petitioner for trial by the Court of Sessions, *held*, that it was a proper commitment under s. 478 of the Code. **22 C. 1004.**

(1373)—*Ss. 195, 487 (=Crim. Pro. Code, 1882, ss. 195 and 487)—Competency of Magistrate to try offence under s. 173, Penal Code, in contempt of his own authority.*—Ss. 487 and 195, Crim. Pro. Code, prohibit a Magistrate from trying an offence under s. 173, Penal Code, committed in contempt of his own authority. **1 Weir 80.**

(1374)—*Ss. 195, 537 (=Crim. Pro. Code, 1882, ss. 195 and 537)—Sanction to prosecute --Prosecution after expiry of period prescribed in s. 195—Operation of s. 537 of the Code.*—S. 537 of the Code is expressly made subject to the provisions before contained in the Code, and it was not intended to override the provision of s. 195. It cannot refer to a case in which the want of sanction was directly brought to the notice of the Magistrate at the commencement of the proceeding before him, nor can it be said that there has not been a failure of justice in the prosecution of a person after expiry of the period, for which the sanction was in force. **22 C. 176.** [*Overruled*, 27 C. 839, F.B.; *R.*, 23 C. 983, 21 A.W.N. 151, 9 C. W.N. 909; *Diss.*, 29 M. 149, 17 M.L.J. 533].

(1375)—*Ss. 195 and 537—Sanction to prosecute for false charge—Irregularity—Notice.*—The police finding a charge to be false suggested that the case should be expunged from the crime register and the accused prosecuted under s. 182, I.P.C. The Sub-Divisional Magistrate merely ordered the papers to be filed. But the District Magistrate being further moved, ordered "Expunge; Sub-Divisional Officer to take cognizance of offence under s. 182, I.P.C.," and the Sub-Divisional Magistrate issued summons to the accused and called upon the Police to produce their evidence. The accused thereupon moved the Sessions Judge to revise this order. *Held* that the Magistrate's order was not a sanction to the institution of proceedings under s. 182, I.P.C., with the requirements of s. 195, Crim. Pro. Code, not having been complied with, that s. 537 was inapplicable as the accused had taken objection to the sanction at the earliest stage, as soon as the summons had been issued against the accused. Notice to the person against whom it is intended to proceed under s. 195, Crim. Pro. Code, may not be absolutely necessary, but it is usual to call upon him to show cause why sanction should not be granted. **5 O.C. 164.**

(1376)—*Ss. 195 and 537 (=Crim. Pro. Code, 1882, ss. 195, 537)—Sanction to prosecute--Penal Code, s. 193—Alternative charges.*—Where a person is prosecuted on alternative charges of giving false evidence either before the police officer investigating a case under Ch. XIV of the Code, or before the Magistrate trying the case, where it is not pending before the Magistrate at the time of the police investigation, and where, therefore, the accused cannot be said to have given false evidence in relation to the proceedings before the Magistrate, s. 195, Crim. Pro. Code, is inapplicable thereto. S. 537, Crim. Pro. Code, would cure the defect in a case in which the complaint by the Court is required by s. 195, but no such complaint is made. **S.C. 232, Oudh.**

(1377)—Ss. 195, 439—*See* ACT V OF 1861, ss. 5 and 36, 9 P.W.R. 1908 Cr.=7 Cr. L.J. 291.

(1378)—S. 195—Sub-Registrar, whether a Court—*See* ACT III OF 1877, s. 34, 11 M. 3.

(1379)—S. 195—Presentation of forged document for registration—Sanction of Sub-Registrar whether necessary—*See* ACT III OF 1877, ss. 34, 35 and 41, 12 M. 201.

(1380)—S. 195—Sub-Registrar acting under s. 41. Registration Act. whether a "Court"—*See* ACT III OF 1877, s. 41, 10 M. 154.

(1381)—S. 195—Registrar whether a "Court" within the meaning of section—*See* ACT III OF 1877, ss. 72, 73, 74 and 75, 15 M. 138=2 M.L.J. 64, F.B.

(1382)—S. 195—Sanction to prosecute for forgery under s. 82, Registration Act, whether necessary—*See* ACT III OF 1877, s. 82, 11 M. 500.

(1383)—S. 195—*See* ACT XV OF 1877, Art. 178, 10 A. 350.

(1384)—S. 195—*See* ACT I OF 1887, ss. 2 and 7, 22 C. 176.

(1385)—S. 195—*See* BEN. ACT VIII OF 1885, ss. 69 and 70, 17 C. 872.

(1386)—S. 195, cl. 7 (3)—*See* BOM. ACT II OF 1906, s. 23, 9 Bom. L.R. 896=6 Cr. L.J. 225.

(1387)—S. 195—*See* COMPLAINT, 4 B.H.C. Cr. 30.

(1388)—Ss. 195 and 476—*See* COMPLAINT, L.B.R. (1893—1900), 388.

(1389)—Ss. 195 and 528—*See* COMPLAINT, 3 C.W.N. 490.

(1390)—Ss. 195, 476—*See* COURT FEES, 5 B.H.C. Cr. 104.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1391)—Ss. 195, 480, 482 and 537—*See* CONTEMPT OF COURT, 15 M. 131=2 Weir 605.

(1392)—S. 195—*See* CRIMINAL PROCEEDINGS, 16 B. 729.

(1393)—S. 195—*See* CRIM. PRO. CODE (1898), s. 476, 2 Weir 597.

(1394)—Ss. 195, 476—*See* DISCHARGE OF ACCUSED, 5 B.H.C. Cr. 41.

(1395)—S. 195—*See* DISMISSAL OF COMPLAINT, 28 C. 251.

(1396)—S. 195—*See* FALSE CHARGE, 7 M. 292=1 Weir 185.

(1397)—Ss. 195, 337, 339—*See* FALSE EVIDENCE, 10 B. 190.

(1398 and 1399)—Ss. 195, 476—*See* FORGERY, 12 B. 36, Rat. Un. Cr. C. 83, 12 P.R. 1897 Cr.

(1399-*a*)—S. 195—*See* LETTERS PATENT, MAD., s. 15, 1 Weir 787.

(1400)—Ss. 195, 198, 487—*See* MAGISTRATE, JURISDICTION OF, 7 M.H.C. App. 17.

(1401)—Ss. 195, 476, 90 and 342—*See* MAGISTRATE, JURISDICTION OF, 6 M.H.C. App. 41.

(1402)—S. 195 (*b*)—*See* NOTICE, 30 A. 52 =A.W.N. 1907, 288=4 A.L.J. 790=6 Cr. L.J 396.

(1403)—S. 195 (1)—*See* PENAL CODE, s. 182, 6 A.L.J. 236=9 Cr. L.J. 518.

(1404)—S. 195—*See* PENAL CODE, ss. 211, 500, U.B.R. (1897—1901), Vol. I, 279.

(1405)—S. 195—*See* PERJURY, 10 C.W.N. 220=3 Cr. L.J. 196.

(1406)—Ss. 195, 476—*See* PRACTICE AND PROCEDURE, 4 N.W.P. 86.

(1407 to 1414)—Ss. 195, 439, 476—*See* REVISION, 16 A. 80.

(1415)—Ss. 195, 174—*See* SANCTION TO PROSECUTE, 5 M.L.T. 355=9 Cr. L.J. 304 =1 Ind. Cas. 547.

(1416)—Ss. 195, 202 and 203—*See* SANCTION TO PROSECUTE, 2 P.R. 1907 Cr.=5 Cr. L.J. 491=49 P.L.R. 1907=18 P.W.R. 1907 Cr. =6 Cr. L.J. 258.

(1417)—Ss. 195 and 203—*See* SANCTION TO PROSECUTE, 24 M. 337=2 Weir 251.

(1418 and 1419)—Ss. 195, 215, 476—*See* SANCTION TO PROSECUTE, L.B.R. (1893—1900), 377, 6 A. 98.

(1420)—Ss. 195, 230—*See* SANCTION TO PROSECUTE, 4 C. 712.

(1421)—Ss. 195, 234, 360, 537—*See* SANCTION TO PROSECUTE, 9 C.L.J. 690=13 C.W.N. 942=10 Cr. L.J. 150=36 C. 808=2 Ind. Cas. 697.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1422)—Ss. 195 and 235—*See* SANCTION TO PROSECUTE, 17 M.L.J. 559=7 Cr. L.J. 6=3 M.L.T. 113=31 M. 43.

(1423)—Ss. 195 (1) (*b*) and 236—*See* SANCTION TO PROSECUTE, 2 Weir 169.

(1424 and 1425)—Ss. 195, 250, 254—*See* SANCTION TO PROSECUTE, 22 C. 586, 1 L.B.R. 286.

(1426)—Ss. 195 and 407—*See* SANCTION TO PROSECUTE, 18 M. 487=2 Weir 165=5 M. L.J. 125.

(1427)—Ss. 195, 407—*See* SANCTION TO PROSECUTE, 3 N.L.R. 50=5 Cr.L.J. 432.

(1428)—Ss. 195 (6), 421 and 440—*See* SANCTION TO PROSECUTE, 12 C.W.N. 248=9 Cr. L.J. 189.

(1429 and 1430)—Ss. 195, 435 (1 to 3)—*See* SANCTION TO PROSECUTE, 7 M. 560=2 Weir 180, A.W.N. 1889, 100.

(1431 and 1432)—Ss. 195, 435, 438, 439—*See* SANCTION TO PROSECUTE, 26 M. 137=2 Weir 196, 26 M. 139=2 Weir 197, 6 M.L.T. 128.

(1433 to 1436)—Ss. 195, 435, 476, 478—*See* SANCTION TO PROSECUTE, 15 M.L.J. 489= 3 Cr. L.J. 118, 15 M. 224=2 M.L.J. 148=2 Weir 174, 10 C.L.J. 564, 13 B. 384, 11 Bom. L.R. 855.

(1437)—Ss. 195, 439—*See* SANCTION TO PROSECUTE, 26 A. 1=A.W.N. 1903, 171, A. W.N. 1907, 283, A.W.N. 1908, 273=5 A.L.J. 749=31 A. 38=9 Cr.L.J. 39=1 Ind. Cas. 569, 23 C. 971, 27 M. 223=2 Weir 208=14 M.L.J. 74, 6 O.C. 216, 2 P.W.R. 1909 Cr.=9 Cr.L.J. 152=37 P.L.R. 1909=1 Ind. Cas. 93, 4 L.B.R. 138=7 Cr.L.J. 416.

(1438)—Ss. 195. 476—*See* SANCTION TO PROSECUTE, 7 A. 871, 16 A. 80, 18 A. 213, 25 A. 234=A.W.N. 1903, 31, 1 A L.J. 186, 1 A.L.J. 395, 13 B. 109, 10 Bom.L.R. 28=32 B. 184=3 M.L.T. 116=7 Cr. L.J. 35, 23 C. 532, 34 C. 848=11 C.W.N. 712=5 Cr. L.J. 480=6 C.L.J. 531, 4 C.W.N. 366, 13 C.W.N. 398, 13 C.W.N. 1038, 2 Weir 168, 9 Cr.L.J. 181=1 Ind. Cas. 220.

(1439)—Ss. 195, 487, 537—*See* SANCTION TO PROSECUTE, 27 C. 452=4 C.W.N. 594.

(1440)—Ss. 195, sub-sec. 1, cl. (*b*), 503—*See* SANCTION TO PROSECUTE, 11 C.W.N. 909=6 Cr.L.J. 160.

(1441)—Ss. 195, 537—*See* SANCTION TO PROSECUTE, 13 C.L.R. 117, 28 C. 217=5 C.W.N. 291.

(1442)—Ss. 195, 369—*See* SESSIONS JUDGE, JURISDICTION OF, 23 B. 50.

(1443 and 1444)—Ss. 195, 423, except. 1 (*d*), 435 (1 to 3), 436, 439 (1 to 4), 476—*See* SESSIONS JUDGE, JURISDICTION OF, 20 C. 633, 23 M. 205=2 Weir 161.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1445 to 1447)—S. 195—*See* Nos. 39, 50, 51, 60, 125, 1058, 1063, 1248, 1250, 1251, 1267, 1278, 1296, 1297, 1298, 1314, 1331, *supra*, and Nos. 1463, 1475, 1476, 1489, 1585, 1879, 1925, 2930, 3142, 3148, 3183, 3185, 3220, 3265, 3516, *infra*.

——S. 196 (=1882, s. 196; 1872, s. 465; 1861, s. 166).

See COMPLAINANT.

See COMPLAINT.

(1448)—*S. 196—Scope of section—Sufficiency of order of Government.*—At the trial on the prosecution of an Editor and Publisher of a newspaper under s. 124-A, an order for the prosecution in the following terms was tendered in evidence. "Under the provision of s. 196, Crim. Pro. Code, M.A. Baig, Oriental Translator to Government, is hereby ordered, by H.E. the Governor in Council to make a complaint against Mr. Bal Gangadhar Tilak, the Publisher, Proprietor and Editor of the *Kesari*, and against Hari Narayan Gokhale, Printer of the said newspaper, in respect of certain articles appearing in the newspaper, under s. 124-A, of the I.P.C., and any other section of the said Code which may be found to be applicable to the case." *Held* that the order was sufficient. Though the order be held not sufficient, the High Court had, under s. 532, power to accept the commitment. The object of s. 196 is to prevent unauthorized persons from intruding in matters of State by instituting State prosecutions and to secure that such prosecutions shall only be instituted under the authority of the Government. The section does not prescribe any particular form of order, and does not even require the order to be in writing. **22 B. 112.** [*F.*, 35 C. 147=7 C.L.J. 49=7 Cr. L.J. 10; *R.*, 32 M. 3=5 M.L.T. 1, 16.]

(1449)—*S. 196—Complaint—Sanction—Examination of complainant—Local Government—Presumption—Evidence Act (I of 1872), s. 114.*—S. 196 of the Crim. Pro. Code, requires that no case under s. 124-A of the Penal Code, shall be taken cognizance of except upon complaint made with the authority of the Local Government. Where the letter of authority did not specify the name of the accused, but he was indicated from the first, and his name was supplied at the commencement of the Police Court proceedings, *held* it was a sufficient compliance with the section. The person who signs the letter of authority is not the complainant, and it is not necessary to take his examination under the law. The person who armed with the authority makes the application to the Court for the apprehension of the accused is the complainant, and his examination is to be taken. A Presidency Magistrate need not at this stage administer an oath to the complainant nor reduce his complaint into writing. The authority under s. 196 need not, in the case of Local Government, be signed personally by the Lieutenant-Governor; it is

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

enough if it is signed by one of his accredited and Gazetted Officers. It must be presumed that all official acts have been duly performed, and s. 114 of the Evidence Act amply supplies all omissions in the method of communication of the sanction to the prosecuting officer and the Magistrate, where the sanctions, as they originally stood, contained a misdescription of the articles on which the prosecution was based, and this was rectified by a subsequent sanction filed in course of the trial, *held*, the petitioner was not prejudiced and the defect was cured by s. 537 of the Crim. Pro. Code. **35 C. 141=2 M.L.T. 500=7 C.L.J. 49=7 Cr. L.J. 10.**

(1450)—*Ss. 196, 235—Graver offence not triable for want of sanction—Conviction for minor offence—Validity.*—The accused was committed for trial on a charge under s. 116, I.P.C., of having instigated certain persons to commit dacoity. In the course of the trial, the Assistant Sessions Judge added an alternative charge under s. 511 and convicted the accused of either instigating or attempting to commit dacoity. On appeal, the Sessions Judge reversed the conviction and acquitted the accused, as he was of opinion that the real charge which should have been brought against the accused was an attempt to commit the offence of waging war against the Queen, under s. 122, I.P.C., and that if that charge could not be framed without the sanction of the Government which they refused to give, the accused should not have been brought to trial at all or, at most, should have been bound over to keep the peace. *Held*, on appeal from the acquittal, that because a charge could not be framed for the graver offence it did not follow that no prosecution should be instituted on the minor charges which the evidence was sufficient to prove. The refusal of Government to prosecute under s. 122 did not affect the accused's liability to punishment under other sections. The acquittal was set aside and the accused convicted of instigating or abetting the commitment of dacoity. **25 B. 90=1 Bom. L.R. 653.** [*R.*, 5 M.L.J. 1, 16=32 M. 3.]

(1451)—Ss. 196, 532 and 537—*See* COMMITMENT TO SESSIONS COURT, 16 P.R. 1890 Cr.

(1452)—S. 196—*See* PENAL CODE, s. 121, L.B.R. (1872—1892), 389.

(1453)—Ss. 196 and 537—*See* SANCTION TO PROSECUTE, 8 P.R. 1908, Cr.=15 P.W.R. 1908 Cr.=149 P.L.R. 1908=7 Cr. L.J. 353.

(1453-*a*)—S. 196—*See* Nos. 81, 1279, *supra*.

——S. 197 (=1882, s. 198; 1872, s. 466, paras 1, 2, 3 and 4; 1861, s. 167; Presidency Magistrate's Act, 1877, s. 39).

See COMPLAINANT.

See COMPLAINT.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1454)—*S. 197 (=Crim. Pro. Code, 1872, s. 476)—Order by Board of Revenue directing an official charged with bribery to be tried by a particular tribunal, validity of.*—A charge of bribery, extortion and criminal intimidation was made against a Sub-Magistrate, and the Collector of the District reported the same to the Board of Revenue. The Board directed him to send the case for trial to some Magistrate, other than the District Magistrate or the Principal Assistant Magistrate. The District Magistrate sent the case for trial to the Senior Assistant Magistrate, Berhampore, who convicted the accused under s. 161, Penal Code. The Sessions Judge reversed the conviction. The Government did not appeal against the acquittal, but the case was referred to the High Court by the District Magistrate under the instructions of the Government. The High Court declined to interfere on the ground, (1) that it had not been shown that the trial by the Senior Assistant Magistrate was without jurisdiction and (2) that the question of jurisdiction was considered by the Sessions Judge and decided adversely to the Government which had not appealed. **15 M. 36=2 Weir 218.**

(1455)—*S. 197.*—Sanction under s. 197 of the above Code is not necessary for the private prosecution of a person accused of an offence otherwise than in his capacity of a "public servant." **U.B.R. (1892—1896), Vol. I, 27.**

(1456)—*Ss. 197 and 423—Sanction to prosecute Administrator General of Bengal—Administrator General appointed as Administrator to the estate of deceased person—Prosecution for non-compliance with Municipal rules—Calcutta Municipal Act (Bengal Act III of 1899), ss. 320 and 574.—Held*, that the sanction of the Government under s. 197, Crim. Pro. Code, was not necessary to prosecute the Administrator-General of Bengal under the Calcutta Municipal Act for non-compliance with the requirements of the Act in respect of certain houses of which he was appointed administrator by an order of the Court on the death of the executors under the will of a deceased person, inasmuch as he was in charge of the premises not by virtue of his office. **30 C. 927=7 C.W.N. 750.**

(1457)—*Ss. 197, 527 and 177—Power of Local Government to specify Court for trial of public servant irrespective of jurisdictions—Magistrate bound to receive complaint.*—A Magistrate can take cognizance of offences which he is competent to try, subject to the provisions of s. 177, Crim. Pro. Code. That section directs that "ordinarily" an offence shall be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed. The use of the word "ordinarily" indicates that this rule is to be read subject to any special provisions of law which may modify it, and the rule is relaxed or modified in several of the succeeding sections of the Code, and it must be read subject to the special provisions of s. 197, cl. 2. The power given in s. 197 (2) overrides the general rule contained in s. 177. *Held*, that the Local Government was entitled to specify any Court for the trial of a public servant, charged with offences under ss. 161 and 164, I.P.C., committed in Upper Burma, within the local jurisdiction of the Judicial Commissioner, Upper Burma, and that a Magistrate within the jurisdiction of the Chief Court of Lower Burma, who refused to receive a complaint presented by the Government Advocate, Mandalay, erred in holding that he had no power to receive the complaint. **4 L.B.R. 265=8 Cr. L.J. 70.**

(1458)—S. 197—*See* MAD. ACT I OF 1884, s. 341, 25 M. 15=2 Weir 223.

(1458-*a*)—S. 197—*See* PUN. ACT XIII OF 1884, s. 8, 14 P.R. 1890 Cr.

(1459)—S. 197—*See* FALSE EVIDENCE, 23 M. 223=1 Weir 152.

(1460)—Ss. 197, 532—*See* HIGH COURT, JURISDICTION OF, 9 B. 288. F.B.

(1461)—S. 197—*See* MAD. REG. XI OF 1816, 23 M. 540=2 Weir 222.

(1462 and 1463)—S. 197—*See* SANCTION TO PROSECUTE, 4 B. 357, 4 M.L.T. 473. 26 C. 852=3 C.W.N. 539, 9 M. 439=2 Weir 213, 16 M. 468=3 M.L.J. 227=2 Weir 220, 27 M. 54, 4 M.L.T. 473=32 M. 255=9 Cr. L.J. 89=3 Ind. Cas. 387, 1 Weir 243, 2 Weir 213=7 M.H.C. 58, 2 Weir 221, Col. Dig. Cr. 85 of 1877, 9 P.L.R. 1905, 27 M. 54.

(1464 and 1465)—Ss. 197, 215, 235, 532—*See* SANCTION OF PROSECUTE, 13 C.P.L.R. 126 Cr., 13 C.W.N. 1062.

(1465-*a*)—S. 197—*See* Nos. 99, 1288, 1445, *supra*, and No. 3552, *infra*.

——S. 198 (=1882, s. 198; 1872, s. 142, para 2; 1861, s. 177).

See COMPLAINANT.

See COMPLAINT.

(1466)—*S. 198—Bigamy, charge of—Persons competent to complain.*—The brother of the second (bigamous) husband of the accused is not a "person aggrieved," within the meaning of s. 198, Crim. Pro. Code. He is, therefore, not competent to prefer a charge of bigamy. **25 A. 132=A.W.N. 1902, 198.** [*R.*, 3 C.L.J. 38=3 Cr.L.J. 187, 11 O.C. 148=7 Cr.L.J. 457].

(1467)—*S. 198—Complaint need not specifically allege under what section of I.P.C., the offence falls.*—S. 198 is intended to prevent Magistrates from enquiring into cases coming under ss. 493 to 496, unless the husband or some person aggrieved lodges a complaint. It is not necessary that a complaint should state precisely the section of the Code under which the accused shall be charged. It is sufficient if the complainant lays before the Magistrate

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matter which, if proved, would be sufficient to warrant a commitment under s. 494, although the complaint alleged facts which seemed to constitute the offence provided for by s. 498. **25 A. 209 = A.W.N. 1903, 7.** [*R.*, 3 C.L.J. 38 = 3 Cr. L.J. 187].

(1468)—*S. 198—"Person aggrieved"—Defamation of a Hindu widow—Complaint by brother, whether valid.*—Where imputations were made against the character of a Hindu lady, a widow living in her brother's house, *held*, that, having regard to the circumstances and conditions under which people live in that part, the brother was a person aggrieved within the meaning of s. 198 of the Crim. Pro. Code, and it was competent to the Court to take cognisance of the offence of defamation upon his complaint. **32 C. 425 = 8 C.W.N. 515.** [*Expl.*, 3 C.L.J. 38; *D.*, 32 C. 1060 = 9 C.W.N. 847 = 2 C.L J. 396].

(1469)—*S. 198—Offence relating to marriage—Bigamy—Cognizance of offence—"Person aggrieved," meaning of—Person competent to institute and carry on proceeding—Father of a lunatic, whose wife has been married a second time, if an aggrieved person in the legal sense—Penal Code, s. 494.*—It is impossible to lay down any inflexible rule for determining, in every case, whether the complainant is a person aggrieved by the offence alleged within the meaning of s. 198 of the Crim. Pro. Code; it must be determined, in each case, according to its own circumstances, whether the complainant can be said to be in a legal sense a person aggrieved. Where the complainant is the head of his family, his son is a lunatic and his daughter-in-law had been living under his protection and an allegation is made that she was taken away to the house of her father and subsequently married to another person, the offence, if true, seriously affects his reputation and status in society and the father-in-law is a "person aggrieved," within the meaning of s. 198 of the Code and is competent to institute the complaint. *Per* MOOKERJEE, J.—The grievance referred to in the words "person aggrieved" in s. 198 of the Code does not contemplate any fanciful or sentimental grievance: it must be such a grievance as the law can appreciate; it must be a legal grievance and not a *stat pro ratione voluntas reason*. **3 C.L.J. 38 = 3 Cr. L.J. 187.**

(1470)—*S. 198—Imputation of unchastity against wife—Complaint by husband—Penal Code, s. 499, Expl. 1.*—Having regard to Expln. 1 to s. 499, Penal Code, the husband is a person aggrieved within the meaning of s. 198, Crim. Pro. Code, in a case in which the imputation of unchastity is made and published in respect of his wife. **15 M.L.J. 224 = 2 Cr. L.J. 381.**

(1471)—*S. 198—Complaint under s. 494, Penal Code—Aggrieved party—Mother of a minor husband, if aggrieved party.*—The words "some person aggrieved" imply that in some cases there may be more persons aggrieved than one, as for instance, where a number of persons are defamed by a single statement or where a number of persons are equally injured by a criminal breach of trust. But the mother of a minor husband, aged sixteen, is not a person aggrieved within the meaning of s. 198, Crim. Pro. Code, for the purpose of making the complaint under s. 494, Penal Code. **2 Weir 231.**

(1472)—*S. 198—"Person aggrieved"—Bigamy—Complaint by a brother of the husband—Indian Penal Code, s. 495.*—*Held*, that a brother of the husband of the woman who committed bigamy is not, as such, a person aggrieved within the meaning of s. 198, Crim. Pro. Code upon whose complaint the Court could take cognizance of an offence of bigamy. **11 O.C. 148 = 7 Cr. L.J. 457.**

(1473)—*S. 198 (= Crim. Pro. Code, 1872, s. 468)*,—An offence committed before or against a Criminal Court within the meaning of s. 468, Crim. Pro. Code does not include a false charge made in a petition presented to the police. **Colm. Dig. Cr. 28 of 1875.**

(1474)—*S. 198 (= Crim. Pro. Code, 1872, s. 468)—Subordinate Court.*—An officer invested, under s. 16 of the Act XIV of 1865, with the powers of a Deputy Commissioner is a Court, to whom the Tahsildar from whom such officer hears appeals, is subordinate within the meaning of s. 468, Crim. Pro. Code, 1872. **Colm. Dig. Cr. 60 of 1876.**

(1475)—*Ss. 198, 195 (= Crim. Pro. Code, 1872, ss. 468, 469)—Revenue Courts, whether Civil Courts.—Held by the Full Bench (Spankie., J., doubting)*:—A Revenue Court is a Civil Court within the meaning and intent of ss. 468, 469, Crim. Pro. Code. **2 A. 533, F.B.** [*F.*, 10 A. 582; *R.*, 97 P.L.R. 1903].

(1476)—*Ss. 198, 195 (= Crim. Pro. Code, 1872, ss. 468, 469)—Sanction to prosecute granted by Munsiff—Appellate powers of District Judge.*—No appeal lies to a District Judge from a sanction accorded by a Subordinate Court of the first instance to the institution of a prosecution, in cases in which such a sanction is required. **6 N.W.P. 124.** [*D.*, 1 A. 17, F.B].

(1477)—*Ss. 198, 487 (= Crim. Pro. Code, 1872, ss. 468, 473)—Offence of preferring a false charge to the police—Jurisdiction.*—Where, on a charge of theft being preferred to the police, they brought it to the notice of the Magistrate, who directed them to investigate the truth of it, and on the police reporting that the charge was false, the Magistrate took proceedings against the person preferring the charge under s. 211, I.P.C., *held*, that the Magistrate was not precluded from trying the case himself, by reason of the provisions of ss. 468, 473, Crim. Pro. Code, as the charge was made to the police and not to the Magistrate, and that neither the Magistrate's sanction nor that of some superior Court was necessary to its trial by another Magistrate. **3 A. 322.** [*R.*, 14 C. 707, F.B].

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(1478)—*Ss. 198, 476, 487 (=Crim. Pro. Code, 1872, ss. 468, 471, 473)—Trial for offences against public justice—Jurisdiction.*—The only case where a Criminal Court cannot itself try an offence committed before it, is that described in s. 473, Crim. Pro. Code, which relates exclusively to contempts of Court. A charge under s. 193, I.P.C., not being in contempt of Court, the Magistrate before whom the offence was committed may himself try the case. **1 A. 162.** [*Overruled*, 1 A. 625, F.B.; *Diss.*, 1 B. 311].

(1479)—S. 198—*See* ABETMENT, 8 P.R. 1891 Cr.

(1480)—S. 198—*See* ADULTERY, Cr. Rg. 7 of 1886.

(1481)—S. 198—*See* BIGAMY, 26 C. 336, 10 B. 340.

(1482)—Ss. 198, 200, 503 (1, 2, 3), 537—*See* COMMISSION, 10 P.R. 1896 Cr.

(1483)—S. 198—*See* COMPLAINT, 10 A. 39, Rat. Un. Cr. C. 327=Cr. Rg. 14 of 1887, 24 P.R. 1884 Cr.

(1484)—S. 198—*See* DEFAMATION, 18 P.R. 1889 Cr., 8 P.W.R. 1908 Cr.=7 Cr. L.J. 290=112 P.L.R. 1908=10 P.R. 1908 Cr.

(1485)—Ss. 198, 345—*See* DEFAMATION, 14 M. 379=2 Weir 230=1 M.L.J. 242.

(1486)—Ss. 198, 439, 526—*See* DEFAMATION, 3 P.W.R. 1909 Cr.=9 Cr. L. J. 154=1 Ind. Cas. 99.

(1487)—S. 198 — *See* FALSE CHARGE, 10 C.L.R. 4.

(1488-1489)—S. 198—*See* SANCTION TO PROSECUTE, 2 B. 384, 2 B. 481, 4 B. 479, 5 B. 137, Rat. Un. Cr. C. 78, 8 C. 435=10 C.L.R. 46, 6 M. 29=2 Weir 173, Col. Dig. 59 of 1876, A.W.N. 1882, 84, 3 A. 508.

(1490)—Ss. 198, 476— *See* SANCTION TO PROSECUTE, 3 A. 62, Rat. Un. Cr. C. 132.

(1490-*a*)—S. 198—*See* Nos. 114, 1250, 1280, 1281, 1282, 1285, 1299, 1350, 1351, 1400, *supra*, and Nos. 1506, 1521, 1522, 1523, *infra*.

——S. 199 (=1882, s. 199; 1872, ss. 478, 479; 1861, s. 178).

See COMPLAINANT.

„ COMPLAINT.

(1491)—*S. 199 (=Crim. Pro. Code, 1872, s. 478)—Charge of adultery — Complaint by husband.*—If a criminal charge of adultery is to be preferred, a formal complaint of that offence must be instituted in the manner provided by the law, and if it is not, s. 478 will not have been satisfied. When the husband preferred against the accused a complaint of rape on his wife, but not of adultery, *held*, that the mere circumstance of the husband appearing as a witness in the prosecution for that offence could not be regarded as amounting to the institution of a complaint for adultery in the sense of s. 478. **5 A. 233.** [*F.*, 29 C. 415, 27 M. 61=2 Weir 236; *R.*, 10 A 39=7 A W.N. 264, 30 C. 910=8 C.W.N. 17, F.B.]

(1492)—*S. 199, Crim. Pro. Code—Conviction under s. 498, Penal Code.*—If no complaint is made by any person of an offence under s. 498, proceedings cannot be initiated on a police charge sheet. **2 Weir 235.**

(1493)—*S. 199—Prosecution for adultery—Minor husband.*—A minor husband cannot be represented by another in a prosecution for adultery. **2 Weir 235.**

(1494)—*S. 199—Jurisdiction to inquire into offence under s. 498, Penal Code—Husband filing complaint—Subsequent death of husband—Its effect on jurisdiction—Criminal prosecution, abatement of.*—A Court has no jurisdiction to inquire into an offence under s. 498 of the Indian Penal Code, until a complaint is filed by the husband. Once it is done, the jurisdiction is restored and the death of the husband cannot have the effect of destroying the jurisdiction. There can be no abatement of a criminal prosecution. **1 S.L.R. Cr. 72=8 Cr. L.J. 190.**

(1495)—*S. 199—Complaint under s. 498, Penal Code, by nephew—Illness of the husband—Whether amounts to 'absence'—Construction of 'in his absence.'*—Where one K was bedridden with paralysis, and his nephew filed a complaint against several accused, alleging that they enticed away K's wife with criminal intent, *held*, that the effect of the words, 'in his absence' in s. 199 of Crim. Pro. Code, is a limit to the right of the caretaker, and that, although the wife was in charge of a caretaker, yet the complaint of the caretaker would not give the jurisdiction unless the husband be absent. The 'absence' must be absence from the place. The Legislature has made no provision for the protection of the lunatic, paralytic or invalid husbands, and the word 'absence' cannot be taken to include such cases. **3 S.L.R. 15 Cr.=9 Cr. L.J. 450=1 Ind. Cas. 941.**

(1496)—*Ss. 199 and 238—Prosecution under s. 498, Penal Code, without any complaint by the husband of an offence under s. 498, Penal Code.*—S. 199 of the Code says that no Court shall take cognizance of an offence under s. 498 of the Penal Code, except upon a complaint made by the husband of the woman. This means a complaint made by the husband of an offence under s. 498, not any complaint made by the husband. Where a person was charged with kidnapping or with abduction and the Judge convicted the accused on the evidence, merely, of an offence under s. 498, *held*, that the conviction was wrong as there was no

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specific complaint by the husband of an offence under s. 498 of the Penal Code. **27 M. 61=2 Weir 236.** [*R.*, 9 Bom. L.R. 148=31 B. 218 =5 Cr. L.J. 164].

(1497)—S. 199—*See* ADULTERY. 5 A. 233, 24 W.R. 18 Cr., 2 Weir 235=4 M.H.C. App. 55.

(1498)—S. 199—*See* CHARGE, A.W.N. 1882, 165.

(1499)—S. 199—*See* COMPLAINT, 17 C.P.L. R. 105, 10 P.R. 1883 Cr.

(1500)—Ss. 199 and 200—*See* COMPLAINT, Rat. Un. Cr. C. 584.

(1501)—S. 199—*See* MAGISTRATE, JURISDICTION OF, A.W.N. 1899, 212.

(1502)—S. 199—*See* PENAL CODE, s. 498, 23 P.R. 1895 Cr.

(1503)—S. 199—*See* RAPE, 29 C. 415=6 C. W.N. 677.

(1503-*a*)—S. 199—*See* Nos. 82, 1281, 1283, *supra*, and Nos 1730, 3041, *infra*.

—— S. 200 (=1882, s. 200; 1872, ss 44, 144; 1861, ss. 66, 273).

See COMPLAINANT.

See COMPLAINT.

(1504)—*S. 200 (= Crim. Pro. Code, 1861, s. 66)—Prescribed mode of ascertaining the matter of a complaint.*—The prescribed mode of ascertaining what a complaint is, is to examine the complainant and to reduce his examination to writing. It is irregular to endorse and return to a party his petition or complaint alleging an offence. Such papers form part of the records of a Magistrate's Court and should not be returned to the party. What the party is entitled to is an authenticated copy of the Magistrate's order on a proper stamp. **2 Weir 237.**

(1505)—*S. 200.*—The procedure applies also to complaints by Municipal officers. **U.B.R. (1892—1896), Vol. I, 131.**

(1506)—*Ss. 200, 190, 198 (=ss. 44 and 142, Crim. Pro. Code, 1872).*—Where a Sessions Judge ordered a certain person to be brought to trial, the order was forwarded by the District Magistrate to his Subordinate Magistrate for compliance. The Subordinate Magistrate then committed the person, after holding a preliminary enquiry, to the Court of Sessions for trial. *Held* that the committing Magistrate's proceedings were without jurisdiction, as he was not invested with powers under s. 142 of the Code, as the case was not transferred to him under s. 44 of the Code and the Sessions Judge's order gave him no jurisdiction. **Colm. Dig. Cr. 57 of 1876.**

(1507)—*Ss. 200 and 202—Police-report—A-form—Order on police to submit—Legality.*—On the report of the police that one W had odged a false information of theft against the

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accused, the Deputy Magistrate made an order that W should be called upon to show cause why he should not be prosecuted under s. 211, I.P.C. Subsequently, on the report of a Subordinate Magistrate, who held an enquiry into the matter, the District Magistrate in charge wanted to examine a certain woman, Lochu, before passing final orders; but for some unexplained reasons, on the date fixed for the examination of the woman, the said Deputy Magistrate recorded the following order:— "I have gone through the evidence and find there is a *prima facie* case against the accused. Call for A-form, and Lochu, being a creature of his, need not be examined." *Held*, that the order passed by the Deputy Magistrate directing the police to send up A-form against the accused was without jurisdiction and must be set aside, inasmuch as the Deputy Magistrate passed the order without having proceeded in accordance with the provisions of s. 200 or s. 202, Crim. Pro. Code, and as, moreover, at the time the order was passed, there seems to have been before him no materials, which would have warranted him in either directing the issue of process against the accused or in directing the police to send up the A-form. **10 C.W.N. 773=3 Cr. L.J. 471.**

(1508)—*Ss. 200 and 202—Complaint—Judicial inquiry—Cognizance—Jurisdiction.*—On the complaint of a person, who had no personal knowledge of the matter complained of, a judicial inquiry was directed, and on the report thereof, proceedings were taken. *Held* that there was no complaint under s. 200, Crim. Pro. Code, properly so called, on which a judicial inquiry could be directed. The proceedings were quashed. **11 C.W.N. 170=5 Cr. L.J. 13.**

(1509)—*Ss. 200, 203—Applicability to s. 552.*—The provisions of ss. 200 and 203 do not apply to s. 552 where no offence is alleged. **4 Bom. L.R. 609.**

(1510)—*Ss. 200, 203, 204—Complaint—Examination of complainant by Subordinate Magistrate—Order passed by District Magistrate—Order in the absence of the complainant—Directions by District Magistrate.*—A direction by a District Magistrate, that as regards a particular class of cases, Subordinate Magistrates taking cognizance of them are not to pass orders under s. 203 or s. 204, Crim. Pro. Code, but to submit them to him, is clearly illegal. The Magistrate, who receives a complaint and examines the complainant, must deal with it himself under s. 203 or s. 204 of the Code and cannot send it to the District Magistrate for orders. It is improper for a Magistrate to dismiss a complaint while sitting in his private room and without giving the complainant or his pleader an opportunity of being heard. **10 C.W.N. 1086=4 Cr. L.J. 213.**

(1511)—*Ss. 200 and 488 (=Crim. Po. Code, 1882, ss. 200, 488)—Appearance in open Court of* pardanashin *applicants.*—*Held* that, although

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s. 200, Crim. Pro. Code, applies to maintenance cases, yet *pardanashin* applicants need not necessarily appear in open Court out of purdah. **S.C. 142, Oudh.**

(1512)—*Ss. 200, 533—Statement of complainant, defectively recorded.*- There is no provision with regard to complaints analogous to that contained in s. 533, with reference to confessions or other statements of an accused person. **6 C.W.N. 840.**

(1513)—*Ss. 200, 537—Non-compliance with the provisions of s. 200, effect of.*—S. 537 does not apply to a non-compliance with the provisions of s. 200 in the recording of the statement of the complainant. **6 C.W.N. 840.**

(1514)—*Ss. 200, 190 (=ss. 44, 141, Crim. Pro. Code, 1872)*—*See* ACT I OF 1871, 26 P.R. 1879 Cr., F.B.

(1515 and 1516)—Ss. 200, 202—*See* COMPLAINT, 18 A. 221, Rat. Un. Cr. C. 625=Cr. Rg. 51 of 1892, Rat. Un. Cr. C. 954, 2 Weir 22=2 Weir 237=7 M.H.C. App. 31, 11 C.W.N. 170=5 Cr. L.J. 13, A.W.N. 1884, 47.

(1517 to 1519)—Ss. 200, 202, 203, 204, 403, 407—*See* COMPLAINT, A.W.N. 1881, 23, 14 C. 41, 13 B. 600.

(1520)—Ss. 200, 202, 303—*See* COMPLAINT, 3 C.W.N. 17.

(1521)—Ss. 200, 190, 198, 253, 426, 439 (1 to 4), 440—*See* DISCHARGE OF ACCUSED, 6 M. 25.

(1522)—Ss. 200, 190, 198, 258, 438, 436—*See* DISCHARGE OF ACCUSED, Rat. Un. Cr. C. 76.

(1523)—Ss. 200, 190, 198, 253, 435 (1 to 3), 436, 438 (1)—*See* MAGISTRATE JURISDICTION OF, 2 B. 534.

(1524)—Ss. 200, 243, 244, 252—*See* PRACTICE AND PROCEDURE, U.B.R. (1897—1901), Vol. I, 67.

(1524-*a*)—S. 200—*See* Nos. 38, 49, 80, 331, 1013, 1158, 1252, 1253, 1265, 1284, 1285, 1286, 1302, 1311, 1352, 1482, 1500, *supra*.

——S. 201, para 1 (=1882, s. 201; 1872, s. 145); para 2, new.

See COMPLAINT.

(1525)—*S. 201—Examination of complainant upon oath.*—When a written complaint made before a Magistrate is obscure or vague, the Magistrate is bound to examine the complainant at sufficient length for the purpose of clearly ascertaining the allegations on which the complaint is based. When, however, the complaint is made in writing and is sufficiently clear, it may frequently be a sufficient compliance with s. 201 if the Magistrate reads it over to the complainant and the latter is asked on oath to subscribe to it. **6 Bom. L.R. 662.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1526)—Ss. 201, 202, 203—*See* PENAL CODE, s. 211, 12 Bom.L.R. 229.

(1526-*a*)—S. 201—*See* Nos. 49, 1302, 1518, 1519, *supra*.

——S. 202 (=1882, s. 202; 1872, s. 146; 1861, s. 180).

See COMPLAINT.

(1527)—*S. 202—Ascertaining of the truth of the complaint before issuing process.*—A Magistrate having jurisdiction to ascertain the truth of the complaint may, before issuing the process, under s. 202, take any preliminary steps for finding out whether the complaint is true or not. He may call upon the accused to show cause why a process should not issue against him. Accused may appear or not in obedience to this, whereas, under a process issued under s. 202, the accused is bound to appear. **6 Bom. L.R. 91.**

(1528)—*S. 202 (=Crim. Pro. Code, 1882, s. 202)—Presentation of complaint—Duty of Magistrate.*—It is the duty of a Magistrate, on a complaint being presented to him, to examine the complainant and then either to issue process or make an order under s. 202, Crim. Pro. Code. **Rat. Un. Cr. C. 368=Cr. Rg. 17 of 1888.**

(1529)—*S. 202 (=Crim. Pro. Code, 1882, s. 202)—Public servant as accused—Calling for report—Validity.*—S. 202 does not contemplate that any report can be called for from an accused, if the accused happens to be an officer subordinate to the Magistrate. A dismissal of a complaint on a perusal of such a report is irregular, and the order of the Magistrate refusing to entertain the complaint for such reason will be set aside. **14 C. 141**, [*R.*, Rat. Un. Cr. C. 954; *Diss.*, 28 A. 421=A.W.N. 1906, 76=3 A.L.J. 224=3 Cr. L.J. 327].

(1530)—*S. 202 (=Crim. Pro. Code, 1882, s. 202)—Reference to Police for inquiry and report.*—A reference to the police, under s. 202, can be made only before inquiry begins, and cannot be made after evidence has been taken for the complainant and process issued. In order to make such reference, the section provides that process may be postponed. **9 M. 282=2 Weir 243.**

(1531)—*S. 202—Postponement of issue of process without recording reasons.*—Under s. 202, a Magistrate distrusting the statement of the complaint may record his reasons when the complainant is examined, and may then postpone the issue of process for compelling the attendance of the person complained against, and inquire into the case himself or direct local investigation by a subordinate officer or by a police officer for the purpose of ascertaining the truth or falsehood of the complaint. The failure of a Magistrate to record the reason is at most an irregularity and it is not a ground for setting aside an order for postponement, unless it has occasioned a failure of justice. **25 M. 546=2 Weir 245.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1532)—*S. 202—Postponement of issue of process and reference to police in petty cases.*—It is an abuse of powers given by s. 202, to refer petty cases, *e.g.*, an assault of a petty character to the police for enquiry; the proper course for the Magistrate is to take action on the complaint at once, unless it is manifestly false, in which compensation can be made to the accused by a summary order. **19 P.R. 1894 Cr.**

(1533)—*S. 202 (=Crim. Pro. Code, 1872, s. 146)—Discharge of accused on report by Subordinate Magistrate without examining prosecution witnesses.*—In a case sent up by the police, the District Magistrate sent the accused in the custody of police to a subordinate Magistrate for enquiry and on receiving the latter's return, discharged the accused without taking the evidence of witnesses named for the prosecution. *Held*, that the discharge was illegal and the case ought to be re-tried. **8 P. R. 1880 Cr.**

(1534)—*Ss. 202, 148 and 293—Local investigation—Powers of Magistrate—Whether Magistrate can give evidence in a case tried by him.*—There may be cases, in which it is desirable that a judicial officer should see the place, in which an occurrence which is the subject of a judicial investigation before him has taken place, in order to enable him to understand the evidence which is laid before him; but when an officer visits a place for this purpose he should take care that no information reaches him with reference to the occurrence, which he is to investigate, beyond what he acquires from the view of the place. When there is a dispute as to the exact spot in which the occurrence is said to have taken place, he must defer his visit to the spot until he has heard the whole of the evidence. Where a Magistrate who was trying a case of some complexity arising out of disputed boundaries to land made a very careful and conscientious investigation of the locality, such as would properly be made by a person whose duty it was to get at the facts with a view to lay the same before some tribunal, but the information which he sought and obtained was not guarded by the safe guards, by which statements on which a Judge or a Magistrate exercising judicial functions can act, must be guarded, *held*, that the notes of the Magistrate should not be put on the record, although the Magistrate tendered himself, while trying the case, as a witness to be cross-examined by either the prosecution or the defence. *Held*, also, that the case should be transferred to another Magistrate. [*F*, 6 M.L.J. 143=19 M. 263=2 Weir 725; *R.*, 19 A. 302.] When a Judge is the sole Judge, both of law and fact, he cannot give evidence before himself. Therefore the suggestion of the Magistrate in 1 *supra*, that he would enter the witness-box and be examined and cross-examined by pleaders of the party on the information acquired by the local enquiry

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was one which would be impossible and be illegal for him to carry out. **21 C. 920.** [*F.*, 6 M.L.J. 143=19 M. 263=2 Weir 725; *R.*, A.W. N. 1904, 157=27 A. 33].

(1535)—*Ss. 202, 203--Dismissal of complaint on police investigation.*—The dismissal of a complaint, after considering the result of a police investigation directed by a Magistrate under s 202, is authorised by s. 203. **6 Bom. L.R. 662.**

(1536)—*Ss. 202 and 203—Dismissal of complaint without observing the procedure laid down in the section.*—A Magistrate transferred to his own file a case pending before a Subordinate Magistrate and referred it to the police for inquiry, on the ground that the police who had investigated a charge of misappropriation brought against the complainant and his brother, must know a good deal about the matter. On the receipt of a report from the police, the Magistrate dismissed the complaint. *Held*, that the order of dismissal was not proper, as the Magistrate had not followed the procedure prescribed by ss. 202 and 203. **2 Weir 244.**

(1537)—*Ss. 202, 203 and 537—Failure to comply with the provisions of s. 202—Effect of, on dismissal of complaint*—Failure by Magistrate to record his reasons for doubting the truth of a complaint as required by s. 202, is an irregularity which, under s. 537, unless it occasions a failure of justice, is no ground for setting aside an order of dismissal of complaint under s. 203. **2 Weir 244.** [*F.*, 25 M. 546= 2 Weir 245].

(1538)—*Ss. 202, 435 (=Crim. Pro. Code, 1882, ss. 202, 435)—Dismissal of complaint —Complainant having no personal knowledge of facts complained of.*—Under s. 202, Crim. Pro. Code, the evidence need not be confined to that of the complainant. The section leaves it in the discretion of the Magistrate to examine such witnesses and make such enquiries as he thinks fit. A complaint should not be dismissed on the ground that the complainant has no personal knowledge of the circumstances alleged by him. The Magistrate should allow the complainant to bring forward evidence to prove them. **Rat. Un. Cr. C. 669=Cr. Rg. 27 of 1893.**

(1539)—*Ss. 202, 203—Departmental enquiry previous to complaint.*—A departmental enquiry previous to the complaint, in which the person complained against has been exonerated, is no substitute for the enquiry or investigation directed by s. 202, Crim. Pro. Code. **33 P.R. 1887 Cr.**

(1540)—*Ss. 202, 203, 437 and 439—Dismissal of complaint by Presidency Magistrate—Power of High Court to direct further enquiry—S. 15, Charter Act—Powers of investigating officer.*—The powers of the High Court, under s. 203, to

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interfere with orders of a Presidency Magistrate, are limited. Where a Presidency Magistrate dismisses a complaint under s. 203, the High Court cannot direct a further enquiry under s. 437, nor can they interfere under s. 439, although the order of the Magistrate, dismissing the complaint, might not be quite proper. They can only act under s. 15 of the Charter Act, but the question of propriety or impropriety of the order does not strictly come within the authority vested by s. 15 of the Charter Act. There is nothing in s. 202 to prevent an investigating officer from making a full enquiry, by obtaining information from the complainant and his witnesses, and the defendant and his witnesses, if any. **33 C. 1282=5 Cr. L.J. 83.**

(1541)—*Ss. 202, 203 and 441—Magistrate not recording reasons as required by ss. 202 and 203—Effect—Effect of statement under s. 441.*—Mere omission by a Magistrate to record his reasons before referring a case under s. 202 for enquiry by the police, and for dismissing a complaint under s. 203, is an irregularity. But a statement filed under s. 441 supplies the omission. So, after the filing of such a statement, such an omission does not call for the interference of the High Court with an order made under those sections. **5 M.L.T. 79=2 Ind. Cas. 618.**

(1542)—*Ss. 202, 204, 242, 244 and 439—Case being tried by a Magistrate who issued process on complaint without inquiry under s. 202—District Magistrate ordering the police subsequently to make independent investigation even as head of Excise Administration illegal—Interference by the Chief Court—Excise Act XII of 1896.*—A complaint was filed on behalf of the Collector in the Court of a Magistrate of the first class, against S, under s. 49 of Act XII of 1896. Process was issued under s. 204, Crim. Pro. Code, without any inquiry under s. 202, and proceedings under ss. 242 and 244 of the same Code, were also taken by the said Court. Notwithstanding this, the said Collector who also was the District Magistrate ordered the police to make independent investigation in the case. On being asked by the Chief Court, the District Magistrate explained he acted as Head of the Excise Administration. *Held*, that the procedure adopted by the District Magistrate as such or as a Collector, was wholly illegal and *ultra vires*. *Held*, also, that, when an illegal order is passed and action taken which involves matters coming within the purview of Law and Justice and within the scope of authority of the Courts, such authority cannot be ousted by the mere *ipse dixit* of the Officer, that he was not acting as a Judicial Officer, but in his executive capacity and the High Court can interfere on revision side. **1 P.W.R. 1908 Cr.=4 P.R. 1908 Cr.=86 P.L.R. 1908=7 Cr. L.J. 202.**

(1543)—*Ss. 202 (1), 340 and 526—Application for transfer of case—Complaint—Examination*

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under s. 200—Person complained against not allowed to cross-examine complainant's witnesses in preliminary inquiry held under s. 202 (1)—Whether any bias implied by refusal—Person compiained against—Accused person.—A person complained against does not become an accused person, until it has been decided to issue process against him, under Ch. XVI of the Crim. Pro. Code. S. 340 does not, hence, entitle a person complained against to be represented by a pleader during the preliminary inquiry which may be held under s. 202 (1). If he chooses to attend the proceedings, he may of course do so, like any other member of the public; but he has no *locus standi* as a party, the purpose of the law being clearly to exclude him until sufficient ground for joining him has been made out by the complainant. Where, therefore, a Magistrate acting under s. 202 (1), Crim. Pro. Code, refused permission to the person complained against to cross-examine the complainant's witnesses and an application for transfer of the case was made to the Judicial Commissioner's Court on the ground, *inter alia*, that the Magistrate's refusing permission to cross-examine the complainant's witnesses gave cause to apprehend some bias in his mind against the person complained against. *Held*, dismissing the application, that there was no reason to think that the Magistrate was biased against the accused or that the latter had any plausible grounds for apprehending its existence. **4 N.L.R. 81=8 Cr. L.J. 20.**

(1544)—*Ss. 202, 437 (=Crim. Pro. Code, 1882, ss. 202 and 437)—Discharge of an accused person—Order for further inquiry by police, validity of.*—S. 202 has application only to a complaint of an offence on which the Magistrate does not deem it fit to issue a process. It does not authorise the police to hold what may be regarded as an inquiry into the propriety of an order of discharge already made by a Magistrate. The proper authority to inquire whether there is ground for reviving the case, is the Magistrate himself who discharges the accused. He must take further evidence and then recommend to the District Magistrate or the Sessions Court or the High Court that the prosecution should be revived, if the further evidence indicated such revival necessary in the interests of justice. **2 Weir 239.**

(1545)—*Ss. 202, 476—Absence of notice—Sanction.*—Where a District Magistrate directed a Deputy Magistrate to inquire into the truth of a complaint, and on receipt of the report from that officer, ordered the prosecution of the complainant for an offence under ss. 182, 211 of the Penal Code, without giving him an opportunity to substantiate the truth of the complaint or show cause against the order, *held* that the order was illegal. **A.W.N. 1900, 187.**

(1546)—*Ss. 202, 356 (=Crim. Pro. Code, Act X of 1882, ss. 202, 356)—Direction by District Magistrate to summon accused after evidence—Legality—Vernacular record.*—Where a District

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Magistrate, to whom a complaint under ss. 330 and 348 was made against some police officers, made over the case to the Joint Magistrate directing that such Magistrate should hear the complainant and his evidence and then summon the accused if he thought the case was well-founded, *held* that the order was illegal under s. 202 of the Crim. Pro. Code. Where such Joint Magistrate, in hearing the evidence of the complainant and his witnesses, made no vernacular record of the evidence and examined witnesses who, the complainant alleged, had been bought over by the opposite party, *held* that the procedure was illegal under ss. 202 and 356 of the Crim. Pro. Code. **A.W.N. 1890, 164.**

(1547)—*S. 202 (=Crim. Pro. Code, 1898, s. 202)—Cognizance of case by Magistrate—Reference to police for investigation.*—A Magistrate cannot order a police investigation into a case of which he has taken cognizance, except under the conditions stated in s. 202, Crim. Pro. Code, that is to say, when for reasons stated by him, he distrusts the truth of the complaint. **A.W.N. 1902, 195.** (20 M. 387, A.W.N. 1884, 47, *F.*)

(1548)—*S. 202 (=Crim. Pro. Code, Act V of 1898, s. 202)—Procedure—Local investigation.*—If a Magistrate acts under s. 202 of the Crim. Pro. Code, he is bound to record his reasons. The section does not empower action being taken after the close of the prosecution case. **A.W.N. 1900, 187.**

(1549)—*S. 202 (=Crim. Pro. Code, Act X of 1882, s. 202)—Applicability to proceeding under s. 117.*—S. 202 of the Crim. Pro. Code applies only in cases where no process has been issued to compel the attendance of the accused. It does not apply to a case where a person has been called upon to show cause, under s. 117, why security to keep the peace should not be taken from him. **A.W.N. 1896, 140.**

(1550)—Ss. 202, 203, 437—*See* COMPLAINT, 9 A. 85.

(1551)—Ss. 202, 203, 476—*See* COMPLAINT, 27 C. 921, 4 C.W.N. 305.

(1552)—Ss. 202 and 350—*See* COMPLAINT, 9 M. 282=2 Weir 243.

(1553)—Ss. 202 and 203—*See* DEFAMATION, 4 P.W.R. 1910 Cr.

(1554)—Ss. 202, 203—*See* FALSE CHARGE, 4 A. 182.

(1555)—Ss. 202 and 203—*See* FURTHER ENQUIRY, 5 A.L.J. 74=A.W.N. 1908, 45=7 Cr. L.J. 157.

(1556)—Ss. 202, 203, 422—*See* FURTHER ENQUIRY, 7 C.W.N. 80.

(1557)—Ss. 202, 203, 437 and 439—*See* FURTHER ENQUIRY, 11 P.W.R. 1908 Cr.=7 Cr. L.J. 347.

(1558)—Ss. 202, 556—*See* MAGISTRATE, JURISDICTION OF, 24 C. 167.

(1559)—S. 202—*See* PLEADER, 8 B.H.C. A.C.J. 202.

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(1560)—S. 202—*See* POLICE ENQUIRY, 19 P.R. 1894 Cr.

(1561)—S. 202—*See* PRELIMINARY ENQUIRY, 4 C.L.R. 413.

(1562)—Ss. 202, 203, 476—*See* PRELIMINARY ENQUIRY, S.C. 284, Oudh.

(1563)—Ss. 202, 203 and 476—*See* SANCTION TO PROSECUTE, 7 M. 189=2 Weir 585.

(1563-*a*)—S. 202—*See* Nos. 49, 998, 1010, 1012, 1013, 1020, 1158, 1253, 1254, 1328, 1416, 1507, 1508, 1516, 1517, 1518, 1519, 1520, 1526, *supra*, and Nos. 1587, 3184, *infra*.

——S. 203 (=1882, s. 203; 1872, s. 147; 1861, s. 67).

See COMPLAINT.

(1564)—*S. 203—Jurisdiction to entertain fresh complaint, after dismissal of complaint on the same facts.*—A complaint was filed by a woman charging the accused with certain offences, one of them being that her daughter had been wrongfully taken away by the accused. This complaint was dismissed, and thereupon another complaint was preferred by the husband on the same facts, although the offences suggested by the complaints were different. *Held*, that the Magistrate had jurisdiction, and was bound to entertain the second complaint and deal with it according to law. **29 A. 7=3 A.L.J. 562=A.W.N. 1906, 245=4 Cr.L.J. 59.**

(1565)—*S. 203—Examination of the complainant.*—When a deposition in the shape of a complaint is made orally or in writing and is sworn to, the requirements of s. 203 in regard the examination of the complainant are sufficiently complied with. **4 Bom. L.R. 609.**

(1566)—*S. 203 (=Crim. Pro. Code, 1882, s. 203)—Applicability of.*—S. 203 of the Crim. Pro. Code applies only to cases falling within Ch. XVI where there has been no issue of process. Where the accused has been summoned to answer a charge, there is a proceeding within the meaning of Ch. XVII, and the complaint cannot be dismissed under s. 203. **Rat. Un. Cr. C. 544=Cr. Rg. 18 of 1891.**

(1567) *S. 203—Penal Code, s. 211—Institution of criminal proceedings before Police—Prosecution of the complainant under s. 211*—According to the decisions of the Calcutta High Court when a person institutes before the police criminal proceedings, which, on enquiry, are found to have no justification, before he can be prosecuted under s. 211 of the Penal Code, he must first have an opportunity afforded him of proving his case against the accused; if he chooses to impugn the correctness of the police enquiry by petition, he is entitled to have the persons complained against tried on the charge, or else, the statement must be recorded by the Magistrate on oath and his complaint dismissed under s. 203, Cr. P.C. **33 C. 1=10 C.W.N. 158 =2 C.L.J. 228.** (15 A. 336, 22 B. 596, 7 M. 295, *R.*; 14 C. 707, F.B., *F.*)

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(1568)—*S. 203 (=Crim. Pro. Code, 1872, s. 147)—Penal Code, ss. 182, 211—Prosecution for false charge before judicial investigation of the complainant.*—A prosecution may be maintained, in respect of false charges made to the police or contained in a complaint, dismissed under s. 147, Crim. Pro. Code, 1872, although there has been no judicial investigation, though where the accused has been brought before a Court, it is wrong to throw out the charge against him summarily, and not to complete the enquiry set on foot by the issue of a summons or warrant for his appearance. **4 C.L.R. 413.**

(1569)—*S. 203—Dismissal of complaint—Fresh complaint without setting aside the order of discharge.*—Where a complaint is dismissed under s. 203, no fresh proceedings upon a new complaint on the same facts can be taken, unless the order of dismissal is set aside by a competent authority. **28 M. 255=2 Weir 247-A=2 Cr. L.J. 752.** [*D.*, 28 M. 310=2 Weir 325-A =2 Cr. L.J. 758; *Diss.*, 16 M.L.J. 79=1 M.L. T. 81=3 Cr. L.J. 274=29 M. 126, F.B.]

(1570)—*S. 203, dismissal of complaint under --Competency of Magistrate to re-hear the complaint without order for further inquiry from higher tribunal.*—The question in this case was whether it was open to a Magistrate to re-hear a complaint, which has been dismissed under s, 203 of the Code, the order for dismissal not having been set aside by a higher Court. *Held*, by a majority of a Full Bench (Subrahmania Ayyar and Davies, JJ., *dissenting*), that it is competent for a Magistrate, who has once dismissed a complaint under s. 203 to re-hear the complaint, although his order of its dismissal has not been set aside by a higher Court. *Held*, per Subrahmania Ayyar, J., *dissentiente* (Davies, J, *concurring*):—If it is justice that a person prosecuted on a former occasion upon evidence, which appeared sufficiently strong to warrant his being put on trial and being called upon for defence, should not be vexed again in the matter when the trial terminates in his favour, it must *a fortiori* be so when the evidence, on which his prosecution was initiated, was so weak as to justify the trial being concluded earlier and the accused discharged and saved from even the necessity of entering upon the vindication of his innocence. So, when a Magistrate, after examining the complainant and taking the steps to satisfy himself as to the complaint being well founded or otherwise, dismisses it under s. 203, the complainant should not be permitted to renew his complaint so long as the order against him stands undisturbed. **1 M.L.T 31, F.B.=29 M. 126=16 M. L.J. 79=3 Cr. L.J. 274.**

(1571)—*S. 203 (=Crim. Pro. Code, 1882, s. 203)—Case forwarded by police to Magistrate subsequently to his dismissing it.*—It is not only competent to a Magistrate but it is also incumbent upon him to take upon his file a cognisable case forwarded to him by the police,

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although he may have previously dismissed the same case under s. 203, on a complaint. **S. C. 230, Oudh.**

(1572)—*S. 203—Dismissal of complaint whether evidence of want of reasonable cause for prosecution.*—The dismissal of a complaint under s. 203 of the Crim. Pro. Code does not necessarily prove the want of reasonable and probable cause for the prosecution as against the complainant or prosecutor. **S.C. 294, Oudh.**

(1573)—*Ss. 203, 204 and 437—Conviction by Magistrate under s. 426, Penal Code—Power of District Judge to direct further enquiry on offence not charged and against persons not summoned to appear before Magistrate.*—On a complaint made to a Magistrate, he convicted one of the accused of mischief and sentenced him to fine. On application made to the Sessions Judge, he directed a further enquiry to be made by the Magistrate into another offence, *viz.*, under s. 144 of the Penal Code in respect of that accused, no charge of any such offence having been made at any time against him. He also directed a further enquiry against the other accused who, apparently, were mentioned in the complaint, but who had not been summoned to appear before the Magistrate. *Held*, that the Sessions Judge was without jurisdiction, not being within the powers prescribed by s. 437, inasmuch as the complaint was not dismissed under s. 203, or s. 204, sub-s. 3, and as none of the accused had been discharged. **27 C. 658.**

(1574)—*Ss. 203, 257, 437—Order directing the withdrawal of prosecution and of process against accused.*—Where, on the acquittal of a co-accused, the other accused against whom process of arrest had been issued, surrendered before the Deputy Magistrate, and he passed an order directing that the accused should not be proceeded against and that the warrant and other processes issued against him be withdrawn, *held*, that the order was bad in law, as it was not one either under s. 203, of dismissal of a complaint, or an order of discharge of the accused, and that the District Magistrate had, therefore, no jurisdiction under s. 437 to set aside the order and direct the re-trial of the accused. **12 C.W.N. 68.**

(1575)—*Ss. 203 and 350 (=Crim. Pro. Code, 1882, ss. 203 and 350) —Commencement of trial afresh.*—A complainant's examination was recorded and the Magistrate, who took it, then sent the case to the police for enquiry. The police as the result of their enquiry sent up the accused for trial. The same Magistrate recorded the evidence for the prosecution as well, apparently as that of some witnesses whom he examined of his own motion; he examined the accused, framed a charge, took the defence of the accused and issued processes for the attendance of witnesses for the defence. At this stage that Magistrate was succeeded by another, who elected under s. 350, Crim. Pro. Code, to

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recommence the trial, and, being under the impression that "this brought the case down to the stage at which it was after the complainant's statement had been recorded and the preliminary enquiry made," he dismissed the complaint under s. 203, Crim. Pro. Code. Held that it was no longer a question of deciding whether or not proceedings should be taken as on a complaint; the question was of either taking up the proceedings at the point to which they had been brought or recommencing the trial. If the Magistrate elected the latter course he was bound, under s. 350 of the Code, to "resummon the witnesses and recommence the trial." It was certainly not "recommencing trial" to summarily dismiss the complaint under s. 203. **7 C.P.L.R. Cr. 36.**

(1576)—*Ss. 203 and 367—Complaint, dismissal of—Fresh complaint on the same facts, when can be entertained.*—A Magistrate, dismissing a complaint under s. 203, may entertain a fresh complaint upon the same facts. But, if the order of dismissal or discharge should amount to a judgment, within the meaning of s. 367, a fresh complaint cannot be entertained. **1 N.L.R. 18.**

(1577)—*Ss. 203, 435 and 437—Complaint, revival of—Power of the Subordinate Magistrate to revive a complaint dismissed by him after District Magistrate has declined to order further inquiry.*—There is nothing illegal in or *ultra vires* of a Deputy Magistrate reviving a complaint which he had dismissed under s. 203, Crim. Pro. Code, after the District Magistrate has, on an application made to him, declined under s. 437, Crim. Pro. Code, to order further inquiry into the complaint. **13 C.W.N. 193 = 5 M.L.T. 95 = 36 C. 415 = 9 Cr. L.J. 563 = 2 Ind. Cas. 293.**

(1578)—*Ss. 203, 437 (= Crim. Pro. Code, 1872, ss. 147, 298)—Order of first class Magistrate dismissing complaint—Powers of Sessions Judge.*—Where a Magistrate of the first class passes an order dismissing a complaint under s. 147 of the Code of 1872, the order is subject, under s. 298, to the orders of the Sessions Judge. **2 C.L.R. 315.**

(1579)—*Ss. 203 and 437 of the Code of 1898 (= ss. 147, 298, Code of 1872)—Dismissal of complaint—Power of another Magistrate to receive the same complaint.*—When a complaint has been dismissed under s. 147, another Magistrate of competent jurisdiction cannot, without an order under s. 298, receive the same complaint, and, taking it on his file, dispose of it according to law. **2 Weir 247.** [*F.*, 2 Weir 247, Note].

(1580)—*Ss. 203, 437 (= Crim. Pro. Code, 1882, ss. 203 and 437)—Dismissal of complaint—Competency of succeeding Magistrate to receive a second complaint on the same facts.*—It is not competent to a Magistrate to entertain, otherwise than under the direction of the District Magistrate, a second complaint on the same facts upon which a complaint made to his predecessor was dismissed under s. 203. **2 Weir 247, Foot-note.**

(1581)—*Ss. 203, 437 (= Crim. Pro. Code, Act X of 1882, ss. 203, 437)—Dismissal of complaint—Fresh complaint.*—A Magistrate who has dismissed a complaint under s. 203 of the Crim. Pro. Code, might at the instance of the complainant himself entertain a fresh complaint on the same facts, without any direction to that effect from a superior authority under s. 437. **A.W.N. 1895, 86.** (9 A. 52 and 9 A. 85, *R.*). [*F.*, 29 A. 7 = 3 A.L.J. 562 = A.W.N. 1906, 245 = 4 Cr. L.J. 59; *R.*, 22 A. 106 = A.W.N. 1899, 211; *D.*, A.W.N. 1899, 201].

(1582)—*Ss. 203, 253, 403, 437, 438, 439—Revival of prosecution—Complaint dismissed—Petition for revision to the Sessions Judge also dismissed—Fresh complaint on the same facts not allowed.*—*Held*, that a Magistrate cannot entertain as fresh complaint, when a previous one on the same facts has been dismissed and the order of dismissal has been upheld by the Sessions Judge. In such a case, the complainant's only remedy is to apply to the High Court for revising the lower Court's orders. **11 P.W.R. 1910 Cr.**

(1583)—S. 203—*See* ACT IX OF 1889, s. 2 (*c*), 17 M.L.J. 490 = 6 Cr. L.J. 374.

(1584)—S. 203—*See* COMMITMENT TO SESSIONS COURT, 11 C.L.R. 55.

(1585)—Ss. 203, 195, 437—*See* COMPLAINT, 2 Weir 154 = 6 M.H.C. App. 15, 24 C. 286 = 1 C.W.N. 185, 11 O.C. 261.

(1586)—Ss. 203, 437—*See* COMPLAINT, 24 C. 286 = 1 C.W.N. 185, 11 O.C. 261.

(1587 and 1588)—Ss. 203, 202, 204, 403, 436, 437, 438 (1)—*See* COMPLAINT, 3 N.W.P. 261, A.W.N. 1881, 68.

(1589)—Ss. 203, 537—*See* COMPLAINT, 9 A. 666, 23 C. 983 = 1 C.W.N. 57.

(1590)—S. 203—*See* CRIMINAL MISAPPROPRIATION, Rat. Un. Cr. C. 919.

(1591)—Ss. 203, 204 (3), 253, 437—*See* DISCHARGE OF ACCUSED, 6 C.L.J. 705 = 6 Cr. L.J. 400.

(1592)—Ss. 203, 253 and 439—*See* DISMISSAL OF COMPLAINT, 26 P.W.R. 1908 Cr. = 8 Cr. L.J. 249.

(1593)—S. 203—*See* FALSE CHARGE, 3 C.W.N. 758.

(1594)—Ss. 203, 437—*See* FURTHER ENQUIRY, Rat. Un. Cr. C. 89, 11 C.W.N. 316 = 5 Cr. L.J. 112.

(1595)—S. 203—*See* HIGH COURT, JURISDICTION OF, 12 C.W.N. 678 = 7 Cr. L.J. 499.

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(1596)—S. 203—*See* TRANSFER OF CRIMINAL CASES, 11 C.W.N. 316=5 Cr. L.J. 112.

(1596-*a*)—S. 203—*See* Nos. 38, 49, 83, 985, 1010, 1013, 1018, 1255, 1256, 1287, 1328, 1416, 1417, 1509, 1510, 1517, 1518, 1519, 1526, 1535, 1536, 1537, 1539, 1540, 1541, 1550, 1551, 1552, 1554, 1555, 1556, 1557, 1562, 1563, *supra*, and No. 2025, *infra*.

——S. 204, paras 1 and 2 (=1882, s. 204; 1872, ss. 147, 148, 149; 1861, ss. 179, 248, 257, 260); para 3, new.

(1597)—*S. 204.*—Magistrates should exercise a reasonable discretion under the above section, as to whether a warrant or a summons should issue, in the case of complaints entertained by them, and should not subject accused persons to the indignity of an arrest, unless there is real need for it. **U.B.R. (1892-1896), Vol. I, 31.**

(1598)—*Ss. 204 and 205—Object of s. 205—Substituting summonses for warrants—Exempting accused from personal appearance*—Pardanashin *ladies*.—Where some three female accused applied to the Magistrate for substituting summonses for warrants and for dispensing with their personal appearance on the allegation that they were *pardanashin* ladies, and the Magistrate dismissed the application, finding they were not *pardanashins*, *held*, that it was not a sufficient reason for his refusal to allow them the benefit of s. 205, Crim. Pro. Code. That section is one which should be freely utilized in such a country as Sind, where so much prejudice exists against the appearance of females in public, and where the procedure law is so frequently abused in order to gratify private malice. **3 S.L.R. 167 Cr.**

(1599)—*S. 204 (=Crim. Pro. Code, Act V of 1898, s. 204)—Sessions case—Duty of Magistrate—Discharge*.—Where, in a Sessions case, in the inquiry before the Magistrate, the evidence discloses a *prima facie* case against the accused, and such evidence stands unrebutted, the Magistrate cannot discharge the accused merely because the evidence appears to be improbable. In doing so, the Magistrate is really trying the case instead of merely considering whether there are sufficient grounds for a commitment. **A.W.N. 1904, 5.** (A.W.N. 1899, 61 and 135, 11 B. 372, *R.*) [*R.*, 26 A. 564=A.W.N. 1904, 125=1 A.L.J. 292].

(1600)—S. 204—*See* ACT III OF 1867, ss. 3, 4, 5, 14, L.B.R. (1872—1892), 486.

(1601)—S. 204 (1, 2)—*See* COMPLAINT, 4 C. L.R. 534, 7 M.H.C. App. 16.

(1602)—Ss. 204 (1 and 2), 205—*See* PARDANASHIN WOMAN, 21 C. 588.

(1602-*a*)—S. 204—*See* Nos. 323, 1256, 1322, 1328, 1510, 1517, 1542, 1573, 1588, 1591, *supra*.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

——S. 205 (=1882, s. 205; 1872, s. 151; 1861, ss. 182, 261).

(1603)—*S. 205—Summons case—Non-attendance on service of summons—Appearance by pleader—Penal Code, s. 174*.—In a summons case, an appearance was made on behalf of the accused, on the day fixed for trial, by his *mukhtear* who asked the Magistrate to dispense with the personal attendance of the accused. The Magistrate, however, refused to allow the application and he, regarding his non-attendance as a contempt of Court, called upon him to show cause why he should not be prosecuted under s. 174, Penal Code, for non-attendance on service of summons. *Held*, that the accused did make an appearance, though not a personal appearance, but that he did not personally attend should not, under the circumstances of the case, have been regarded as an offence under s. 174, and the fact that the accused proceeded to Calcutta, instead of attending the Magistrate's Court, to apply to the High Court against the proceedings of the Magistrate, would not make him liable to punishment under s. 174. **7 C. 985=5 C.W.N. 131.**

(1604)—*S. 205 (=Crim. Pro. Code, 1872, s. 151)—Sentence passed in absence of accused*.—Where the accused, who was arrested on a charge under s. 417, I.P.C., was left on bail, and his personal attendance during the trial was neither dispensed with, nor could be dispensed with, *held*, that taking evidence, and passing a sentence in his absence, though in the presence of his agent, was not warranted by law. The Chief Court declined to set aside his conviction and sentence on revision, until he had submitted himself before the Magistrate's Court. **18 P.R. 1880 Cr.**

(1605)—*Ss. 205, 438 and 439*—Purdah *woman—Her personal attendance when to be enforced—Doubtful complaint*.—A Criminal Court should abstain from compelling a *purdah* woman to attend in person, unless and until the case against her has reached the stage at which her personal attendance is clearly and legally required in the interests of justice. It is a part of the Court's duty to see that the machinery of a criminal trial is not utilised as a means of gratifying petty spite. **5 P.W.R. 1909 Cr.=9 Cr. L.J. 158=1 Ind. Cas. 101.**

(1606)—S. 205—*See* PURDANASHIN WOMAN, 6 A. 59.

(1607)—Ss. 205 and 496—*See* RECOGNIZANCE, 5 B.H.C. Cr. 64.

(1607-*a*)—S. 205—*See* Nos. 74, 325, 1598, 1602, *supra*.

——S. 206 (=1882, s. 206; 1872, s. 143; 1861, ss. 37 and 38).

See COMMITMENT TO SESSIONS COURT.

See MAGISTRATE, JURISDICTION OF.

See SESSIONS JUDGE, JURISDICTION OF.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1608)—*S. 206 (=Crim. Pro. Code, 1882, s. 206)—Scope—When provisions of Ch. XVIII applicable—Second class Magistrate invested with powers under s. 206—Discharge of person charged with offence under s. 392, Penal Code.* —The powers conferred under s. 206 convey authority to carry into effect any of the provisions of Ch. XVIII of the Code. The procedure to be adopted under Ch. XVIII is not confined to cases exclusively triable by a Court of Sessions, but is also applicable to cases which, in the opinion of the Magistrate concerned, ought to be tried by such Court. Where a Magistrate of the second class invested with the powers described in s. 206, Crim. Pro. Code, enquired into the case of an offence described in s. 392, I.P.C., triable by a Court of Sessions, a Presidency Magistrate and a first class Magistrate, with the idea of committing the case, after enquiry, to the Sessions and eventually discharged the accused, *held*, that his enquiry into that case should be taken to mean that, in his opinion, the case was one that ought to be tried by a Court of Session and that, his order of discharge was, therefore, legal. **6 A. 477.**

——**S. 207 (=1882, s. 207 : 1872. s. 189).**

(1609)—*Ss. 207, 254, 347—Words "ought to be tried in Court of Session" in ss. 207 and 347 explained.*—The words "ought to be tried" (by the Court of Session) in ss. 207 and 347 of the Crim. Pro. Code must be read with s. 254 of the Code; and a case which ought to be tried by a Court of Session is one which the Magistrate is not competent to try, or in which, in his opinion, adequate punishment cannot be inflicted by him. **4 Bom. L.R. 85.**

(1610)—*Ss. 207, 254, 423 (B)—Penal Code, s. 326—Jurisdiction of Magistrate.*—A reference to ss. 207 and 254 of the Crim. Pro. Code shows that it is not only cases which are exclusively triable by a Court of Sessions that ought to be committed for trial by the Sessions Court, but also cases in which the Magistrate cannot give adequate punishment. An offence, under s. 326 of the Penal Code, of cutting off a woman's nose with a knife, should be committed for trial by the Sessions Court. **Rat. Un. Cr. C. 577=16 B. 580.**

(1610-*a*)—Ss. 207, 213, 215—*See* COMMITMENT TO SESSIONS COURT, A.W.N. 1886, 256.

(1611)— Ss. 207, 215, 233 — *See* PRELIMINARY ENQUIRY, 7 Bom.L.R. 457=2 Cr. L. J. 432.

(1611-*a*)—S. 207—*See* No. 140, *supra*.

——**S. 208, paras 1, 3 and 4 (=1882, s. 208; 1872, ss. 190, 357, 362; 1861, ss. 186, 198, 207).**

(1612)—*S. 208—Case triable by Court of Sessions—Duty of Magistrate.*—A Magistrate inquiring into a case triable by the Court of Sessions is not empowered to frame a charge or make out an order for commitment until after he has taken all such evidence as the accused produces before him for hearing. **20 A. 264.** [*F.*, 26 A. 177=23 A.W.N. 215; *Diss.*, 12 C.W.N. 1014=36 C. 48=8 Cr. L.J. 221].

(1613)—*S. 208—Duty of Magistrate to examine all witnesses produced by accused in a case triable by Sessions, before ordering committal.*—Where a person charged with an offence under s. 330, I.P.C., applied to the Magistrate inquiring into the case to issue process to compel the attendance of a number of witnesses on his behalf for examination in his Court, *held* that the Magistrate was bound to take all such evidence as the accused was prepared to produce before him, and that an order of commitment without doing so was not valid. **26 A. 177=A.W.N. 1903, 215.** [*Not F.*, 12 C.W.N. 1014 =8 Cr. L.J. 221=36 C. 48].

(1614)—*Ss. 208, 212, 215—Commitment—Case committed to Sessions before examination of defence witnesses—Commitment quashed.*—A charge under s. 302 of the Indian Penal Code was under inquiry by a Magistrate of the first class. The evidence for the prosecution had been recorded, and certain witnesses for the defence had been summoned. the Magistrate also, at the request of the accused, had consented to make a local inspection, when the Sessions Judge directed the Magistrate to commit the case to Sessions, and he did so, without examining any of the witnesses for the defence and without making the intended local inspection. *Held* that the commitment should be quashed. **A.W.N. 1906, 306=4 Cr. L.J. 452=4 A.L.J. 44.**

(1615)—*Ss. 208 and 215—Commitment on evidence taken in the absence of accused.*—An order of commitment to Sessions based on evidence recorded, while the accused was not arrested on the charge at all, is not valid. **2 Weir 259.**

(1616)—*Ss. 208 and 215—Power of Sessions Judge to remand a case committed to the Sessions.*—The Code of Criminal Procedure nowhere authorises the return of a case committed to the Sessions to the Magistrate. Where the accused reserved the cross-examination of the prosecution witnesses to the Court of Sessions, *held*, that the Sessions Judge had no power to remand the case to the Magistrate for the cross-examination of the witnesses. **2 Weir 263.**

(1617)—*Ss. 208, 252 (=Crim. Pro. Code, 1872, s. 362)—Scope of the section—Issue of summons for witnesses by prosecution—Discretion of Magistrate to dispense with examination of witnesses summoned.*—S. 362 applies to the course that may be taken before, not after, the issue of summonses. A Magistrate, therefore, has no discretion to dispense, after the issue of summonses by the prosecution, with the examination of the prosecution witnesses,

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Where the witnesses summoned are in default, the proper course for the Magistrate is to proceed to enforce their attendance in the manner provided in s. 355 of the Code. **4 M. 329.**

(1618)—*Ss. 208, 252, 344 (=ss. 190 and 194 of the Code of 1872)—Remand of accused to jail, without examining witnesses.*—S. 194 must be read as a proviso to the provisions of s. 190. It qualifies s. 190 to this extent, that the commencement of the enquiry or the further enquiry, if it is commenced, may be deferred if, from the absence of a witness or from any reasonable cause, it becomes necessary or advisable to defer it, and in that case the Magistrate, in place of immediately examining the complainant and witnesses as required by s. 190, may remand the accused person. **6 M. 63=2 Weir 409.**

(1619)—*Ss. 208 and 347—Commitment to the Court of Sessions under s. 347 not controlled by s. 208—High Court's criminal appellate jurisdiction—Power to quash commitment to the High Court Sessions.*—S. 347, Crim. Pro. Code, is not to be read as subject to the provisions of s. 208, Crim. Pro. Code, and it is not imperative on the Magistrate after the prosecution has closed its case and the Magistrate has decided to commit the accused for trial to the Court of Sessions in exercise of his powers under s. 347, Crim. Pro. Code, to allow the accused to cross-examine the witnesses for the prosecution or to call witnesses in his defence. *Quære* :—Whether the High Court in the exercise of its ordinary criminal appellate jurisdiction, has power tc quash a commitment made to it for trial under the ordinary original criminal jurisdiction. **12 C.W.N. 1014=8 Cr. L.J. 221=36 C. 48=1 Ind. Cas. 469.**

(1619-*a*)—S. 208—*See* Nos. 1963, 3571, *infra*.

——S. 209 (=1882, s. 209; 1872, s. 195; 1861, s. 225; Presidency Magistrate's Act, 1877, s. 87).

(1620)—*S. 209—Sessions case—Duty of Magistrate.*—Simply because a case is a Sessions case, it is not necessary that a Magistrate should, where the evidence for the prosecution discloses an offence, commit the accused for trial. He may examine the accused and his witnesses and decide whether there are sufficient grounds for commitment. **A.W.N. 1899, 135.** [*R.*, A.W.N. 1904, 125=1 A.L.J. 292; *D.*, A.W.N. 1904, 5].

(1621)—*S. 209 (=Crim. Pro. Code, 1882, s. 209)—Interpretation of section.—Held* that, in interpreting s. 209, Crim. Pro. Code, 1882, the ruling reported in 5 A. 161 should be followed. **Rat. Un. Cr. C. 746=Cr. Rg. 13 of 1895.**

(1622)—*S. 209—Duty of Magistrate to examine the accused before committal to the Sessions.*—It is a duty of a Magistrate, before committing an accused person for trial, to examine him for the purpose of enabling him to explain any circumstances appearing in the evidence against him. The effect of s. 209, Crim. Pro. Code, is that it is not left to the discretion of the Magistrate, who intends to commit, to examine the accused. He is bound to examine him, and, if he makes an order of commitment without examining him, the order is irregular. **23 M. 636=2 Weir 253.**

(1623)—*S. 209—Charges against a person of offence exclusively triable by Sessions and also of a minor offence—Procedure to be adopted by Magistrate in case the former offence not being proved.*—The primary object of s. 209 is to make provisions for the procedure in cases triable by Court of Sessions or High Court. If, in the opinion of the Magistrate, there is no evidence to warrant a charge of an offence exclusively triable by a Court of Session, he may "discharge" the accused in respect of the alleged offence and, having done so, may proceed as regards the minor offence or offences, under Ch. XXI or other appropriate chapter. In fact, a Magistrate cannot proceed to act under the latter part of sub-s. (1) of s. 209 until he has "discharged" the accused under the former part of the sub-section. **24 M. 136=2 Weir 544.**

(1624)—*S. 209—Order of discharge by Magistrate, in a case triable exclusively by Court of Sessions, when valid—Order of discharge by Presidency Magistrate—Power of High Court.*—An order of discharge by a Magistrate, under s. 209, in a case triable exclusively by a Court of Sessions or High Court, would be a valid order, although the Magistrate uses in the order words used in s. 253, instead of those in s. 209, if the Magistrate has considered the evidence in the case and is of opinion that no *prima facie* case has been made out. Where a finding of a Presidency Magistrate is one of fact, the High Court has no power to interfere in the exercise of its powers under the Code or the High Courts Act. It would be otherwise, if the Magistrate has ignored or contravened an express provision of the Code or some other provision of the law. But the mere fact, that the High Court might be disposed to take the view that the Magistrate discredited the prosecution evidence for insufficient reasons, is no ground for interference. **2 Weir 255.** [*R.*, 31 M. 133=3 M.L.T. 230=18 M.L.J. 757=7 Cr. L.J. 267.]

(1625) — *S. 209—Commitment—Sufficient ground for.*—The words in s. 209 of the Crim. Pro. Code "sufficient ground for committing" mean, not sufficient ground for convicting, but refer to a case in which the evidence is sufficient to put the accused on his trial and such a case arises when credible witnesses make statements which, if believed, would sustain conviction. It is not necessary that the Magistrate should satisfy himself fully of the guilt of the accused before making a commitment. It is his duty to commit when

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the evidence for the prosecution is sufficient to make out a *prima facie* case against the accused and he exercises a wrong discretion if he takes upon himself to discharge an accused in the face of evidence which might justify a conviction. The Magistrate is entitled to consider the credibility of the evidence and need not necessarily commit because there is evidence which, if believed, would result in conviction, he can neglect that evidence if it is in his opinion incredible. **148 P.L.R. 1903.** (11 B. 372, 27 B. 84, *F.*).

(1626)—*Ss. 209, 210(=Crim.Pro.Code, 1861, ss. 225, 226)—Procedure of Magistrates as to commitment.*—S. 226 provides that if a Magistrate finds that the evidence before him is sufficient for the conviction of the accused person of an offence triable by a Court of Session, he must send the accused person for trial before the Court of Session. S. 225 enacts that when a Magistrate finds that there are not sufficient grounds for committing or for remanding him he shall discharge him. Such a discharge does not amount to an acquittal and the accused would be liable to further proceedings if necessary. If the evidence given before a Magistrate upon a preliminary enquiry relating to an offence exclusively triable by a Court of Session satisfies him that the act or omission charged against the accused is brought within one of the general exceptions of the Penal Code, the Magistrate would be wrong in committing the accused for trial. **7 W.R. Cr. Cir. 1.**

(1627)—*Ss. 209, 253(=Crim.Pro. Code, 1882, ss. 209, 253)—Right of Magistrate to refrain from proceeding with enquiry.*—The second paragraph of s. 209 and para. 2 of s. 253 of the Code relieve a Magistrate from the necessity of going on with an enquiry or trial when he is reasonably convinced, on what has already been deposed to, that a criminal charge cannot be sustained. The most common case of this kind is when the account given of a transaction by a prosecutor himself is such as to deprive it of a criminal character. In such a case, it would generally be a mere waste of time to go on taking collateral evidence which could have no effect in sustaining a charge virtually contradicted by the person most interested in establishing it. **Rat. Un. Cr. C. 201.**

(1628)—*Ss. 209, 253, 435, 439 (=Crim. Pro. Code, 1882, ss. 209, 253, 435, 439)—Grounds for setting aside an order of discharge—Court having jurisdiction to set aside order of discharge.*—The series of ss. 435 to 439 must be read together. Of these, s. 435 is the principal section dealing with the grounds upon which revisional jurisdiction may ordinarily be exercised. According to the section, every finding, sentence or order is liable to review, not only on the ground of irregularity, but also on the ground of incorrectness ; that is to say, on the ground that it is wrong on the merits. An order of discharge, under s. 209 or s. 253 is no exception to the general rule. The order of discharge may also be set aside, under subsequent sections, on other grounds, such as discovery of fresh evidence. The High Court, the Court of Sessions, and the District Magistrate, all have power, as Courts of revision, to deal with an order of discharge on the merits as well on other grounds. The High Court has power, under s. 439, to deal as a Court of revision with any finding, sentence or order which come under its notice. **15 C. 608, F.B.** [*F.*, 21 C. 931, 28 C. 652=5 C.W.N. 457, F.B.]

(1628-*a*)—*Crim. Pro. Code, ss. 435, 439—Setting aside an order of discharge—Proper order to be made.*—The High Court, under s. 423, embodied in s. 439, can set aside the order of discharge, and direct a charge to be framed and tried by the proper Court. It can, under s. 437, probably also under s. 439, order a further enquiry instead of a committal. The Court of Sessions and the District Magistrate have, in cases triable exclusively by the Court of Sessions, the same alternative open to them under ss. 436 and 437. In other cases they can set aside the discharge and order a further enquiry under s. 437, or refer the matter to the High Court. **15 C. 608, F.B.** [*R.*, 27 B. 84].

(1629)—*Ss. 209 and 436—Discharge by Magistrate of an accused person charged with offence triable exclusively by Court of Sessions —Acquittal of a charge of offence triable by Magistrate himself—Order by Sessions Judge for further inquiry or committal, legality of.*—A Magistrate framed a charge of theft against three persons. The prosecution also asked that a charge might be framed under s. 477, Penal Code, but this the Magistrate declined to do, there being no direct evidence that the accused had destroyed or secreted the promissory note about which the charges were framed. In the end, after hearing evidence for the defence, the Magistrate acquitted the accused under s. 258 of the Code of Criminal Procedure. The Sessions Court ordered a further inquiry and directed that the accused should be committed to the Sessions Court under s. 477, Penal Code. *Held*, that the order of the Magistrate was in substance an order discharging the accused in respect of an alleged offence under s. 477, Penal Code, and the Sessions Judge was therefore acting within his jurisdiction in having made an order for further inquiry under s. 436, Crim. Pro. Code. **24 M. 136=2 Weir 544.**

(1630)—Ss. 209, 210—*See* COMMITMENT TO SESSIONS COURT, **Rat. Un. Cr. C. 319.**

(1631)—Ss. 209, 210, 436—*See* COMMITMENT TO SESSIONS COURT, **7 C.W.N. 77.**

(1632)—Ss. 209, 213, 215 and 436—*See* COMMITMENT TO SESSIONS COURT, **7 C.W.N. 327.**

(1633)—Ss. 209 and 304—*See* CONFESSION **2 C.W.N. 702.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1634)—Ss. 209, 210—*See* DISCHARGE OF ACCUSED, 5 A. 161.

(1635)—Ss. 209 and 215—*See* DISCHARGE OF ACCUSED, 2 Weir 258=7 M.H.C. App. 40.

(1636)—Ss. 209, 210, 470, 471 (=Crim. Pro. Code, 1861, ss. 225, 226, 393 and 394)—*See* INSANE PRISONERS, 8 W.R. Cr. Cir. 3.

(1637)—S. 209—*See* MAGISTRATE, JURISDICTION OF, 11 Cr. L.J. 18=4 Ind. Cas. 612=10 P.R. 1909 Cr.=3 P.W.R. 1909 Cr.

(1638)—Ss. 209, 210—*See* MAGISTRATE, JURISDICTION OF—COMMITMENT TO COURT OF SESSIONS, 10 B. 372.

(1639)—Ss. 209 and 210—*See* PRELIMINARY ENQUIRY, 14 P.R. 1908 Cr.=30 P.W.R. 1908 Cr.=8 Cr. L.J. 263.

(1640)—Ss. 209, 210—*See* REVISION, 5 A. 161.

(1641)—Ss. 209, 210, 438 (1), 436—*See* REVIVAL OF CRIMINAL PROCEEDINGS, 4 C. 16.

(1642)—Ss. 209, 436, 437—*See* SESSIONS JUDGE, JURISDICTION OF, Rat. Un. Cr. C. 837.

(1642-*a*)—S. 209—*See* Nos. 197, 625, 627, *supra*.

——S. 210 (=1882, s. 210; 1872, ss. 195, 196, 198, 199; 1861, ss. 226, 227, 233).

(1643)—*S. 210—Magistrate—Commitment to Court of Sessions—Practice as to commitment.*—The High Court deprecated the practice followed by some Magistrates of adding charges apparently for the purpose of enabling them to commit those cases to the Court of Session without any reasonable ground for the addition. **11 Bom. L.R. 18=5 M.L.T. 225=9 Cr. L.J. 163=1 Ind. Cas. 104.**

(1644)—S. 210—*See* ACT III OF 1877, s. 83. 15 W.R. Cr. 58=6 B.L.R., F.B., 692.

(1645)—S. 210—*See* COMMITMENT TO SESSIONS COURT, 9 Bom. L.R. 225=5 Cr. L. J. 213.

(1646)—Ss. 210, 213, 218—*See* FALSE EVIDENCE, 1 Weir 161=2 Weir 271=3 M.H. C. App. 32.

(1646-*a*)—S. 210—*See* Nos. 1626, 1630, 1631, 1634, 1636, 1638, 1639, 1640, 1641, *supra*.

——S. 211 (=1882, s. 211; 1872, s. 200, paras 1 and 3; 1861, ss. 227, 228).

(1647)—*S. 211—Asking accused to give a list of defence witnesses.*—A Magistrate is, under s. 211 (1) of the Code, bound to require the accused to give a list of witnesses he desires to call. It is not enough to put him the question, "Have you any evidence?" since the question is ambiguous and might suggest to the accused only an enquiry as to whether he had witnesses ready in Court. **7 Bom. L.R. 723=2 Cr. L.J. 601.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1648)—S. 211—*See* WITNESS, 19 A. 502.

(1649)—Ss. 211 and 216—*See* WITNESS, 4 M.H.C. 81.

——S. 212 (=1882, s. 212; 1872, s. 200, para 2).

(1650)—*S. 212 (=Crim. Pro. Code, 1882, s. 212)—Reserving of defence.*—Where an accused person against whom a charge is framed under s. 210 reserves his defence, the committing Magistrate is not precluded from exercising his discretion under s. 212, and from summoning and examining the witnesses named for the defence. The law does not require that he should record his reasons before exercising such powers. He is given a discretion which he may be trusted to use properly, and it will be for the person impugning his order to satisfy the High Court that a judicial discretion has not been used, before that Court can interfere. **18 A. 380.**

(1650-*a*)—S. 212—*See* No. 1614, *supra*.

——S. 213 (=1882, s. 213; 1872, ss. 198, 200, para 2; 1861, ss. 229, 233).

(1651)—*S. 213—Commitment—Discharge of accused without further evidence—Duty of Magistrate.*—S. 213 gives a committing Magistrate power to cancel a charge when he has heard witnesses for the defence. A Magistrate who has framed a charge against an accused with a view to commitment cannot discharge him without taking further evidence. Where credible witnesses make statements which, if believed, would sustain a conviction, the Magistrate ought to commit. **2 L.B.R. 140.** (11 B. 372, *R.*).

(1652)—*S. 213—Joint charge against several persons—Committal of one of them to Sessions.*—Where several persons are jointly charged with the same offence, and it is considered necessary to commit one of them to Sessions, the most convenient course is that all the prisoners should be so committed. Where a Magistrate adopts a different course, it cannot, however, be held that he has acted in contravention of any provision of law. **2 Weir 258.**

(1653)—Ss. 213 to 215, 477, 478, 498—*See* ACT IV OF 1871, 31 C. 1=7 C.W.N. 889.

(1653-*a*)—S. 213—*See* Nos. 1610, 1632, 1646, *supra*.

——S. 214 (=1882, s. 214; 1872, s. 197 without Expianation).

(1654)—*Ss. 214, 477, 487 (=Crim. Pro. Code, 1872, ss. 197, 472, 473)—False evidence given before Sessions Court—Committal to same Court—Competency.*—The prohibition contained in s. 473 extends also to the offence of giving false evidence, and consequently, a Sessions Judge cannot try any person for such an offence committed before himself. Where a Magistrate committed a person for trial before the Sessions

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Court for the offence of giving false evidence before the same Court, and there was no Assistant Sessions Judge or Joint Sessions Judge, *held* that, although the commitment cannot be quashed, as there was no irregularity in it. Sessions Judge should be directed to transfer the case for trial by another Court of Sessions. *Held*, further, that in such cases, the Magistrate should try the case himself, and that, if the sentence which the Magistrate was competent to pass was not sufficient the Sessions Judge should refer the case to the High Court for enhancement of sentence. **1 B. 311.** [*R.*, L.B.R. (1872—1892), 256, 14 A. 354; *D.*, 10 B. 274].

(1655)—S. 214—*See* MAGISTRATE, JURISDICTION OF, Rat. Un. Cr. C. 110.

(1655-*a*)—S. 214—*See* No. 1653, *supra*.

—— S. 215 (=1882, s. 215).

(1656)—*S. 215—Commitment when could be quashed.*—Under s. 215, a commitment once made by a competent Magistrate can be quashed by the High Court only, and that only on a point of law. **3 Bom. L.R. 703.**

(1657)—*S. 215—Commitment to Court of Sessions of a summons case—Commitment quashed.*—Where a Magistrate, finding that there was a *prima facie* case against an accused person, under ss. 352 and 447 of the Indian Penal Code, committed the accused to the Court of Sessions, it was *held* that the commitment was wrong on a point of law, first, because there is no warrant for the commitment of such cases and, secondly, because the maximum punishment under each offence was one which the Magistrate could inflict. **A.W.N. 1906, 28=3 A.L.J. 14=3 Cr. L.J. 94=1 M.L.T. 61.**

(1658)—*S. 215—Power of Sessions Judge, on commitment, to try a case not triable exclusively by a Court of Session, or to set it aside and refer it back to the Magistrate for trial—Powers of High Court.*—Though the offence of theft in a building is not triable exclusively by a Court of Session, there is nothing to prevent such a Court from trying a person accused of such an offence and duly committed to it for trial. Such committal can be set aside only by the High Court under s. 215 of the Code. The Sessions Judge has no power to set it aside and direct the Magistrate to try the case himself. **16 M.L.J. 525=5 Cr. L.J. 99.**

(1659)—*S. 215—Reference to the High Court to set aside a commitment, when to be made.*—After the accused has been put on his trial in the Sessions Court, has pleaded not guilty and has been tried with the aid of assessors, the High Court would not quash the commitment on a reference by the Sessions Judge. The Judge should proceed according to law and dispose of the case under Ch. XXIII (E), or the Public Prosecutor may, with the consent of the Court, withdraw from the prosecution under s. 494.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

Where the order of commitment rested upon a misapprehension, and there was no evidence upon which the order could be supported, *held*, that the High Court had jurisdiction under s. 215 to set aside the order. **2 Weir 262.**

(1660)—A commitment to a Court of Sessions cannot be quashed, after the accused has been put on his trial and has pleaded to the charge. **9 Cr. L.J. 250=1 S.L.R.Cr. 6.**

(1661)—*Ss. 215 and 227—Expunging charge and substituting another.*—Where an accused person is committed to stand his trial on a specific charge before the Sessions Court, the Sessions Judge has no power to expunge a charge before calling upon the accused to plead to it, as it is practically quashing a commitment in direct contravention of s. 215, Crim. Pro. Code. **10 C.P.L.R. Cr. 13.** (8 B. 200, 9 A. 525, 12 A. 551, 7 C.L.R. 143, *R.*)

(1662)—*Ss. 215 and 436—Offence triable exclusively by Court of Sessions—Discharge by Magistrate.*—The mere fact that a Magistrate discharged an accused person who was charged with an offence triable exclusively by a Court of Sessions would not make the discharge invalid. **2 Weir 260.**

(1663)—*Ss. 215, 436, 439—Power of Sessions Judge to order commitment—High Court's power of interference.*—S. 215 refers only to a commitment actually made. It is open to the High Court to consider whether the Sessions Judge has or has not exercised a proper judicial discretion under s. 436 in setting aside a Magistrate's order of discharge, and for this purpose, the High Court may consider the facts as well as the questions of law involved. Though the High Court has this power, it will only exercise it, where it is manifest that the Sessions Judge's order is improper, *e.g.*, where there is no evidence to prove the offence charged, or where it is clear that the Court would not act on the evidence. **16 M.L.J. 529=30 M. 224=5 Cr.L.J. 100.**

(1664)—*Ss. 215, 438—Commitment made without direct evidence.*—A commitment made without direct evidence and merely on presumption, is not erroneous in point of law, and, as such, cannot be quashed under s. 215. **4 C.W.N. cxvi.**

(1665)—*Ss. 215, 436 and 526—Quashing of commitments by High Court.*—S. 215 is inapplicable to cases in which the commitment is not one made under any of the four sections therein specified, but is one made under the direction of the High Court under s. 526 (1) (iv). The order of a Sessions Judge or District Magistrate passed under s. 436 directing commitment can be quashed by the High Court in the exercise of its revisional powers, though not under s. 215. But an order passed by the High Court itself under s. 526 cannot be so revised. **27 M. 54=2 Weir 227.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1666 and 1667)—Ss. 215, 235, 239—*See* COMMITMENT TO SESSIONS COURT, Rat. Un. Cr. C. 915, 925, 1 L.B.R. 88, Rat. Un. Cr. C. 718, A.W. N. 1885, 53.

(1668)—Ss. 215, 436 - *See* COMMITMENT TO SESSIONS COURT, 6 M. 372=2 Weir 541.

(1669)—Ss. 215, 478—*See* COMMITMENT TO SESSIONS COURT, 26 M. 139=2 Weir 197.

(1670)—Ss. 215, 403, 423, 433, 530—*See* SESSIONS JUDGE, JURISDICTION OF, 29 C. 412.

(1670-*a*)—S. 215 - *See* Nos. 100, 1418, 1419, 1464, 1610, 1611, 1614, 1615, 1616, 1632, 1635, 1653, *supra*.

——S. 216 (=1882, s. 216 ; 1872, ss. 358, 359 ; 1861, ss. 227, 228).

(1671)—*S. 216 of the Code of 1898 (=Crim. Pro. Code, 1872, s. 359)—Refusal to summon defence witnesses.*—The only ground on which a Magistrate may refuse to summon a witness for the defeuce, under s. 359 (s. 216), is when he thinks that the wituess has been included in the list for purposes of vexation and delay. He will not be justified in refusing to summon such witness, merely on the ground that his testimony would not be material or reliable. **2 Weir 263.**

(1672)—*S. 216 (=Crim. Pro. Code, 1872, s. 359)—Refusal to re-summon a witness on failure to attend.*—Where a witness cited on behalf of the accused was summoned to attend on the day fixed for the hearing of the case, and owing to some delay in the service of the summons, the witness did not attend, the Magistrate was bound to makea further attempt to secure the attendance of the absent witness, and the provisions of s. 359 were not applicable to the case. **4 A. 53.**

(1673 and 1674)—*S. 216 (=Crim. Pro. Code, 1872, s. 359)—Construction.*—The meaning of s. 359 of the Crim. Pro. Code, 1872, is that, if, among the persons named by the accused as witnesses, the Magistrate considers that any particular witness is included for the purpose of vexation and delay, he is to exercise his judgment and enquire whether such witness is material. It does not at all enable a Magistrate to enquire, generally, into what the defence of the accused is to be and to consider whether he is absolutely to abstain from summoning the whole of the witnesses cited by the accused. **3 C. 573=2 C.L R. 62.**

(1675)—*S. 216 (=Crim. Pro. Code, 1872, s.359) - Refusal to summon witnesses.*—A Magistrate is not at liberty to refuse to summon the witnesses tendered by the accused, except on the grounds specified in s. 359 of the Code. The fact that the accused stated that he did not wish to examine the witnesses, whom he now tendered, at the close of the case, is no reason for refusing to summon them to meet fresh evidence taken by the Magistrate, after hearing the arguments on behalf of the defence. **8 C.L.R. 70.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1676)—S. 216, proviso II—*See* MAGISTRATE, JURISDICTION OF, 2 Weir 263=6 M.H.C. App. 9.

(1677)—S. 216—*See* WITNESS, 6 C. 714.

(1678)—Ss. 216, 291, 540—*See* WITNESS, 8 A. 668.

(1679)—Ss. 216, 428—*See* WITNESS, 19 M. 375=2 Weir 680=6 M.L.J. 195.

(1679-*a*)—S. 216—*See* No. 1649, *supra*.

——S. 217 (=1882, s. 217 ; 1872, s. 360 ; 1861, s. 232).

(1680)—*S. 217—Plea of guilty, how construed—Case of murder—Penal Code, ss. 302, 307.*—In Burma where there is, as a general rule, profound popular ignorance of law, it is necessary to accept a plea of guilty, particularly in a capital case, with extreme caution. A Burman has usually no clear perception of the distinction between killing which amounts to murder and killing which is only culpable homicide not amounting to murder. **U.B.R. (1897—1901), Vol. I, 78.**

(1681)—S. 217—*See* WITNESS, A.W.N. 1882, 37.

——S. 218 (1), para 1 (=1882, s. 218, para 1 ; 1872, s. 202, para 1 ; 1861, ss. 231, 233) ; s. 218 (1), para 2 (=1882, s. 218, para 2 ; 1872, s. 198, paras 2 and 3 ; 1861, s. 229) and s. 218 (2) (=1882, s. 218, para 3 ; 1872, s. 198, para 4).

(1681-*a*)—S. 218—*See* No. 1646, *supra*.

——S. 219 (=1882, s. 219 ; 1872, s. 357, para 2).

(1682)—S. 219—*See* WITNESS, 14 A. 212.

——S. 221 (=1882, s. 221 ; 1872, s. 439 ; 1861, s. 234).

See CHARGE.

(1683)—*S. 221—Previous conviction, proof of, when necessary—Crim. Pro. Code, 1872, s. 439 (=s. 221 of the Code of 1898).*—Unless a Magistrate considers that an increased sentence should be passed on an accused person, under s. 75, I.P.C., it is not necessary to specify the previous conviction, under s. 75, in the charge. If, although a Magistrate does not think it necessary that the increased punishment provided by s. 75 should be imposed, he, nevertheless, desires to obtain information as to the antecedents of the accused to determine the duration of the sentence to be imposed on him, previous conviction may, if denied, be proved in the ordinary manner. **2 Weir 265.**

(1684)—*S. 221 of the Code of 1898 (=Crim. Pro. Code, 1872, s. 439)—Charge—Previous conviction - Whipping.*—Where the previous conviction is not stated in the charge, as required by the last paragraph of s. 439 (s. 221), a sentence of whipping in addition to imprisonment is not legal. **2 Weir 265.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1685)—*S. 221 of the Code of 1898 (=s. 439 of the Code of 1872)—Charge of previous conviction.*—Where a person is charged with previous convictions, it is not sufficient to state that the accused is an "old offender," as that does not sufficiently bring home to the accused person the particular offence or class of offences which renders him liable to a more severe sentence than would otherwise be imposed. **2 Weir 266.**

(1686)—*S. 221 (=Crim. Pro. Code, 1872, s. 439)—Liability to whipping—Grounds of liability to be stated both in charge and judgment.*—When an accused person is liable to be punished under the Whipping Act, the charge must state the liability, and the judgment should set out the ground of the liability to punishment under the Act, when that punishment is imposed. **5 M. 158.**

(1687)—*S. 221 (=Crim. Pro. Code, 1872, s. 439).*—Where a previous conviction is admitted by an accused, no more proof under s. 221 of the Code is necessary. **Colm. Dig. Cr. 42 of 1876.**

(1688)—*S. 221 (=Crim. Pro. Code, 1872, s. 439)—Charge—Conviction for another offence, after framing charge—Insertion in the charge.*—S. 439 makes no provision for inserting in the charge, after it has been framed, a conviction obtained after that charge was framed. **21 P.R. 1879 Cr.**

(1689)—*S. 221—Magistrates should be careful to follow the language of the Penal Code in drawing up charges.*—Forms of guidance are given in Sch. V of Crim. Pro. Code, 1898. **U.B.R. (1892—1896), Vol. I, 32.**

(1690)—*Ss. 221, 535, 537—Previous conviction intended to affect punishment—Form of charge—Omission to set out previous conviction in due form—Effect.*—Under s. 221, Crim. Pro. Code, if the accused has been previously convicted of an offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award, the fact, date and place of the previous conviction should be stated in the charge. Mere omission to set out the previous conviction is not sufficient reason for interfering in appeal or revision with the sentence passed, unless there has been a failure of justice caused by the omission. (See ss. 535, 537, Crim. Pro. Code). **7 M.L.T. 77.**

(1691)—*Ss. 221 (7), 342, 412 and 511—Identity of accused how proveable—Questioning accused regarding previous conviction—Scope of s. 342, not intended merely for benefit of accused—Powers of appellate Court regarding plea of guilty of being previous convict.*—That a person of the same caste, bearing the same name as the accused, and having a father of the same name as the accused's father, should have been convicted in the same Court or the same district where the accused is under trial, are "circumstances appearing in evidence against the accused," and he may be rightly questioned about them. S. 511, Crim. Pro. Code, does not require identity to be proved by calling witnesses or in any particular way. It is not necessary that identity should be conclusively established before the accused is questioned. If it were so necessary, the questioning would be superfluous. The moment there is some evidence of identity, the accused may be asked to explain it. It has repeatedly been laid down by the various High Courts that the examination of an accused under s. 342, Crim. Pro. Code, should be strictly limited to the purpose of enabling him to explain any circumstance appearing in the evidence against him, and that the Magistrate has no right to attempt to elicit damaging or incriminatory admissions, as to which no previous evidence is on the record. Admissions improperly obtained should be excluded. But s. 342 is not intended merely for the benefit of the accused. It is part of a system for leading the Court to discover the truth; and it constantly happens that the accused's explanation, or his failure to explain, is the most incriminating circumstance against him. The result of the examination may be beneficial, but it may equally be injurious, to him. The principle involved is that contained in the judicial maxim, *audi alteram partem*; and the section does not require that the accused should be heard only on what is *prima facie* proved against him, but on every circumstance *appearing in evidence against him.* Where a charge has been framed against an accused person under s. 221 (7), Crim. Pro. Code, and such person has pleaded guilty to the charge that he is a previous convict, the appellate Court, under s. 412 of the Code, is precluded from opening the question whether the accused is a previous convict. **4 N.L.R. 163=9 Cr. L.J. 56.**

(1692)—S. 221—*See* ACT VI OF 1864, L.B.R. (1872—1892), 337.

(1693)—S. 221—*See* CHARGE, 11 C. 106.

(1694)—S. 221—*See* EVIDENCE, L.B.R. (1893—1900), 352.

(1695)—Ss. 221, 222, 223, 225, 537—*See* PENAL CODE, s. 124-A, 5 M.L.T. 393=32 M. 384.

(1696)—Ss. 221, 222, 223, 225, 227, 232, 233, 234 and 439—*See* PENAL CODE, ss. 147, 332, 38 P.W.R. 1907 Cr.

(1697)—S. 221—*See* PREVIOUS CONVICTION, A.W.N. 1883, 110.

(1697-*a*)—S. 221—*See* No. 3554, *infra*.

——S. 222, para 1 (=1882, s. 222; 1872, s. 440); and para 2, new.

See CHARGE.

(1698)—*S. 222—Joinder of more than three charges.*—A charge of cheating relating to the sum total of different items, about twenty-six

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in number, said to have been taken by the accused on false representations from the complainant, is contrary to law. Such a charge is not justified under s. 222, Crim. Pro. Code. **1 A.L.J. 599.**

(1699)—*S. 222 of the Code of 1898 (=s. 440, Code of 1872)—Liability to whipping under s. 3 of Act VI of 1864—Charge—Enhanced punishment.*—Whipping, when awardable under s. 3 of Act VI of 1864, is a special form of punishment which may be given in addition to any other punishment to which an accused person may be liable under s. 75, Penal Code. The liability to whipping, as an additional punishment under s. 3 of Act VI of 1864, and the liability to enhanced punishment, under s. 75, Penal Code, are distinct liabilities, and either or both liabilities must be set out in the charge, according as they arise or not in the circumstances of each particular case. **2 Weir 267.**

(1700)—*Ss. 222, 223 (=ss. 222, 223 of the Code of 1882)—Duty of committing Magistrate.*—A committing Magistrate is bound under ss. 222, 223 to insert in the heads of charges sufficient particulars of time, place, person and circumstances as would give each of the accused notice of the matter with which he is charged. **15 B. 491.** [*R.*, 16 B. 414].

(1701)—*Ss. 222, 234—Penal Code, s. 406—Criminal breach of trust—More than three acts committed within one year charged.*—Where a person was charged with the embezzlement of the sum total of different items, all alleged to have been collected by him within a period of less than one year, and the charge also specified the various items collected, more than three in number, *held*, that the charge was perfectly valid and did not come under the provisions of s. 234. **24 A. 254=A.W.N. 1902, 44.** [*F.*, A. W.N. 1904, 165=27 A. 69, 31 C. 928=8 C. W.N. 807, 29 M. 558=5 Cr. L.J. 133; *R.*, 32 C. 1085=10 C.W.N. 51, 16 P.W.R. 1907 Cr. =6 Cr. L.J. 137].

(1702)—*Ss. 222, 234—Charge on three counts, two of them composed of three minor items each.*—Where a charge of criminal misappropriation consisted of three counts, alleging misappropriation on three different occasions, two of those items being made up of three smaller sums of money each, *held*, that such a charge was a valid charge under s. 234. **27 A. 69=A.W.N. 1904, 166.** [*F.*, 29 M. 558=5 Cr. L J. 133; *R.*, 32 C. 1085=10 C.W.N. 51].

(1703)—*Ss. 222 (2), 234—Criminal breach of trust of gross sum—Penal Code, s. 408.*—Where a charge against an accused person, which resulted in his conviction under s. 408, Penal Code, recited that the accused realised by certain rent receipts, 23 in number, the sum of Rs. 103, of which the accused misappropriated the sum of Rs. 67 within the period of one year, *held*, that the charge came within s. 222 (2), Crim. Pro. Code, and was properly framed. *Held*, also, that, by specifying the rent receipts, the charge went beyond what was necessary, and was to that extent favourable to the accused, because it gave him an opportunity of meeting the accusation regarding the misappropriation of a gross sum of Rs. 67. **31 C. 928=8 C.W.N. 807.** [*F.*, 32 C. 1085=10 C.W.N. 51].

(1704)—*Ss. 222, 234 and 235—Joinder of charges—Criminal misappropriation extending over two years.*—The accused was charged with, and tried at one trial for, criminal misappropriation, consisting of a series of acts extending over a period of two years. *Held*, that the joinder of charges was illegal. In this case, such illegality was held to be fatal to the conviction and the accused was acquitted. **14 P.R. 1905 Cr.=64 P.L.R. 1905.** (25 M. 61, P.C., *F.*)

(1705)—Ss. 222, 235—*See* CHARGE, 30 M. 328=17 M.L.J. 141=2 M.L.T. 177=5 Cr. L.J. 341.

(1706)—Ss. 222, 234, 439—*See* CRIMINAL BREACH OF TRUST, 16 P.W.R. 1907 Cr.=6 Cr. L.J. 137.

(1707)—Ss. 222, 234—*See* JOINDER OF CHARGES, 29 M. 558=5 Cr. L.J. 133.

(1708)—Ss. 222, 233, 234, 235—*See* JOINT TRIAL, 30 M. 328=17 M.L.J. 141=2 M.L.T. 177=5 Cr. L.J. 341.

(1709)—Ss. 222, 234 and 439—*See* PENAL CODE, ss. 406 and 408, 16 P.W.R. 1907 Cr.= 6 Cr. L.J. 137.

(1710)—S. 222 (1)—*See* UNNATURAL OFFENCE, 6 A. 204.

(1710-*a*)—S. 222—*See* Nos. 1180, 1695, 1696, *supra*.

——S. 223 (=1882, s. 223; 1872, s. 441).

See CHARGE.

(1711)—S. 223—*See* FALSE EVIDENCE, 1 L.B.R. 268.

(1711-*a*)—S. 223—*See* Nos. 1695, 1696, 1700, *supra*.

——S. 224 (=1882, s. 224).

See CHARGE.

——S. 225 (=1882, s. 225).

See CHARGE.

(1712)—*Ss. 225, 232, 233, 537 (=Crim. Pro. Code, 1882, ss. 225, 232, 233, 537)—Alternative charges of contradictory statements, one to a public servant, another on oath before a judicial officer—Penal Code, ss. 182, 193.*—Where a person was charged in the alternative with having made two contradictory statements, one to a public servant, and another contradicting the first, on oath before a Magistrate of the first class, and was convicted in

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the alternative, either under s. 182, or under s. 193, I.P.C., the Magistrate being unable to find which of them was false, *held*, that the charge as framed was not in accordance with the requirements of s. 233, nor could it be so modified as to be brought into the shape of the schedule form, for, upon the facts alleged, there was no way of charging the accused with one distinct offence on the ground of self-contradiction. He could not be successfully charged under s. 193, I.P.C., on contradictory statements, because he only gave one deposition in which there were no discrepancies; and similarly, he could not be charged under s. 132, I.P.C., for he only once gave information to a public servant. The charge was bad in law, being an alternative charge in a form forbidden by s. 233. *Held*, also, that the accused, having regard to ss. 225, 232, 537, Crim. Pro. Code, should be held to have been prejudiced by the course adopted and that the conviction should, therefore, be set aside. **10 B. 124.** [*F.*, Rat. Un. Cr. C. 336, 401, 503; *R.*, Rat. Un. Cr. C. 659, 1 L.B.R. 101].

(1713)—*Ss. 225, 233, 234, 235, 236 and 237 —Joinder of charges—Indian Penal Code, ss. 124-A and 153-A—Publication in sedition.* —The accused was convicted of offences under ss. 124-A and 153-A of the Indian Penal Code in respect of each of two articles that appeared in his newspaper. The Magistrate, who tried the case, had framed a charge, with two heads, one bearing on each article, and each head mentioned that the accused was punishable under ss. 124-A and 153-A for publishing the article. It was contended on behalf of the accused, (1) that the receipt of his paper by Government servants in their capacity as such servants was no publication; (2) that each of the offences ought to have been charged separately; (3) that, from the articles, passages which offended against s. 124-A and those against s. 153-A ought to have been distinctly pointed out in separate charges; and (4) that the trial of four offences at one trial was illegal. *Held* that it is a sufficient publication if a newspaper, containing a seditious article, has been received by a Government servant; that the accused had distinct notice of the charges he had to answer, and the informal mode, if any, in which the charges were drawn up, was cured by s. 225 of the Crim. Pro. Code; (3) that, as each of the two articles taken as a whole brought the act of the accused within each of the ss. 124-A and 153-A, no specification of particular passages was necessary; (4) that, as a charge under s. 124-A in respect of one article could have been legally joined with a charge under s. 124-A in respect of the other article, and as the accused could have been convicted under s. 153-A by the application of ss. 236 and 237 of the Crim. Pro. Code, even though s. 153-A was not the subject-matter of the charge, the addition of s. 153-A in the charge was not illegal. *Per Chandavarkar, J.*—There is nothing in the Crim. Pro. Code which directs

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that, where an accused person is alleged to have done two or more acts, each of which may fall within the definition of an offence under one or another section of the Penal Code, the section or sections in either case being the same, the joinder of the charges under those sections is illegal. Substantially, the acts amount in such a case to offences punishable under the same sections of the Penal Code and, therefore, they are offences of the same kind. *Per Heaton, J.*—S. 234, Crim. Pro. Code, does not say that, at the most, a trial must be limited to three charges; it says it must be limited to three offences and that the offences must be of the same kind. The "offence," as defined by the Code itself, is the act or omission made punishable. Publication of two seditious articles on different dates amounts to two offences, and these are punishable under the same sections of the Penal Code, and are offences of the same kind. The word "section" in the second clause of s. 234 is not invariably to be read as singular. It is not the intention of the Crim. Pro. Code, either expressed or implied, to exclude from the operation of s. 234 an offence, because it is made the subject of more than one charge. **10 Bom. L.R. 801=8 Cr. L.J. 272=33 B. 77=1 Ind. Cas. 641.**

(1714 and 1715)—Ss. 225, 298 (2)—*See* CHARGE TO JURY, 22 C. 276, 4 C.W.N. 196.

(1715-*a*)—S. 225—*See* Nos. 1695, 1696, *supra*.

——S. 226 (=1882, s. 226).

See CHARGE.

(1716)—*Ss. 226, 227 (=ss. 226, 227 of 1882) —Power of Sessions Judge to withdraw a charge.* —The Sessions Court is not precluded from withdrawing a charge framed by itself at the commencement of the trial and which it considers to have been an improper charge. The word "alter" in s. 227, Crim. Pro. Code, must be taken to include "withdraw." **12 A. 551.** [*R.*, 10 C.P.L.R. 13 Cr., 10 Bom. L.R. 848].

(1717)—*Ss. 226, 227 (=Crim. Pro. Code, 1882, ss. 226, 227)—Word "alter" in s. 227 explained.—Per Sargent, C.J., and Bayley, J.*:—Although the word "alter," in s. 227, is taken in the same sense as it is used in s. 226 as including "addition," the addition must be one to some specific charge in the nature of an alteration, and not the addition of a new charge. *Per Scott, J.*:—The word "alter" in s. 227 must be taken to be equivalent to the words "add to or otherwise alter" as used in s. 226. Therefore, the addition of a new head of charge is an "alteration" within the meaning of the section. Prejudice to the prisoner is the only test of admissibility or rejection of proposed amendments to a charge. **8 B. 200.**

(1718)—*Ss. 226 to 231 (=Crim. Pro. Code, 1882, ss. 226 to 231)—Term "Charge" and "without charge" explained.—Per Sargent, C.J.*

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and Bayley, J:—The word "charge" in the Crim. Pro. Code, is genecally used as the statement of a specific offence and not as the aggregate of all the separate offences for which the prisoner is being tried. There is nothing in the Code to justify the term "charge" having a different meaning given to it in ss. 226, 227, from what it has throughout the other sections of the Code. *Per Scott, J.*:—The word "charge" is used in the Code both as indicating the whole series of counts or heads of charges, and, also, as indicating a charge of a specific offence. In s. 227, it is used in the former sense. The words "without a charge" in s. 226 will properly apply not only to a case in which there is "no charge at all" but also to the case in which there is "no charge" in respect of such offence as the Sessions Judge or Clerk of the Crown may think the prisoner ought to be tried for. **8 B. 200** [*Diss.*, 9 A. 525, 12 A. 551, 16 B. 414, 10 C.P.L.R. 13 Cr.].

(1719)—Ss. 226, 227—*See* SESSIONS JUDGE, JURISDICTION OF, 32 C. 22=8 C.W.N. 784.

(1719-*a*) –S. 226—*See* No. 423, *supra*.

——S. 227 (=1882, s. 227; 1872, ss. 444, 445; 1861, s. 244).

See CHARGE.

(1720)—*S. 227 (=Crim. Pro. Code, 1882, s. 227)—Addition of charge at Sessions trial.*—The Court has power under s. 227, to add a fresh charge upon which the accused has not been committed for trial. **9 A. 525.**

(1721)—*S. 227 (=Crim. Pro. Code, 1882, s. 227)—"Return of perdict"—Term explained.*—The words "return of verdict" in s. 227 mean the return of the final verdict which the Judge is bound to record. **8 B. 200.**

(1722)—*S. 227 (=s. 445, Crim. Pro. Code, 1872)—Amendment of charge.*—S. 445 provides only for amendments and alteration of the charge in those statement of facts which affect the liability of an accused person to punishment; and not to a statement of fact which merelyaffects the amount of punishment which may be inflicted, if such liability is proved. **21 P.R. 1879 Cr.**

(1723)—*S. 227—Cancelling of charge under one section and substitution of another when not warranted by law.*—Where, after the complainant was examined and after hearing argument, the Magistrate held that the charge which was originally framed against the accused could not stand and so cancelled the charge and substituted another under a different section, *held* that the Magistrate's action in cancelling the charge under one section and substituting a charge under another section was a procedure not warranted by s. 227, Crim. Pro Code. **U.B.R. (1897—1901), Vol. I, 64.**

(1724)—*Ss. 227, 233, 234, 537—Charge of more than three offences at one trial—Striking out offences so as to reduce them to three.*—Where a person is charged with, and tried for, four offences committed in the same year, it is not open to a Magistrate, purporting to act under s. 227, to strike out one of the charges, and convict the accused on the remaining three. The words of s. 227 may be wide enough to warrant a Court in altering a charge, by striking out one of the charges, at any time before judgment; but the section does not seem to warrant the striking out of a charge, for the purposes of curing an illegality, which had already been committed. Disobedience to an express provision as to a mode of trial cannot be regarded as a mere irregularity, within the meaning of s. 537. **1 M.L.T. 409=29 M. 569=5 Cr. L.J. 94.**

(1725)—*Ss. 227, 537—Charge—Addition of a further charge by Sessions Judge as to offence committed independent of the charge on which committal is based—Illegality—Dying declaration—Acquittal—Appeal by Government—Evidence of witnesses disbelieved as against some accused not to be believed as regards the other co-accused—Re-trial refused when evidence untrustworthy and discrepant—Penal Code, ss. 302, 324 and 326.*—Four persons J.,S.,S.D., and S.N., were charged with the murder of one J. M. Of these J. was discharged by the committing Magistrate, and the rest committed to the Sessions for an offence under s. 302, I.P.C. In the Sessions Judge's opinion, the whole of the prosecution evidence was untrustworthy and materially discrepant. He accordingly acquitted all three accused of the murder of J.M., but convicted S.D., on the charge under s. 326, Penal Code, added by himself during the course of the trial, of having caused grievous hurt by means of a stabbing instrument to another person A., and sentenced him to transportation. But S.D., had not been committed for causing injury to A. In a note, subsequently added to his judgment, the Sessions Judge observed that the injury did not amount to grievous hurt under s. 326, Penal Code, but the offence did amount to one under s. 324, Penal Code, for which he inflicted the maximum punishment awardable under s. 326, Penal Code, because "he was certain that S.D. had had a hand in the killing of J.M." *Held*, that the Sessions Court is not a Court of original jurisdiction, and, though vested with large powers for amending and adding to charges, can only do so with reference to the immediate subject of the prosecution and committal, and not with regard to the matter not covered by the indictment; and, therefore, the conviction of S.D. of an offence under s. 326 alleged to have been committed on A., is illegal and must be set aside; the addition of the second charge was not a mere irregularity but an illegality not covered by s. 537, Crim. Pro. Code; the evidence was untrustworthy and materially discrepant, on which it was not proper to order a re-trial; an accused should not be convicted on the strength of evidence, which is disbelieved so far as the other co-accused are concerned, if the ground for disbelieving it is common to all of

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

them; a dying declaration inconsistent with the other prosecution evidence, full of material contradictions and discrepancies, is as valueless as the evidence itself. In awarding punishment, it is illegal to pay any regard to the offence of which an accused was charged but acquitted. **20 P.W.R. 1909 Cr.**

(1726)—*Ss. 227, 237 (=Crim. Pro. Code, Act X of 1882, ss. 227, 237)—Penal Code, ss. 411, 380.*—S. 237 of the Crim. Pro. Code, does not imply that a person charged under s. 411 of the Penal Code may, without altering the charge, be convicted under s. 380 of the Penal Code. The proper course is to alter the charge under s. 227 of the Crim. Pro. Code. **A.W.N. 1888, 116.**

(1727)—S. 227—*See* ACT I OF 1849, s. 9, 5 M.H.C. App. 13.

(1728)—S. 227—*See* CHARGE, Rat. Un. Cr. C. 33, 5 B.H.C. Cr. 9.

(1729)—Ss. 227, 228, 229—*See* CHARGE, 6 C.W.N. 72.

(1730)—Ss 227, 288, 199, 238—*See* CHARGE, 9 Bom. L.R. 148=5 Cr. L.J. 164=31 B. 218.

(1730-*a*)—S. 227—*See* Nos. 1661, 1696, 1716, 1717, 1718, 1719, *supra*.

——S. 228 (=1882, s. 228; 1872, s. 447; 1861, s. 245).

(1731)—Ss. 228, 229, 231—*See* CONFESSION, 11 B.H.C. 278.

(1731-*a*)—S. 228—*See* Nos. 1718, 1729, *supra*.

——S. 229 (=1882, s. 229; 1872, s. 448; 1861, s. 246).

(1732)—*Ss. 229 and 537 (=Crim. Pro. Code, 1882, ss. 229, 537)—Addition of new charge.*—Where a new charge was read aloud to the jury, but was not specially explained to the prisoner and he was not called upon to plead to that charge, but his counsel, on being asked, did not require a new trial, *held*, that the accused was not prejudiced by the addition of the new charge, and the omission would not affect the trial. **8 B. 200.**

(1732-*a*)—S. 229—*See* Nos. 1718, 1729, 1731, *supra*.

——S. 230 (=1882, s. 230; 1872, s. 450).

(1732-*b*)—S. 230—*See* Nos. 1420, 1718, *supra*.

——S, 231 (=1882, s. 231; 1872, s. 449; 1861, s. 247).

(1732-*c*)—S. 231—*See* Nos, 1718, 1731, *supra*,

——S. 232 (=1882, s. 232; 1872, s. 451).

See CHARGE.

(1733)—*S. 232 (=Crim. Pro. Code, 1882, s. 232)—Assessor's list—Gentlemen of rank and status—Refusal to act.*—A gentleman of considerable rank and status should not be placed on the list of assessors, or, if put upon the list, ought not to be summoned to serve as an assessor, unless it were known that he would be willing to act as such. **A.W.N. 1897, 167.**

(1734)—*Ss. 232 and 423—Conviction in absence of charge--New trial, power of appellate Court to order.*—Where the accused was charged under s. 471, Penal Code, for dishonestly using a forged document, but was convicted eventually under s. 500 for defamation contained in that document, *held*, that the Sessions Judge, to whom the case went up on appeal, was wrong to order a re-trial for defamation, if he thought it was necessary, under s. 423, but should have ordered it under s. 232. *Quære:*—Whether an appellate Court has, under s. 423(*u*), general powers to order a new trial? **28 C. 63=5 C.W.N. 819.**

(1735)—S. 232—*See* CHARGE, 29 C. 481=6 C.W.N. 599.

(1736)—Ss. 232, 423—*See* PENAL CODE, ss. 147, 323 and 448, 30 C. 283.

(1737)—Ss. 232 and 423 (*b*)—*See* RE-TRIAL, 7 C.W.N. 301.

(1737-*a*)—S. 232—*See* Nos. 1696, 1712, *supra*, and No. 2822, *infra*.

——S. 233 (=1882, s. 233; 1872, s. 452).

See JOINDER OF CHARGES.

See JOINT TRIAL.

(1738) *S. 233—Distinct offences—Offences under ss. 411 and 489 (c), I.P.C.—Separate trial.*—Offences under ss. 411 and 489 (*c*), Penal Code, are distinct offences and, therefore, can be tried separately. Where an accused was tried by a Magistrate and convicted under s. 411, and the evidence disclosed also the commission of an offence under s. 489 (*c*), triable exclusively by a Court of Sessions, *held*, that the conviction under s. 411 was proper, inasmuch as the offences under ss. 411 and 489 (*c*), Penal Code, were distinctly and separately triable. **29 C. 387=6 C.W.N. 550.**

(1739)—*Ss. 233 and 236—Contradictory statements — Charge, nature of— Evidence.*—Where a person is charged with having made two contradictory statements, two separate charges ought to be framed; and such evidence, as is procurable, should be adduced to prove the falsity of one or other of the two statements. **2 Weir 299.**

(1740)—*Ss. 233, 236.*—If a person is charged with having made two contradictory statements, two charges should be framed, one relating to each statement. If it were found impossible to say which of the two statements is false and that the two cannot be reconciled, the prisoner ought to be convicted accordingly, under s. 236, Crim. Pro. Code. **2 Weir 300.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1741)—*Ss. 233, 234 and 239—Joinder of charges—Several accused persons, if can be jointly tried for distinct offences of the same kind, committed within twelve months.*—S. 234 of the Code does not apply where several persons are jointly accused, but refers to the case of a single accused person. When, therefore, several accused persons were jointly charged with having, on two separate dates, within the space of twelve months, committed two offences of the same kind not forming part of the same transaction, *held*, that the joinder was illegal. **33 C. 292=10 C.W.N. 32=3 Cr. L.J. 126.** [*R.*, 11 C.W.N. 54, 6 C.L.J. 757=6 Cr. L J. 442].

(1742)—*Ss. 233, 234, 537 (=Crim. Pro. Code, 1882, ss. 233, 234, 537)—Joint trial for distinct offences.*—Where the accused, at one and the same trial, were charged with robbery and murder committed in the course of the robbery and also of a robbery committed some hours previously at a place three miles off the scene of the former crime, *held*, that the joint trial of the first robbery and the subsequent robbery and murder was only an error or an irregularity within the meaning of s. 537. **14 A. 502.** [*R.*, 27 C. 839, 83 P.L.R. 1901=7 P.R. 1901 Cr., 2 L.B.R. 10, A.W.N. 1907, 208=6 Cr. L.J. 215].

(1743)—*Ss. 233, 235—Several dacoities on the same night—Charge, form of.* Where certain persons are charged with having committed four separate dacoities in the course of the same night, there must be distinct charges for each dacoity, although the offences, being committed on one and the same night, formed one series of acts so connected together as to form part of the same transaction and were triable at one trial. **26 A. 195=A.W.N. 1903, 231.** [*R.*, 10 Bom. L.R. 848].

(1744)—*Ss. 233, 235—Charges under ss. 302 and 201, Penal Code.*—Charges under ss. 302 and 201, Penal Code, cannot be combined. **2 Weir 301.**

(1745)—*Ss. 233, 239 and 537—Joint trial—Misjoinder of parties—Retrial.*—Where two persons were tried together in the same trial, for offences under ss. 411 and 414, I.P.C., each of these persons being charged with the same offence only in respect of a currency note of Rs. 500, but in respect of the charges on two other currency notes of Rs. 100, the charge against each of the accused being separate and distinct and relating only to one of those currency notes, *held*, that there was a misjoinder of parties. [*R.*, 29 B. 449=7 Bom. L.R. 527]. An appellate Court, in discharging the accused on the ground of misjoinder of parties, has power to add to that order a direction that the accused should be re-tried. It cannot be contended that further proceedings should be left to the discretion of the Magistrate. There is no reason at all why the superior Court should not point out to the Magistrate the course which should be taken in such a matter. Misjoinder of parties is not fatal to the proceedings, but is an irregularity which requires that the Court should consider whether, under the terms of s. 537, it has, in fact, occasioned a failure of justice. Where no objection was taken before the trying Magistrate for the joint trial of a person charged under s. 411 with a person charged under s. 381, Penal Code, and the evidence was that the former was handling the stolen property only a few hours after the theft, *held*, that the joint trial of him with the person charged with the theft had not occasioned a failure of justice. **28 C. 104.** [*R.*, 29 B. 449 =7 Bom. L.R. 527; *Diss.*, U.B.R., 1st Qr., Crim. Pro. 5=14 Bur. L.R. 38].

(1746)—*Ss. 233 and 537—Misjoinder of parties—Joint trial of persons charged with criminal breach of trust and receiving stolen property—Objection, when to be taken—Penal Code, ss. 407 and 411.*—A misjoinder of parties, just as a misjoinder of charges, is not fatal to the proceedings, but is an irregularity which requires that the Courts should consider, under the terms of s. 537, whether it has, in fact, occasioned a failure of justice. Where neither before the Magistrate, who tried the case, nor in the appellate Court was any objection taken to the joint trial of persons charged, under s. 407, Penal Code, with dishonestly receiving and retaining stolen property, which had been taken by criminal misappropriation, with the person charged with the latter offence, *held*, that the objection could not be properly raised before the High Court in revision, and that it could and should have been raised at an earlier stage of the proceedings, and that, therefore, it should be held that, not being so raised, it had not, in fact, occasioned a failure of justice. **28 C. 7.** [*F.*, 28 C. 10; *Diss.*, U.B.R. 1907, 1st Qr., Crim. Pro. 5=14 Bur. L.R. 38].

(1747)—*Ss. 233, 537 (=Crim. Pro. Code, 1882, ss. 233 and 537)—Trial of offences under ss. 376 and 377 together—Conviction—Validity.* —The mere fact that an accused was tried at the same trial, in contravention of the provisions of s. 233, Crim. Pro. Code, for offences under ss. 376 and 377, I.P.C., is not sufficient to invalidate the conviction for either offence in the absence of evidence that he was prejudiced in his defence. S. 537, Crim. Pro. Code, was applicable to an error of this kind as well as to any other mere error of procedure. **9 C.P.L.R. Cr. 23.**

(1748)—*Ss. 233 and 239—Joint trial of three persons, one for an offence under s. 457 and the others for an offence under s. 411, Penal Code.*—Three persons were jointly tried and convicted at one trial, one for an offence under s. 457 and the other two for an offence under s. 411, Penal Code. No objection as to the illegality of the trial was taken before the Magistrate or the Sessions Judge. Nor did it appear that the theft and the receipt of the stolen property were parts of the same transaction. *Held*, under the circumstances, that the joint trial

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

and the conviction were illegal and opposed to the provisions of s. 239 of the Crim. Pro. Code. It is not a mere irregularity curable under s. 537, Crim. Pro. Code. **4 P.L.R. 1905=2 Cr. L.J. 30.**

(1749)—*Ss. 233, 242—Joint trial of several accused in summons case—Applicability of.*—The accused were tried together and convicted for an encroachment on a grazing ground. It was found that each of the accused cultivated a separate piece of land. They did not all join together to cultivate the same piece in common. The question for decision was whether s. 233 of the Code applied to the present case, which was a summons case, in which no formal charge was necessary. *Held*, a charge is an essential element in any trial and if the provisions as to joinder of charges do not apply to summons case, there are no other provisions of law to guide Magistrate. But, in a summons case, a charge need not be embodied in writing. S. 233 of the Code applies to summons cases also. **3 L.B.R. 52, F.B.**

(1750 and 1751)—Ss. 233, 239 and 423—*See* APPELLATE COURT, 38 P.R. 1905 Cr.

(1752)—S. 233—*See* CHARGE, 13 C.W.N. 1067, Rat. Un. Cr. C. 529=Cr. Rg. 27-11-1890.

(1753)—Ss. 233, 234, 439, 537—*See* CHEATING, 4 L.B.R. 315.

(1754)—Ss. 233 and 555—*See* FALSE EVIDENCE, 10 C. 937.

(1755)—Ss. 233, 239—*See* JOINDER OF CHARGES, 5 P.R. 1900 Cr.

(1756)—Ss. 233, 234—*See* JOINT TRIAL, 13 C.W.N. 418=9 Cr. L.J. 277=1 Ind. Cas. 335, 9 C.L.J. 149=13 C.W.N. 507=5 M.L.T. 349=3 Ind. Cas. 319.

(1757)—Ss. 233, 251, 252 and 256—*See* JOINT TRIAL, 3 L.B.R. 280=5 Cr. L.J. 417.

(1758)—Ss. 233, 537—*See* JOINT TRIAL, 6 C L.J. 757=6 Cr. L.J. 442.

(1759)—Ss. 233, 239, 537—*See* PENAL CODE, s. 419, 149 P.L.R. 1903.

(1760)—S. 233—*See* RIOTING, 1 L.B.R. 56.

(1761)—Ss. 233, 334 and 537—*See* RIOTING, 8 C.W.N. 344.

(1761-*a*)—S. 233—*See* Nos. 235, 1611, 1696, 1708, 1712, 1713, 1724, *supra*.

——S. 234 (=1882, s. 234; 1872, s. 453).

See JOINDER OF CHARGES.

See JOINT TRIAL.

(1762)—*S. 234—Charges under s. 477-A, Penal Code, of falsification of a book or account, more than 3 in number.*—Every act of falsification of a book or account would amount to an offence under the Code under s. 234. An accused can only be charged and tried at one trial for any number of offences of the same

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

kind not exceeding three committed within the space of one year. The explanation appended to s. 477-A does not purport to override s. 234, Crim. Pro. Code. [*Appl.*, 4 Bom. L.R. 433]. The alteration in the law by s. 222 (2) of the Crim. Pro. Code of 1898 does not apply to a charge under s. 477-A of the Penal Code. It applies only to criminal breach of trust or dishonest misappropriation of money. **26 C. 560=3 C.W.N. 412.**

(1763)—*S. 234—Joint trial for several acts of misappropriation—Separate acts of misappropriation.*—An accused person cannot be charged with, and tried at the same time for, criminal misappropriation of a sum which is not the subject of a single act of misappropriation, but which represents a general deficiency consisting of a lengthened series of separate defalcations. Where there have been separate acts of misappropriation, the accused cannot be tried at the same time for more than three of such acts committed within a year; but when it may be properly inferred from the evidence that there has been but one act of misappropriation, although the sum misappropriated may represent the aggregate of sums received by the accused at different times, he may then be charged and tried at one trial in respect of the aggregate sum, or if there be three such acts occurring within a year, then in respect of all of them. **2 C.W.N. 341.** (15 W.R. Cr. 5, 24 C. 193, 17 A. 153, 18 A. 116, *Diss.*).

(1764)—*S. 234—Irregularity.*—Charging an accused person with and trying him at one trial for three offences, punishable under ss. 380, 454 and 457, Crim. Pro. Code, was held to be in contravention of s. 234 of Crim. Pro. Code, which defines offences of the same kind as offences punishable with the same amount of punishment under the same section of the Penal Code or of any special or local law. It is not a mere irregularity to disobey an express provision as to a mode of trial. **15 C.P.L.R. Cr. 53.** (L.R. 28 I.A. 257, *R.*).

(1765)—*Ss. 234, 235—Trial of several offences at same time.*—Difference between separate offences and separate acts done in the course of the commission of a single offence pointed out. **U.B.R. (1892—1896), Vol. I, 33.**

(1766)—*Ss. 234, 235 (1)—Various charges of threatening for the purpose of inducing payment of bribes—Single trial—Multiplicity.*—The accused was convicted at one trial of threatening 14 persons with injury, unless they each paid him a bribe. The alleged threat with reference to ten of them was made at one time, and with reference to the rest at another time. But the tenor of the charge was quite different from the facts as above stated. The charge was that two specific individuals were asked, under threat of dismissal in case of non-compliance, to obtain bribes for the accused from other people who were not even named in the charge.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

Held, that, whether the charge be taken as being an instigation to obtain bribes, or as inducing the accused with actual threats, it was bad for multiplicity under s. 234, inasmuch as more than three separate offences were involved, which offences were not committed in one transaction, and that s. 235 (1) did not apply. **2 Weir 299.**

(1767)—*Ss. 234,236 (=Crim.Pro.Code, 1872, ss. 453 and 455)—Penal Code, ss. 325, 387, 392.* —The trial of an accused in a single trial on two charges of offences under ss. 387, 325, 392, I.P.C. (not of the same kind within the meaning of ss. 453, 455, Crim. Pro. Code), renders the proceedings only fit to be annulled, since the said offences have arisen out of two entirely different sets of circumstances. **Colm. Dig. Cr. 55 of 1876.**

(1768)—Ss. 234, 537—*See* JOINDER OF CHARGES, 14 C. 128, 12 M. 273=1 Weir 375, 25 M. 61=11 M.L.J. 233=3 Bom. L.R. 540 =28 I.A. 257=5 C.W.N. 866=2 Weir 271=10 M.L.J. 147, P.C.

(1769)—S. 234—*See* JOINT TRIAL, A.W.N. 1881, 68.

(1769-*a*)—S. 234—*See* Nos. 1421, 1696, 1701, 1702, 1703, 1704, 1706, 1707, 1708, 1709, 1713, 1724, 1741, 1742, 1750, 1753, 1756, *supra*.

——**S. 235 (=1882, s. 235; 1872, s 454, omit ills. (e), (h), (i), (k).)**

See JOINDER OF CHARGES.

See JOINT TRIAL.

(1770)—*S. 235 (=Crim. Pro. Code, 1872, s. 454)—Same offence causing injury to two persons—Separate sentences—Penal Code, s. 71.* —A man who rode a horse furiously and knocked down another man and his child, was convicted under ss. 279 and 326 of the I.P.C., and sentenced under the former to one month's rigorous imprisonment and under the latter to a fine of Rs. 20. *Held* that though the combined sentence was within the limit fixed by s. 71 of the Penal Code, the case fell within s. 454 (2) of the Crim. Pro. Code, which contemplates the passing of a single sentence only, and that the order in appeal substituting a single sentence equal in extent to the combined sentence, was right. **Rat. Un. Cr. C. 159=Cr. Rg. 10—3—1881.**

(1771)—*S. 235 (=Crim. Pro Code, 1872, s. 454)—Punishment for offences under ss. 147 and 324, I.P.C.*—Under s. 454, Crim. Pro. Code, the collective punishment awardable for offences under s 147 and s. 324, I.P.C., must not exceed that which may be given for the graver offence. **8 C.L.R. 390.**

(1772)—*S. 235—Separate sentences—Distinct offences—Trial to be generally held before District Magistrate with enhanced powers.*— Where a person was convicted and sentenced by a first class Magistrate, to two years' rigorous imprisonment under s. 457 and to another two years' imprisonment for another offence under s. 380, I.P.C., *held*, that, although the separate sentences passed on the accused was legal, yet, it was desirable that such cases should be tried before a District Magistrate with enhanced powers. **8 P.R. 1888 Cr.**

(1773)—*S. 235—Distinct offences committed in the same transaction—Separate sentences.*— A person found guilty of rioting armed with deadly weapon and also of having voluntarily caused grievous hurt by means of that weapon, is guilty of distinct offences punishable separately. **32 P.R. 1885 Cr.**

(1774)—*S. 235 (=Crim. Pro. Code, 1882, s. 235)—Penal Code, s. 71—Cumulative sentence.*—If, in pursuance of a common object, several persons attack at the same time and dacoit two houses belonging to different owners in the same village, they are not liable to be punished separately on separate charges of dacoiting each house. They can only be punished for one offence of dacoity. **L.B.R. (1872—1892), 444.**

(1775)—*S. 235 (=Crim. Pro. Code, 1882, s. 235).*—Distinction between s. 235, Crim. Pro. Code, 1882, and its corresponding s. 434 of the Code of 1872, pointed out.—*See* L.B.R. (1872—1892), 476.

(1776)—*Ss. 235, 236 and 403 (=Crim. Pro. Code, 1882, ss. 235, 236, 403)—Scope of s. 236—Previous conviction or acquittal—Subsequent trial when valid.*—S. 236 contemplates a state of facts constituting a single offence, but not where it is doubtful whether the acts involved may amount to one or another of several cognate offences. Where that is the case, the accused may be simultaneously charged with and tried for the commission of all or any of such offences, and after acquittal or conviction cannot again be tried on the same facts either for the specific offence or offences for which he has already been tried, or for any other offence for which he might then have been tried under the provisions of the section. But where the acts of an accused disclose more offences than one and distinct in their character, the fact of his having been charged on a previous occasion with one offence only is no bar to the institution of a separate proceeding in respect of some other offence which as then disclosed. (S. 403, 2nd para). **23 C. 174.** [*R.*, 1 L.B.R. 104].

(1777)—*Ss. 235, 239 and 537—Misjoinder of charges—Offence under s. 128, Railway Act IX of 1890)—Penal Code, s. 225.*—S. 235, as regards the joinder of different offences, must be read with s. 239, and it is one of the sections mentioned in the latter section. An offence under s. 128 of the Railway Act, and the offence of rescuing the person arrested for the former offence, *i.e.*, an offence under s. 225, Penal Code, are distinct offences, and must be tried separately. The irregularity of trying these offences jointly cannot be cured by s. 537. **29 C. 385=6 C.W.N. 468.** [*R.*, 26 M. 592].

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1868 and VIII of 1869) —continued.

(1778)—*Ss. 235 and 403*—Autrefois *convict* —*Conviction under s 452 of the Indian Penal Code no bar to a subsequent trial for an offence under s. 365 of the Code arising out of the same set of circumstances.*—One Merai Curmi, formed an intimacy with one Mussammat Hulla, a widow, and Hulla took up her abode in Merai's house. Some of Hulla's relations attacked the house of Merai, beat him and his brothers, and carried off Hulla. For this they were tried and convicted under s. 452 of the Indian Penal Code. After being removed from Merai's house, Hulla disappeared, and, after all efforts to find her had been unavailing for a space of some two years, the persons, who had been concerned in the attack of Merai's house were put on their trial under s. 365 of the Indian Penal Code. *Held*, that their previous conviction under s. 452 was no bar to their being tried under s. 365. **A.W.N. 1906, 32=3 A.L.J. 2=3 Cr. L.J. 93.**

(1779)—*S. 235 (1)*—"*Transaction*," *meaning of*—*See* U.B.R. (1897—1901), Vol. I, 31.

(1780)—Ss. 235 and 403—*See* ACT XXVI OF 1870, s. 3, 2 A. 301.

(1781)—Ss. 235 and 35—*See* ACT XII OF 1896, ss. 45 and 51, 1 L.B.R. 33.

(1782)—Ss. 235, 239, 403—*See* JOINT TRIAL. 31 C. 1007.

(1783)—S. 235—*See* PENAL CODE, L.B.R. (1893—1900), 226.

(1784)—S. 235—*See* PENAL CODE, s. 71, L.B.R. (1872—1892), 440.

(1785)—S. 235—*See* PENAL CODE, ss. 71, 406, 417, L.B.R. (1872—1892), 492.

(1786)—S. 235—*See* PENAL CODE, ss. 379 and 390, 6 C.P.L.R. 36 Cr.

(1787)—S. 235—*See* RIOTING, 12 C. 495.

(1788)—S. 235, cls. 2 and 3—*See* SENTENCE, 5 P.R. 1883 Cr., 6 C. 718, 12 C. 495, 9 A. 645, Rat. Un. Cr. C. 79, Rat. Un. Cr. C. 95, Rat. Un. Cr. C. 135, Rat. Un. Cr. C. 369, 11 C. 349.

(1789)—Ss. 235, 239—*See* UNLAWFUL ASSEMBLY, 6 M.L.T. 17.

(1789-*a*)—S. 235—*See* Nos. 234, 235, 245, 1180, 1422, 1450, 1465, 1667, 1704, 1705, 1708, 1713, 1743, 1744, 1750, 1765, 1766, *supra*, and Nos. 1895, 2631, *infra*.

——S. 236 (=1882, s. 236; 1872, s. 455; 1861, s. 242).

See JOINDER OF CHARGES.

See JOINT TRIAL.

(1790)—*S. 236—Scope of the section—Power of Sessions Judge to amend the statement of common object of an unlawful assembly—Alternative charges—Misdirection of jury—Penal*

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

Code. s. 249.—S. 236 of the Code only authorises a charge in the alternative, when it is doubtful which of the several offences the facts which canbe proved will constitute, and not when there may be a doubt as to the facts which constitute one of the elements of the offence. Where, on a charge under s. 149 of the Penal Code, the prosecution alleged a certain common object, but the Judge amended the charge and added an alternative common object, considering, possibly, that the common object alleged by the prosecution might be considered not to have been proved, and where it was found that it was impossible to say whether the jury intended to find that the accused acted with the common object alleged by the prosecution, or with that inserted in the charge by the Judge, or with both, or some with one and some with other, *held*, that the Judge had misdirected the jury and the conviction should be set aside. The case was ordered to be retried. **21 C. 955.** [*Applied*, 25 C. 561; *R.*, 1 L.B.R. 101].

(1791)—*S. 236—Charge in the alternative—Penal Code, ss. 193 and 423—False evidence—Entry of false consideratim in deed—Sentence.* —The accused in a sale-deed executed by him entered the consideration as Rs. 1,475. When a suit for pre-emption was brought, he gave evidence that the only price was Rs. 900 and that a fictitious price had been entered to defeat pre-emption. *Held*, that the accused was liable to conviction in the alternative under s. 193 or 423, Penal Code. When a conviction is in the alternative only, the sentence cannot be heavier than what is suitable for the less serious offence. **60 P.L.R. 1903.**

(1792)—*S. 236—Scope.*—S. 236 relates not to distinct acts, but to a single act, or series of acts, where the facts being ascertained it is doubtful which of several sections is applicable. **43 P.R. 1887 Cr.**

(1793)—*Ss. 236, 237—Accused charged with causing grievous hurt with a da—Conviction for attempt to murder—Penal Code, ss. 326, 307—Two scales of punishment—Correct course.*—Where an accused person was charged with causing grievous hurt with a *da* under s. 326, Penal Code, but was formally acquitted of that offence and convicted of attempt to murder under s. 307, Penal Code, *held* that, though ss. 236 and 237, Crim. Pro. Code, read together seem to legalize the course taken by the Court of Sessions, still the correct course would have been to amend the charge, or to add a fresh charge of attempt to murder and to call on the accused to plead to this charge. S. 307 contains two scales of punishment, the higher scale being applicable when hurt is caused. Therefore, in the case of a conviction under s. 307, there should be an express finding that hurt was caused. **1 L.B.R. 221.**

(1794)—*Ss. 236, 237, 239—Alteration of charge—Irregularity—Penal Code, ss. 366, 376.* —It is not competent to a Judge, in appeal,

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to alter a charge under s. 376 of the Penal Code to one under s. 366; because a charge under the latter section involves different elements and different questions of fact from a charge under s. 376. **8 Bom. L.R. 120=3 Cr. L.J. 240.**

(1795)—*Ss. 236, 237, 403—Acquittal under s. 400, I.P.C., whether a bar for conviction under s. 395, I.P.C.*—The acquittal of an accused on a charge under s. 400, I.P.C., cannot operate, under s. 403, Crim. Pro. Code, as a bar to his being prosecuted again on a charge under s. 395, I.P.C., for committing one of the dacoities in respect of which evidence was given in the previous trial under s. 400. S. 403, Crim. Pro. Code, bars a separate trial on the same basis of facts, only in cases falling within ss. 236, 237 of that Code. **1 Bom. L.R. 15.**

(1796 and 1797)—*Ss. 236, 237 (=Crim. Pro. Code, 1872, ss. 455, 461)—Joinder of charges—Judgment in the alternative.*—S. 455 applies to cases in which not the facts, but the application of the law to the facts, is doubtful. A judgment in the alternative cannot be passed in cases in which it is doubtful whether the accused person is guilty of any one of several offences, but where it is doubtful of which of those offences he is guilty. **7 N.W.P. 137.**

(1798)—*Ss. 236, 237, 537 (=Crim. Pro. Code, Act X of 1882, ss. 236, 237, 537)—Charge of murder—Conviction for theft.*—Ss. 236 and 237 of the Crim. Pro. Code, refer to cognate offences such as theft and criminal breach of trust, and do not relate to offences of so distinct a character as murder and theft. Where, however, the prisoner was not prejudiced in his defence by the failure to frame a separate charge of theft, *held*, that s. 537 of the Crim. Pro. Code, applied and that the conviction need not be set aside. **A.W.N. 1888, 95.**

(1799)—Ss. 236, 237, 403 (1)—*See* BOM. ACT III OF 1888, ss. 308, 309, 342, 4 Bom. L R. 575.

(1800)—Ss. 236, 237, 403—*See* AUTREFOIS ACQUIT, PLEA OF, 7 N.W.P. 371.

(1801)—S. 236—*See* CHARGE, 8 B.H.C. Cr. 115.

(1802)—Ss. 236, 237 (1)—*See* CHARGE, 19 B. 51.

(1803)—Ss. 236, 237, 238, 423—*See* CHARGE, 26 C. 863=3 C.W.N. 653.

(1803-*a*)—S. 236, Sch V, No. XXVIII (4) —*See* FALSE EVIDENCE, 32 P.R. 1888 Cr.

(1804)—S. 236—*See* MURDER, 11 P.R 1887 Cr.

(1805)—S. 236—*See* PENAL CODE, ss. 182, 193, 5 A. 17.

(1806)—Ss. 236, 477, 478—*See* SESSIONS JUDGE, JURISDICTION OF, 3 M. 351.

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(1806-*a*)—S. 236—*See* Nos. 235, 1058, 1180, 1423, 1713, 1739, 1740, 1750, 1767, 1776, *supra*, and No. 2632, *infra*.

——S. 237, para 1 (=1882, s. 237; 1872, s. 456; 1861, *cf.* ss. 56 to 59); and para 2, new.

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See JOINT TRIAL.

(1807)—*S. 237—Scope of the section.*—S. 237, Crim. Pro. Code, does not apply to a case where the true nature of the offence is not open to reasonable doubt. Where a person is charged with a certain offence and the opinion of the assessors is taken on that charge, he cannot be convicted of a different offence, which the evidence in the case points to, if the opinion of the assessors is not taken regarding that offence. **2 Weir 301.**

(1808)—*S. 237 (=Crim. Pro. Code, 1861, ss. 56 to 59)—Penal Code, ss. 395, 412—Charge of dacoity—Conviction under s. 412—Legality.*—Persons charged with and tried for dacoity under s. 395 of the Penal Code cannot be convicted of receiving stolen property under s. 412, since there was no charge under the latter section and since the case did not fall within ss. 56 to 59 of the Crim. Pro. Code, 1861. **Rat. Un. Cr. C. 34=Cr. Rg. 16—6—1870.**

(1809)—*Ss. 237, 238 (=Crim. Pro. Code, 1882, ss. 237 and 238).*—A person charged with and acquitted of murder was convicted of having dishonestly misappropriated property possessed by the deceased person at the time of his death. *Held* that, as the latter charge was not framed and the accused was not called upon to plead to it, the conviction was bad. **13 C.P.L.R. Cr. 167.** (11 B.H.C. 240, *R.*).

(1810 and 1811)—S. 237 (1), 238—*See* CHARGE, Cr. Rg. 19—9—1890, 17 B. 369.

(1812)—S. 237—*See* PENAL CODE, ss. 201, 302, 30 P.L.R. 1904.

(1813)—S. 237 (1)—*See* SENTENCE, 2 A. 101,

(1813-*a*)—S. 237—*See* Nos. 1180, 1713, 1726, 1750, 1793, 1794, 1795, 1796, 1799, 1800, 1802, 1803, *supra*, and Nos. 1848, 2632, 2787, *infra*.

——S. 238 (=1882, s. 238; 1872, s. 457).

See JOINDER OF CHARGES.

See JOINT TRIAL.

(1814)—*S. 238 (=Crim. Pro. Code, 1882, s. 238)—Charge of robbery—Conviction for offences under ss. 380, 457—Validity.*—The accused were charged with and tried by the Sessions Court for an offence under s. 397, Indian Penal Code, of committing robbery and using a deadly weapon (a sword) at the time of committing it, and the jury returned a verdict of not guilty of the offence charged, but found accused No. 1 guilty of the offence of house breaking by night and theft in a dwelling house and accused No. 2 guilty of abetting

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those offences. *Held*, that all the particulars constituting the minor offence of house-breaking by night and theft in a dwelling house and abetment of those offences were not included in the definition of robbery, the only offence with which the accused were charged; therefore, under s. 238, Crim. Pro. Code, the accused could not be convicted of those offences without a charge being framed; the verdict of the jury finding them guilty of those offences in the absence of such a charge was accordingly bad and should be reversed. **Rat. Un. Cr. C. 211 = Cr. Rg. 26-4-1885.**

(1815)—*S. 238 (=Crim. Pro. Code, 1882, s. 238)—Conviction for a minor offence where evidence is not sufficient for grave offence—Penal Code, ss. 366 and 498.*—Where the husband is the complainant and brings his complaint under s. 366 of the Penal Code, a conviction under s. 498 of the Penal Code may properly be had, even in the absence of complaint by the husband, under s. 199, Crim. Pro. Code, of an offence under s. 498 of the Penal Code, if the evidence be such as to justify a conviction for the minor offence, and yet insufficient for a conviction for the graver one. Such a case is within the intention of s. 238, Crim. Pro. Code. The intention of the law is only to prevent Magistrate's inquiring of their own motion into cases connected with marriage, unless the husband or other person authorised moves them to do so. **20 C. 483.** [*R.*, 22 C. 1006, 30 C. 910=8 C.W.N. 17, F.B.; *Diss.*, 27 M. 61=2 Weir 236, 17 C.P.L.R. 105].

(1816)—*S. 238 (=Crim. Pro. Code, 1882, s.238)—"Minor offence"—Offences under ss. 365, 366 and 376, Penal Code.*—The words "minor offence" in s. 238, Crim. Pro. Code, ought to be taken in their ordinary sense and not in any technical sense; if so taken, an offence under s. 365 would be a minor offence as compared with those under ss. 366 and 376, Penal Code. **22 C. 1006.**

(1817)—*S. 238 (=Crim. Pro. Code, 1882, s.238)—Penal Code, s. 330.*—Where the accused had been convicted of an offence, to constitute which an additional particular was necessary over and above the particulars which constituted the graver offence with which he was charged, *i.e.*, the purpose of extorting confession, *held* that a conviction under s. 330, Penal Code, without framing a charge was not correct. **7 C.P.L.R. Cr. 17.**

(1818)—*Ss. 238, 418 and 536—Offences triable by jury—Acquittal—Jury being of opinion of accused being guilty in respect of minor offence not triable by jury—Conviction—Appeal on facts and on law.*—The accused was charged with robbery under s. 392, Penal Code, and also with the offence of causing grievous hurt at the time of committing robbery under s. 397, both being offences triable by jury. The jury, while returning a verdict of not guilty on both the charges, found the appellant guilty of

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voluntarily causing grievous hurt, an offence triable by assessors. The Sessions Judge, accepting the verdict of "not guilty" acquitted the accused in respect of the charges under ss. 392 and 397, but convicted him of causing grievous hurt under s. 325, Penal Code. Against this conviction, the accused appealed and claimed to go into the evidence and to show that the offence under s. 325 was not proved. *Held*, by Benson, J.—The accused has in fact been convicted of the minor offence by the Judge who treated the finding of the jury in regard to the grievous hurt as the opinion of assessors. It is not correct to say that the conviction under s. 325 was by a jury. It is expressly a conviction by the Judge and the Judge's procedure was correct. An appeal, therefore, lies on the facts of the case. *Per* Bhashyam Ayyangar, J.—The effect of s. 238 is to invest a jury trying an offence triable by a jury with authority to find, as an incident to such trial, that certain facts only are proved in the trial which facts constitute a minor offence, and return a verdict of guilty of such offence though it may not be triable by a jury. And the Sessions Judge may thereupon record a judgment convicting the accused of such minor offence, although he is not charged with it and tried on such a charge by the Sessions Judge with the aid of jurors as assessors. In cases in which, having regard to the charge and the evidence adduced at the trial, it is appropriate to do so, the Sessions Judge in his charge to the jury should draw their attention to the provisions of s. 237 or 238 as the case may be, so that the jury may, if they deem fit to do so, return a verdict of guilty on a cognate or minor offence, though they return a verdict of not guilty of the offence with which the accused has been actually charged. In this case the jury found that the first accused was guilty of causing grievous hurt and the Judge has given judgment convicting him of the same. And, therefore, an appeal will lie from such judgment only on a point of law. **26 M. 243=2 Weir 463.**

(1819)—Ss. 238, 423 (*b*) (2)—*See* APPELLATE COURT, Rat. Un. Cr. C. 293.

(1820)—Ss. 238, 303, 307—*See* CHARGE TO JURY, 20 B. 215.

(1821)—S. 238—*See* CONVICTION, 11 B.H.C. 240, 12 B.H.C. 1.

(1822)—Ss. 238, 307—*See* HIGH COURT, JURISDICTION OF, 22 C. 1006.

(1823)—S. 238—*See* VERDICT OF JURY, 6 C.L.R. 349.

(1823-*a*)—S. 238—*See* Nos. 1076, 1180, 1496, 1750, 1794, 1798, 1803, 1809, 1811, *supra*, and Nos. 2222, 2787, *infra*.

——S. 239 (=1882, s. 239; 1872, s. 458).

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See JOINT TRIAL.

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(1824)—*S. 239 (=Crim. Pro. Code, 1882, s. 239)—Charges involving conspiracy between the accused—Joint trial.*—Where the charges involve conspiracy between the accused, they should be tried jointly. **16 A. 88.**

(1825)—*S. 239 (=Crim. Pro. Code, 1882, s. 239)—"Transaction," meaning of—Fight between two parties.*—The word "transaction" in s. 239 cannot be construed as authorising the trial, at one and the same trial, of opposing parties to a riot, inasmuch as fight between two parties cannot be treated as one transaction within the meaning of that section. **20 C. 537.** [*R.*, 1 L.B.R. 56, 4 Cr. L.J. 75=5 P.R. 1906 Cr.=116 P.L.R. 1907].

(1826)—*S. 239—Joinder of charges against several persons.*—Where 62 persons were jointly charged with theft, but there was no joint action on their part, each acting independently of the rest, *held*, that the joinder of 62 separate charges into one charge was a material irregularity by which the accused had been prejudiced. **2 Weir 303.**

(1827)—*S. 239—False statement, charge of, against several persons.*—When several persons are charged with making false statements, they should be charged and tried separately. **2 Weir 304.**

(1828)—*S. 239—Same transaction—Theft and disposal of proceeds.*—Ordinarily theft and the disposal of the proceeds would be parts of the same transaction; and as proximity of time between two acts does not necessarily constitute them parts of the same transaction, an appreciable interval of time between two acts, otherwise connected, does not prevent them from continuing to be parts of the same series of connected, events; and, hence, it is not necessary to show that the theft and disposal occurred within a few hours or even a few days of each other. **U.B.R. 1907, Crim. Pro 5=6 Cr. L.J. 28=14 Bur. L.R. 38.**

(1829)—*Ss. 239, 439 and 537—Joint trial of both parties in a riot, whether merely irregular or altogether illegal and void—Interference by Chief Court on revision entirely discretionary.*—Where two parties are arrayed against each other in a riot, it cannot be said that the offence of rioting was committed by both the parties in the same transaction, within s. 239 of the Code, so as to justify a joint trial of the persons on both the sides. The offence of rioting committed by each side forms a separate transaction and s. 239 will, therefore, be entirely inapplicable. Though, in the light of the Privy Council judgment in Subramania Iyer v. King Emperor, it must be held that a trial which is not warranted by the provisions of the Criminal Procedure Code is altogether illegal and void and not merely irregular, within the purview of s. 537, yet it would be entirely inconsistent with the letter and scope of s. 439 to hold that, in every case of illegal trial, the Chief Court is necessarily obliged to interfere

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without due regard to the circumstances of the particular case. The illegality of a trial is no doubt *prima facie* good and strong ground for the exercise of revisional jurisdiction, but it is not imperative on the Court to take such action in every case, however small and scant may be the necessity or reason for adopting such a course so as to interfere with the conviction in every such case, especially where no prejudice is shown to have been caused by such illegality. **5 P.R. 1906=4 Cr. L.J. 75=116 P. L.R. 1907.**

(1830)—*Ss. 239 and 537 (=Crim. Pro. Code, 1882, ss. 239, 537)—Counter cases of rioting—Trial of both cases together—Irregularity prejudicing the accused—Examination of accused in one case as prosecution witnesses in another.*—In counter cases of rioting and grievous hurt committed to Sessions separately, the Judge examined, first, the witnesses in one of the cases and then examined the witnesses in the other case. The principal witnesses for the prosecution in the one case were the accused in the other and *vice versa*. The assessors in both the cases were the same. After examination of witnesses in both the cases, the argument in both cases were heard on the same day, and the assessors were invited to give their opinion in the two cases at one time, as the cases were, according to the Judge, inextricably connected, and only one judgment was given in both cases. *Held*, that the mode of trial, although irregular, did not prejudice the accused in their defence and that retrial was not made necessary by reason of such irregularity. [*R.*, 1 C.W.N. 426, 83 P.L.R. 1901=7 P.R. 1901 Cr., 8 C.W.N. 344, 2 L.B.R. 106.] *Held* also that the examination of the accused in one case as witnesses for the prosecution, as was done *supra* would not affect the validity of a conviction based on such evidence. **20 C. 537.**

(1831)—*S. 239 (=s. 458, Crim. Pro. Code, 1872)*—*See* COMMITMENT TO SESSIONS COURT, 22 P.R. 1881 Cr.

(1832)—S. 239—*See* JOINT TRIAL, A.W.N. 1882, 215.

(1833)—S. 239—*See* MAGISTRATE, JURISDICTION OF, 13 C. 305.

(1834)—S. 239—*See* PENAL CODE, ss. 109, 195, A.W.N. 1882, 64.

(1835)—S. 239—*See* WITNESS, 5 C.L.R. 574.

(1835-*a*)—S. 239—*See* Nos. 308, 521, 1180, 1667, 1741, 1745, 1748, 1750, 1751, 1755, 1759, 1777, 1782, 1789, *supra*.

——S. 240 (=1882, s. 240; 1872, s. 459; 1861, s. 379-A).

See JOINDER OF CHARGES.

See JOINT TRIAL.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1836)—*S. 240 (=Crim. Pro. Code, 1882, s.240)—Withdrawal of charge.*—The permission to withdraw one of several charges against an accused person, allowed by s. 240 of the Crim. Pro. Code, only applies to charges against the same accused in the same case and not to separate charges of distinct offences in different cases. **Rat. Un. Cr. C. 362=Cr. Rg. 5 of 1888.** [*F.*, 6 M.L.T. 90=9 Cr. L.J. 495].

(1837)—*S. 240 (=Crim. Pro. Code, 1882, s. 240).*—S. 240 of the above Code applies to cases in which at the same trial more charges than one have been formally drawn up against the same person under the provisions of Ch. XIX of the Code. **10 C.P.L.R. Cr. 1.**

(1838)—*Ss. 240, 297, 303 (=Crim. Pro. Code, 1882, ss. 240, 297, 303)—Trial for several charges—Conviction.*—S. 240, Crim. Pro. Code, applies to cases where more charges than one are made against an accused person. If he is convicted of one of these charges before the other charges are tried, such other charges may be withdrawn. But, when the evidence bearing on all the charges has been recorded and the pleaders heard, it is the duty of the Sessions Judge under s. 297, Crim. Pro. Code, to sum up the whole of the evidence, and the jury should then, under s. 303, be required to return a verdict on all the charges. **Rat. Un. Cr. C. 286=Cr. Rg. 22 of 1886.**

(1839)—*Ss. 240, 344, 494—Stay of trial under s. 240.*—Where the Sessions Judge stayed the trial of the accused in a case, pending appeal against the conviction in another, and purported so to act under s. 240, Crim. Pro. Code, *held*, that s. 240, Crim. Pro. Code, is only applicable to joinder of charges in the same case, and not to separate charges of distinct offences tried separately, and the procedure of the Sessions Judge was illegal. *Held*, also, that the Sessions Judge might have attained the desired object by adjourning the trial under s. 344, Crim. Pro. Code, pending appeal in the other case, or the Public Prosecutor might under s. 494 have withdrawn the case, with the consent of the Court. **6 M.L.T. 90=9 Cr. L.J. 495=2 Ind. Cas. 128.**

(1840)—*Ss. 240, 403 (1 to 4) (=Crim. Pro. Code, Act X of 1882, ss. 240, 403)—Penal Code, ss. 193, 204—Stay of trial.*—A Magistrate trying a person accused of offences under ss. 193 and 204 of the Penal Code, convicted the accused under the former section, but with regard to the latter, the Magistrate, thinking that the facts constituted some other offence, ordered the papers to be placed before the District Magistrate. Later on, the accused was again placed on trial under s. 204. *Held*, that the first disposal did not amount to an acquittal but only to a stay of trial under s. 240 of the Crim. Pro. Code, and that the subsequent trial was not barred by s. 403 of the Crim. Pro. Code. **A.W.N. 1889, 8.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1841 and 1842)—S. 240—*See* CHARGE, Rat. Un. Cr. C. 977, 9 C.L.J. 257.

(1842-*a*)—S. 240—*See* No. 3312, *infra*.

——**S. 241 (=1882, s. 241; 1872, s. 203, para 1).**

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(1842-*b*)—S. 241—*See* No. 68, *supra*.

——**S. 242 (=1882, s. 242; 1872, ss. 203, para 2, 206, para 1; 1861, s. 265).**

See SUMMONS CASES.

See TRIAL.

(1843)—*Ss. 242, 244, 342, 364 and 537—Examination of accused.*—S. 342, Crim. Pro. Code, is imperative and requires the accused to be examined after the witnesses for the prosecution have been examined. This applies to all trials, but, in summary trials, the provisions of s. 364 as to the mode of recording such examination do not apply. The answer of the accused recorded under s. 242 in summons cases takes the place of a plea to a formal charge, but when the witnesses for the prosecution are finished, s. 244 requires the Magistrate to hear the accused again and to take such evidence as he produces in his defence **2 L.B.R. 239.** (2 L.B.R. 115, *R.*; 4 L.B.R. 143, *Dist.*)

(1844)—S. 242—*See* ACCUSED PERSON, 1 L.B.R. 308, 1 L.B.R. 60.

(1844-*a*)—Ss. 242, 243, 244—*See* PUNJ. ACT XIII OF 1884, 2 P.R. 1890 Cr.

(1845)—Ss. 242, 262, 264—*See* SUMMARY TRIAL, Rat. Un. Cr. C. 725.

(1845-*a*)—S. 242—*See* Nos. 242, 594, 603, 1542, 1749, 1843, *supra*, and No. 3266, *infra*.

——**S. 243 (=1882, s. 243; 1872. ss. 206, para (2), 208).**

See SUMMONS CASES.

See TRIAL.

(1846)—*Ss. 243, 244, 246—Trial of summons case—Summons for criminal trespass—Conviction for assault and mischief—Competency of Magistrate—Procedure to be followed.*—Where certain accused persons had been summoned to answer a charge of criminal trespass only, it is open to the trying Magistrate to convict them of the offences of assault and mischief. *Held*, that, on a plain construction of s. 246, the Magistrate is not bound, when he thinks that other offences have been proved, to re-open the trial and follow the procedure of ss. 243 and 244. **36 C. 869.**

(1847)—*Ss. 243, 262, 263 and 555 (=Crim. Pro. Code, 1882, ss. 243, 262, 263, 555)—Summary procedure—Accused fined by the Magistrate without notice or summons and proceeding recorded subsequently to trial, validity of.*—Where a Deputy Magistrate, who

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was also the Chairman of a Municipality, riding on horse back, in his capacity as Chairman, convicted a person under s. 283, Penal Code, describing the trial as summary trial, on the admission of the accused that he had raised the level of the road, without issuing any process or giving any notice to the accused, *held*, that the Magistrate's procedure was illegal on the grounds (1) that the record of the proceeding was not made at the time of the trial, (s. 263), but subsequently prepared, after the close of the trial, from memory or from rough notes; (2) that the Magistrate did not record the admission of the accused at the time in the words of the accused as far as possible as required by s. 243 and (3) that the Magistrate was prohibited by s. 555 from trying the case himself. **15 M. 83 = 2 Weir 326.**

(1848)—Ss. 243 and 237—*See* MURDER, 5 W.R. Cr. Cir. 2.

(1849)—S. 243—*See* PENAL CODE, s. 290, 1 C.P.L.R. 25 Cr.

(1849-*a*)—S. 243—*See* Nos. 68, 242, 595, 1524, 1844-*a*, *supra*, and Nos. 1852, 1939, 3266, *infra*.

——**S. 244 (=1882, s. 244 ; 1872, ss. 207, 361 ; 1861, ss. 262, 263, 266).**

See SUMMONS CASES.

See TRIAL.

(1850)—*S. 244—Summons cases—Powers of Magistrate to refuse to compel attendance of witness, already summoned.*—There is no discretionary power given by s. 244 of the Code to refuse, in summons cases, to compel the attendance of a witness upon whom the Court has already issued process. **30 C. 121.**

(1851)—*S. 244 (=Crim. Pro. Code, 1882, s. 244)—Power of Magistrate to dispense with complainant's witnesses.*—It is not open to the Magistrate, under s. 244, to dispense with any witness whom the complainant wishes to examine. **2 Weir 305.**

(1852)—*Ss. 244 and 243—Procedure when accused does not admit offence.*—If an accused does not admit that he committed the offence of which he is accused, the Magistrate cannot convict him except upon evidence that the accused did commit the offence. The latter part of s. 243 should not be read as distinct and separable from the first part of the section. **1 L.B.R. 95.**

(1853)—*Ss. 244, 250 (=Crim. Pro. Code, 1882, ss. 244, 250)—Complaint of assault—Conviction of complainant and accused for affray.*—The complainant charged some persons with assault. The Magistrate, after taking evidence, acting under s. 250, Crim. Pro. Code, and without altering the previous charge or framing a new one, convicted the accused and also the complainant under s. 160, I.P.C. *Held* that the conviction of the complainant was illegal and that separate proceedings ought to have been taken against him. **Rat. Un. Cr. C. 403 = Cr. Rg. 64 of 1888.**

(1854 and 1855)—Ss. 244, 245, 247—*See* COMPLAINANT, Rat. Un. Cr. C. 539 = Cr. Rg. 11 of 1891, 5 M. 160 = 2 Weir 305.

(1855-*a*)—S. 244—*See* Nos. 165, 1524, 1542, 1843, 1844-*a*, 1846, *supra*, and No. 3575, *infra*.

——**S. 245 (=1882, s. 245 ; 1872, ss. 211, paras 1 and 2, 221 ; 1861, s. 272).**

See SUMMONS CASES.

See TRIAL.

(1856)—*Ss. 245 and 252 (=Crim. Pro. Code, 1882, ss. 245, 252)—Warrant case—Court-fees for summoning witnesses.*—Under s. 244, the Magistrate is to summon witnesses on the application of the complainant in summons cases, but in warrant cases the rule is laid down in s. 252. The Magistrate, in the latter case, is to ascertain the names of other persons acquainted with the case, from the complainant or otherwise, and shall then summon them. S. 31 of the Court Fees Act which has reference only to the law as it stood at the time of its enactment, does not itself make the complainant liable to pay fees. The dismissal of complaint in a warrant case, although the offence is a non-cognizable one, for failure of the complainant to pay Court-fees is not, therefore, legal. **2 Weir 323.**

(1857)—*Ss. 245, 253, 258, 403, 407 (=Crim. Pro. Code, 1882, ss. 245, 253, 258, 403, 407)—Trial of warrant case as summons case—Acquittal—Discharge Order for re-trial.*—The complainant charged two persons before a Tahsildar Magistrate with theft and hurt (ss. 379, 323, I.P.C.), which were warrant cases. The summons was issued for an offence under s. 426, I.P.C. The offence for which the accused was tried was one under s. 323, but the Magistrate did not frame a charge. He treated the case as a summons case, and dismissed the charge under s. 245, Crim. Pro. Code. On the application of the complainant, the Magistrate of the District made an order, under s. 437, Crim. Pro. Code, for a new trial before himself, on the ground that the accused had been improperly discharged. *Held* that, as s. 245 did not apply to warrant cases, the so-called acquittal had no effect, and the complaint was not legally disposed of by the Tahsildar Magistrate. The result being that the order of the Magistrate could only operate as a discharge under s. 253, I.P.C., the order of the District Magistrate was good under s. 437, Crim. Pro. Code. **A.W.N. 1886, 260.** [*F.*, A.W.N. 1888, 96].

(1858)—*Ss. 245, 253, 258, 437 (=Crim. Pro. Code, Act X of 1882, ss. 245, 253, 258, 437)—Penal Code, ss. 447, 448—Acquittal—Effect.*—Where a Magistrate dealt with a warrant case

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(s. 448 of the Penal Code) as a summons case and acquitted the accused under s. 245 of the Crim. Pro. Code, *held* that the order amounted only to one of discharge under s. 253 of the Crim. Pro. Code, and could be dealt with as such under s. 437. The mere absence of the words "house-trespass" in the Magistrate's judgment do not warrant an inference that the case was dealt with as one under s. 447 of the Penal Code when the facts clearly establish the theory of an offence under the next section. **A.W.N. 1888, 96.**

(1859)—S. 245—*See* ASSESSORS, Rat. Un. Cr. C. 35.

(1860)—Ss. 245, 247, 248, 250, 345 and 366—*See* COMPENSATION, 56 P.R. 1887 Cr., 14 P. R. 1884 Cr. and note, 19 P.R. 1888 Cr., 6 C. 581.

(1861)—Ss. 245, 349—*See* MAGISTRATE, JURISDICTION OF, 2 L.B.R. 285.

(1862)—S. 245—*See* REVISION, 15 M.L.J. 225.

(1862-*a*)—S. 245—*See* Nos. 68, 140, 1854, *supra*, and No. 1926, *infra*.

——S. 246 (=1882, s. 246; 1872, s. 203, para 1, cl. 2).

See SUMMONS CASES.

See TRIAL.

(1863)—*S. 246 (=Crim. Pro. Code, 1882, s. 246)—Dismissal of complaint made by a police charge sheet.*—Where a complaint is made by a police charge sheet, it is not necessary to examine the complainant before dismissing the complaint. 2 **Weir 246.**

(1363-*a*)—S. 246—*See* Nos. 68, 1846, *supra*.

——S. 247 (=1882, s. 247; 1872, ss. 205, 208, 212; 1861, s. 259); and proviso, new.

See COMPLAINANT.

See COMPLAINT.

See SUMMONS CASES.

See TRIAL.

(1864)—*S. 247 of the Code of 1898 (=Crim. Pro. Code, 1872, s. 208)—Failure of complainant to appear on an adjourned date.*—Where a complainant has done all that is necessary for him to do to establish his case, the complaint ought not to be dismissed in default of his attendance on an adjourned date, unless the Magistrate has seen fit, for sufficient reasons, to require his attendance specially on that date. **2 Weir 306.** [*F.*, 2 Weir 477=7 M. 213, 2 Weir 306].

(1865)—*Crim. Pro. Code (1898), s. 247—Failure of complainant to appear on an adjourned date*—Although a Magistrate has a discretion, under s. 247, to acquit the accused on account of the non-appearance of the complainant on the day to which the case is adjourned, yet, when all the evidence for the complainant has been taken and when he is not specially required to attend, the Magistrate will not be justified in acquitting the accused. **2 Weir 306.**

(1866)—*Crim. Pro. Code, s. 247—Non-service of summons to accused—Dismissal of complaint for complainant's default.*—Where summons has not been served on the accused, it is illegal to dismiss the complaint on the ground that the complainant has not appeared on the day fixed for hearing. **2 Weir 307.**

(1867)—*S. 247—Summons case—Absence of complainant—Order of "struck off" by Magistrate—Second complaint—Order of acquittal and discharge—Practice and procedure.*—A summons case was, owing to the absence of the complainant, ordered to be struck off by the Magistrate, under s. 247 of the Crim. Pro. Code. A fresh complaint was filed; but the Magistrate acceded to the argument that he could not entertain it as he had already once passed an order under s. 247 in the case, and acquitted and discharged the accused. *Held*, that neither order was correct in form. The Magistrate was not entitled under s. 247 to record the order "struck off," nor was he in a case which he had not tried, entitled to record the order of acquittal on the second complaint. The most he could do would be to record an order of discharge. **10 Bom. L.R. 628=8 Cr. L.J. 139.**

(1868)—*Ss. 247 and 403—Previous acquittal—Fresh process for offences including the previous one.*—Where a Magistrate issued processes against and summoned certain accused persons for one of several offences alleged against them, and acquitted them of the offence for which they were summoned, no fresh processes could, in view of the provisions of s. 403 (1), be issued against them, in respect of all the offences alleged against them on the previous occasion, including the one for which they were summoned and acquitted. **2 C.L.J. 622=3 Cr. L.J. 115.**

(1869)—*S. 247 (=Crim. Pro. Code, 1861, s. 259)—Dismissal for non-appearance—Nature of offence.*—S. 259 of the Crim. Pro. Code, 1861, does not apply to an offence punishable with imprisonment exceeding six months. A Magistrate cannot, therefore, dismiss complaints of such offences for default of the complainant's appearance. **Rat. Un. Cr. C. 16=Cr. Rg. 8—7—1869.**

(1870)—*S. 247 of the Code of 1898 (=s. 202 of 1861)—Dismissal of complaint—Irregular proceedings—Effect of dismissal.*—Where the proceedings of a Magistrate are substantially irregular so as to amount to no trial at all, a dismissal of the complaint will not operate as an acquittal. **2 Weir 307.** [*D.*, 2 Weir 308].

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1871)—*S. 247—Failure to dismiss a case for complainant's default - Subsequent dismissal on further default—Validity.*—Where a Magistrate might have disposed of a case under s. 247, at the first hearing, the fact of his not having done so and of his adjourning the case to some other day does not deprive him of the power to acquit under the same section on the latter date, when the complainant has again failed to appear. **2 Weir 308.**

(1872)—*S. 247—Appearance of complainant by Vakil.*—The appearance of the complainant's vakil is not equivalent to the appearance of the complainant himself. The mere fact that the complainant is absent on the day fixed for the hearing is a sufficient reason for the dismissal of the complaint. **2 Weir 309.**

(1873)—*Ss. 247, 403 (=Crim. Pro. Code, 1882, ss. 247, 403)—Accused acquitted for default of complainant—Re-trial—Validity.*—Where a person accused of an offence appears on the day fixed for the hearing, but the complainant does not, and the accused is acquitted under s. 247, the accused is "tried" by a Court within the meaning of s. 247. He cannot, therefore, be tried again for the same offence. **2 Weir 457.**

(1874)—*Ss. 247, 403 (=Crim. Pro. Code, 1872, ss. 212, 460)—S. 277, I.P.C.—Discharge of accused—Re-trial—Act V of 1861.*—An offender, discharged on a complaint under s. 277, I.P.C., cannot, with reference to ss. 212, 460 of the Code, be re-tried on the same facts under s. 34, cl. 7 of Act V of 1861 (Police). **Colm. Dig. Cr. 50 of 1876.**

(1875)—*Ss. 247, 404 of the Code of 1898 (=ss. 208, 286 (b) of 1872)—Dismissal of complaint for default—Appeal.*—No appeal is allowed against an order of dismissal of a complaint for the non-appearance of the complainant. **2 Weir 308.**

(1876)—S. 247—*See* COMPLAINANT, 4 M.H.C. App. 41.

(1877)—Ss. 247, 369, 432, 437—*See* COMPLAINT, 13 C.L.R. 303, 7 M. 356=2 Weir 309. A.W.N. 1885, 43, 4 C.W.N. 26, 346.

(1878)—S. 247—*See* DISMISSAL OF COMPLAINT, Colm. Dig. Cr. 91 of 1877.

(1879 to 1881)—Ss. 247, 195—*See* DISMISSAL OF COMPLAINT, Rat. Un. Cr. C. 137.

(1882)—Ss. 247, 253—*See* JOINDER OF CHARGES, 11 C. 91.

(1883)—Ss. 247, 426, 439, 440—*See* REVISION, A.W.N. 1882, 229.

(1883-*a*)—S. 247—*See* Nos. 1855, 1859-*a*, 1859-*b*, *supra*.

——S. 248 (=1882, s. 248; 1872, s. 210; 1861, s. 271).

See COMPLAINT.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

See SUMMONS CASES.

See WITHDRAWAL OF COMPLAINT.

(1884)—*S. 248 of 1898 (=s. 271 of 1861)—Withdrawal of complaint and stay of proceedings—Penal Code, s. 498.*—"Enticing etc., a married woman with criminal intent" not being an offence triable under Ch. XV, Crim. Pro. Code, 1861, a complaint under s. 498, Penal Code, could not be withdrawn under s. 271, Crim. Pro. Code, 1861; but a husband could stay proceedings under s. 498, Penal Code, by declining to offer any evidence, as he alone could institute a charge under that section. **8 P.R. 1871 Cr.**

(1885)—*Ss. 248, 253, 403—Charges under ss. 182, 500, I.P.C.—Withdrawal for want of sanction—Subsequent institution of complaint with sanction.*—A complaint was made to the Magistrate against the accused of offences under ss. 182 and 500, I.P.C. On the day when the accused appeared before the Magistrate the latter passed the following order:—"As there is no sanction, prosecution withdraws the charge. The accused is discharged." Sanction having been subsequently obtained, a fresh complaint was lodged against the accused for the same offences. The Magistrate ordered the proceedings to be stopped, considering that they could not be taken by reason of the provision of s. 403, Crim. Pro. Code. *Held*, that the order was not legal as the accused had not been previously acquitted by a Court of competent jurisdiction. By reason of there being no sanction, the Court could not take cognizance of the offence under s. 182, and could not, therefore, acquit the accused of that offence. As regards the offence under s. 500, I.P.C., which was a summons case, the only legal order he could have passed was under s. 253, and, therefore, there was no acquittal even in that case. **22 B. 711.** [*D.*, 29 M. 126=16 M.L.J. 79=1 M.L.T. 31=3 Cr. L.J. 274].

(1886)—*Ss. 248, 345 (=Crim. Pro. Code, 1861, s. 271)—Withdrawal of complaint triable under Ch. XIV.*—S. 271 of the Crim. Pro. Code, 1861, does not apply to offences punishable with imprisonment exceeding six months. The complainant in such cases cannot withdraw his complaint. **Rat. Un. Cr. C. 17=Cr. Rg. 8—7—1869.**

(1887)—*Ss. 248, 345(=Crim. Pro. Code, 1861, s. 271)—Compromise.*—Offences triable under Ch. XV of the Crim. Pro. Code, 1861, cannot be compromised under s. 271 of the Code. **13 W.R. Cr. Cir. 14.**

(1888)—Ss. 248, 250—*See* COMPENSATION, Rat. Un. Cr. C. 462, 24 P.R. 1883 Cr.

(1889)—S. 248—*See* COMPLAINANT, 23 M. 626=1 Weir 310.

(1890)—S. 248—*See* COMPLAINT, 5 M. 378.

(1891)—S. 248—*See* COMPOUNDABLE OFFENCE, 1 B. 417.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1892)—Ss. 248, 259 and 437—*See* COMPOUNDABLE OFFENCE, 10 C. 551.

(1893)—Ss. 248, 337, 345 (1 to 4, 6, 7)—*See* EVIDENCE, Rat. Un. Cr. C. 461.

(1894)—S. 248—*See* SANCTION TO PROSECUTE, 2 B. 653.

(1895)—Ss. 248, 35, 235—*See* SENTENCE, 1 B. 214.

(1896)—Ss. 248, 345 (1 to 4 and 6 and 7)—*See* SENTENCE, 7 M.H.C. App. 21.

(1897)—S. 248—*See* WARRANT CASE, 13 B. 600.

(1897-*a*)—S. 248—*See* No. 1859-*b*, *supra*.

——S. 250 (=1882, s. 560; 1872, s. 209, paras 1 and 2; 1861, s. 270).

See COMPENSATION.

(1898)—*S. 250—Object of.*—The object of s. 250 of the Code is not to punish the complainant, but to award by a summary order some compensation to the person against whom a frivolous or vexatious accusation is brought, leaving it to him to obtain further redress against the complainant, if he seeks for it, by a regular civil suit or by a criminal prosecution. —*Per* Banerji, J. **30 C. 123=6 C.W.N. 799.**

(1899)—*S. 250 (=Crim. Pro. Code, 1872, s. 209)—Scope of section.*—The special provisions of s. 209 are applicable only in the case of original trials under Ch. XVI of the Code. The award of compensation by the appellate Court is illegal. **2 Weir 314=8 M.H.C. App. 7.**

(1900)—*S. 250—Applicability of.*—S. 250, Crim. Pro. Code, 1898, does not apply to a case instituted on a police report or on information given by a police officer. **U.B.R. (1897—1901), Vol. I, 68.** (21 C. 984, U.B.R., 1892—1896, Vol. I, 28, *R.*).

(1901)—*S. 250—Compensation, order for, when and how to be made—"Frivolous and vexatious," meaning of.*—S. 250 requires that a Magistrate, if he wishes to exercise his discretion as to the award of compensation, should do so by his order of discharge or acquittal. There is nothing in the Code which authorises him to hold an enquiry on a subsequent date, and make an order under s. 250 on such date. The direction for payment of compensation must be contained in the order of discharge or acquittal. **25 A. 315.** [*F.*, 57 P.R. 1905 Cr.=181 P.L.R. 1905=3 Cr. L.J. 123; *R.*, U.B.R. 1906, 3rd Quarter, Crim. Pro. Code, 51=5 Cr. L.J. 293, 8 Bom. L.R. 847].

(1902)—A Civil Court *chaprasi* made a report to the District Judge, that the judgment-debtor, for whose arrest he had a warrant, had escaped from his custody, after having been arrested, by using force to him. The District Judge directed that the papers should be sent to the District Magistrate for formal hearing of a charge under s. 225 (*b*), I.P.C., against the judgment-debtor. A case was instituted accordingly, but the Magistrate acquitted the accused and ordered the Civil Court *chaprasi* to pay compensation to the accused. *Held* that the order for compensation was not legal, as the *chaprasi* neither filed a complaint nor gave the information upon which the case against the accused was instituted, and the District Judge was the person who instituted proceedings acting on the *chaprasi's* report. **26 A. 183=A.W.N. 1903, 216.**

(1903)—The expression *vexatious* charge, in s. 250, is sufficiently wide to include a false charge, and compensation may be awarded to an accused, when the accusation against him was deliberately false. **26 A. 512=1 A.L.J. 234=A.W.N. 1904, 116.**

(1904)—S. 250 does not contemplate that compensation shall be awarded because the case is found false, but it can only be awarded if the Magistrate is satisfied that the accusation is frivolous and vexatious. If a Magistrate orders the complainant to pay compensation to the accused on the ground that he has preferred a false complaint, it practically amounts to convicting, in a summary proceeding, the complainant under s. 211, Penal Code, without a proper trial, which is altogether improper and open to serious objection. [*Overruled*, 30 C. 123 F.B.; *F.*, 4 Bom. L.R. 645; *R.*, 27 M. 59; *Diss.*, 15 C.P.L.R. 194, 5 Bom. L.R. 128]. The words "frivolous and vexatious" in s. 250 indicate an accusation merely for the purpose of annoyance, not an accusation of an offence which is absolutely false. **28 C. 251.** [*Diss.*, 15 C.P.L.R. 194].

(1905)—An order for compensation to an accused person under the above section should be made in the order of discharge or acquittal and not subsequently. **U.B.R. (1892—1896), Vol. I, 35.**

(1906)—*S. 250 (=s. 209 of the Code of 1872)—False complaint, whether vexatious.*—A false complaint is also a vexatious complaint. **2 Weir 313.**

(1907)—*S. 250—Compensation—Default in payment—Imprisonment.*—Under s. 250 (2) it is only if the compensation ordered to be paid cannot be recovered, that imprisonment can be awarded. **28 C. 251.** [*F.*, 17 C.P.L.R. 104; *R.*, 2 Weir 321=26 M. 127].

(1908)—*S. 250—Complaint by police officer in non-cognizable case—Compensation—Police Act (Bombay), Act IV of 1890, s. 90.*—Where a police officer initiates criminal proceedings in a non-cognizable case by filing a complaint before a Magistrate, the Magistrate has jurisdiction, if he finds the complaint vexatious, to award compensation to the accused under s. 250. **26 B. 150=3 Bom. L.R. 586, F.B.** [*R.*, 5 O.C. 164, F.B., 6 O.C. 15, 32 M. 3=5 M.L.T. 1 and 16].

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1909)—*S. 250 (=Crim. Pro. Code, 1882, s. 560)—Compensation in frivolous complaint—Power of Sessions Judge to reverse order.*—A Sessions Judge is not competent to reverse, in appeal, an order granting compensation passed by a first class Magistrate under s. 560, Crim. Pro. Code, 1882. **1 Bom. L.R. 330.**

(1910)—*S. 250(=Crim. Pro. Code, 1882, s. 560) —Compensation, nature of—Appeal.*—Though a sum which a complainant may be directed to pay to an accused under the provisions of s. 560 of the Code, is "recoverable as if it were a fine," it is obviously not a fine. Sub-section 3 of s. 560 gives a right of appeal only in respect of orders for compensation passed by a Magistrate of the second or third class, and such an order would be appealable irrespectively of the amount awarded. Hence, such an order of a Magistrate of the first class under s. 560, whatever might be the amount of compensation awarded, is not subject to appeal. An order, legal in substance but illegal only in form, need not be interfered with. **8 C.P. L.R. Cr. 13.**

(1911)—*S. 250 (=Crim. Pro. Code, 1872, s. 209)—Compensation, if awardable by appellate Court.*—An appellate Court cannot award any compensation to an accused person under s. 209, and if made, it is illegal. **Colm. Dig. Cr. 23 of 1875.**

(1912)—*S. 250 (=Crim. Pro. Code, 1872, s. 209)—Fining the complainant and crediting the amount to Government.*—To fine a complainant under the above section and remit the amount into the Government treasury is illegal. **Colm. Dig. Cr. 66 of 1877.**

(1913)—*S. 250 (proviso), nature of—Order for compensation—Objection by complainant.*—The proviso to s. 250 is imperative and requires that, before making any direction for payment of compensation, the Magistrate shall record and consider any objection which the complainant may urge against the making of the direction. **3 Bom. L.R. 777.**

(1914)—*Ss. 250, 117—Compensation on refusal to take security.*—To justify the application of s. 250, a person must be accused before the Magistrate of an offence triable by a Magistrate. The institution of proceedings under s. 117, Crim. Pro. Code, is not an accusation of an offence triable by a Magistrate, and consequently does not fall within the provisions of s. 250, Crim. Pro. Code. **25 B. 48=2 Bom. L.R. 339.**

(1915)—*Ss. 250, 388, cl. 2—Order for compensation—Inability to pay—Order for imprisonment, validity of.*—Where a person, ordered to pay compensation under s. 250, was ordered to be imprisoned for 30 days by the Magistrate, on the ground that he was unable to produce any sureties or to pay the amount of the compensation, and the order was passed without making any attempt to levy the amount of the compensation, *held*, that the order was invalid both under ss. 250 and 388, cl. 2, Crim. Pro. Code. **26 M. 127=2 Weir 321.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1916)—*Ss. 250, 388.*—Imprisonment in default of payment of compensation ordered under s. 250 cannot be awarded at once, unless the person ordered to pay fails to execute a bond under s. 388, Crim. Pro. Code, 1898. **U.B.R. (1897—1901), Vol. I, 71.**

(1917)—S. 250 only directs that "compensation shall be recoverable as it were a fine," and s. 386 and the following sections direct by what means a fine shall be recovered. These sections would, therefore, be applicable for realisation of money ordered to be paid as compensation. But in regard to an order for imprisonment in such a case, s. 250, proviso (2) declares that 'if the compensation cannot be recovered, simple imprisonment may be awarded for such term not exceeding 30 days." The alternative imprisonment, therefore, can only be awarded *if compensation cannot be recovered.* **28 C. 164.** [*F.*, 17 C.P.L.R. 104].

(1918)—*S. 250—Scope of section—Municipal Jamadar arresting person committing offence punishable under s. 34, Police Act.*—S. 250, Crim. Pro. Code, is not applicable to the case of a Jamadar arresting a person whom he considered to be committing in his presence an offence punishable under s. 34, Act V of 1861, the person so arrested having been sent up for trial in the usual manner by the police, and having been acquitted. **A.W.N. 1901, 142.**

(1919)—*S. 250 (=Crim. Pro. Code, Act X of 1882, s. 250)—Complaint*—Where an amin who was ordered by an Assistant Collector to attach and sell some property, reported that he had been obstructed, and the District Magistrate, on the report of the Assistant Collector, directed the prosecution of the obstructors under s. 186 of the Penal Code, *held* that no compensation could be ordered in such a case since there was no complaint within the meaning of s. 4 of the Crim. Pro. Code. **A.W.N. 1888, 216.**

(1920)—*S. 250 (= Crim. Pro. Code, 1872, s. 209)—Warrant cases, applicability of the section.*—The offence of theft being a warrant case, s. 209, Crim. Pro. Code, is not applicable. Where a case has been dealt with throughout by a competent Court as a case of theft, and the facts alleged, if true, clearly constitute the offence of theft, a Magistrate, to whom a reference under s. 46, Crim. Pro. Code, 1872, is made, is not competent to pass an order under s. 209, convicting the accused of criminal trespass and recording an order dismissing the charge of theft. **A.W.N. 1881, 99.** [*R.*, A.W.N. 1881, 161].

(1921)—Ss. 250, 255—*See* ACQUITTAL, 1 W.R. Cr. Letters, 10.

(1922)—S. 250—*See* ACT XIII OF 1859, Rat. Un. Cr C. 617=Cr. Rg. 40 of 1892.

(1923)—S. 250—*See* APPEAL, 9 C.P.L.R. Cr. 27, Rat. Un. Cr. C. 409=Cr. Rg. 75 of 1888.

(1924)—S. 250—*See* CHARGE, Rat. Un. Cr. C. 734.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1925)—Ss. 250, 195 (*b*)—*See* COMPENSATION, 2 Weir 311, 30 P.W.R. 1907 Cr.

(1926)—Ss. 250, 245 and 366—*See* COMPENSATION, 5 M. 381=2 Weir 316.

(1927 to 1929)—Ss. 250, 262, 345, 386, 387—*See* COMPENSATION, 11 M. 142=2 Weir 314, 10 Bom. L.R. 1056=9 Cr. L.J. 186, Rat. Un. Cr. C. 611.

(1930)—Ss. 250 (3), 422—*See* COMPENSATION, 5 M.L.T. 262=9 Cr. L.J. 150=19 M.L.J. 130=1 Ind. Cas. 79=33 M. 99.

(1931 and 1932)—Ss. 250, 438, 439, 476—*See* COMPENSATION. 9 Cr. L.J. 502=2 Ind. Cas. 159, 24 P.R. 1908 Cr.=9 Cr. L.J. 103, 14 P.R. 1888 Cr., 26 C. 181.

(1933)—S. 250 (paras 1 and 2)—*See* SENTENCE, 8 M.H.C. App. 8.

(1934)—S. 250—*See* Nos. 61, 65, 77, 139, 470, 471, 486*a*, 1003, 1424, 1853, 1859-*a* and *b*, 1888, *supra*, and Nos. 2391, 2393, 2915, 3292, 3553, *infra*.

——**S. 251 (=1882, s. 251; 1872, s. 213).**

(1935)—S. 251—*See* COMPOUNDING OFFENCE, 1 B. 64.

(1936)—S. 251—*See* PENAL CODE, ss. 99, 353, 8 A. 293.

(1937)—S. 251—*See* Nos. 1257, 1757, *supra*.

——**S. 252 (=1882 s. 252; 1872, ss. 190, 362; 1861, ss. 186, 193, 249).**

(1938)—*S. 252—"Any remaining witnesses"—Prosecution witnesses—Calling of new witnesses not named or summoned—Accomplice—Evidence of accomplice—Conspiracy—Proof.*—The expression "any remaining witnesses" in s. 252, cl. (2), is not necessarily limited to the witnesses named by the complainant and summoned by the Magistrate before the framing of the charge. The expression is wide enough to include any witness who, according to the prosecution, is able to support its case, though he has not been summoned, provided, of course, that he is not sprung upon the defence all of a sudden, and sufficient opportunity is given to the latter to prepare for the cross-examination of the witness. An accomplice confesses himself a criminal. No man ought to be treated as an accomplice on mere suspicion, unless he confesses that he had a conscious hand in the crime, or he makes admissions of facts showing that he had such hand. If the evidence of a witness falls short of these tests, he is not an accomplice; and his testimony must be judged on principles applicable to ordinary witnesses. When a conspiracy between several persons is alleged, it is not necessary for the prosecution to prove, before it can be held established, that each conspirator knew and had personal communication with all the rest, because some of them might be intermediaries. **11 Bom. L.R. 1153.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1939)—*Ss. 252, 243—Warrant-case triable as under s. 252, tried by Magistrate as a summons case—Conviction of accused under s. 243, illegality of.*—The accused was charged with an offence under s. 9 of the Opium Act (I of 1878). The case was one which ought to have been tried as a warrant-case. The Magistrate, however, without recording any evidence in support of the prosecution, as required by s. 252, called upon the accused to plead to the charge and convicted him on his own admission as under s. 243 without even framing a formal charge. *Held*, the procedure adopted by the Magistrate was more than a mere irregularity, that it had occasioned failure of justice to the accused and that his conviction ought, therefore, to be set aside. **29 M. 372=4 Cr. L.J. 231.**

(1940)—*Ss. 252, 436 and 437—Power to receive a fresh complaint—Necessity for setting aside order of dismissal—Power of Presidency Magistrate to commit accused previously discharged by another Magistrate.*—There is nothing in the Code to the effect that the dismissal of a complaint shall be a bar to a fresh complaint being entertained, so long as the order of dismissal remains unreversed. Hence a commitment by a Presidency Magistrate, on fresh evidence is legal, although the accused may have been previously discharged by another Presidency Magistrate, and the order of discharge was not set aside. **28 C. 211 =5 C.W.N. 169.** [*F.*, 28 C. 652, F.B., 2 L.B.R. 27; *R.*, 9 P.R. 1902 Cr.=50 P.L.R. 1902, 29 C. 726, F.B.]

(1941)—Ss. 252, 253—*See* DISCHARGE OF ACCUSED, A.W.N. 1891, 80.

(1942)—Ss. 252, 253, 437—*See* DISCHARGE OF ACCUSED, A.W.N. 1883, 150.

(1943)—Ss. 252, 253, 437—*See* FURTHER ENQUIRY, 7 M. 454=2 Weir 551.

(1944)—Ss. 252, 514—*See* WITNESS, 22 P.W.R. 1907 Cr.=6 Cr. L.J. 275.

(1944-*a*)—S. 252—*See* Nos. 1165, 1524, 1617, 1618, 1757, 1856, *supra*, and No. 1963, *infra*.

——**S. 253 (=1882, s. 253; 1872, s. 215; 1861, s. 250).**

See DISCHARGE OF ACCUSED.

(1945)—*S. 253 (=Crim. Pro. Code, 1872, s. 215)—Discharge—Revival of prosecution.*—A discharge under s. 215, Crim. Pro. Code, does not bar the revival of a prosecution for the same offence when further evidence is available. **Rat. Un. Cr. C. 145.** [*R.*, 2 L.B.R. 27=1 Cr. L.J. 167].

(1946)—*S. 253—Case triable by Court of Sessions—Duty of Magistrate.*—It cannot be laid down as a general proposition that a Magistrate, having before him formally and categorically evidence which discloses a case for trial in some Court to which such Magistrate might in his discretion commit, is bound

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

so to commit, and that he is wrong, in point of law in exercising a discretion and considering the sufficiency of the evidence. **21 A. 265. [*R.*, 6 C.L.J. 760=12 C.W.N. 117=6 Cr. L.J. 406].**

(1947)—*S. 253 (=Crim.Pro.Code, 1882, s. 253) —Warrant case—Withdrawal of complaint—Discharge.*—The order of a Magistrate in a warrant case, permitting the withdrawal of a complaint of a non-compoundable offence, is equivalent to an order of discharge under s. 253. **Rat. Un. Cr. C. 391=Cr. Rg. 47 of 1888.**

(1948)—*S. 253 (=Crim. Pro. Code. 1872, s. 215)—Absence of jurisdiction in Magistrate—His duty.*—Where a Magistrate finds that he has no jurisdiction to try a case, he should not discharge the accused, but should send him before a Magistrate having jurisdiction. **2 Weir 323.**

(1949)—*Ss. 253, 254—Benefit of doubt before framing of charge—Discharge of accused.*—S. 254 requires a charge to be framed when a Magistrate, after taking evidence, is of opinion that there is ground for presuming that the accused has committed the offence. But, if the evidence recorded does not lead to any such presumption being made, but merely raises a doubt, the Magistrate would not be justified in framing the charge and he would not act contrary to the spirit of s. 254, if he gave the benefit of the doubt to the accused and ordered his discharge. So, if, on the close of the evidence for the prosecution, a Magistrate should come to the conclusion that, although there are reasons for entertaining some doubt against the accused, yet they are not sufficient to establish the charge against him, he will be acting in consonance with the spirit of the section only if he declines to frame a charge. **2 P.R. 1906 Cr =37 P.L.R. 1906=3 Cr. L.J. 345.**

(1950)—*Ss. 253, 254(=Crim. Pro. Code, 1861, s.250)—Discharge, whether amounts to acquittal.* —A discharge, under s. 250 of the Code of 1861, does not amount to an acquittal. **4 N.W.P. 23.**

(1951)—*Ss. 253, 258, 350—Charge framed—Power of succeeding Magistrate to re-hear evidence and discharge accused.*—A second class Magistrate, after hearing the evidence, framed charges against several accused under s. 406, I.P.C., and called on them to produce evidence to clear themselves. The Magistrate was transferred, and the case was sent to his successor, who, at the request of the accused, reheard the evidence, and subsequently passed an order for their discharge. *Held*, that the order was not proper in form, and should be held to be an order of acquittal. Rehearing of the evidence under proviso (*a*) to s. 350, Crim. Pro. Code, after a charge has been drawn up, amounts to the re-commencement of the trial as distinguished from a recommencement of the enquiry. **14 P.R. 1903 Cr.** (9 M. 282, 12 A. 66 and 6 P.R. 1884 Cr., *R.*).

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1952)—*Ss. 253, 366, 367, 437—Order of discharge not "judgment"—Magistrate's competency to initiate subsequent proceedings after order of discharge—Principle of autrefois acquit, how far applicable?—Exhaustiveness of Code presumed.*—When a Magistrate passes an order discharging an accused under s. 253, Crim. Pro. Code such order of discharge does not preclude him from taking fresh proceedings and issuing process against the person discharged, in respect of the same offence, without such order being set aside by a higher tribunal. *Per Munro and Pinhey, JJ.* An order of discharge is not a "judgment." Although the word "judgment" is not defined in the Crim. Pro. Code, it is sufficiently clear from ss. 366, 367, that the term is intended to apply to the final order in a *trial*, terminating in either the conviction or acquittal of the accused. *Per Pinhey, J.* The principle of *autrefois acquit* can have no application, as it must be assumed that the Code is exhaustive on the subject it deals with, and it is not permissible to add to its provisions. *Ibid.* Reading together ss. 253 and 437, it is clear that the Legislature could never have intended that a Magistrate discharging an accused should furnish him with a certificate of immunity from further molestation. *Ibid.* The remedy for repeated indiscretions on the part of Magistrates is the provision of better Magistrates by Government, and not the limitation of their powers by judicial interpretation. *Ibid.* **31 M. 543=5 M.L.T. 184=9 Cr. L.J. 80.**

(1953)—*Ss. 253, 403 (=Crim. Pro. Code, 1882, ss. 253, 403)—Discharge—Jurisdiction to re-try.*—There is nothing to prevent a Magistrate, after he has discharged an accused under s. 253, Crim. Pro. Code, from enquiring again into the case against him. A discharge not operating as an acquittal leaves the matter at large for all purposes of judicial enquiry. There is jurisdiction still vested in all Magistrates including the one who has made the previous enquiry just as before. But all Magistrates, and especially the one who formerly discharged the accused, are bound to exercise due discretion, to take that discharge into acccunt and to avoid any such oppressive proceedings as may either expose them to punishment under s. 219 or s. 220, I.P.C., or to a civil action on the part of the accused. A case arising on fresh evidence will generally be best dealt with by the Magistrate already familiar with the facts previously proved. He will, of course, deal discreetly with an instance of a revived prosecution where there is room to suspect that any crooked practice has been resorted to, but his authority to enquire and try is not affected by the previous abortive enquiry. **Rat. Un. Cr. C. 350=Cr. Rg. 40 of 1887.**

(1954)—*Ss.253, 435, 439—Retrial—Discharge after full enquiry—Evidence—Magistrate's personal knowledge and personal inspection of a spot not evidence.—Held*, that, where there is a body of evidence which, if believed, justifies

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

conviction, it is far better, as a rule, to draw up a charge and dispose of the case finally. But if a competent Magistrate, after hearing all the evidence for the prosecution and thoroughly discussing it, does dismiss the charge, a High Court should not set aside the order of dismissal and direct further enquiry, unless new and cogent evidence is forthcoming. *Held*, that a Magistrate commits serious irregularities: if he bases any of his findings on his own personal knowledge, and if he treats his own memo. made after the examination of a spot, as evidence in the case, instead of having any facts, brought to light by that examination, duly brought on the record by the testimony of witnesses subject to cross-examination, rebuttal and explanation. **18 P.W.R. 1909 Cr.**

(1955)—*Ss. 253, 437—Discharge—Revision—Disturbance of findings of fact—Abuse of process—Civil claim—Men of position—Law—Penal Code (Act XLV of 1860), s. 297—Construction—'Trespass' meaning of.*—A very heavy burden lies on those, who seek to disturb, on revision, an order of discharge passed by a Magistrate under s. 253, Crim. Pro. Code. In cases of regular appeal, the ordinary rule is that no Court of Appeal will lightly substitute its own view of evidence, for the view of the Court which had the advantage of seeing and hearing the witnesses. An application in revision is on a lower plane than a regular appeal, and unless the petitioner can show some plain reasons against the order of discharge, he can have no chance of succeeding. While it is undesirable that the criminal process of the Courts should be abused with the object of merely furthering a Civil claim, it would be intolerable, if, by reason of the position of any individual whatever, he was allowed to evade the law. S. 297, Penal Code, does not require the prosecution to prove that the trespass had been committed on a place set apart for the performance of funeral rites or as a depository for the remains of the dead. The section is equally satisfied, if the prosecution are in a position to prove that the trespass occurred on any place of sepulchre. But where there have been only a few isolated and secret cases of burial, in the course of many years, on a piece of property, that would not be enough to constitute it a place of sepulchre, within the meaning of the section. *Per Beaman, J.* The trespass contemplated in s. 297 is such a trespass as is defined by the Indian Penal Code. While s. 297 is comprehensively worded, the offence at which it strikes is intimately bound up with the commission of a trespass or, subject to that, of deliberately offering an indignity to a corpse, or causing disturbance to a body of persons assembled for religious purposes. **2 Ind. Cas. 825.**

(1956)—*Ss. 253, 437 and 439—Revision—Discharge of accused by first Court—Retrial on the same evidence ordered by District Magistrate if prejudicial to the accused—Power of Chief Court to go into evidence.*—The accused one H was tried by a first class Magistrate for an offence under s. 406, I.P.C., and was discharged on the ground that the prosecution had not made out a case. On appeal to the District Magistrate, he ordered a retrial, by another Magistrate, on the ground that a document for the defence had not been considered. On revision to the Chief Court, that order was confirmed. Then the accused was tried by the other Magistrate and convicted; the Sessions Judge upheld the conviction. On revision to the Chief Court, *held*, that the order of the District Magistrate ordering a retrial on the same evidence was seriously prejudicial to the accused and was opposed to principle, though not illegal. A Criminal Court cannot review its own order passed with jurisdiction. Where an order for retrial was prejudicial to the accused, and he was convicted at the retrial, the correct course for the Chief Court to follow is to hear the case as if an appeal lay to that Court. **8 P.R. 1909 Cr.**

(1957)—*Ss. 253, 517 (=Crim. Pro Code, 1872, ss. 215, 418)—Order under s. 418, pre-requisites for.*—Where no offence has been proved against the accused, the pre-requisites of an order under s. 418 would be wanting. **2 Weir 665.** [*F.*, 2 Weir 666].

(1958)—*Ss. 253 and 528—District Magistrate withdrawing a case to his own file and dismissing the complaint—Validity of procedure.*—A District Magistrate withdrew from the file of a Deputy Magistrate, a case against some policemen for entering the house of a Raja, to his file, when the Deputy Magistrate was about to frame charges against the accused persons, and dismissed it, because he thought the police were protected by their warrants. *Held*, that the case ought to have been left with the Deputy Magistrate to be disposed of, and it would have been for him to determine whether the offence charged was made out, or whether, assuming the facts to be proved, the police were or were not protected by the warrants under which they purported to act. **30 C. 693.**

(1959)—*Ss. 253, 437 (=Crim. Pro. Code, Act X of 1882, ss. 253, 437)—Practice.*—It is absolutely necessary that a Magistrate who, professing to act under s. 437 of the Crim. Pro. Code, issues an order for the trial of a person previously discharged under s. 253 of the Crim. Pro. Code, should give the accused an opportunity of showing cause why such an order should not be issued, and should also record his reasons for issuing the order. **A.W.N. 1890, 147.**

(1960)—S. 253—*See* **COMPLAINT, 2 A. 447.**

(1961)—Ss. 253, 403, 423, except. 1 *(d)*, 439 (1 to 4)—*See* **COMPLAINT, 24 C. 528=1 C.W.N. 370.**

(1962)—S. 253—*See* **DISCHARGE OF ACCUSED, A.W.N. 1891, 116.**

(1963)—Ss. 253, 208 (1), (3) and (4), 252—*See* **DISCHARGE OF ACCUSED, 4 M. 329.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1964)—Ss. 253, 403—*See* DISCHARGE OF ACCUSED, A.W.N. 1881, 145, A.W.N. 1883, 150, A.W.N. 1882, 179.

(1965)—Ss. 253, 426, 439 (1 to 4), 440—*See* DISCHARGE OF ACCUSED, Cr. Rg. 10-10-1878.

(1966)—Ss. 253, 367, 369, 403, 437—*See* FURTHER ENQUIRY, 29 C. 726=6 C.W.N. 633, F.B.

(1967)—Ss. 253, 437—*See* FURTHER ENQUIRY, 10 C. 1027, 68 P.L.R. 1902.

(1968)—S. 253—*See* MAGISTRATE, JURISDICTION OF, 2 C. 405.

(1969)—Ss. 253, 259—*See* MAGISTRATE, JURISDICTION OF, 10 C. 17=13 C.L.R. 405.

(1969-*a*)—S. 253—*See* Nos. 236, 625, 627, 1257, 1258, 1521, 1523, 1582, 1591, 1592, 1627, 1628, 1857, 1858, 1882, 1885, 1941, 1942, 1943, *supra*, and Nos. 2025, 3576, *infra*.

——S. 254 (=1882, s. 254; 1872, s. 216; 1861, s. 250).

(1970)—*Ss. 254, 346 (=Crim. Pro. Code, 1882, ss. 254, 346)—Report by second class Magistrate to District Magistrate—Procedure.*—When a second class Magistrate reports a case to the District Magistrate as one which he ought not to try since whipping would be an appropriate punishment, the District Magistrate should treat the report as one under s. 346 of the Crim. Pro. Code and make an order as specified in the second para thereof. He should not return the case to the same Magistrate with direction to frame a particular charge, nor should the second class Magistrate frame a charge under s. 254. **Rat. Un. Cr. C. 499=Cr. Rg. 10 of 1890.**

(1971)—*Ss. 254, 346—Frame of charge by Magistrate though he intended to transfer the case to superior officers—Regularity of procedure.*—It is not irregular for a Magistrate of the second or third class to frame a charge against an accused person, in a case which he has jurisdiction to try, even though at the time of framing the charge he intends, if he is of opinion that the accused is guilty, to submit the proceeding to the District or Sub-Divisional Magistrate to pass sentence. **U.B.R. 1905, Cr. Pro. Code, 38=2 Cr.L.J. 464.**

(1972)—*Ss. 254, 255, 258—Taking evidence for defence without framing charge.*—Where a Magistrate, after examining the prosecution witnesses and the accused, took the evidence for the accused, without framing a charge, and discharged the accused under s. 253, *held* that the order of discharge was not legal and that the order should be treated as an order of acquittal. **29 P.R. 1883 Cr.**

(1973)—S. 254—*See* COMPLAINT, 3 Bom. L.R. 675.

(1974)—Ss. 254, 258, 403 (1 to 4 & Expl.)—*See* DISCHARGE OF ACCUSED, 3 C.L.R. 131.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1975)—Ss. 254, 258, 437—*See* DISCHARGE OF ACCUSED, 3 A. 129.

(1976)—S. 254—*See* MAGISTRATE, DUTY OF, 7 C.W.N. 521.

(1977)—Ss. 254, 258—*See* TRIAL, 3 C.L.R. 131.

(1977-*a*)—S. 254—*See* Nos. 140, 1249, 1425, 1609, 1949, 1950, *supra*.

——S. 255 (=1882, s. 255; 1872, ss. 217, 324; 1861, s. 251).

(1978)—*Ss. 255, 256 (=Crim. Pro. Code, 1872, ss. 217, 218)—Recalling and cross-examining witnesses for prosecution.*—If the accused person desires to recall and cross-examine the witnesses for the prosecution, the time at which he should express such desire is when the charge is read over to him, and he is called upon to make his defence. If it is not expressed then, it is no longer in the power of the accused to insist upon that right although it is in the discretion of the Magistrate to recall them, if he thinks fit. **8 C.L.R. 325.**

(1979)—*Ss. 255, 342—Prosecution for false evidence—Admission by accused of having made the statement alleged to be false—Evidence as to identity of accused, if necessary.*—When a person, charged with giving false evidence, has admitted, in his examination and in his defence, that he was the person, who made the statement alleged to be false, further evidence as to identity is unnecessary and his conviction would not be illegal by reason of the absence of such evidence. The accused's defence in this case, having been that what he had stated in his affidavit was true, this involved the admission on his part, that it was he, who made the affidavit, and the rule of evidence, that whatever is admitted need not be proved, would apply, so far as regards the admitted identity of the accused with the person, who made the affidavit. S. 255 of the Crim. Pro. Code requires a Magistrate to make the accused's plea immediately after the charge has been framed and, when stating his plea, facts are voluntarily admitted by the accused, there is no necessity for the prosecution to call evidence to prove such facts. So, in this case, the admission in the defence having afforded sufficient proof of identity, the conviction was held not to be illegal merely on account of the absence of evidence of the identity of the accused with the perjurer. **3 L.B.R. 208=4 Cr. L.J. 471.**

(1980)—Ss. 255, 364 and 533 (1) (=ss. 324, 346 of the Code of 1872)—*See* CONFESSION, 3 C. 756=2 C.L.R. 317.

(1981)—Ss. 255, 349—*See* MAGISTRATE, JURISDICTION OF, 3 L.B.R. 279=5 Cr. L.J. 416.

(1982)—S. 255—*See* PENAL CODE, s. 412, U.B.R. (1897—1901), Vol. I, 72.

(1983)—Ss. 255, 256—*See* WITNESSES, 7 C. 28.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(1983-*a*)— S. 255—*See* Nos. 1921, 1972, *supra*.

——**S. 256 (=1882, s. 256; 1872, s. 218; 1861, s. 252).**

See WITNESS.

(1984)—*S. 256(=Crim. Pro. Code, 1882, s. 256)* —*Scope of* —S. 256 of the Code does not prohibit cross-examination before a charge. It merely permits a further cross-examination expressly directed to the case found and embodied in the charge, and would enable an accused person, if he has reserved his cross-examination, to exercise his right at the same time subject to a discretion given to the Mistrate by s. 257. **21 C. 642.**

(1985)—*S. 256—Duty of Magistrate under.*— It is incumbent on a Magistrate, after a charge has been drawn up, to question the accused and to ascertain whether he wishes to cross-examine any. and, if so, which of the witnesses for the prosecution whose evidence has been taken. The fact that there has been already some cross-examination before the charge has been drawn up does not affect this privilege. The record should show that the requirements of the section have been complied with. **14 C.P.L.R. 137.** (4 C.W.N. 241, 27 C. 350, *R.*)

(1986)—*S. 256—Right to cross-examine prosecution witnesses after framing of charge.*—The accused has the right of cross-examining the prosecution witnesses after a charge is framed against him, and the fact that these witnesses may have been fully cross-examined before the charge does not affect the right. **2 Bom. L.R. 542.**

(1987)—Though an accused person cannot be required to cross-examine the witnesses, or, to say whether he will cross-examine them or not, until the charge has been framed, he may, if he wishes to do so, cross-examine each witness at the conclusion of the examination-in-chief. **U.B R. (1897—1901), Vol. I, 74.**

(1988)—*Ss. 256, 257.*—Where a Magistrate refused to re-summon a Medical Officer for the purpose of cross-examination, except on payment of fees for his attendance, on the ground that the accused had declined to cross-examine the officer, when he had the opportunity, *held*, that the accused was entitled under s. 256 to claim that as a matter of right, and that s. 257 did not apply. **4 C.W.N. 351.** [*D.*, 5 C.W.N. 106].

(1989)—*Ss. 256 and 526—Re-calling of prosecution witnesses for cross-examination—Accused's right to re-call—Transfer to some Magistrate other than the trying Magistrate—Judgment passed by trying Magistrate—Trial*, de novo. —The accused in a criminal case has a right under s. 256 of the Code of Criminal Procedure, to have the witnesses for the prosecution re-called and cross-examined after charge. Where a Magistrate declined to give the accused such an opportunity to re-call and cross-examine the witnesses for the prosecution and proceeded to judgment in the case against the accused.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

Held, that the conviction should be set aside and the trial held *de novo* by some other Magistrate of competent jurisdiction. **7 C.L.J. 240= 7 Cr. L.J. 213.**

(1990)— *S. 256--Warrant case—Accused pleading not guilty, if must be asked to cross-examine prosecution witnesses immediately—Cross-examination before charge framed, if affects right to cross-examine after charge—Waiver.*— When, on framing charges in a warrant case, the accused having pleaded not guilty, the Magistrate called upon them to state whether they wished to cross-examine any of the prosecution witnesses, but they did not reply immediately, but before the close of the trial they applied to be allowed to cross-examine some of them, and the application was refused on the grounds (1) that they had waived their right and (2) that the witnesses have been sufficiently cross-examined before the charges were framed. *Held*, that the order was against the wording and spirit of s. 256, Crim. Pro. Code, and the conviction of the accused must be set aside. **14 C.W.N. 280.**

(1991)—*S. 256—Filing of written statements.* —The filing of a written statement is not contemplated by Ch. XVIII of the Code, in which s. 209 occurs. The only provision which contemplates a written statement is s. 256 which occurs in Cb. XXI. **2 Weir 255.**

(1992)—*Ss. 256, 257 (=Crim. Pro. Code, Act X of 1882, ss. 256, 257)—Right of accused to summon prosecution witnesses for cross-examination.*—S. 257 of the Crim. Pro. Code does not apply and relate to the preceding section. S. 256 gives an absolute right to the accused to recall any witness present in the Court precincts for cross-examination at any stage of the defence. S. 257 refers to witnesses not so present, and the accused has no absolute right to have them summoned. The Magistrate can refuse to summon them for reasons to be recorded by him in writing. **A.W.N. 1895, 40.**

(1993)—*S. 256—Omission to ask accused after framing charge whether he wishes prosecution witnesses re-called for cross-examination.*—The omission, after framing a charge, to ask the accused whether he wished to have the prosecution witnesses or any of them, re-called for cross-examination, and the rejection of the accused's application on the ground that it was too late were held to have prejudiced the accused in his trial. **A.W.N. 1902, 5.**

(1994)—Ss. 256, 257, paras 1 and 2—*See* ACCUSED PERSON, 1 C.W.N. 313.

(1995 to 1997)—Ss. 256, 262—*See* SUMMARY TRIAL, Rat. Un. Cr. C. 768.

(1998)—S. 256—*See* WITNESS, 12 P.R. 1907 Cr. = 32 P.W.R. 1907 Cr.

(1999)—Ss. 256, 540—*See* WITNESS, 2 A. 253.

(1999-*a*)—S. 256—*See* Nos. 1009, 1353, 1757, 1978, 1983, *supra*, and No. 2460, *infra*.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

——S. 257, paras 1 and 2 (=1882, s. 257; 1872, s. 362, para 2); proviso to para 1, new.

See WITNESS.

(2000)—*S. 257—Duty of Magistrate to summon witnesses.*—S. 257 is imperative. A Magistrate has no discretion to refuse to issue process to compel the attendance of any witness, unless he considers that the application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Such ground must be recorded by him in writing. A Magistrate, therefore, must issue summons for each witness named unless he takes the responsibility of recording his grounds for believing that any particular name was entered for the purpose of vexation or delay or for defeating the ends of justice. The case of each witness must be dealt with individually. **26 B. 418=4 Bom. L.R. 38.** [*F.*, 31 M. 131=17 M.L.J. 62 Note=7 Cr. L.J. 425; *R.*, 2 S.L.R. 5].

(2001)—*S. 257—Grounds for rejecting an application for summoning further defence witnesses.*—It is a sufficient compliance with the requirements of s. 257, if a Magistrate, while rejecting an application for summoning further defence witnesses, states facts which have led irresistibly to the conclusion that the application was for no other purpose than that of vexation or delay or of defeating the ends of justice, although he does not say explicitly that it was for that purpose. **11 C.W.N. 789=6 Cr. L.J. 1.**

(2002)—Under s. 257, Crim. Pro. Code, the Magistrate can only refuse to issue process on the ground that the application is made for the purpose of vexation or delay or of defeating the ends of justice. The grounds of refusal must be recorded. and the accused must be given an opportunity under cl. (2) of that section of depositing their expenses. This power of refusal should be sparingly exercised, as it creates an impression that the Magistrate is biased in favour of the prosecution. **2 L.B.R. 270.**

(2003)—*Ss. 257 and 537—Magistrate refusing to issue process to accused's witnesses without any of the grounds stated in s. 257—Legality of refusal—Whether illegality cured by s. 537.*—Where a Magistrate, in refusing to issue process for the witnesses named by the accused, did not base his refusal in regard to any particular witness, on any of the grounds which, under the provisions of s. 257 of the Code, are sufficient to justify it, *held*, that the order was illegal and was not such as could be cured by s. 537, Crim. Pro. Code. **31 M. 131=7 Cr.L.J. 425.**

(2004)—*S. 257—Order of Magistrate refusing application for re-calling witnesses.*—The terms of s. 257, Crim. Pro. Code, are peremptory; and the only ground on which a Magistrate can refuse to grant an application to re-call witness for cross-examination is that the application is made for the purpose of vexation or delay, or for defeating the ends of justice; and such ground must be recorded by him in writing. A conviction arrived at in violation of the above section cannot be supported. 2 **S.L.R. 5 Cr.=10 Cr. L.J. 207.**

(2005)—*S. 257—Refusal of Magistrate to adjourn a case to enable accused to cross-examine prosecution witnesses—Right of accused to summon them as defence witnesses and to cross-examine—Evidence Act, s. 154.*—The witnesses for the prosecution were examined, and an application for adjournment, so as to enable the accused to cross-examine them by Counsel, who could not appear on the day fixed, was refused. The accused, not being in a position to cross-examine them, applied for issue of summons to them to appear as defence witnesses. The witnesses being summoned, the Counsel for the accused proceeded to cross-examine them but he was not allowed to do so. *Held*, that the mere fact that the accused had, under the circumstances already stated, been compelled to treat the witnesses for the prosecution as their own witness did not change their character, and that, although the accused were compelled to obtain their attendance as witnesses for the defence, they were really summoned under s. 257 for the purpose of cross-examination, and the Magistrate was wrong in refusing to allow their cross-examination. **28 C. 594.**

(2006)—*S. 257 (=s. 257 of the Code of 1882)—Framing of charge—Application for re-summoning the complainant and his witnesses for cross-examination.*—Where an application by the accused to re-summon the complainant and his witnesses for cross-examination, made one day after the charge had been framed against him, was refused on the ground that it was evidently made for delaying the case, and the accused convicted, *held*, that the trying Magistrate should re-open the case from the stage where he made the formal charge, and should allow the accused such opportunities of calling and re-calling witnesses as the law gives them. **Rat. Un. Cr. C. 723=Cr. Rg. 48 of 1894.**

(2007)—*S. 257 (=Crim. Pro. Code, 1882, s. 257)—Right of accused to re-summon prosecution witnesses.*—An accused has a right to have the prosecution witnesses re-summoned even though they had been summoned previously and had not attended. **28 P.R. 1884 Cr.**

(2008 and 2009)—S. 257 (1 and 2)—*See* JUDGMENT, Rat. Un. Cr. C. 854.

(2010)—S. 257, paras 1, 2—*See* MAGISTRATE, DUTY OF, Rat. Un. Cr. C. 594=Cr. Rg. 14 of 1892.

(2011)—Ss. 257, 262—*See* SUMMARY TRIAL, 5 L.B.R. 20=9 Cr. L.J. 583=2 Ind. Cas. 365.

(2012)—S. 257—*See* WITNESS, 4 Bom. L.R. 461, Rat. Un. Cr. C. 930, 20 C. 469.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2012-*a*)—S. 257—*See* Nos. 430, 1574, 1988, 1992, 1994, 1996, *supra*.

——S. 258 (=1882, s. 258; 1872, s. 220, I. Expl.; 1861, s. 255).

See ACQUITTAL.

See CONVICTION.

(2013)—*S. 258—Acquittal by a Magistrate on the ground of the case being false—Effect of, on persons not sent up for trial.*—Where proceedings were taken against some only of several persons charged with an offence, and the Magistrate acquitted them, on the ground that the case was "doubtful or false," and the District Magistrate, without moving the local Government, and considering that the decision of the trying Magistrate was wrong, ordered the prosecution of the persons who were not tried before, *held* that the District Magistrate should have, in the proper exercise of his discretion, moved the local Government against the order of acquittal, and that no proceedings could be taken against the other persons so long as the trying Magistrate's judgment declaring the case to be false was not set aside. **7 C.W.N. 493.** [*F.*, 7 C.W.N. 711; *D.*, 10 C. W.N. 1031=4 Cr. L.J. 173].

(2014)—*S. 258 (=Crim. Pro. Code, 1872, s. 220).*—A Magistrate who convicts an accused person, ought, under this section, to pass a sentence on him according to law, and any omission to do so must be supplied. **Colm. Dig. Cr. 13 of 1873.**

(2015)—*S. 258—Penal Code (XLV of 1860), ss. 104, 504—Acquittal, order of—Interference by High Court at the instance of a private prosecutor—Acquittal on an erroneous view of the law—Using abusive language—Right of private defence.*—Case where the High Court interfered in revision, on the application of a private prosecutor, with an order of acquittal passed on an erroneous view of the law. S. 104, Penal Code, can have no application by way of defence to a charge under s. 504, Penal Code. **11 C.L.J. 113.**

(2016)—*Ss. 258, 259 (=Crim. Pro. Code, 1882, ss. 258, 259)—Warrant case—Complainant not appearing—Procedure.*—A Magistrate, having taken all the evidence for the prosecution and framed a charge against the accused in a warrant case and appointed a day for further hearing, cannot acquit the accused under s. 258 of the Crim. Pro. Code, or discharge him under s. 259 on the mere ground that the complainant does not appear on that day. He should proceed to hear the defence evidence and decide according to law. **Rat. Un. Cr. C. 524=Cr. Rg. 54 of 1890.**

(2017)—*Ss. 258 and 350—Charge—Transfer of Magistrate trying case—Rehearing of case—Order of discharge by succeeding Magistrate.*—A second class Magistrate, after hearing the evidence, framed charges against several accused persons under s. 406, Indian Penal Code, and called on them to produce evidence to clear themselves. That Magistrate was transferred and the case was sent to another second class Magistrate who, at the request of the accused, reheard the evidence, and subsequently passed an order for their discharge. *Held*, that the order passed by the succeeding Magistrate must be held to be an order of acquittal. **175 P.L.R. 1903**

(2018)—Ss. 258, 347—*See* COMMITMENT TO SESSIONS COURT, 3 C. 495.

(2019)—S. 258—*See* COMPLAINT, 5 C.L.R. 359.

(2020)—S. 258—*See* SUMMARY TRIAL, 1 L.B.R. 9.

(2020-*a*)—S. 258—*See* Nos. 1522, 1857, 1858, 1951, 1972, 1974, 1975, 1977, *supra*, and No. 3534, *infra*.

——S. 259 (=1882, s. 259).

See COMPLAINANT.

See COMPLAINT.

(2021)—*S. 259—Absence of complainant—Procedure.*—In a warrant case, when the Magistrate believes the prosecution evidence and arrives at the stage to which s. 254 of the Crim. Pro. Code applies, it is his duty to frame a charge, and he should not discharge the accused under s. 259 merely because the complainant was absent on the day of hearing. **Rat. Un. Cr. C. 847=Cr. Rg. 14 of 1896.**

(2022-2023)—*S. 259—Absence of complainant at hearing—Discharge of accused—Fresh complaint.*—Where a Magistrate has passed an order discharging the accused under s. 259, his order is no bar to a re-trial of the case on a fresh complaint. **28 M. 310=2 Weir 325-A=2 Cr. L.J. 753** [*R.*, 16 M.L.J. 79=1 M.L.T. 31=3 Cr. L.J. 274=29 M. 126].

(2024 and 2025)—Ss. 259, 253, 203—*See* FRESH COMPLAINT, 4 M.L.T. 140=8 Cr. L.J. 208.

(2025-*a*)—S. 259—*See* Nos. 625, 627, 1160, 1892, 1969, 2016, *supra*.

——S. 260, para 1 (=1882, s. 260; 1872, ss. 222, 223, 224); and para 2, new.

See SUMMARY TRIAL.

(2026)—*S. 260—Charge of offence not triable summarily—Competency to try summarily when facts disclosed only an offence triable summarily.*—Where a Magistrate ascertained from the evidence that the facts alleged to have taken place only disclosed an offence triable summarily, and the aggravating circumstances which rendered the offence not so triable were mere exaggerations, he could dispose of the case summarily, and the mere fact that the complainant charged the accused with an offence not triable summarily did not affect the jurisdiction of the Magistrate. **1 Bom. L.R. 683.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2027)—*S. 260—Complaint of offences, not triable summarily—Summary trial for minor offence—Jurisdiction of Magistrate.*—Where a petition of complaint stated that the accused, with others to the number of some 90 or 100, armed with swords and other deadly weapons came upon the complainant's land and in spite of his remonstrances, threatened him and cut his paddy, and the Magistrate, in examining the complaint, recorded merely the fact that the complainant stated that his paddy had been cut by the accused and convicted him summarily, under ss. 143, 379, I.P.C., *held*, that, as the petition of complaint disclosed the commission of a much more serious offence than the offences for which the Magistrate had held a summary trial, and as the examination of the complainant, which had not been properly recorded, did not show that the offence so complained of was not committed, the Magistrate had acted without jurisdiction in trying the case summarily. **29 C. 409=6 C.W.N. 713.** [*F.*, 21 P.L.R. 1907].

(2028)—*S. 260—Charges under ss. 147 and 324, Penal Code—Power of Magistrate, after taking evidence, to try case summarily for offence under s. 323, Penal Code, after discharging accused of offences not triable summarily.*—Where, in the case of a complaint of offences under ss. 147 and 324, Penal Code, the Magistrate, after hearing the evidence, was of opinion that the only offence made out was an offence under s. 323, Penal Code, which was triable summarily and so tried the case, *held*, that the procedure adopted by the Magistrate was not illegal and did not amount to disregarding that part of the charge, which took the case out of his summary jurisdiction for the purpose of dealing with the case summarily; *held*, further, that, as the effect of strictly confining to the charge before him would be to discharge the accused and not to commit him, the Magistrate was acting properly in trying the case summarily for the offence, which was clearly disclosed by the evidence. **22 M. 459=2 Weir 254.**

(2029)—*S. 260—Summary trial--Forest Act (VII of 1878), s. 31, offence under.--Held.* that the petitioner's conviction under s. 51 of Act VII of 1878 for being in possession of beams belonging to the Government was illegal, where the beams were found concealed in an open field, which it could not be said was in the exclusive possession of the petitioner. The Chief Court remarked that, though the Magistrate had the power to try the case summarily, he had exercised an improper discretion in doing so. **128 P.L.R. 1902.**

(2030)—*S. 260—Summary trial of an offence which cannot be so tried—Conviction—Legality.*—An accused person cannot be convicted in a summary trial of an offence which cannot be tried summarily. **U B.R. (1897—1901), Vol. I, 75.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2031)—*S. 260 (=Crim. Pro. Code, 1882, s. 260)—Construction of cls. (b) to (k).*—Cls. (*b*) to (*k*) of s. 260 of the Crim. Pro. Code being precisely expressed, are not to be governed by cl. (*a*), but may be given their full effect. **Rat. Un. Cr. C. 600=Cr. Rg. 18 of 1892.**

(2032)—*Ss. 260, 262, 263 (=Crim. Pro. Code, 1882, ss. 260, 262, 263)—Presidency Magistrate—Warrant case—Procedure.*—The provisions of Ch. XXII of the Crim. Pro. Code do not apply to trials before Presidency Magistrates. The procedure to be followed in warrant cases is that laid down in Ch. XXI. **Rat. Un. Cr. C. 539=Cr. Rg. 12 of 1891.**

(2033)—*Ss. 260, 355, 30, 34 (=Crim. Pro. Code, 1872, ss. 222, 36)—Maximum punishment—Summary trial.*—An accused person was tried summarily under s. 222, Crim. Pro. Code, 1872, and was sentenced to rigorous imprisonment for four years subject to the confirmation of the Sessions Judge under s. 36, Crim. Pro. Code, 1872. *Held*, that, under s. 222, two years was the maximum period of imprisonment that can be awarded in a summary trial. **Colm. Dig. Cr. 30 of 1876.**

(2034)—*Ss. 260, 355 and 488 (=Crim. Pro Code, 1882, ss. 260, 355, 488)—Proceedings under Ch. XXXVI—Application for maintenance—Record of evidence.*—Proceedings, under Ch. XXXVI of the Code, cannot be conducted as in a summary trial under Ch. XXII. The evidence should be recorded as provided by s. 355 of the Code. **20 C. 351.** [*R.*, L B R. (1893—1900), 662].

(2035)—*S. 260—Summary trial—Act IX of 1890, s. 121.*—An offence under s. 121, Railways Act, is an offence which is summarily triable within the meaning of s. 260, Crim. Pro. Code. **A.W.N. 1902, 24.**

(2036)—S. 260—*See* BEN. ACT XXI OF 1856, s. 49, 3 C. 366=1 C.L.R. 442.

(2037)—S. 260 (1)—*See* MAGISTRATE, JURISDICTION OF, Rat. Un. Cr. C. 670.

(2038)—Ss. 260 (1) and 355.—*See* SUMMARY TRIAL, 2 C.L.R. 374.

(2038-*a*)—S. 260—*See* Nos. 250, 1242, 1300, 1312, *supra*.

——S. 261 (=1882, s. 261; 1872, s. 225).

See SUMMARY TRIAL.

(2039)—S. 261—*See* MAD. ACT XXIV OF 1859, s. 48, 13 M. 142=1 Weir 910=2 Weir 327.

(2040)—S. 261—*See* BENCH OF MAGISTRATES, 13 M. 142=1 Weir 910=2 Weir 327.

——S. 262 (=1882, s. 262; 1872, s. 226).

See SUMMARY TRIAL.

(2040-*a*)—*S. 262—See* Nos. 187, 188, 1845, 1847, 1927, 1997, 2011, 2032, *supra*.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

——S. 263 (=1882, s. 263; 1872, s. 227).

See JUDGMENT.

See SUMMARY TRIAL.

(2041)—*S. 263 (=Crim. Pro. Code, 1872, s. 227 (h))—Record of reasons for conviction by Magistrate.*—Under s. 227 (*h*) of the Crim. Pro. Code, a Magistrate, in recording his reasons for a conviction, should state them therein, so that the High Court, on revision, may judge whether there were sufficient materials before him to support the conviction. **6 C. 579.** [*F.*, 13 C. 272, 18 B. 97, 13 C.P.L.R. 17, 1 L.B.R. 95, 1 L.B.R. 208, 3 L.B.R. 3=2 Cr. L.J. 375; *R.*, 21 A. 189, 31 C. 983].

(2042)—*S. 263, strict compliance with—Summary trial—Non-compliance with law, effect of.*—In the case of a summary trial, the provisions of s. 263 of the Code must be fully and strictly complied with, and complied with, in this sense, that the record must be sufficiently exact and sufficiently full to enable the Judges of the Revisional Court to say whether the law has been complied with or not on the points to be recorded. The three things required, under s. 236 of the Code, to be recorded, namely, the offence charged, the offence, if any, proved and the reasons for convicting, must be recorded, and recorded in such a way as to enable the Court of Revision to say, yea or no, from within the four corners of the record itself, whether the offence charged is an offence in point of law, whether the offence proved is an offence in point of law, and whether the reasons for the conviction are good and sufficient reasons. **2 C.L.J. 565=10 C.W.N. 79=3 Cr. L.J. 178.**

(2043)—*Ss. 263, 414, 415, 416 (=Crim. Pro. Code, 1872, ss. 227, 274)—Sentence of imprisonment and fine by first class Magistrate—Appeal Form of record.*—Where a Magistrate of the first class passes a sentence of fine and imprisonment, his order is appealable. Therefore, he should record the evidence of the witnesses and his reason for passing the sentence. **2 C.L.R. 511.**

(2044)—*S. 263 (=Crim. Pro. Code, 1872, s. 227), cl. (h)—Summary trial.*—A summary trial applies only to short and simple cases, where little evidence is needed. The proceedings of a Magistrate thereunder, covering more than 130 pages and occupying seven days, were held to be an abuse of the law. **25 W.R. Cr. 65.**

(2045)—S. 263 (*a*)—*See* CONVICTION, 6 C.W.N. 40.

(2046)—S. 263 (*h*)—*See* JUDGMENT, 18 B. 97, 3 C.W.N. 281, A.W.N. 1883, 114.

(2047)—Ss. 263, 367, 537—*See* JUDGMENT, 6 C.L.R. 273.

(2048)—S. 263—*See* PARDON, 13 C.P.L.R. Cr. 17.

(2049)—S. 263—*See* Nos. 1847, 2032, *supra*, and No. 2478, *infra*.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

——S. 264 (=1882, s. 264; 1872, s. 228).

See SUMMARY TRIAL.

(2050)—*Ss. 264, 537 (=Crim. Pro. Code, 1872, ss. 228, 283)—Summary trial—Record in appealable cases—Defective record—Duty of appellate Court.*—A Sessions Judge should not quash a conviction in a summary trial, on the ground that the substance of the evidence was not embodied in the Magistrate's judgment. If the Judge found it impossible to dispose of the appeal because of such defect, he should have required that officer to repair the defect in his judgment, by recording a judgment in which the substance of the evidence should be fully embodied, and, if necessary, re-examining the witnesses for that purpose, or to have ordered a re-trial with that view. **1 A. 680.**

(2051)—*Ss. 264, 351 (=Crim. Pro. Code, 1882, ss. 264, 351)—Deposition of witnesses taken before the Magistrate in the absence of the accused.*—If, in the course of a trial, the Judge is of opinion that the prosecution has not laid a basis for the reception of the depositions taken before the Magistrate in the absence of the accused, he should adjourn the trial under s. 264, Crim. Pro. Code, and under s. 351, summon such witnesses as he may deem material. **12 C.L.R. 120.**

(2052)—*Ss. 264, 407 (=Crim. Pro. Code, 1882, ss. 264, 407)—Conviction by Bench of Magistrates exercising second and third class powers—Appeal.*—Under s. 407, an appeal lies from a conviction by a Bench of Magistrate exercising second or third class powers, and the Bench is bound to record a judgment under s. 264. **9 M. 36=2 Weir 460.**

(2053)—*S. 264 (=Crim. Pro. Code, 1872, s. 228)—Record of evidence in appealable cases.*—Under Act X of 1872, s. 228, Magistrates need not record the substance of depositions; but may state generally the substance of the witnesses' evidence. **25 W.R. Cr. 6.**

(2054)—S. 264—*See* CONVICTION, A.W.N. 1882, 178.

(2054-*a*)—S. 264—*See* No. 1845, *supra*, and No. 2478, *infra*.

——S. 265.

See JUDGMENT.

See SUMMARY TRIAL.

——S. 268 (=1882, s. 268; 1872, s. 232).

(2055)—Ss. 268, 272, 284, 285—*See* ASSESSORS, 15 B. 514.

(2056)—Ss. 268, 285—*See* ASSESSORS, 13 A. 337, 6 C.W.N. 715.

(2057)—Ss. 268, 537—*See* ASSESSORS, 15 A. 136.

(2058)—Ss. 268, 269, 447, 451-A, 451-B, 536—*See* EUROPEAN BRITISH SUBJECT, 18 P.R. 1888 Cr.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

——S. 269 (=1872, s. 233, paras 1 and 2; 1861, s. 322); paras 1 and 3 (=1882, s. 269).

(2059)—*S. 269—Order by Government revoking previous orders directing certain offences to be tried by jury as regards persons connected with anti-Shanar riots in Tinnevelly and Madura.*—The words "class of offences," referred to in s 269, are not restricted to the classification recognised by the Legislature, such as is found in the Penal Code, *e.g.*, offences against the state, against the person), or in the Crim. Pro. Code (*e.g.*, bailable offences, cognisable offences). Offences may also be classified according to the person who commits them, or according to the person or property against whom or which the offences are committed or in regard to the particular occasion in connection with which they are committed. Thus, the fact of offences having been committed by old offenders or members of criminal tribes, or having been committed against women or against public property, would afford reasonable ground for classification. The notification by Government, dated 30th August, 1899, by which the Government, revoking their previous orders providing for trial by jury of certain class of offences, directed the trial of persons concerned in the "anti-Shanar riots and disturbances in Tinnevelly and Madura" should be tried with the aid of assessors and not by jury. *Held*, that the offence connected with the outbreak was rightly treated as a class of offences and that it was competent to the Government, with the consent of the Governor-General in Council, to revoke the previous notification so far as it related to that class. **23 M. 632=2 Weir 331.**

(2060)—*Ss. 269 (3) and 309—Offences triable both by jury and assessors—Proper procedure.*—In a case where the accused is charged at the same trial, with offences of which some are, and some are not, triable by jury, and where the Judge combines his charge to the jury with the summing up to the assessors, it is desirable that the Judge should explain clearly to the jury and assessors the double capacity in which they were acting. **2 Weir 334.**

(2061)—*Ss. 269 (3), 309 and 537—Charges of theft and administering drug—Trial of the case by Sessions Judge and the jury—Opinion of only two of jurors taken regarding the latter charge—Validity.*—In a trial of an accused person for theft in building, an offence triable by a jury and for administering a stupefying substance with intent to facilitate the commission of an offence, an offence triable by assessors, the Judge took the verdict of the jury regarding the first charge and took the opinion of two of the jurors, as assessors, regarding the second charge, *held*, that he ought, under the provisions of ss. 269, cl. 3 and 309 of the Code of Criminal Procedure, to have taken the opinion of all the jurors as assessors, as regards the second charge. His failure to do that could not be treated as an omission or irregularity to which s. 537 of the Code of Criminal Procedure would apply. **26 M. 598=2 Weir 333.**

(2062)—*Ss. 269, 403 and 536—Acquittal by assessors on charge of abetment of dacoity with murder—Subsequent conviction by jury of receiving stolen property on the same facts as in previous case—Validity.*—The accused person was first charged with abetment of dacoity with murder. He was tried by the Sessions Court with the aid of assessors and was acquitted, but was afterwards charged with the offence of receiving stolen property and was tried by a Sessions Judge and a jury who convicted him of that offence. The facts on which the accused was convicted of the offence of receiving the stolen property did not differ from the facts on which he was acquitted of the offence of abetment of dacoity with murder. It was contended on behalf of the prosecution that, as the charge of receiving stolen property should be tried by a jury, under the rules made under the powers conferred by s. 269 of the Code of Criminal Procedure, the Court, which had acquitted the accused on the charge of abetment of dacoity with murder, was not a Court competent to try the accused on the charge of receiving stolen property. *Held*, that, as the words "was not competent to try" mean "had not jurisdiction to try" and as the provisions of s. 536, cl. 2, Crim. Pro. Code, validate the trial by assessors of a case triable by jury, if no objection had been taken before the Court had recorded its finding, the Court which first tried the accused was a Court "competent to try" the charge of receiving stolen property and that, therefore, the conviction of the accused on the second charge should be set aside. **24 M. 641=2 Weir 458.**

(2063)—S. 269 (1, 2)—*See* JUDGE AND JURY, Rat. Un. Cr. C. 600=Cr. Rg. 19 of 1892.

(2064)—S. 269—*See* TRIAL BY JURY, 11 Bom. L.R. 350=33 B. 423=2 Ind. Cas. 480.

(2065)—Ss. 269 (3) and 307—*See* TRIAL BY JURY, 9 Bom. L.R. 1057=7 Cr. L.J. 236.

(2066)—S. 269 (1 and 3)—*See* VERDICT OF JURY, 9 M. 42.

(2066-*a*)—S. 269—*See* No. 2058, *supra*, and No. 2228, *infra*.

——S. 270 (=1882, s. 270; 1872, s. 235; 1861, s. 360).

(2067)—*S. 270 (=s. 235 of 1872)—Scope of the section.—Per Brodhurst, J.*—S. 235 cannot be limited merely to cases of persons who, in addition to the offence of rioting, have with their own hands committed the further offences of voluntarily causing grievous hurt and of assaulting a public servant, when engaged in suppressing a riot. **7 A. 757, F.B.**

(2068)—S. 270—*See* COMPLAINANT, 5 B.H. C. Cr. 85.

(2069)—S. 270—*See* SESSIONS JUDGE, Rat. Un. Cr. C. 53.

(2069-*a*)—S. 270—*See* No. 3326, *infra*.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

—— S. 271 (=1882, s. 271; 1872, s. 237; 1861, s. 362).

(2070)—*S. 271—Statement by prisoner when called upon to plead—Procedure—Practice.*— In cases where an accused person when called upon to plead to a charge before a Court of Session, instead of pleading guilty, makes a long rambling statement more or less admitting guilt, it would be much safer if the Judge recorded a formal plea of "not guilty" and proceeded to try the case in the ordinary way, recording the evidence. **A.W.N. 1908, 54=5 A.L.J. 157=7 Cr. L.J. 295.**

(2071)—*S. 271 (=Crim. Pro. Code, 1882, s. 271)—Offence charged not proved—Conviction for different offence.*—A charge of murder on which the accused was tried, was not proved, but the Court convicted her of the offence of concealment of birth, which it considered was admitted by her in her examination by the Court. *Held*, that such conviction was illegal, and that a charge of concealment of birth should have been framed and the accused tried thereon. **Rat. Un. Cr. C. 386=Cr. Rg. 37 of 1888.**

(2072)—*S. 271—Plea of guilty—Discretion of Judge to continue the trial after such plea.*— Under the Crim. Pro. Code, the Court is not bound to convict an accused person on his plea of guilty. S. 271 only says that "the plea shall be recorded, and he may be convicted thereon." As a matter of practice in Sessions trials, especially in murder cases, many Judges rightly prefer not to act on the plea of guilty, but proceed to take the evidence just as if the plea had been one of not guilty, and decide the case upon the whole evidence including the accused's plea. When this procedure is adopted, it cannot be said that the trial terminates with the plea of guilty. A trial does not end, strictly speaking, until the accused has been either convicted, acquitted or discharged. **23 M. 151=2 Weir 747.**

(2073)—*S. 271—Plea of guilty—Conviction for murder—Penal Code, s. 302—Culpable homicide not amounting to murder.*—In this case, the appellant was charged with murder under s. 302, I.P.C. He admitted having killed his wife, but excused his act on the plea of provocation. The Court of Sessions recorded a plea of guilty and convicted the accused thereon. *Held*, that the conviction and sentence should be set aside and a re-trial ordered. The plea obviously was not intended to be and did not amount to a plea of guilty under the section charged. Further, the accused was entitled to have an opportunity of establishing the alleged facts, if he could, in order to show such grave and sudden provocation as would reduce the offence committed to culpable homicide not amounting to murder. **U.B.R. (1897—1901), Vol. I, 76.**

(2074)—*S. 271 (2)—Sessions trial—Alternative plea.*—An accused should never be called on to plead in the alternative, but separately to each of the heads of a charge. **Rat. Un. Cr. C. 327=Cr. Rg. 15 of 1887.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2075)—*Ss. 271 (2) and 342—Accused pleading guilty—Procedure postponing conviction to allow confession to be considered against co-accused—General examination of the accused.*—When an accused person pleads guilty, the Court should record the confession and forthwith convict him thereon. If there are other persons being tried with him for the same offence, the Court should not postpone his conviction merely for the purpose of allowing the statements he may have made to be considered against the co-accused. It is against the spirit of law to postpone the conviction so that the person who has pleaded guilty may technically be said to be tried jointly for the same offence. The general examination of the accused provided for by s. 342 can be made only for the purpose of enabling the accused to explain the circumstances appearing against him in evidence. The Court should not ask a confessing accused "who were with you in the dacoity?" **5 A.L.J 505.**

(2076)—*Ss. 271 (2), 342 (1), 439, 494—Plea of guilty, not recorded, effect of—Examination of the accused, whether allowed, when no evidence has been recorded, and whether can be in the nature of cross-examination—Withdrawal of charge by the public prosecutor—Right of the accused to an acquittal—Power of the High Court to interfere with, in revision—Practice.*—If the accused pleads guilty on a charge, the plea should be recorded. Where no such plea appears on the record, the conviction is bad, and must be set aside and a new trial ordered on the charge. A Sessions Judge is not justified in questioning a prisoner at a stage when no evidence has yet been recorded which the accused could be required to explain; and questions appearing to be in the nature of cross-examination are not justifiable. If the Public Prosecutor withdraws a charge and the Court approves of it, the accused shall be acquitted; and neither the Public Prosecutor nor the Judge is called on to give any reasons for his action. The High Court has no power to interfere with such an order of acquittal. **5 M.L.T. 216.**

(2077)—*Ss. 271, 465—Lunatic, trial of—Procedure—Guilty, plea of, not to be accepted in capital offences.*—A plea of guilty should not be accepted in capital offences. The accused confessed having killed his wife, and pleaded guilty at his trial for committing the offence of murder. The Sessions Judge recorded briefly the evidence of two prosecution-witnesses to determine whether the offence committed was or was not culpable homicide amounting to murder. He found that the offence was murder and sentenced the accused to transportation for life on the ground that the accused 'without being actually insane so as not to be aware of what he was doing, appears to be decidedly a man of weak intellect.' On appeal, it was urged that the accused was insane or at any rate incapable of understanding the charge against him. The Chief Court set aside the conviction and ordered

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

a re-trial and enquiry under s. 465 of the Code. **169 P.L.R. 1905=54 P.R. 1905 Cr.=3 Cr. L.J. 80.**

(2078)—Ss. 271 and 342—*See* ACCUSED PERSON, 9 C.L.J. 291=13 C.W.N. 552.

(2079)—S. 271—*See* CHARGE TO JURY, 2 Weir 339.

(2080)—S. 271—*See* CONVICTION, 10 W.R. Cr. Cir. 5.

(2081)—S. 271—*See* FALSE CHARGE, 7 C. 96=8 C.L.R. 471.

(2082)—S. 271—*See* MURDER, Rat. Un. Cr. C. 410.

——S. 272 (=1882, s. 272; 1872, ss. 238, 665; 1861, ss. 347, 363); proviso (=1872, s. 265).

(2083)—*S. 272 (=s. 363, Code of 1861)—Accused not pleading—Silence—Practice.*—Where an accused, asked to plead, keeps silent, an inquiry should be made as to whether he is obstinately so or *ex visitatione die*. In either case, a plea of not guilty is to be recorded. If he is found insane, the procedure laid down in Ch. XXVII of the Crim. Pro. Code should be followed. **Rat. Un. Cr. C. 19=Cr. Rg. 9—8—1869.**

(2084)—Ss. 272, 417—*See* APPEALS FROM ACQUITTALS, 9 A. 528.

(2085)—S. 272—*See* SESSIONS TRIAL, 6 Bom. L.R. 671.

(2085-*a*)—S. 272—*See* No. 2055, *supra*.

——S. 273 (=1882, s. 273).

(2086)—*S. 273 (=Crim. Pro. Code, 1882, s. 273)—Unsustainability of a charge—Entry to that effect—Effect.*—Under s. 273 of the Code, in trials before the High Court, when it appears to the Court, at any time before the commencement of the trial of a person charged, that any charge or any portion thereof is clearly unsustainable, the Judge may make on the charge an entry to that effect. Such entry has the effect of staying the proceedings upon the charge or portion of the charge as the case may be. **21 C. 97.** [*F.*, Rat. Un. Cr. C. 962; *R.*, 11 C.P.L.R. 6].

——S. 274 (=1882, s. 274; 1872, s. 236; 1861, *cf.* s. 327).

——S. 276 (=1882, s. 276; 1872, ss. 240, 243; 1861, s. 342).

(2087 and 2088)—*Ss. 276, 279 and 326—Jury, selection of.*—The Legislature has taken special precautions to render impossible any intentional selection of jurors to try a particular case. In the first place, the persons who are to be summoned to act upon the jury are drawn by lot; and, then again, when they appear, the jurors who are to try a particular case are chosen in the same manner from amongst the persons summoned. Where, owing to the fact that only three jurors attended the Court, the Judge summoned jurors from among the residents of the town on the day fixed for the trial, *held*, that the jury as constituted was not a proper jury as the procedure adopted by the Judge implied that the persons to be summoned were specially selected and were not summoned after being chosen, as the law required, by lot, from the whole of the persons liable to serve on the jury. Where, instead of choosing jurors by lot and then hearing and deciding objections as provided by ss. 276—279. the Judge proceeded at once to exempt some of the persons present merely on their own representation, *held*, that the procedure was irregular, and the irregularity was not cured by s. 537, **7 C.W.N. 188.**

(2089)—Ss. 276, 537—*See* VERDICT OF JURY, 8 C. 739=12 C.L.R. 233.

(2089-*a*)—S. 276—*See* No. 3122, *infra*.

——S. 277 (=1882, s. 277; 1872, s. 243, paras 1 and 2; 1861, s. 343).

(2089-*b*)—S. 277—*See* No. 3122, *infra*.

——S. 279 (=1882, s. 279; 1872, s. 243).

(2089-*c*)—S. 279—*See* No. 2088, *supra*.

——S. 280 (=1882, s. 280; 1872, s. 246; 1861, s. 346).

(2090)—S. 280—*See* SUMMARY TRIAL, 10 A. 55.

——S. 282 (=1882, s. 282; 1872, s. 254; 1861, s. 350).

(2091)—*S. 282 (=Crim. Pro. Code, 1882, s. 282)—Order for trial of witness for giving false evidence in Sessions trial*—De novo *trial of Sessions case owing to incompetency of one of the jurors, effect of—Penal Code, s. 193—Indian Oaths Act, X of 1873, s. 14.*—During the trial of a dacoity case, a person was examined as a witness, and the Sessions Judge, considering his evidence to be false, committed him for trial before his own Court under s. 193, Penal Code. Subsequently, the dacoity case was tried *de novo* owing to the incapacity of a juror who was found to be deaf and partly blind. *Held*, that there was nothing in the trial of the dacoity case to absolve the witness from the obligation under which he lay to speak the truth when examined as a witness in the first trial, although such trial became null and void owing to the incapacity of a juror. **19 M. 375=2 Weir 680=6 M.L.J. 195.** [*F.*, 6 C.W.N. 717].

(2091-*a*)—S. 282—*See* No. 2788, *infra*.

——S. 284 (=1882, s. 284; 1872, s. 239; 1861, s. 342).

See ASSESSORS.

(2092)—*S. 284 (=Crim. Pro. Code, 1882, s. 284)—Scope.*—S. 284 refers, not to the illegality of a sentence, but to the invalidity of a conviction by reason of want of jurisdiction in the Court to try the offence. **4 A. 366.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2093)—Ss. 284, 285, 537—*See* ASSESSORS, 25 B. 694=3 Bom. L.R. 274.

(2093-*a*)—S. 284—*See* No. 2055, *supra*, and No. 3122, *infra*.

——S. 285 (=1882, s. 285; 1872, s. 259; 1861, s. 353).

See ASSESSORS.

(2094)—*S. 285 of the Code of 1898 (=s. 353 of the Code of 1861)—Case tried with assessors—Incompetency of one of the assessors, effect of.*—Where, at the close of a trial, it is discovered that one of the assessors is so blind and deaf as to render him unfit to discharge the duties required of him, the trial would be irregular and there should be a new trial. **2 Weir 340.** [*R.*, 24 M. 523=2 Weir 340].

(2095)—*S. 285 (=Crim. Pro. Code, 1882, s. 285)—Assessors.*—An assessor, who was allowed to absent himself under this section during a portion of the trial and was caused or allowed to sit as assessor afterwards, the said portion of the proceedings taken during his absence being read over to him on his return, *held* that this procedure was not in accordance with law; according to s. 285, Crim. Pro. Code, the trial should proceed with the aid of the other assessor alone. **8 C.P.L.R. Cr. 9.**

(2096)—*Ss. 285, 295 (=Crim. Pro. Code, 1882, ss. 285, 295)—Absence of one of the assessors for one day during trial.*—Where the Sessions Judge allowed one of the assessors to absent himself for one of the days during which the trial proceeded, and to return on the following day, *held* that the procedure was contrary to the intention of ss. 285, 295, Crim. Pro. Code. The Judge ought either not to have given leave or should have adjourned till a day when both the assessors could attend. **Rat. Un. Cr. C. 695=Cr. Rg. 24 of 1894.**

(2097)—*Ss. 285 and 537—Valid commencement of trial with aid of two assessors—Absence of one assessor during portion of trial and subsequent resumption of seat—Legality of the trial.*—A murder case was tried by a Sessions Judge with the aid of two assessors. One of the assessors was absent owing to the illness of his mother and subsequently attended the Court for some days only after 1 P.M., after performing the daily obsequies rendered necessary by her death the evidence taken in his absence being shown to, and read by, him. At the end of the trial, the opinion of each of the assessors was taken and duly recorded. The Judge, concurring with the opinion of the assessors, convicted the accused. *Held*, on objection being raised to the procedure followed in the trial, by Benson and Bhashyam Ayyangar, JJ. (Davies, J., *dissenting*) that, as the assessors are not members of the Court of Sessions, as the trial in this case validly commenced with the aid of two assessors, as one of the assessors attended the trial throughout its termination, and as his status as assessor had not been affected and his opinion recorded by the Judge at the conclusion of the trial, had not been invalidated by the action of the Judge in allowing the other assessor to resume his seat as an assessor and inviting his opinion as such at the conclusion of the trial, the act of the Judge was only an error or irregularity in a proceeding during the trial, which would be cured by s. 537 of the Code. **24 M. 523=2 Weir 340.**

(2098)—S. 285—*See* ASSESSORS, 21 A. 106.

(2098*a*)—S. 285—*See* Nos. 2055, 2056, 2093, *supra*.

——S. 286 (=1882, s. 286; 1872, s. 247; 1861, *cf.* s. 364).

(2099)—*Ss. 286, 288 and 537 (=Crim. Pro. Code, 1882, ss. 286, 288, 537)—Irregularity in examination of witnesses by Sessions Judge.*—Where, on the suggestion of the attorney for the prisoner for the purpose of expediting the trial, that the depositions of certain witnesses for the prosecution, given before the committing Magistrate, should be read, and that he should be permitted to cross-examine, and the Judge, on the Government prosecutor consenting to the procedure, adopted it in those cases when, on each witness being called, there was nothing to render the procedure inadmissible, *held*, that the procedure adopted was contrary to the Code, but that the prisoner was not prejudiced by it, inasmuch as the course was suggested by prisoner's attorney. **9 M. 83=2 Weir 356.** [*R.*, 8 Bom. L.R. 538].

(2100)—*Ss. 286 and 289—Examination of prosecution witnesses at a Sessions trial—Validity of questioning them as to the truth of their depositions before the committing Magistrate.*—It is extremely objectionable, in a Sessions trial, to read to the prosecution witnesses their depositions before the committing Magistrate and to ask if what was there recorded was not true. **2 Weir 360.**

(2101)—Ss. 286, 292, 293—*See* REPLY, RIGHT OF, 14 A. 212.

——S. 287 (=1882, s. 287; 1872, s. 248; 1861, s. 366).

See ACCUSED PERSON.

See EXAMINATION OF ACCUSED.

(2102)—*S. 287 of the Code of 1898 (=s. 366 of 1861)—Proper procedure.*—The proper form to be observed under s. 366 is to read the examination of the accused person as part of the case of the prosecution, before the case for the defence is entered upon, and to mark the same accordingly, and to make a note thereof in the record of the trial. **2 Weir 361.** [*R.*, 21 M. 83=2 Weir 503].

(2103)—*Ss. 287, 288, 350 and 436—"Order him to be committed,"—"Committing Magistrate"—Meaning of the expressions.*—The words "Order him to be committed" in s. 436 of the Code do not mean more than "pass an order

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

for his committal" and enable the District Magistrate himself to make a committal, or to direct a Subordinate Magistrate to make a committal. The phrase "committing Magistrate" in ss. 287 and 288 is merely a compendious way of referring to the Magistrate or Magistrates, who held the preliminary inquiry on which the committal was made. S. 350 of the Code enables a commitment to be made by a Magistrate, who succeeds to the jurisdiction of another Magistrate, on evidence recorded by that Magistrate. In such a case, the Magistrate actually making the order of commitment need not have himself recorded any of the evidence or the statement of the accused. **3 M.L.T. 25=7 Cr. L.J. 29.**

(2104)—*Ss. 287, 289, 342 (=Crim. Pro. Code, 1882, ss. 287, 289, 342)—Trial before Court of Sessions—Acquittal without taking whole evidence tendered by prosecution—Re-trial.*—In a dacoity case, the Sessions Judge after taking part of the evidence for the prosecution, and considering that the offence against the accused persons, whom he did not examine, was not proved, refused to take further evidence, and after recording the opinions of the assessors, acquitted the accused. *Held*, that the rules of procedure laid down in ss. 287, 289 and 342 of the Code of Criminal Procedure must be followed; and that, under the circumstances, the order of acquittal must be quashed, and the accused re-tried according to law. **1 O.C. 85.**

(2105 and 2106)—Ss. 287, 342—*See* CONFESSION, 4 L.B.R. 244=8 Cr. L.J. 62=14 Bur. L.R. 233.

(2107)—S. 287—*See* GRAVE AND SUDDEN PROVOCATION, L.B.R. (1893—1900), 207.

(2107-*a*)—S. 287—*See* Nos. 81, 1332, *supra*, and No. 2358, *infra*.

——**S. 288 (=1882, s. 288; 1872, s. 249).**

See ACCUSED PERSON.

See EXAMINATION OF ACCUSED.

(2108)—*S. 288 (=Crim. Pro. Code, 1872, s. 249)—Scope of.*—S. 249 is intended to provide for the contingency that may arise, when a witness, who is produced before the Court of Sessions, holds back information and evidence, and tells a different story to that which he gave in the preliminary enquiry before the Magistrate. **2 A. 646.**

(2109)—S. 288, Crim. Pro. Code, does not extend to Courts of Magistrates nor to depositions not taken in the presence of the accused; it is a section requiring very careful use by Courts of Sessions, and its real scope is explained in 11 B.H.C. 281. Such statements may be recorded after cross-examination upon them of the witnesses who made them, which would reveal discrepancies, or used under s. 145, Evidence Act, as a basis of cross-examination. **Rat. Un. Cr. C. 728=Cr. Rg. 56 of 1894.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2110)—S. 288 appears to contemplate that a witness shall be first examined, and that, after that, his evidence before the committing Magistrate may be treated as evidence. It cannot be said that the mere examination of the witness as to his making the deposition before the Magistrate is an "examination" within the meaning of s. 288. The section provides for the exercise by the Sessions Judge of a discretion whether he will treat the evidence of a witness before the Magistrate as evidence in the case. The section does not authorise a Judge to admit the evidence before the Magistrate of all the witnesses or a number of them together, thereby causing a complete change of the course and practice of law especially laid down in s. 286. **9 M. 83=2 Weir 356.** [*R.*, 8 Bom. L.R. 538].

(2111)—S. 288 of the Code does not limit the production of the evidence given before the committing Magistrate only for the purpose of contradicting the witness at the Sessions trial. It also enables the Court to read the previous evidence as substantive evidence in the case, at the trial, where, for the purposes of justice, the adoption of such a course is found necessary by the Judge. **24 M. 414=2 Weir 377.**

(2112)—There is nothing in the Code which prescribes the value or weight to be attached to the evidence admitted under s. 288, Crim. Pro. Code, 1882. This is a matter entirely beyond the scope of the section, as it is also of the Evidence Act, and is a question in the particular case for the jury or for the assessors, subject to the direction of the Judge in summing up, or for the Judge in cases where he is the Judge of fact. **51 P.R. 1887 Cr.**

(2113)—*S. 288—Evidence taken before committing Magistrate, case to be made of.*—S. 288 was never intended to be used so as to enable a Court trying a case to take a witness's deposition bodily from the Magistrate's record, and treat it as evidence before itself. A Court of Sessions may admit in evidence the statements made by witnesses before the committing Magistrate, when such evidence is to a certain extent corroborated by independent testimony before itself. If there is no such corroborative evidence, it is not proper to base a conviction solely upon such evidence. **21 A. 111.** (12 B.L.R. Ap. 15, 12 M. 123, 7 A 862, *R.*) [*R.*, 3 A.L.J. 852=28 A. 683=A.W.N. 1906, 187=4 Cr. L.J. 61].

(2114)—*S. 288—Evidence by approver—Statements of witnesses before committing Magistrate—Admissibility before the Sessions Court—Use to be made of such statements.*—Where a person, who, accepting a pardon tendered to him, made a statement as a witness before the committing Magistrate, but subsequently at the Court of Sessions repudiated such statement, *held*, that the statement of the approver before the committing Magistrate was admissible in evidence in the Sessions Court. **21 A. 175.** [*R.*, 2 L.B.R. 214=1 Cr. L.J. 483].

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2115)—Statements made by witnesses before a committing Magistrate and subsequently repudiated by them are admissible in the Sessions Court, merely for the purpose of contradicting the witnesses. But the substance of such repudiated statements should not be used by the prosecution as substantial evidence of the allegations. **22 A. 445.** [*R.*, 2 L.B.R. 214=1 Cr. L.J. 483, 3 A.L.J. 852=28 A. 863 =A.W.N. 1907, 187=4 Cr. L.J. 61].

(2116)—In a capital case, certain witnesses, who had stated before the committing Magistrate that they had seen the accused striking the deceased, withdrew their statements before the Court of Sessions and gave evidence exculpating the accused. The Sessions Judge considering the evidence given before him by these witnesses to be untrue, and acting under s. 288 of the Code of Criminal Procedure, admitted in evidence the statements of these witnesses made before the committing Magistrate. *Held*, that such statements were rightly admitted and, when admitted, were on the same footing as the other evidence on the record. **A.W.N. 1906, 187=4 Cr. L.J. 61=3 A.L.J. 852=28 A. 683.**

(2117)—Although s. 288, Crim. Pro. Code, allows the evidence of a witness taken before a committing Magistrate to be treated as evidence in the case in the Sessions Court, yet, when the evidence has been retracted in the latter Court, it would be very unsafe to act upon it, unless it is clearly found to be true by some independent evidence. **Rat. Un. Cr. C. 966=Cr. Rg. 20 of 1898.**

(2118)—A Sessions Judge does not show a proper discretion in allowing a statement before a committing Magistrate by a witness to be used as evidence under s. 288, when the witness repudiates it at the Sessions and attributes it to improper influence in the course of the investigation, and when the circumstances are such that the Judge could not rely on it. **7 C.W.N. 345.**

(2119)—Under s. 288, Crim. Pro. Code, a Court is authorised to take a particular statement made by a witness before the committing Magistrate as the true statement, notwithstanding that it was denied or a statement inconsistent therewith was made by the witness before the Court itself, if the Court could see, from the evidence of the same witness before itself, or of other witnesses before itself, that the original statement was worthy of belief, and should not entirely ignore the evidence of the witnesses before it, and have recourse to the evidence of the same persons before the committing Magistrate. (12 B.L.R. App. 15, *F.*) A Court intending to use the evidence of a witness before the committing Magistrate is bound to put to the witnesses whom it proposes to contradict by their statements made before it, the whole or such portions of their depositions as it intends to rely upon in his decision. **S.C. 229, Oudh.** (7 A. 862, *F.*).

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2120)—*S. 288 (=288 of the Code of 1882).*—Where a statement made by a witness in the enquiry before a Magistrate previous to commitment was used as evidence against the accused, notwithstanding that the witness was subsequently convicted along with the accused for the same offence, *held*, that s. 288, Crim. Pro. Code, 1882, did not authorise such a procedure. **23 P.R. 1883 Cr.**

(2121)—*S. 288 (=Crim. Pro. Code, 1882, s. 288)—Evidence before committing Magistrate, weight of, in Sessions Court—Conviction on such evidence, if justifiable.*—Though s. 288 of the Crim. Pro. Code allows evidence taken before the committing Magistrate to be treated as evidence at the trial in the Sessions Court, a conviction based on such evidence alone, especially when the witnesses give completely different versions in the Sessions Court would not be justified. **Rat. Un. Cr. C. 894=Cr. Rg. 8 of 1897.** (21 W.R. Cr. 49, 12 M. 123, 7 A. 862, *R.*)

(2122)—*S. 288 (=Crim. Pro. Code, 1882, s. 288)—Deposition before Magistrate used in Sessions trial—Procedure—Witness in the Court below, cross-examined in Sessions Court—Accused's right to put in previous deposition.*—When a Sessions Judge admits the deposition of a witness taken before the committing Magistrate as evidence in the trial before his Court, under s. 288, Crim. Pro. Code, he should, in his proceedings, distinctly note that he has done so and give the deposition a number in his proceedings and translate it, or the material portions of it, in his English minute of the proceedings. When a counsel or pleader cross-examines a witness, with reference to a previous deposition, the parts thereof to which the cross-examination is directed should be set out in the Judge's minute of the proceedings. The deposition itself need not, in such a case, be made a portion of the evidence in the Sessions Court, unless the Government Pleader desires that it should be so recorded or the Sessions Judge adopts it under s. 288, Crim. Pro. Code. The pleader or counsel for the defence of the accused may introduce, as part of his own evidence, a previous deposition made by a witness, and in this case, the depositions must be numbered and translated in the minute of the proceedings. The prosecuting counsel or pleader has a right in such a case to question the witness as to apparent contradictions and discrepancies between the two statements. **Rat. Un. Cr. C. 343=Cr. Rgs. 34 and 35 of 1887.**

(2123)—*S. 288—Withdrawal in Sessions Court of statement made by witnesses before the committing Magistrate—Conviction—Legality.*—It is unsafe to convict a person on the statements made by witnesses before the committing Magistrate, when such statements are withdrawn before the Sessions Court, and there are no independent circumstances from which it may be inferred that the subsequent statements were false and the original statements were true. **2 Weir 374.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2124)—The only direct evidence against an accused person was the deposition given by a witness before the committing Magistrate, but the truth of which was totally denied by the witness when examined at the Sessions. But the deposition of that witness before the committing Magistrate was to a certain extent corroborated by the evidence of another witness. *Held*, that the conviction of the accused based upon the evidence before the committing Magistrate, which was subsequently withdrawn at the Sessions trial, was not improper. **2 Weir 375.**

(2125)—*S. 288 (=Crim. Pro. Code, 1882, s. 288)—Transfer of deposition to Sessions record.*—A Sessions Judge should not arbitrarily transfer the deposition of a witness to the record of his own Court, before he has examined him and before he has satisfied himself as to the necessity for the transfer. **9 C.P.L.R. Cr. 24.**

(2126)—*S. 288—Statements before committing Magistrate, retracted at Sessions trial—Corroboration.*—A statement made to a committing Magistrate, even though subsequently retracted and repudiated, may be used by the prosecution as substantial evidence of the allegations made in it. If the uncorroborated evidence of an accomplice, even when unretracted, requires corroboration, it must still more require corroboration when retracted. **2 L.B.R. 214.** (21 A. 175, 22 A. 445, *R.*).

(2127)—*Ss. 288 and 289 (=Crim. Pro. Code, 1882, ss. 288, 289)—Cross-examination of prosecution witnesses, postponement of—Legality.*—There is no provision of law which authorises, at a Sessions trial, the Judge to allow the witnesses for the prosecution to be examined one day and to permit the cross-examination of these witnesses to be reserved to a subsequent date. **2 Weir 381.**

(2128)—*Ss. 286, 342 (=Crim. Pro. Code, 1882, ss. 288, 342)—Right of accused to cross-examine witnesses before the commitment and to communicate with pleader.*—Where a District Magistrate did not allow a prisoner to communicate with his pleader so as to properly instruct him as to his defence and refused to allow any cross-examination of prosecution witnesses during the judicial enquiry in his Court before commitment, *held*, that that Magistrate had acted arbitrarily and improperly. *Held*, also, that such depositions could not be treated as evidence at the Sessions trial of the accused under s. 288 of the Code, inasmuch as the mere fact that the accused was merely present would not make the depositions "duly taken" in his presence, if the accused was not allowed an opportunity to cross-examine such witnesses. [*R.*, 3 P.R. 1904 Cr.] The express provision made in the Crim. Pro. Code of 1872 allowing cross-examination by the accused during an enquiry previous to commitment and its omission in the Code of 1882 must not be taken to show an intention

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

on the part of the Legislature to deprive the accused of such right, seeing that the Evidence Act provides for cross-examination as part of the record of evidence taken in a judicial enquiry. The omission may be explained by taking that the Legislature thought the provision to be redundant, inasmuch as the Evidence Act provides for it. Further, if the law allows (s. 342) a Magistrate to examine an accused in the course of an enquiry or trial so as to explain any circumstances appearing in evidence before him before a charge has been drawn, surely he has a right by cross-examination to show that those circumstances have been improperly made to appear in the evidence given. **21 C. 642.**

(2129)—*Ss. 288, 423 (2) (=Crim. Pro. Code, 1882, ss. 288, 423)—Retracted confession—Corroboration—Charge to jury—Omission to point out the nature of confession—Effect.*—A retracted confession must be supported by independent reliable evidence corroborating it in material particulars. An omission to point out this to the jury amounts to misdirection. **2 Weir 509.**

(2130)—*Crim. Pro. Code, 1882, ss. 288, 423 (2)—Retracted confession—Charge to the jury.*—*Held*, that the Judge had misdirected the jury in omitting to tell them that it was necessary that a retracted confession should be corroborated, and that such corroboration should not consist only of depositions given before the Magistrate and proved under s. 288 of the Crim. Pro. Code. **2 Weir 509.**

(2131)—*S. 288 (=Crim. Pro. Code, 1872, s. 249)—Admissibility of evidence of accomplice given at enquiry.*—The accused in this case was offered and accepted a pardon and was examined as a witness by the committing Magistrate. Before the Court of Session, he retracted the statement made by him before the Magistrate, asserting that he had been intimidated into making it by the police and that he knew nothing about the case. The pardon was accordingly withdrawn and his commitment was ordered. His evidence before the committing Magistrate was used and acted upon by the Court of Session. *Held* that, even if s. 249 had any applicability to the case, which was very doubtful, it would have been wiser to discard that statement. The case was not one of a witness giving evidence inconsistent with, or contrary to, a former statement or statements made to the committing Magistrate. On the contrary, the accused admitted his deposition, but declared that it was brought about by the coercion of the police. At any rate, the proper course would have been to call his attention to the various passages of his deposition *seriatim* before using it to contradict him. **A.W.N. 1881, 74.**

(2132)—*S. 288 (=Crim. Pro. Code, 1872, s. 249)—Former deposition of witness—Evidence Act, s. 80.*—The confession of a person in the

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shape of a former deposition can be used as evidence against him only if it was duly taken by the committing officer in the presence of that person. **21 W.R. Cr. 5.**

(2133)—*S. 288 (=Crim. Pro. Code, 1872, s. 249)—Depositions taken before Magistrate.*—A Sessions Court cannot base its decision on the depositions taken by the Magistrate without a fresh examination of the witnesses. **24 W. R. Cr. 11.**

(2134)—*S. 288 (=Crim. Pro. Code, 1872, s. 249)—Witnesses before committing Magistrate.*—On the trial of a prisoner for the murder of his wife and child, the witnesses for the prosecution gave evidence contradicting that given by them before the committing Magistrate; and the Sessions Judge, purporting to act under s. 249, Act X of 1872, discarded the evidence taken before himself, and based his decision on the evidence given before the Magistrate, and on this evidence convicted the prisoner and sentenced him to death. On appeal by the prisoner, *held* that s. 249 did not warrant such a course of procedure, that section merely authorised the Court to take a particular statement, made by a witness before the Magistrate as the true statement, notwithstanding that it was denied, or a statement inconsistent with it made by the witness before the Judge, only if the Judge should see that the original statement was worthy of belief, and did not mean that the Court should discard wholly the testimony of witnesses before it and have recourse to the testimony of the same persons given before another officer. **21 W.R. Cr. 49=12 B.L.R. Ap. 15.**

(2135)—S. 288—*See* ACCOMPLICE, 3 P.R. 1904 Cr., 14 P.R. 1894 Cr.

(2136)—S. 288—*See* APPROVER, 7 C.L.R. 66, 13 C.L.R. 326.

(2137)—S. 288—*See* CONFESSION, 27 C. 295=4 C.W.N. 129, 12 M. 123=2 Weir 376.

(2138)—S. 288—*See* EVIDENCE, 23 C. 361, L.B.R. (1893—1900), 280, A.W.N. 1886, 256, 11 B.H.C. 281.

(2139)—Ss. 288, 292—*See* REPLY, RIGHT OF, 31 C. 1050.

(2140)—S. 288—*See* SESSIONS TRIAL, 31 C. 142, F.B.

(2141)—S. 288—*See* WITNESS, 7 A. 862.

(2141-*a*)—S. 288—*See* Nos. 1109, 1128, 1148, 1332, 1333, 1730, 2099, 2103, 2187, *supra*, and No. 2311, *infra*.

——S. 289 (=1882, s. 289; 1872, s. 251, paras 1 and 2; 1861, s. 372).

(2142)—*S. 289 (=Crim. Pro. Code, 1882, s. 289)—Scope of.*—Where the Court considers there is no evidence to lay before the assessors, the usual procedure is for the Court itself to record a finding, under s. 289, to that effect. But this section applies only where there is no evidence and would not cover a case where the Court considers that the charge was in itself improper. **12 A. 551.**

(2143)—The words "no evidence" in s. 289, Crim. Pro. Code, must not be read as meaning "no satisfactory, trustworthy, or conclusive evidence." If there is evidence on which the jury can judge and not merely conjecture, the trial must go on to its close; in trials by jury, the jury, and, in other trials, the Judge, after considering the opinion of the assessors, have to find on the facts. **16 B. 414.** [*R.*, 19 B. 749, Rat. Un. Cr. C. 772, Rat. Un. Cr. C. 779, 9 C.P.L.R. 24 Cr.]

(2144)—It is only in a case in which there is no evidence that the accused committed the offence that a Court can acquit under s. 289. Where there was direct evidence which, if believed, would establish the offence, the fact, that the Judge did not himself believe the evidence was no ground for withdrawing it from the consideration of the assessors or from the jury. **2 Weir 382.**

(2145)—*S. 289 (=Crim. Pro. Code, 1882, s. 289, para 3)—"No evidence," meaning of.*—The term "no evidence" in s. 289, Crim. Pro. Code, implies "no legal evidence, or proof" and not "no evidence worthy of belief." Where, in a Sessions trial with the aid of assessors, there was evidence, which, if true, would have sufficed for the conviction of the accused of the offence charged against them, and the Court, disbelieving the evidence, recorded a finding of not guilty, purporting to act under s. 289, Crim. Pro. Code, *held*, that the order of the Sessions Judge was made without jurisdiction and was illegal. **S.C. 274, Oudh. (10 A. 414, *F.*; 11 A.W.N. 93, *R.*)** [*App.*, 1 O.C. 84].

(2146)—The words "there is no evidence" in s. 289 should not be extended so as to mean no satisfactory, trustworthy or conclusive evidence. The meaning of the third paragraph of s. 289, is that if at a certain stage of a Sessions trial, the Court is satisfied that there is not upon the record any evidence, which, even if it were perfectly true, would amount to legal proof of the offence charged, then, the Court has power without consulting the assessors, to record a finding of not guilty. But the Judge, acting with the aid of assessors, has no such power, because only he considers the evidence unsatisfactory, untrustworthy, or inconclusive. A Court acting in this way acts without jurisdiction, and its order in discharging the accused is illegal. Even if it be taken as only a serious irregularity, it will then be necessary to see whether, under s. 537, the irregularity has occasioned a failure of justice or not. **10 A. 414.** [*Appr.*, 16 B. 414; *F.*, 9 C.P.L.R. 24 Cr.; *R.*, 24 M. 523=2 Weir 346].

(2147)—*S. 289 (=Crim. Pro. Code, 1882, s. 289)—Duty of prosecution to produce prosecution witnesses—When a particular witness may be dispensed with.*—It is *prima facie* the

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duty of the prosecution, especially when it is conducted in the name of the Crown, to call all those witnesses who prove their connection with the matter under inquiry and must be able to give important information. But, if there is a reasonable belief that, if called, any particular witness may not speak the truth, it may be accepted as a sufficient reason for not calling him. **2 Weir 378.**

(2148)—It is not within the province of the Judge to dispense with the evidence of any of the prosecution witnesses, and if the Public Prosecutor does so, he commits a serious error of judgment. The whole evidence should be put before the Court, and the Public Prosecutor is at least bound to tender the witnesses for cross-examination before the Sessions Court if so required. **2 Weir 379.**

(2149)—*S. 289 (= Crim. Pro. Code, 1882, s. 289)—Finding of "not proven"—Legality.*—There is no legal warrant for a finding of "not proven." In such cases, the Judge should enter a judgment of acquittal before discharging the prisoner. **2 Weir 381.**

(2150)—*S. 289—Duty of Judge to summon a necessary witness, not sent up by committing Magistrate.*—Although a Sessions Judge has a discretion to summon a necessary witness who has not been sent up, it is not for him, as a general rule, to supplement a defective inquiry on the part of the Magistracy and Police. **2 Weir 382.**

(2151)—*S. 289 (= Crim. Pro. Code, 1882, s. 289) —Accused's examination at Sessions trial—Duty of Judge.*—Where an accused person, at the close of a case for the prosecution in a Sessions trial, makes any statement in his defence, it should be recorded; if he does not voluntarily make any statement, and refuses to answer any question put to him by the Court, this fact should also be noted. **S.C. 95, Oudh.**

(2152)—*S. 289 (3)—In the absence of evidence on prosecution side against him, accused not to be convicted on evidence adduced in defence by co-accused.*—An accused, in the absence of evidence on prosecution side against him, should not be convicted on the evidence given against him by the witnesses called by the co-accused in his defence. **5 M.L.T. 75=2 Ind. Cas. 525.**

(2153)—*Ss. 289 and 292 (= Crim. Pro. Code, 1882, ss. 289, 292)—Cross-examination of prosecution witnesses—Documentary evidence put in by accused—Prosecutor's right of reply.*—Where the accused put certain documents into the hands of witnesses for the prosecution, and having proved them by cross-examination, tendered them in evidence, and had them marked as exhibits on his behalf, *held*, that the prosecutor would not be entitled to a reply in the event of no witnesses for the defence being called. **10 C. 1024.** [*F.*, 14 C. 245; *R.*, 17 C. 930; *Diss.*, 14 A. 212, 11 M. 339=2 Weir 381].

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2154)—*S. 289 (= Crim. Pro. Code, Act X of 1882, s. 289)—"No evidence"—Meaning—Discharge.*—The words "no evidence," in the sense of s. 289 of the Crim. Pro. Code, imply that all the evidence, even if true, would not constitute the offence charged. An order of discharge is not proper if there was evidence which, if believed, is sufficient to constitute the offence. **A.W.N. 1888, 153.**

(2155)—*Ss. 289, 290 (= Crim. Pro. Code, 1872, s. 251)—Procedure—Absence of witnesses for defence.*—If an accused person has not his witnesses present, the Judge should, if he sees grounds for proceeding, first call upon him to enter upon his defence, and then postpone the case. **23 W.R. Cr. 58.**

(2156)—S. 289—*See* ASSESSORS, 9 C.P.L. R. Cr. 24, 7 B.H.C. Cr. 82.

(2157)—Ss. 289, 297, 423 (*d*)—Appellate Court's power to interfere with a verdict of jury—*See* CHARGE TO JURY, 23 C. 252.

(2158)—Ss. 289 and 342—*See* PENAL CODE, s. 396, 1 O.C. 84.

(2159)—S. 289—*See* REPLY, RIGHT OF, 14 C. 245, 11 M. 339=2 Weir 380.

(2160)—Ss. 289, 292—*See* REPLY, RIGHT OF, 11 Bom. L.R. 177=1 Ind. Cas. 280, 17 C. 930, 4 L.B.R. 5=6 Cr. L.J. 115, 1 Sind L.R. Cr. 91=8 Cr. L.J. 215.

(2160-*a*)—S. 289—*See* Nos. 1110, 2100, 2104, 2127, *supra*, and Nos. 2366, 3326, *infra*.

——, S. 290 (=1882, s. 290; 1372, s. 251, para 3).

(2160-*b*)—S. 290—*See* No. 2155, *supra*, and No. 3326, *infra*.

——S. 291 (=1882, s. 291; 1872, s. 363; 1861, s. 375).

(2161)—*S. 291 (= s. 291 of the Code of 1882) —Right of accused to examine as witness any person in Court and use as evidence any document in Court.*—An accused person is entitled to call as his witness any person who is in Court, whether he has summoned him or not, and also he may, so far as the law of evidence permits him to do so, make use of, as evidence, any document which is in Court at the trial. **16 C. 610.**

(2162)—*S. 291 (= Crim. Pro. Code, 1882, s. 291)—Application for summons of witnesses before conclusion of Sessions trial—Duty of the Judge.*—The appellant complained, before the trial was concluded, that some of his witnesses had not been served, and requested an adjournment so that their attendance might be secured, which was however refused. The appellant also complained that no opportunity had been afforded him of cross-examining the witnesses for the prosecution and that he had not known at what time it was competent to him to do so. *Held*, that the conviction should be set aside, and the trial re-opened, and the remaining

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witnesses already named by the appellant be summoned and examined and that he should be allowed the opportunity of cross-examining the witnesses for the prosecution. **2 Weir 383.**

(2162-*a*)—S. 291—*See* No. 1678, *supra*.

—— S. 292 (=1882, s. 292; 1872, s. 252; 1861, s. 376).

See, REPLY, RIGHT OF.

(2163)—*S. 292 (=s. 292 of 1882)---Defence producing documents for cross-examination of prosecution witnesses—Right of the Crown to reply.*—If, during the cross-examination of one of the witnesses for the Crown, the defence puts a certain document to the witness, which has not been proved by the Crown, the Crown has the right of reply under s. 292, Crim. Pro. Code. **16 A. 88.** [*F.*, 4 L.B.R. 5=6 Cr. L.J. 115].

(2164)—*S. 292—Adducing evidence—Documents put in by counsel for the accused during cross-examination of a witness for the Crown—the prosecution, whether entitled to reply.*—The phrase "adduces any evidence," as used in s. 292 of the Code, applies to and includes, the production and recording of documentary evidence, which the defence places before the Court, as, where during the cross-examination of witnesses for the prosecution, certain documents are put in on behalf of the accused by his counsel. Such documents so put in or tendered and relied upon by the defence, as distinct from the evidence actually tendered by the prosecution and submitted for cross-examination, must be regarded as evidence, adduced by the accused within the meaning of the section. The words of the section adopt the principle laid down by the ruling in *Hurry Churn Chuckerbutty* v. *The Empress*, that each side should have an opportunity of commenting upon the evidence of the other side. A right of reply is always to be given to the Crown, whenever, at any stage, evidence is recorded for the defence, which is not part of that adduced for the prosecution. **30 B. 421=8 Bom. L.R. 421=4 Cr. L.J. 1.** [*R.*, 1 S.L.R. 91 Cr.=8 Cr. L.J. 215, 11 Bom. L.R. 177].

(2165)—Ss. 292,298—*See* CHARGE TO JURY, 9 Cr. L.J. 404=1 Ind. Cas. 867.

(2166)—S. 292—*See* REPLY, RIGHT OF, 14 B. 436.

(2166-*a*)—S. 292—*See* Nos. 2101, 2139, 2153, 2159, *supra*, and No. 3326, *infra*.

——S. 293 (=1882, s. 293; 1872, s. 253; 1861, s. 348).

(2167)—S. 293—*See* ASSESSORS, 5 W.R. Cr. 59.

(2167-*a*)—S. 293—*See* Nos. 998, 1534, 2101, *supra*.

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——S. 294 (=1882, s. 294; 1872, s. 258).

(2168)—*S. 294 (=Crim. Pro. Code, 1872, s. 258)—Accused person, naming complainant as his principal witness—Complainant evading examination — Acquittal of accused.*— The Magistrate who tried the accused charged with offences under ss. 381 and 408, failing in the first place to procure the attendance of the complainant, a resident of Jaipore, named by the accused as his principal witness, endeavoured to procure his examination by the Political Agent of Jaipore. On being offered by the Jaipore Durbar to examine him themselves instead of allowing him to be examined by the Political Agent, the Magistrate, being of opinion that the accused would not feel satisfied, acquitted the accused. *Held* that the Magistrate should have taken measures for the examination of the complainant before the Durbar, or if the accused did not desire this, he should have pronounced on the evidence upon the record. **1 A.W.N. 38.**

(2168-*a*)—S. 294—*See* No. 998, *supra*.

——S. 295](=1882, s. 295; 1872, s. 260; 1861, s. 378).

(2169)—Ss. 295, 435, 439 and 476—*See* SANCTION TO PROSECUTE, 7 P.W.R. Cr. 1908, F.B. =103 P.L.R. 1908=5 P.R. 1908 Cr.=7 Cr. L.J. 281.

(2170)—Ss. 295 and 476—*See* SANCTION TO PROSECUTE, 19 C. 345.

(2170-*a*)—S. 295—*See* No. 2096, *supra*.

——S. 297 (=1882, s. 297; 1872, s. 255, para 1; 1861, s. 379).

See CHARGE TO JURY.

(2171)—*S. 297—Charge to jury.*—Where in a trial by jury before a Court of Sessions, the Judge's summary of his charge to the jury consisted merely of these words—" it is for you to say from the evidence you have heard whether you consider the accused guilty or not," *held* that the charge was wholly insufficient, and the conviction and sentence should be set aside, a fresh trial ordered. **A.W.N. 1902, 201.**

(2172)—*Ss. 297, 298 (=ss. 297, 298, Code of 1882)—Duty of Judge in summing up—Charge, when defective.*—It is highly important in a charge of murder that the Judge should discuss the evidence fully. If it does not appear that anything more was said to the jury than is contained in the record of the heads of charge, or that this was supplemented by reading the depositions of the most important witnesses, the charge is defective. **19 B. 741.**

(2173)—Under s. 297, the Sessions Judge is bound to sum up the evidence for the defence as well as for the prosecution, this being essential for a proper charge. **Rat. Un. Cr. C. 720 =Cr. Rg. 46 of 1894.**

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(2174)—A clear and complete statement of facts should appear in the charge to the jury, so as to enable the High Court to know what they are without having to call for the evidence. Where the prisoner makes an explanation of the facts appearing against him, it is not for the Judge to tell the jury that it is incredible, without any qualification that it is merely his own opinion, and that the jury are at liberty to draw their own conclusions. **2 Weir 385.**

(2175)—*Ss. 297 and 298—Duty of Judge to explain the law to jury—Omission, whether amounts to misdirection.*—Under s. 297, the Judge is bound to lay down the law by which the jury are to be guided. It is immaterial how much or how often jury may have been addressed by the pleader on both sides upon the law. The responsibility of laying down the law for the guidance of the jury rests entirely with the Judge, and a verdict arrived at by the jury, in the absence of any such direction on the law by which they should be guided, cannot be accepted as a valid verdict in the case. **29 C. 379=6 C.W.N. 292.** [*F.*, 1 M.L.T. 399=30 M. 44].

(2176)—*Ss. 297, 537—Charge to jury—Omission of Judge to lay down the law—Incomplete definition of offence—Material irregularity.*—If the direction of the Judge leaves room for doubt as to whether the jury had present to their minds an essential element of the offence, with which the accused are charged, it is a misdirection to the jury. So, where, in a charge of dacoity, the Judge said to the jury "the accused are charged with dacoity; dacoity is committed when any number of persons not less than five conjointly committed robbery," but did not explain to the jury what is necessary to constitute the offence of robbery, it is an omission to lay down the law, by which the jury are to be guided, as required by s. 297. It is not merely a misdirection. It is a failure to comply with an express provision of the law, and s. 537 is not applicable to such a case. **1 M.L.T. 399=30 M. 44 =5 Cr. L.J. 78.**

(2177)—*S. 297—Charge to jury by the Judge —Omission to direct jury to give benefit of doubt to the accused—Misdirection in law.*—A direction by the Judge to the jury that, if they entertain reasonable doubt as to the guilt of any one of the accused, the jury should give him the benefit of the doubt and acquit him, is certainly a usual and most proper direction and it ought, as a matter of practice, to be given in every case; but, it cannot be held that the omission to give it must, in every case, constitute a misdirection of such a character, as to render a conviction invalid. Where, however, the Judge thinks that the evidence is so weak that there are the very greatest doubts as to the guilt of the accused, the omission to direct the jury to give the benefit of the doubt is a misdirection, which prejudices the accused and entitles him to an acquittal. **1 M.L.T. 350=4 Cr. L.J. 502.**

(2178)—*S. 297—Charge to jury, splitting up of—Validity—Duty of Judge.*—There should be but one charge both on the facts and on the law, and a Judge will be acting illegally in splitting it up into two. In his charge to the jury, a Judge is bound to lay carefully and plainly before the jury the whole of the evidence recorded by him, noting the discrepancies and pointing out generally the way in which it either favourably or unfavourably affects the prisoner. It is irregular to comment merely on certain portions of the evidence, and to omit to point out what discrepancies and improbabilities are to be found in the evidence. It is not open to a Sessions Judge, after hearing one witness, to tell the jury that it would be unsafe to convict and that there is no necessity to hear any further evidence. But unless the Public Prosecutor withdraws the charge with the leave of the Court, the Judge is bound to allow the evidence to be placed before the jury. **2 Weir 384; 2 Weir 493.**

(2179)—*S. 297—Jury, trial by—Misdirection —Three persons accused of culpable homicide —Deceased dying of fatal inquiry received in a fracas—One accused pleading* alibi*—Omission of this fact in summing-up—Judge directing jury to find all accused guilty if injury caused by one—Penal Code (Act XLV of 1860), s. 34.*—In a trial by jury, the Judge in charging the jury said: "If you hold it proved that the three accused all set upon Gulam Husain with the intention of beating him and that one of them struck the fatal blow, you will be justified in finding them all guilty of culpable homicide not amounting to murder, even if there is no evidence to show which of the three struck the blow" and then read and explained to them the provisions of s. 34 of the Penal Code: *Held*, that the Judge misdirected the jury in stating that any one of the accused might be found guilty of culpable homicide, even though his individual intention and the common intention was merely to beat. One of the accused denied his presence at the scene and was supported in his statement by evidence. In summing up evidence, the Judge omitted to make all mention of this fact: *Held*, that the omission of this part of the case constituted a misdirection. **11 Cr. L.J. 15=4 Ind. Cas. 608=3 S.L.R. 125 Cr.**

(2180)—*Ss. 297, 298 and 337—Charge to jury—Duty of Judge regarding evidence of approver—Misdirection to jury.*—A Sessions Judge, in laying the evidence of an approver before the jury, told them: "if you think that the approver's story is worthy of credit in itself, you have to consider whether it has been corroborated on material points," and then describing what in his opinion were the points of corroboration, told the jury that "the above are the points on which the evidence has been

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corroborated and that corroboration is full and complete, if you believe it; you have to consider these points and decide whether the approver has been corroborated in material points; and if you find that to be so, then you have in his story sufficient evidence to connect all the 3 accused with the crime." *Held*, that this was not a proper way to place the case before the jury. The Sessions Judge should have told the jury that, although the law permits them to convict on the uncorroborated evidence of an accomplice, it was not the practice of the Courts, which have consistently held that it was not safe or proper to convict on such evidence without some corroboration sufficient to connect each of the accused with the offence committed. With this caution, the Sessions Judge should have laid before the jury the evidence corroborating the statement of the accomplice. **29 C. 782=6 C.W.N. 553.**

(2181)—*Ss. 297, 307 (=Crim. Pro. Code, 1882, ss. 297, 307)—Withdrawal of a case from the jury, when allowed.*—It is only when there is no evidence, *i.e.*, when the evidence given does not, if believed, show that the legal offence charged has been committed, that a Judge can withdraw a case from the jury or abstain from taking the opinion of the assessors. **2 Weir 388; 2 Weir 391.**

(2182)—*Ss. 297, 423 (2)—Jury—Misdirection—Error in summing up—Non-direction, when misdirection—Reference to arguments of pleaders.*—The expression "misdirection," as used in the Criminal Procedure Code, includes not only an error in laying down the law by which the jury are to be guided, but also an error in summing up the evidence. In summing up, it is open to the Judge to refer the jury to the arguments of pleaders; but he should not omit matters of prime importance. A non-direction is not a misdirection, unless it is on a matter of prime importance; and especially if it tells in favour of the accused. **11 Cr. L. J. 13=4 Ind. Cas. 597=3 S.L.R. 102 Cr.**

(2183)—S. 297—*See* ASSESSORS, 6 B.H.C. Cr. 55.

(2184)—Ss. 297, 367—*See* CHARGE TO JURY, 25 C. 737=2 C.W.N. 484.

(2185)—Ss. 297, 410—*See* CHARGE TO JURY, Rat. Un. Cr. C. 27.

(2186)—Ss. 297, 537—*See* CHARGE TO JURY, 30 M. 44=1 M.L.T. 399=5 Cr. L.J. 78.

(2187)—Ss. 297 and 288—*See* JUDGE AND JURY, 18 M.L.J. 66=31 M. 127=3 M.L.T. 270=7 Cr. L.J. 325.

(2188)—Ss. 297, 301—*See* JURY, Rat. Un. Cr. C. 238=Cr. Rg. 27 of 1886.

(2189)—Ss. 297, 418, 423—*See* TRIAL BY JURY, 3 S.L.R. 102 Cr.

(2189-*a*)—S. 297—*See* Nos. 1838, 2156, *supra*.

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——S. 298 (=1882, s. 298; 1872, s. 256).

See CHARGE TO JURY.

(2190)—*S. 298 (=Crim. Pro. Code, 1882, s. 298)—Duty of Judge—Inadmissible evidence.*—It is the duty of the Judge under s. 298 to see that evidence which is not admissible in itself should not be allowed to go in to the prejudice of the accused, though no objection is taken thereto by the accused. **25 C. 736=2 C.W.N. 484.**

(2191)—Ss. 298, 299, 537—*See* CHARGE TO JURY, 4 C.W.N. 576.

(2192)—S. 298—*See* CONFESSION, 11 Bom. L.R. 332=2 Ind. Cas. 517, Rat. Un. Cr. C. 245.

(2193)—S. 298—*See* EVIDENCE ACT, s. 73, Rat. Un. Cr. C. 491.

(2194)—S. 298—*See* JUDGE AND JURY, Rat. Un. Cr. C. 730.

(2195)—Ss. 298, 299—*See* JUDGE AND JURY, 6 Bom. L.R. 258.

(2196)—S. 298—*See* TRIAL BY JURY, Rat. Un. Cr. C. 840.

(2197)—Ss. 298, 302—*See* VERDICT OF JURY, 19 B. 735.

(2197-*a*)—S. 298—*See* Nos. 1715, 2165, 2172, 2175, 2180, *supra*.

——S. 299 (=1882, s. 299; 1872, s. 257).

See CHARGE TO JURY.

(2198)—*Ss. 299 (a), 302, 303, 439, 537 (d)—Misdirections in a charge to the jury—Illegality in dealing with the verdict—Conviction on second verdict—Review under s. 12, Lower Burma Courts Act, 1900.*—On the grounds of various misdirections in the charge to the jury and of illegality in dealing with the verdict, application was made, under s. 12 of the Lower Burma Courts Act, 1900, for review of a case tried by the Chief Court, Criminal Sessions. *Held*, that, in a trial on a charge of murder, omission by the Judge to explain to the jury the distinction between murder and culpable homicide and suggestion by the Judge to the jury that a strong inference should be drawn against the accused from his having failed to take steps to bring the real offender to justice must be regarded as material misdirections. Also, as to the illegality in dealing with the verdict, it was laid down that, where a jury returns an ambiguous verdict, the Judge should proceed under s. 303 of the Code and not send the jury back again to consider further and return a second verdict and the conviction and sentence on such an irregular second verdict must be set aside as entirely illegal and that, in such a case s. 12 of the Lower Burma Courts Act, 1900, nearly corresponding with s. 26 of the Letters Patent for the High Courts, does not empower the Bench to go into the facts again and decide the case on the evidence.

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Per Adamson, C.J. and Fox, J. *Per* Irwin, J.—The error was an irregularity to which s. 537 of the Code applied. The conviction and sentence might be set aside and a new trial might be ordered, without the accused being acquitted. **3 L.B.R. 75=3 Cr. L.J. 1.**

(2199)—S. 299—*See* Nos. 2191, 2195, *supra*.

——S. 300 (=1882, s. 300; 1872, s. 263, para 1; 1861, s. 352).

(2200)—*Ss. 300, 301, 302, 303, 306, 307 (=Crim. Pro. Code, 1872, s. 263)—Judge differing from jury—Reference to High Court.* —The Government may appeal against an acquittal by a jury, where the Judge differed from the jury, but did not consider it necessary for the ends of justice to refer the case to the High Court. **2 B. 526, Note.** See, also, 2 B. 525. [*R.*, 2 B. 525].

(2201)—Ss. 300, 301, 302—*See* FALSE EVIDENCE, Rat. Un. Cr. C. 26.

(2202)—Ss. 300, 301, 302, 303, 306—*See* REFERENCE TO HIGH COURT, 2 B. 525.

(2203)—Ss. 300, 301, 302, 303, 306, 307—*See* VERDICT OF JURY, 5 C. 871, 9 C. 53=11 C.L.R. 169, 1 C.L.R. 275, 2 C.L.R. 1, 3 C.L.R. 518, 1 B. 10.

(2203-*a*)—S. 300—*See* No. 2481, *infra*.

——S. 301 (=1882, s. 301; 1872, s. 263, para 1; 1861, s. 352.

—S. 301—*See* Nos. 2198, 2200, 2201, 2202, 2203, *supra*, and No. 2481, *infra*.

——S. 302 (=1882, s. 302; 1872, s. 263, para 3; 1861, s. 352).

(2204)—Ss. 302, 303, 304—*See* VERDICT OF JURY, Rat. Un. Cr. C. 982.

(2204-*a*)—S. 302—*See* Nos. 2197, 2198, 2200, 2201, 2202, 2203, *supra*, and No. 2481, *infra*.

——S. 303 (=1882, s. 303; 1872, s. 263, para 2).

See JURY.

See TRIAL BY JURY.

See VERDICT OF JURY.

(2205)—*S. 303—Questioning the jury.*—S. 303 limits the power of the Judge to question the jury only to cases in which it is necessary to ascertain what the verdict of the jury is—that is, where the evidence being delivered in ambiguous terms or with uncertain sound, their meaning is not clear. There is no provision in the Code which empowers the Judge to question the jury as to their reasons for an unanimous verdict, where there is nothing ambiguous in the verdict itself, and no lurking uncertainty in their own minds regarding it. **28 B. 412=6 Bom. L.R. 361.**

(2205-*a*)—S. 303—*See* Nos. 1520, 1820, 1838, 2198, 2200, 2202, 2203, 2204, *supra*, and No. 2481, *infra*.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

——S. 304 (=1882, s. 304).

(2206)—*Ss. 304, 307—Mistaken verdict owing to misunderstanding of the law by jury.*—S. 304, Crim. Pro. Code, obviously contemplates cases where the verdict delivered is not in accordance with what was really intended by the jury. But where the jury commit a mistake in understanding the law, and such mistake results in an erroneous verdict, it can be corrected only by the Judge disagreeing with the jury and referring the case under s. 307, Crim. Pro. Code. to the High Court. **28 B. 412=6 Bom. L.R. 361.**

(2206-*a*)—S. 304—*See* Nos. 1633, 2204, *supra*.

——S. 306(=1882, s.306; 1872, s. 263, paras 2 and 4).

(2206-*b*)—S. 306—*See* Nos. 2200, 2202, 2203, *supra*, and No. 2481, *infra*.

——S. 307 (=1882, s. 307; 1872, s. 263, paras 5 and 6).

See JURY.

See REFERENCE.

See TRIAL BY JURY.

See VERDICT OF JURY.

(2207)—*S. 307 (=Crim. Pro. Code, 1882, s. 307) —Reference by Sessions Judge to High Court under--Duty of High Court.*—Where a Sessions Judge refers to the High Court, under s. 307 of the Crim. Pro. Code, a case in which the Judge disagrees with the jury who returned a verdict of acquittal, the High Court has to consider whether the evidence for the prosecution is so clear as to take the responsibility of differing from the opinion of those to whom the decision of the facts is entrusted by law. **Rat. Un. Cr. C. 626=Cr. Rg. 53 of 1892.**

(2208)—In a case where the Sessions Judge thinks that the verdict of the jury is contrary to the weight of evidence, it is the duty of the Sessions Judge, in a reference to the High Court under s. 307, to set out on what portions of the evidence or on what facts disclosed by the evidence the accused should have been convicted. **7 C.W.N. 345.**

(2209)—*S. 307—Trial of certain offences with jury and of others with jurors as assessors —Difference of Judge in verdict and opinion—Referenee to the High Court.*—A Sessions Judge tried the accused with the aid of a jury. The accused were charged with offences, some of which were triable with jury and others were not so triable. At the conclusion of the trial, the Sessions Judge took the verdict of the jury in respect of offences triable with jury; and, with regard to other charges, took the opinion of the jurors as assessors; and, disagreeing with their verdict and opinion, the Sessions Judge referred, under s. 307 of the Code, the whole case to the High Court. The High Court upheld the verdict of the jury;

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and, with regard to the other charges, returned the case to the Sessions Judge so that he might deal with it according to law, remarking that the Sessions Judge should not have joined them in the reference. **8 Bom. L.R. 599=4 Cr. L.J. 192.**

(2210)—*S. 307, reference to High Court under —Practice—Procedure—The term, "opinion," meaning of.*—In this case, the jury unanimously found guilty four out of eight persons charged with dacoity, finding the other four not guilty. The Sessions Judge agreed with the jury that one of the latter four persons was not guilty, but he disagreed from their verdict in regard to the three others found not guilty, and referred their case to the High Court under s. 307 of the Code. *Held*, it is the duty of the High Court, on a reference under the section, to consider the entire evidence and form its own opinion upon such evidence and it has been the invariable practice of the High Court, in such references, to deal with the evidence against the accused, treating the so-called verdict of the jury as their "opinion" referred to in this section. There is nothing in cl. (3) of the section warranting the interpretation of the term "opinion" in it to mean anything other than the respective conclusions of the jury and the Judge and the term is not used therein to denote the reasons for such conclusions. *Per* Subrahmania Ayyar, Offg. C.J. and Boddam, J: In cases of references under s. 307 of the Code, expedient as it may be to have before the High Court the reasons of the jury, when any have been given, for the view taken by them in a particular case, the circumstance that no such reasons have been ascertained does not warrant the High Court to decline to go into the evidence and to arrive at its own judgment after giving due weight to the views taken by the Judge and the Jury as to the guilt or innocence of the accused. **29 M. 91= 3 Cr. L.J. 371.**

(2211)—*S. 307 (=Crim. Pro. Code, 1882, s. 307)—Verdict of jury—Reference to High Court—Powers of the High Court.*—A bare verdict of 'not guilty' may be as consistent with a belief of a great part of the evidence for the prosecution, as with a total disbelief of every part of it. Where, therefore, there are no specific findings of the jury before the High Court, it will not interfere upon a mere preponderance of evidence, or, unless it is satisfied, beyond reasonable doubt, that the verdict is so distinctly against the evidence, that it may be termed a perverse verdict. **2 Weir 388.** [*F.*, 2 Weir 390].

(2212)—When a case is referred to the High Court under s. 307, the Court may exercise any of the powers which it may exercise on appeal under s. 423. The whole case is before the Court, and it is for it to say whether, upon the evidence, the accused should be acquitted or convicted. Due weight must be given to the verdict of the jury, unless it appears to be

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not only unsatisfactory and unjust, but also unreasonable as well as to the opinion of the Judge who has heard the evidence. **2 Weir 390.**

(2213)—The test whether the High Court should interfere with a jury's verdict on a reference under s. 307, is whether reasonable and cautious men might be disposed, on the evidence laid before them in the case, to entertain a doubt as to the accused's guilt. If there should be any doubt, the Court must not interfere with the verdict, even though it should form conclusions different from those drawn by the jury. **S.C. 234, Oudh.**

(2214)—*S. 307—Duty of Judge to confine himself to evidence properly given before him.*—In a trial held by a Sessions Judge, he is exactly in the same position as the jury in dealing with the evidence properly given before him, and he is bound to confine himself solely to such evidence. That is the rule which should invariably guide him in making a reference to the High Court under s. 307, Crim. Pro. Code. **27 C. 295=4 C.W.N. 129.**

(2215)—*S. 307—Jurisdiction of High Court exercising jurisdiction under the section to send prisoner to jail outside Presidency town—Prisoners Act, V of 1898, ss. 7, 8 and 9.*—The jurisdiction, which the High Court exercises in hearing a case submitted to it under s. 307, Crim. Pro. Code, is not original jurisdiction in any sense, the hearing not having any of the essentials of an original trial. It hears the case as a Court of Reference, in the exercise of the jurisdiction vested in it by cl. 28 of the Charter Act, which is, by the terms of that clause, co-extensive with its appellate jurisdiction. Therefore, it has power, on conviction and sentence, to send the accused to a jail outside the Presidency town. **29 C. 286=6 C.W.N. 254, F.B.**

(2216)—*S. 307 (=Crim. Pro. Code, 1882, s. 307)—Penal Code, ss. 395, 396 and 412—Judge trying a case under s. 396 with jury instead of with assessors—Disagreement with jury—Reference to High Court—Procedure.*—Ten persons were charged with having committed dacoity and murder in committing dacoity, offences punishable under ss. 395 and 396, Penal Code, and some of them were also charged with having received some of the stolen property under s. 412 of the Code, and were committed to the Sessions. From a perusal of the preliminary register, it was clear that the accused were guilty under s. 396 and not under s. 395. The Sessions Judge, instead of trying the case with assessors for the offence under s. 396, which was only triable by the Judge with assessors, tried the case with a jury. The jury returned a verdict of not guilty, but the Judge disagreeing with the jury referred the case to the High Court under s. 307, Crim. Pro. Code. *Held*, that the procedure adopted by the Judge was wrong and that he should have tried the case with the aid of assessors. *Held*, further, that, under the

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circumstances of the case the proper course for the High Court to adopt would be to proceed with the case under s. 307, Crim. Pro. Code, as amended by s. 3 of Act XIII of 1896, and to determine whether the accused were guilty of dacoity (s. 395, Penal Code) or not, after considering the entire evidence and after giving due weight to the opinion of the Sessions Judge and the Jury, instead of ordering a new trial by the Sessions Judge for the offence under s. 396, Penal Code, which would be attended with inconveniences and was not necessary for the ends of justice. **22 M. 15=2 Weir 705.**

(2217)—*Ss. 307 and 337—Reference to the High Court by the Sessions Judge when he disagrees with the verdict of the jury—Circumstances justifying reference—High Court's power in the reference to go into evidence—Pardon to the approver—Reasons for granting pardon, omission to state, consequence—Approver's testimony, the corroboration needed—Confession, facts throwing suspicion on the truth of—Penal Code (Act XLV of 1860), ss. 114, 302, 392.*—Where the facts which led up to the tender of pardon appear on the record, the omission on the part of a Magistrate (other than a Presidency Magistrate) tendering pardon to a would-be approver under s. 337, Crim. Pro. Code, to state reasons is not an illegality or irregularity which vitiates the proceeding under that section and renders the evidence of the approver inadmissible. In dealing with a reference under s. 307, Crim. Pro. Code, the High Court must consider the entire evidence and give due weight to the opinions of the Sessions Judge and jury, including the opinion of the minority of the jury when the verdict is divided. When a Sessions Judge, after the jury have given their verdict, disagrees with the verdict and decides to make a reference to the High Court, he may, after telling the jury his intention to do so, ask the jury to give their reasons for the verdict and record those reasons. But the circumstance that no such reasons have been recorded by the Sessions Judge does not warrant the High Court to decline to go into the evidence and to arrive at its own judgment, after giving due weight to the views taken by the Judge and the jury as to the guilt or innocence of the accused. Facts and circumstances rendering an approver's testimony unreliable, discussed. **13 C.W.N. 757=9 C.L.J. 638=36 C. 629=2 Ind. Cas. 497.**

(2218)—*Ss. 307 and 369—Verdict of jury, acceptance of—Power of Sessions Judge to reconsider the verdict, and refer the case to the High Court.*—It is not open to a Sessions Judge, when he has once accepted the verdict of the jury and has postponed the case for passing sentence, to re-consider his order and refer the case to the High Court under s. 307, but he must pass sentence on the persons awaiting sentence on the verdict. **4 C.W.N. 683.**

(2219)—Ss. 307, 418, 423—*See* ACT III OF 1884, s. 8 (6), 9 A. 420.

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(2220)—S. 307—*See* APPEAL, Rat. Un. Cr. C. 691.

(2221)—Ss. 307, 383, 491 and 456—*See* APPEAL, 29 C. 286=6 C.W.N. 254, F.B.

(2222)—Ss. 307, 238—*See* HIGH COURT, SUPERINTENDENCE AND POWERS OF, 3 C. 189.

(2223)—Ss. 307, 310—*See* PREVIOUS CONVICTION, 30 M. 134=5 Cr.L.J. 422.

(2224 and 2225)—Ss. 307, 429—*See* REFERENCE TO HIGH COURT, 10 B. 497, 6 Bom. L. R. 519, 6 Bom. L.R. 599, 7 C.W.N. 135, 11 C.W.N. 715=5 Cr. L.J. 484, 13 M. 343=2 Weir 389, 10 Bom. L.R. 173=7 Cr. L.J. 192, 9 C.L.J. 432=2 Ind. Cas. 593, 15 B. 452.

(2226)—Ss. 307 and 451—See REFERENCE TO HIGH COURT, 29 C. 128=6 C.W.N. 253.

(2227)—S. 307—See REVISION, 15 C. 269.

(2228)—Ss. 307 and 269 (3)—*See* VERDICT OF JURY, 9 Bom. L.R. 1057=7 Cr. L.J. 236.

(2229)—Ss. 307 and 418—*See* VERDICT OF JURY, 4 M.L.T. 483=9 Cr. L.J. 93, 14 M. 36 =2 Weir 390.

(2229-*a*)—S. 307—*See* Nos. 1820, 1822, 2065, 2181, 2200, 2203, 2206, *supra*, and Nos. 2481, 2788, *infra*.

——S. 309 (=1882, s. 309; 1872, ss. 255, para 1, 261, 262; 1861, s. 324).

See ASSESSORS.

(2230)—*S. 309 (=Crim. Pro. Code, 1882, s. 309)—Summing up of evidence by Sessions Judge.*—The power of summing up the evidence should be exercised by the Sessions Judge, under s. 309 of the Crim. Pro. Code, in long and intricate cases; and he should not obtrude on the assessors his own opinion on the worthlessness or otherwise of portions of the evidence. **9 C. 875=12 C.L.R. 506.**

(2231)—*S. 309—Case tried with assessors—Judge differing from assessors—Duty of Judge to record the grounds of their opinion.*—Where, in a case tried with the aid of assessors, the Sessions Judge's views differ from the opinions of the assessors and he gives judgment without conforming to their opinions, it is his duty to record, in his judgment, the opinion of the assessors with the reasons given by them for those opinions. **48 P.R. 1905 Cr.=192 P.L. R. 1905=3 Cr. L.J. 132.**

(2232)—*Ss. 309, 367 (=Crim. Pro. Code, 1882, ss. 309, 367)—Jury sitting as assessors for some offences—Duty of Sessions Judge.*—Where an accused person is charged with some offences triable by jury and others triable with the aid of assessors, and the same persons sit as jury and assessors, it is the duty of the Sessions Judge, under s. 309 of the Crim. Pro. Code, to pronounce a judgment containing the matters specified in s. 367. A reference to the heads of

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charge to the jury is not a sufficient compliance with these requirements. **Rat. Un. Cr. C. 426 = Cr. Rg. 90 of 1888.**

(2233)—*Ss. 309, 537 (=Crim. Pro. Code, 1882, ss. 309, 537)—Case tried with the aid of assessors—Omission to record judgment.*—The omission of a Judge to record a judgment in a case tried with the aid of assessors, is an irregularity; but it is covered by s. 537 of the Code. **2 Weir 392.**

(2234)—*Ss. 309, 356 (=Crim. Pro. Code, Act X of 1882, ss. 309, 356)—Imperfect record—Effect.*—Where it appeared from the record in a Sessions case that there were the following defects, (1) that while the record showed the opinion of the assessors was that the accused were guilty while their manifest intention was to acquit them as the Judge eventually did, (2) that the minutes of the evidence of some witnesses was not made as the examination of those witnesses proceeded, *held* that the provisions of ss. 309, 356 of the Crim. Pro. Code, had not been complied with and that there should be a retrial. **A.W.N. 1891, 145.**

(2235)—Ss. 309, 366—*See* JUDGMENT, 20 P.R. 1899 Cr.

(2236)—S. 309—*See* PLEA OF GUILTY, 7 Bom. L.R. 731 = 2 Cr. L.J. 609.

(2237)—Ss. 309, 494—*See* WITHDRAWAL OF PROSECUTION, Rat. Un. Cr. C. 307 = Cr. Rg. 58 of 1886.

(2237-*a*)—S. 309—*See* Nos. 2060, 2061, *supra*, and No. 3122, *infra*.

——S. 310 (=1882, s. 310).

See PREVIOUS CONVICTION.

(2238)—*S. 310—Verdict of acquittal—No questioning, therefore, of previous conviction—Reference—Procedure.*—The accused was tried by a Court of Sessions on the charge of theft of a cap, but was acquitted by the jury. Owing to this verdict, the Sessions Judge was disabled from asking the prisoner about his previous conviction, with which also the prisoner was charged. Upon a reference to the High Court by the Sessions Judge, *held* that the accused was guilty of the offence of theft and that the case should be remanded to the Court of Sessions in order that it might proceed to finish the trial by applying the procedure prescribed by s. 310. **2 Bom. L.R. 336.**

(2239)—*S. 310 (=Crim. Pro. Code, 1882, s. 310.—Proof of previous convictions)*—In a trial by jury or with the aid of assessors, the record should invariably show that reference to a previous conviction has not been made until the subsequent offence has been found proved against the accused. **12 C.L.R. 555.**

(2240)—*S. 310—Jury being informed of previous conviction before taking their verdict on substantive offence.*—Where a Judge informed the jury, before he took their verdict on the substantive offence that the accused was charged as an old offender, *held*, that he acted in direct violation of s. 310 of the Code. **2 Weir 393.**

(2241)—*Ss. 310, 343 and 511—Previous convictions how to be proved.—Examination of accused to prove such convictions, whether proper—Evidence Act, s. 91.*—Previous convictions should, regard being had to the provisions of s. 91, Evidence Act, and s. 511, Crim. Pro. Code, be proved by copies of judgment or extracts from judgments or by any other documentary evidence of the fact of such previous conviction; and the examination of the accused in respect of those convictions is, having regard to s. 342, Crim. Pro. Code, without legal warrant or justification. A Sessions Judge is, however, justified, under s. 310, Crim. Pro. Code, in passing sentence on the accused on an admission by him of previous convictions, and such sentence should not be interfered with, unless the accused has been prejudiced by the irregularity in the enquiry as to the previous convictions. **28 C. 689 = 5 C.W.N. 670.** [*R.*, 28 B. 129; 3 L.B.R. 208].

(2242)—*Ss. 310 (a), 537 (=ss. 310 (a), 537, Crim. Pro. Code, 1882)—Material irregularity.*—Where a Sessions Judge had at one and the same examination of the prisoner, after the evidence for the prosecution had been taken, enquired from him what he had to say on the charge of theft and also on the charge of having been previously convicted, *held*, that this irregularity could not affect the conviction of the accused, if it had not occasioned a failure of justice. **13 C.L.R. 110.**

(2243)—*S. 310 (=Crim. Pro. Code, Act X of 1882, s. 310)—Penal Code, s. 75—Trial by jury—Procedure.*—Where in a trial by a Sessions Judge and jury, one of the witnesses was allowed to state that he had heard that the accused was an old convict, and it appeared that the jury were aware of the previous conviction before they gave their verdict, *held* that the accused might have been prejudiced by the contravention of the provision in s. 310 of the Crim. Pro. Code, and that there should be a new trial. **A.W.N. 1890, 12.**

(2244)—S. 310—*See* PREVIOUS CONVICTION, A.W.N. 1886, 47.

(2245)—S. 310—*See* No. 2223, *supra*, and No. 2349, *infra*.

——S. 321 (=1882, s. 321; 1872, s. 400; 1861, s. 329).

(2246)—Ss. 321, 324—*See* ASSESSORS, Rat. Un. Cr. C. 304.

——S. 322 (=1882, s. 322; 1872, s. 401, para 1; 1861, s. 380, para 1).

(2247)—Ss. 322 and 323—*See* ADVOCATE, L.B.R. (1872—1892), 260.

——S. 323 (=1882, s. 323; 1872, s. 401, para 2).

(2247-*a*)—S. 323—*See* No. 2247, *supra*, and No. 2712, *infra*.

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——S. 324, paras 1 to 5 (=1882, s. 324; 1872, s. 402; 1861, s. 331); and paras 6 and 7 (=1882, s. 325; 1872, s. 403; 1861, s. 332).

(2247-*b*)—S. 324—*See* No. 2246, *supra*.

——S. 326 (=1882, s. 326; 1872, s. 407; 1861, s. 336).

(2248)—*S. 326 (=Crim. Pro. Code, 1872, s. 407)—Duty of issuing a precept.*—The duty of issuing a precept, which is imposed on the Court of Sessions by s. 407, Crim. Pro. Code, 1872, cannot legally be performed by a Subordinate Judge in temporary charge of the current duties of the Sessions Judge. **Rat. Un. Cr. C. 148.**

(2249)—*Ss. 326, 327 (=Crim. Pro. Code, 1882, ss. 326, 327)—Appointment of assessors outside persons summoned.*—The Sessions Judge has no power to select any one to act as an assessor who has not been summoned under s. 326 or s. 327, Crim. Pro. Code. **A.W.N. 1894, 207.**

(2449-*a*)—S. 326—*See* No. 2088, *supra*.

——S. 327 (=1882, s. 327; 1872, s. 410; 1861, s. 338).

(2249-*b*)—S. 327—*See* No. 2249, *supra*.

——S. 332, paras 1, 2 and 4 (=1882, s. 332; 1872, s. 414; 1861, s. 354); para 3, new.

(2250)—*S. 332—Service of summons on servant of juror—Crim. Pro. Code, Act XIV of 1882, s. 70.*—On the analogy of s. 70 of the Crim. Pro. Code, a service of summons on a juror, in order to be sufficient to make him liable under s. 332 of the Crim. Pro. Code, cannot, outside the Presidency towns, be effected on his servant. **A.W.N. 1899, 13.**

——S. 334 (=1882, s. 334).

(2250-*a*)—S. 334—*See* Nos. 241, 1761, *supra*.

——S. 337 (=1882, s. 337; 1872, s. 347; 1861, s. 209).

See ACCOMPLICE.

See ACCUSED PERSON.

See APPROVER.

See PARDON.

(2251)—*S. 337—Scope of.*—This section does not contemplate either that the District Magistrate should delegate the tender of pardon to a Subordinate Magistrate who has no concern whatsover with the case, or that the said Magistrate should record informal statements which are not and could not be admissible as evidence. In a case where the tender of pardon must be regarded as a tender by the District Magistrate, who examined, as witnesses in the case, the persons who had accepted the tender, the District Magistrate was debarred under s. 337 (4) from trying the case himself. The Magistrate's order releasing on bail the persons who had accepted the tender was wrong, because they were not already on bail at the time. **13 C.P.L.R. Cr. 7.**

(2252)—*S. 337—Pardon tendered—Reasons to be recorded.*—When a Magistrate tenders a pardon under the said section, he is bound to record his reasons for doing so. **U.B.R. (1897—1901), Vol. I, 81.**

(2253)—*Ss. 337, 339 (=Crim. Pro. Code, 1882, ss. 337, 339)—Tender of pardon, effect of.*—When a pardon has once been tendered and accepted, the person to whom it is tendered should be examined as a witness in any case arising out of the same transaction, and should not be committed for trial for any offence arising out of the same circumstances, unless he is guilty of the misconduct referred to in s. 339. **2 Weir 394.**

(2254)—*S. 337 (=Crim. Pro. Code, 1882, s. 337)—Condition of pardon.*—The only condition on which pardon could be tendered to an accused person is the one specified in s. 337 of the Crim. Pro. Code. It cannot be stipulated that the accomplice should testify to having been present when the crime was committed. **Rat. Un. Cr. C. 612=Cr. Rg. 34 of 1892.**

(2255)—*S. 337 (=Crim. Pro. Code, 1882, s. 209)—Power to tender a conditional pardon.*—The power to tender a conditional pardon under s. 209, extends to cases triable by the Magistracy concurrently with the Court of Sessions. **3 M.H.C. App. 2.**

(2256)—*S. 337 (=Crim. Pro. Code, 1861, s. 209)—Power under the section, when exercisable.*—The power given to a Magistrate, under s. 209, cannot properly be exercised except with a view to the committal of a case for trial before a Court of Session. **3 M.H.C. App. 4.**

(2257)—*S. 337—Non-fulfilment of conditions of pardon—Trial of approver.*—Nothing can be done against an approver who has not complied with the condition on which the tender of pardon was made to him, until after the case in the Court of Sessions has been finished; then his trial should be commenced *de novo*. **23 B. 493.** [*F.*, 13 C.P.L.R. 123, 4 Bom. L.R. 826, 5 N.L.R. 134; *Appl.*, 24 M. 321=2 Weir 396; *R.*, 3 Bom. L.R. 271=25 B. 675, 52 P. L.R. 1903=4 P.R. 1903 Cr., 6 O.C. 236, U. B.R. 1907, 4th Quarter, Crim. Pro. Code, p. 7=14 Bur. L.R. 306=7 Cr. L.J. 245].

(2258)—No action can be taken against a person who has accepted a pardon, for breach of the conditions on which the pardon was tendered, until after the case in the Court of Sessions has been finished. **4 Bom. L.R. 826.**

(2259)—*Ss. 337 and 339—Tender of pardon—Breach of the conditions—Trial—Commitment of person to whom pardon tendered—Penal Code, s. 194—Person accepting pardon to be made available as witness.*—It is the intention of the law that a person to whom a tender of pardon has been made should not be tried for an alleged breach of the conditions upon which the pardon was tendered until the original case has been fully heard and determined. No prosecution for the offence of giving false

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evidence in respect of a statement made by a person who has accepted a tender of pardon should be entertained without the sanction of the High Court. A person who has accepted a tender of pardon by a committing Magistrate ought to be made available as a witness for examination before the Sessions Court. It is therefore wrong to proceed against him for a breach of the condition on which the pardon was granted until after the conclusion of the case in the Sessions Court. **27 C. 137.** [*R.*, 13 C.P.L.R. 123; *D.*, 2 Weir 396=24 M. 321].

(2260)—*S. 337—Tender of conditional pardon —Withdrawal of the pardon by the committing Magistrate without placing the person before Sessions Judge for giving his evidence—Validity.—Trial of approver—When pardon to be withdrawn and by whom—Good faith.*—S. 337, cl. (2), Crim. Pro. Code, requires that every person accepting a tender of pardon "shall be examined as a witness in the case." The words "in the case" are purposely used so as to include the preliminary inquiry and do not refer to the trial only. Where an approver, when examined in the preliminary inquiry, keeps back material evidence within his knowledge, the Magistrate can withdraw the pardon, and it is not the duty of the prosecution to put him forward as a witness in the Sessions trial. [*F.*, U.B.R. 1907, 4th Quarter, Crim. Pro. Code, p. 7; *R.*, 153 P.L.R. 1905=41 P.R. 1905 Cr.]. When a pardon is revoked, nothing should be done against the person who so forfeits it, until after the trial of the other accused is over, and then his trial should proceed *de novo*. [*R.*, 8 Bom.L.R. 740=30 B. 611, U.B.R. 1907, 4th Quarter, Crim. Pro. Code, 7.] When a pardon has been tendered and has been accepted, the utmost good faith must be kept on both sides. Good faith is broken if the witness does not disclose the truth to the Magistrate, and the conditional pardon may be at once withdrawn as soon as good faith is broken. The Crim. Pro. Code does not specify by whom a pardon may be withdrawn. Ordinarily the authority, which makes an offer, has the power of withdrawal. The proper authority, therefore, to withdraw a pardon is the authority which granted it, even after the trial has been held in the Sessions Court. **24 M. 321=2 Weir 396.**

(2261)—The authority which tendered a pardon has the power to revoke it where there are grounds for it. **3 O.C. 191**; (A.W.N. 1895, 163 and 24 C. 492, *R.*).

(2362)—*S. 337—Pardon—Case not triable exclusively by Court of Session or High Court—Evidence of approver.*—It is only in cases triable exclusively by the Court of Sessions or the High Court that a pardon can be lawfully granted to an accused person. It is illegal to convert an accused person into a witness except when a pardon has been lawfully granted, and the deposition of an accused person, to whom a pardon has been tendered for an offence not exclusively triable by a Court of Session or High Court, cannot be considered against other persons accused of such offence. **52 P.L.R, 1902.**

(2263)—Where the offence is not one triable exclusively by the Court of Session or the High Court, a pardon cannot be granted under s. 337. The evidence of an accomplice who is illegally pardoned and made a witness must be excluded in such a case. **L.B.R. (1893—1900), 51.**

(2264)—*Held* by the Full Bench:—The effect of the words, "such offence" in s. 338, is to restrict the scope of the section to the offences referred to in s. 337, *viz.*, offences triable exclusively by a Court of Session or the High Court. A Sessions Judge cannot tender a pardon to an accused, under s. 338 of the Code of Criminal Procedure, when the offences for which he has been committed are not triable exclusively by the Court of Sessions. **10 M.L.J. 147, F.B.**

(2265)—*S. 337—Pardon—Pardon by Local Government outside s. 337 of the Crim. Pro. Code—Pardon withdrawn and accused convicted—Acquittal when no breach of condition of pardon is shown.*—When the Local Government sanctioned the pardon of the accused outside the provisions of s. 337 of the Criminal Procedure Code, on condition of his making a full disclosure of all the facts connected with the case within his knowledge, and the pardon was cancelled and the accused was prosecuted and convicted subsequently for the offence with which he was originally charged, *held*, that it was not shown that the accused had failed to act up to the conditions of his pardon, that he was entitled to be acquitted, and that he should not have been prosecuted. **126 P.L.R. 1902.**

(2666)—*S. 337—Pardon, tender of—Evidence Act, ss. 24 and 133—Confession by an accomplice—Admissibility of evidence—Illegal inducement or threat—Withdrawal of case against co-accused—Discharge.*—S. 337 of the Crim. Pro. Code requires a Magistrate, who tenders a pardon, to record his reasons for so doing. Where, however, the facts, which led up to the tender, appear on the record, the omission to state reasons is, not only not an illegality, but not even an irregularity which vitiates the proceedings. The tender of a pardon by local Government, though of doubtful validity in law, can in no way be regarded as an inducement or threat, illegally held out to an accused person, to disclose or withhold any matter within his knowledge. Where the Public Prosecutor put in a petition under s. 409, Crim. Pro. Code, for withdrawing a case against one of the accused persons and the application was granted: *Held*, such person became a competent witness and his evidence was admissible, even though no formal order of discharge was recorded. **5 C.L.J. 224=5 Cr. L. J. 142.**

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(2267)—*Ss. 337, 338 and 339—When person to whom pardon tendered liable to conviction.*— A person, to whom a pardon has been tendered, cannot again be convicted of the same offence for which the pardon was tendered, unless it has been found that he has not complied with the conditions on which the tender was made In the absence of such a finding, the conviction is bad, and the Court which has to decide whether he is liable to punishment for the offence, is the proper authority to decide whether such liability has been incurred. **3 O. C. 245.**

(2268)—*Ss. 337, 339—Approver—Approver retracting his confession at preliminary inquiry—Procedure—Confession not admissible in evidence.*—When, during a police investigation, a pardon was granted to one of two persons accused of murder, and he made a confession implicating himself and the other accused but retracted it when examined by the committing Magistrate in the course of the preliminary enquiry, *held*, that either of the two courses could have legally been then adopted. Either the approver and the other accused should have been tried of the offence, beginning the trial *de novo*, or the other accused should have been tried and the approver examined as a witness, and, in case of his not speaking the truth, his trial must be ordered separately. When a pardon to an approver is revoked at any stage before the final trial, no part of his confession as an approver can be utilised against himself, much less against any one with whom he is jointly tried. **52 P.L.R. 1903.** (20 A. 529, 5 P.R. 1889, *F.*; 136 P.L.R. 1902, 23 B. 493, *R.*).

(2269)—*Ss. 337, 339—Revoking tender of pardon—Accused refusing to make a statement —Commitment—legality of.*—An accused, who had an opportunity of cross-examining the prosecution witnesses, was tendered a pardon on condition of his making a true disclosure. After accepting that pardon, he refused to make any statement saying that he knew nothing. The Magistrate revoked the pardon and committed him to the Court of Sessions. *Held*, that the commitment was perfectly legal. **3 A.L.J. 615 = A.W.N. 1906, 258 = 29 A. 24 = 4 Cr. L.J. 142.**

(2270)—*Ss. 337 and 339—Approver—Grant of conditional pardon—Disclosure of facts within the approver's knowledge—Recantation of the statement in cross-examination before the Sessions Court—Forfeiture of pardon—Trial of the approver for the principal offence—False evidence—Procedure.*—The accused, under a pardon given to him by the committing Magistrate, under s. 337 of the Code, made "a full and true disclosure of the whole of the circumstances within his knowledge relating to" the offence. He stuck to his story in his examination-in-chief before the Court of Session, but, during his cross-examination, he resiled from his statement. At the conclusion of

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the trial, which ended in the conviction of his accomplices, the accused was sent by the Sessions Judge in custody to the committing Magistrate with an order directing that he should be committed for trial for the principal offence. The Magistrate accordingly withdrew the pardon and committed the accused to the Court of Session, where he was convicted on what was described as his plea of guilty. *Held*, by *Aston*, J. (1) that the Sessions Judge had no authority, under the Code, to order the accused to be committed for trial for the principal offence, in respect of which a pardon had been tendered, and that his trial was conducted with material irregularity, which seriously prejudiced the accused and occasioned a failure of justice: (2) That the question whether the pardon was in fact forfeited should have been enquired into and decided at the trial of the accused before he was called upon to plead to the charge of the principal offence. *Held*, by *Beaman*, J. (1) that the Sessions Judge had no power to pass an order directing the forfeiture of pardon granted to the accused; (2) that the procedure adopted by the Sessions Judge was wrong and illegal. *Per Aston*, J.— S. 339 of the Code, contemplates a pardon being forfeited under it, but, neither in it nor in any other part of the Code is it enacted that the forfeiture of a pardon depends upon the opinion of the Judge or Magistrate, trying a case in which the occasionally pardoned accomplice has agreed to make a full and true disclosure. It is, therefore, open to a pardoned accomplice, if placed on trial as an accomplice, who has forfeited the pardon already accepted by him, to plead in bar of trial that he did comply with the condition on which the tender of pardon was made, and such plea in bar of trial would have to be gone into and decided before the accused is called on to enter his plea in defence to the charge of having committed the offence, in respect of which the pardon was tendered. The section does not enact that a person who has accepted a tender of pardon, renders himself liable to be tried for the offence, in respect of which pardon was tendered, if he gives false evidence. What the section says is that he renders himself so liable (or forfeits the pardon) if, by giving false evidence, he has not complied with the condition on which the tender was made. *Per Beaman*, J.—A pardon is offered upon two main conditions, first, that an accomplice shall make a full, second a true, disclosure of all he knows about the crime, and the pardon is forfeited by his failure to comply with these two conditions in two corresponding ways, first by concealing some material fact, that is to say, by not making a full, or by giving false evidence, that is, by not making a true, disclosure. The words "false evidence" must be read subject to the limitations of their context, as defining one of the modes of non-compliance with the conditions of the pardon, and not in their fullest literal sense. At the termination of the trial, in which the pardon is given, the accomplice must be discharged by

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the Court. Then, if so advised, the Crown may re-arrest and proceed against him for the offence, in respect of which he was given a conditional pardon. When put upon his trial for that offence, he may plead to a competent Court his pardon, in bar. And that is a plea that the Court would be bound to hear and decide upon, before going further and putting him on his defence. In deciding it, the Court would have to raise the issues whether he had or had not complied with the conditions of the pardon; and whether he had or had not made a full, and a true, disclosure of the whole facts, and where, after having admittedly done that, he had at a later stage recanted, whether that recantation amounted to giving false evidence within the meaning of s. 339 of the Code and worked a forfeiture of the pardon. **8 Bom. L. R. 740 = 4 Cr. L.J. 346 = 30 B. 611.**

(2271)—*Ss. 337 and 339—Tender of pardon —Fulfilment of condition by witness by making true disclosure—Contradictory statement subsequently made in another case—Forfeiture of pardon—Committal to Sessions—Trial and conviction—Tender of pardon, a plea in bar of trial —Duty of jury in a jury case to decide the issue—Recantation whether amounts to giving false evidence and works a forfeiture of the pardon.*—During the preliminary enquiry into a certain dacoity case, A was tendered a pardon under s. 337. He accepted the pardon and, when examined as a witness in the case, made a full and true disclosure of what was known to him in connection with the dacoity. But a few days afterwards, while he was examined as a witness in another case connected with the same transaction, he made a statement which was totally contradictory of the evidence given by him in the previous case. A was therefore recalled by the Magistrate before whom the first statement was made, and, when further examined, he adhered to the statement made in the other Court. He was then committed to the sessions on a charge of having taken part in the dacoity and was convicted. A appealed on the ground that, the condition on which the pardon was granted having been fulfilled, the pardon could not be subsequently revoked, and that his resiling from the first statement would not work a forfeiture of the pardon, and also contended that, had he been examined at the trial in the Sessions Court, he was prepared to adhere to the first statement, and that opportunity ought to have been given him of doing so. *Held*, that the prosecution was not bound to examine the accused as a witness in the Sessions Court, after he has resiled from his original statement before the Magistrate and thereby shown that he was a witness on whose evidence no reliance could be placed. *Held* also, when a person has been pardoned and has afterwards been placed on his trial for the offence, on an allegation that he has forfeited the pardon, it is open to him to plead the pardon in bar of the trial, and the Court (*i.e.*, the jury in a jury case, and the Judge in other cases) must first try the issue as to whether the accused has, in fact, forfeited the pardon. *Held* further, that a witness who, after accepting a tender of pardon, makes a full and true disclosure, is not at liberty to subsequently contradict his statement or deny its truth, without any fear of forfeiting his pardon; that as A, in the present case, after having made a true disclosure, had at a late stage recanted, the recantation amounted to giving false evidence within the meaning of s. 339 and worked a forfeiture of the pardon. **7 M.L.T. 121.**

(2272)—*Ss. 337, 339—Pardon, acceptance of, by accomplice—Forfeiture of pardon—Trial of accused for offence for which pardon was accepted —Duty of Court—Trial of preliminary issue.*—Under s. 337, Crim. Pro. Code, pardon had been tendered to, and accepted by, an accomplice. The Magistrate who tried the persons implicated by the accomplice, examined the latter as a witness in that case, and, finding that his evidence was unavailable and that his statement, as approver, was not sufficiently corroborated, cancelled the pardon and ordered him to be tried for the offence of dacoity, in which on his own statement as approver, he had taken part. At his trial thereon, in the present case, he pleaded, before the Magistrate, that his pardon could not be said to have been forfeited under s. 339 of the Code as he had not failed to comply with the conditions on which the tender was made; but the Magistrate convicted him without any reference to the question raised by him. *Held*, following 31 P.R. 1904 Cr., there can be no such thing, under the present Crim. Pro. Code, as cancellation or withdrawal of a pardon once tendered and accepted; but, under s. 339, Crim. Pro. Code, such a pardon can be forfeited by a person who had accepted tender of it, if, either by wilfully concealing anything essential or by giving false evidence, he did not comply with the conditions on which the tender had been made and he may be tried for the offence in respect of which the pardon had been tendered only if the pardon had been so forfeited. The question, therefore, whether the previous pardon to the accused had been forfeited by him is to be tried as a preliminary issue and decided by the Court, before which he is put on his trial, and, until it is disposed of against the accused, he cannot be tried and convicted for the offence for which he received the pardon. **59 P.R. 1905 Cr. = 40 P.L.R. 1906 = 3 Cr. L.J. 342.**

(2273)—*Ss. 337, 339—Pardon, forfeiture of —Approver—Statement made by approver, after accepting pardon, if admissible in evidence against him on forfeiture of pardon.*—*Held*, by the Full Bench (*Chatterji* and *Johnstone*, JJ, concurring with the opinion of *Clark*, C. J. as expressed in the order referring the case to the Full Bench), *Kensington* and *Reid*, JJ., *dissentiente* that, when a pardon has been tendered and accepted by a person under s. 337

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of the Crim. Pro. Code and a statement is made by him before a Magistrate, which is materially incomplete or false and he is subsequently tried for the offence of which pardon was granted to him, without being examined as a witness under s. 337 (2) of the Code, the statement made by him is admissible in evidence against him at his trial for the offence. **153 P.L.R. 1905 = 41 P.R. 1905 Cr. = 3 Cr. L.J. 55.**

(2274)—*Ss. 337, 339 and 342—Accomplice to whom pardon has been granted—Competency to give evidence.*—An accomplice, to whom the Local Government has made a promise not to prosecute and by whom the promise has been accepted, after the commencement of the trial, is not a competent witness. Such grant of pardon does not alter the position of the accomplice as an accused person, and make him cease to be an accused person. No oath could be administered to him. **9 P.R. 1906 Cr. = 4 Cr. L.J. 282 = 113 P.L.R. 1907.**

(2275)—*Ss. 337, 494—Withdrawal of prosecution—Competency to testify.*—A person whose prosecution has been withdrawn under s. 494, Crim. Pro. Code, can be examined as a witness in a case in which he had been accused. A number of accused were charged before a Magistrate with a criminal offence. During the conduct of the trial, the Public Prosecutor, with the consent of the Magistrate, withdrew from the prosecution instituted against two of them, and they were discharged by the Magistrate. *Held* that the two persons so discharged were competent witnesses. **25 B. 422 = 2 Bom. L.R. 1095.**

(2276)—*S. 337 (= Crim. Pro. Code, Act X of 1882, s. 337)—Tender of pardon to accomplice —Authority competent to revoke.*—Where a first class Magistrate has tendered a conditional pardon to an accomplice and examined him as a witness, the only authorities by which the pardon can be formally withdrawn are the Magistrate himself before the commencement of the trial by the Sessions Court and the Sessions Judge who can, if he finds the condition of the pardon not fulfilled, direct the commitment of the accomplice for trial for the original offence. The District Magistrate has no jurisdiction to withdraw the pardon. **A.W.N. 1895, 163.** [*Not F.*, 3 O.C. 191].

(2277)—*S. 337 (= Crim. Pro. Code, Act X of 1872, s. 347)—Applicability.*—The tender of pardon is restricted by s. 347 of the Crim. Pro. Code to offences described as triable exclusively by a Court of Session. **A.W.N. 1882, 240.**

(2278)—Ss. 337—339, 342—*See* ACCOMPLICE, 21 P.R. 1904 Cr.

(2279)—S. 337—*See* BUR. ACT I OF 1899, s. 8, 1 L.B.R. 62.

(2280)—Ss. 337, 339 and 436—*See* APPROVER, 1 P.R. 1898 Cr.

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(2281)—Ss. 337, 364, 431—*See* CHARGE TO JURY, 17 C. 642.

(2282)—S. 337—*See* COMMITMENT TO SESSIONS COURT, 5 P.R. 1899 Cr. and 3 P.R. 1904 Cr., A.W.N. 1891, 182.

(2283)—S. 337—*See* DISTRICT MAGISTRATE, L.B.R. (1893—1900), 323.

(2284-2285)—Ss. 337, 339—*See* PARDON, 3 P.R. 1897 Cr., 3 P.R. 1898, 3 B.H.C. Cr. 59, 15 P.R. 1895 Cr.

(2286-2288)—Ss. 337, 339, 539—*See* PARDON, 1 P.R. 1898 Cr.

(2289)—Ss. 337, 529—*See* PARDON, 20 A. 40.

(2289-*a*)—S. 337—*See* Nos. 170, 1122, 1140, 1333, 1335, 1397, 1893, 2180, 2217, *supra*, and No. 2360, *infra*.

——S. 338 (=1882, s. 338; 1872, s. 348; 1861, s. 210).

See ACCOMPLICE.

See ACCUSED PERSON.

See APPROVER.

See PARDON.

(2290)—*S. 338 (= Crim. Pro. Code, Act X of 1872, s. 348)—Pardon illegally tendered by committing Magistrate—Effect.*—Where a second class Magistrate tendered pardon to one of the persons accused of murder before him without the sanction of the District Magistrate, and the Sessions Judge, before whom this person was not brought as accused, found on evidence that he was implicated in the murder and also that his evidence was likely to be material to the case, *held* that the Sessions Judge could himself tender pardon under s. 348 of the Crim. Pro. Code. **A.W.N. 1882, 241.**

(2291)—*Ss. 338, 339 (= Crim. Pro. Code, Act X of 1872, ss. 348, 349)—Withdrawal of pardon after examining accused.*—Where a Sessions Judge offered a pardon to one of the accused persons, examined him as a witness against the others, then revoked the pardon and tried and convicted him, *held* that the procedure was altogether irregular. **A.W.N. 1882, 31.**

(2292)—S. 338—*See* PRACTICE AND PROCEDURE, A.W.N. 1884, 147.

(2292-*a*)—S. 338—*See* Nos. 170, 2267, 2278, *supra*.

——S. 339 (=1882, s. 339; 1872, s. 349; 1861, s. 211).

See ACCOMPLICE.

See ACCUSED PERSON.

See APPROVER.

See PARDON.

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(2293)—*S. 339—Pardon, tender of—Trial of approver—Withdrawal of pardon—Forfeiture of pardon.*—It cannot be laid down as a general rule that a Magistrate who tenders a pardon to an accused person has no jurisdiction to commit him before the close of the trial of the other accused, since the Legislature, by using a general term like "case" in s. 339, Crim. Pro. Code, instead of the word "trial" meant to abstain from laying down any such rule. [*R.*, 14 Bur. L.R. 306=7 Cr. L.J. 245=U.B.R.1907, Crim. Pro. Code, 7, 32 M. 173, 5 N.L.R. 134.] In s. 339, the word; "withdrawn" in the Code of 1882 has disappeared and been replaced by the word "forfeited" As the law now stands, the question is whether the accused has forfeited his pardon by some act of his own, not whether the Magistrate has validly withdrawn it. The question is one of fact on which it is clear that the Magistrate may hold one opinion and the Sessions Judge another. The Sessions Court has to determine for itself, on the evidence before it, whether the pardon has been forfeited; for, if not, the accused who has accepted such pardon, cannot be tried. **25 B. 675=3 Bom. L.R. 271.** [*F.*, 32 M. 173; *R.*, 153 P.L.R. 1905=41 P.R. 1905 Cr.]

(2294)—*S. 339 (=Crim. Pro. Code, 1882, s. 339)—Withdrawal of conditional pardon.*—Under s. 339, a conditional pardon should be withdrawn by the authority which granted it, and not by the High Court. **24 C. 492.** [*F.*, 2 Weir 396=24 M. 321, 19 P.R. 1901 Cr.; *R.*, 3 O.C. 191; *D.*, 149 P.L.R. 1901, 31 P.R. 1904 Cr.=176 P.L.R. 1905].

(2295)—*S. 339—Pardon tendered by Dt. Magistrate and accepted by approver—Sessions Judge ordering commitment of approver on his retracting his statement—Legality of commitment.*—In a case, triable exclusively by the Court of Sessions, an approver was offered pardon on the condition of his making a true statement of facts of the case. The approver accepted the pardon and made a statement which he afterwards retracted. The Sessions Judge, trying the case, ordered the approver to be committed to the Court of Sessions for not fulfilling the condition on which the pardon was granted. It was contended that the pardon could be withdrawn by the Dt. Magistrate only and therefore the commitment by order of the Sessions Judge was illegal. *Held*, that the contention had no force. The Sessions Judge was competent to order the approver to be committed to the Court of Sessions when he was of opinion that he had forfeited the pardon. No withdrawal of pardon is necessary before the approver is ordered to be tried for the original offence in respect of which pardon was granted. **176 P.L.R. 1905.**

(2296)—*S. 339 (3)—High Court, sanction of, under—Necessity for a motion on behalf of the Crown—Prosecution of approver.*—If the sanction of the High Court is desired under s. 339 (3), Crim. Pro. Code, there should be a motion on behalf of the Crown. **5 M.L.T. 164 =32 M. 47=1 Ind. Cas. 207.**

(2297)—Ss. 339 and 477—*See* APPROVER, 42 P.R. 1884 Cr.

(2298)—S. 339—*See* PARDON, 19 P.R. 1901 Cr., 24 P.R. 1902 Cr., 34 P.R. 1902 Cr., 59 P.R. 1905 Cr.

(2298-*a*)—S. 339—*See* Nos. 1332, 1335, 1397, 2253, 2259, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2278, 2280, 2285, 2286, 2291, *supra*.

—— S. 340 (=1882, s. 340; 1872, s. 186, paras 1 and 2; 1861, s. 432).

See ACCUSED PERSON.

See DEAF AND DUMB PERSON.

See PLEADER.

(2299)—*Ss. 340, 341 (=Crim. Pro. Code, 1872, s. 186)—Scope of section.*—S. 186 of the Crim. Pro. Code is intended to provide for cases in which the accused person is deaf and dumb, or, from ignorance of the language of the country and the want of an interpreter, is unable to understand or make himself understood; and, in such cases, the High Court would order the prisoner to be detained during Her Majesty's pleasure. **Rat. Un. Cr. C. 151.**

(2300)—*S. 340—Trial of a deaf and dumb man—Summary trial—Reference to High Court.*—Where the accused is deaf and dumb, it is inconvenient to try him summarily. In such a case, an attempt should be made to find out whether the accused has any friends or relatives, who are accustomed to communicate with him. The Magistrate should make inquiries about his antecedents, ordinary mode of life and the manner in which he was communicated within the ordinary affairs of life. **8 Bom. L.R. 849=4 Cr. L.J. 444.**

(2301)—*S. 340 (=Crim. Pro. Code, 1872, s. 186) —Accused, a deaf and dumb person.*—The High Court, under the circumstances of this case, which came before it under the last clause of s. 186, Crim. Pro. Code, set aside the conviction of the prisoner, a deaf and dumb person, and directed that he be admonished and discharged. **22 W.R. 35 Cr.**

(2302)—Under the circumstances of this case, where a prisoner, who was deaf and dumb, had a further opportunity given him of being heard in defence, the Court confirmed the conviction by the Magistrate. **22 W.R. 72 Cr.**

(2303)—*Ss. 340, 426, 439, 440, 348 (=Crim. Pro. Code, 1872, ss 186, 297, 315)—Accused, a deaf and dumb person, understanding proceedings—Previous convicitions—Committal—Sessions Court.*—In the case of an accused person who was deaf and dumb, the Deputy Magistrate, who tried and convicted him, was of opinion that he did not understand the proceedings, and accordingly referred the case to the

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Magistrate under s. 186, Crim. Pro. Code. The Magistrate considered that the accused did understand what he was charged with. *Held*, that the finding of the Magistrate must prevail, and that s. 186 was inapplicable. Acting under s. 297, Crim. Pro. Code, the High Court set aside the order of the Deputy Magistrate, and, as the accused had been previously convicted of an offence under Chapter XVII of the Penal Code, punishable with rigorous imprisonment, ordered that he should, under s. 315, Crim. Pro. Code, be committed for trial to the Sessions Court. **19 W.R. 37 Cr.**

(2304)—*S. 340 (=Crim. Pro. Code, 1861, s. 432)—Agent of accused in Criminal Court—Appellate Court.*—S. 432 of the Crim. Pro. Code, entitles a prisoner to authorize any person to be his agent in any Criminal Court. **Rat. Un. Cr. C. 1.**

(2305)—The provisions of s. 432 of the Crim. Pro. Code do not apply to an appellate Court. The appellate Court is bound, under ss. 417 and 419, to hear an agent on behalf of an appellant. **Rat. Un. Cr. C. 29=Cr. Rg. 22—2—1870.**

(2306)—*S. 340 (=Crim. Pro. Code, 1861, as amended by Act VIII of 1869, s. 432)—Mooktears, employment of.*—The terms of s. 432 do not warrant any general rule for the exclusion of Mooktears in all cases, but only allow the exercise by Magistrates of their discretion in each case as it arises. The Magistrates shall not, by indiscriminate exclusion of persons who are invested by law with a distinct professional status in criminal trials, deprive parties of legal aid which they could frequently obtain at a moderate cost. **14 W.R. Cr. Cir. 5.**

(2307)—*S. 340 (=Crim. Pro. Code, 1872, s. 186 (2)—Unauthorised pleaders.*—Under s. 186 (2), the Criminal Courts are bound, in each case coming before them, to exercise a discretion as to permitting the person nominated to conduct the defence, in cases where such person is not an authorised pleader. **2 Weir 400.**

(2308)—*S. 340 (=Crim. Pro. Code, 1872, s. 186)—Pleaders of District Munsif's Courts—Vakalatnamah in criminal cases.*—A pleader of a District Munsif's Court comes within the category of "authorised pleaders," and, as such, is not required to file a vakalatnamah in criminal cases. **2 Weir 402.**

(2309)—*S. 340 (=Crim. Pro Code, 1872, s. 186)—Deaf and dumb accused—Conviction for house-breaking--Validity.*—Where a person aged nearly 16 years, whose understanding was of the most limited kind, and who had been deaf and dumb from his birth, was convicted of house-breaking by night, the High Court, considering the facts already stated and considering also that sheer hunger had driven him to break into the house and that he had never been in arrest before, recommended that he should be made over to his father. **7 N.W.P. 131.**

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(2310)—*Ss. 340, 341 (=Crim. Pro. Code, 1872, s. 186) Reference to High Court.*—Under s. 186, it is necessary that there should have been a committal or conviction before a reference is made to the High Court. **Rat. Un. Cr. C. 180.**

(2311)—*Ss. 340, 341, 288 (=Crim. Pro. Code, 1872, ss. 186, 249)—Cross-examination—Refusal of right of.*—Where the evidence given before a committing Magistrate by certain witnesses was repudiated, and they made entirely different statements before the Sessions Judge, and the Sessions Judge thereupon, under s. 249, Crim. Pro. Code, used the previous depositions of those persons as evidence in the case, and it was objected that those depositions ought not to be so used because they were given without cross-examination, in consequence of the refusal of the Magistrate to allow pleaders to appear before him on behalf of the accused, *held*, that, under the circumstances of the case, the conviction based merely upon such evidence was not improper. **6 C.L.R. 53.**

(2312)—*Ss. 340, 341 (=Crim. Pro. Code, 1872, s. 186)—Deaf and dumb person—Ability to understand charge—Procedure—See* **19 W.R. Cr. 37.**

(2313)—*Ss. 340, 341 (=Crim. Pro. Code, 1872, s. 349)—Deaf and dumb person, trial of —Direction by High Court to be admonished of discharge—See* **22 W.R. Cr. 35.**

(2314)—*Ss. 340, 341 (=Crim. Pro. Code, 1872, s. 349)—Deaf and dumb person—Trial of.*—Where the High Court had no doubt that the prisoner (a deaf and dumb person) was guilty; but, before passing final orders, it gave the prisoner a further opportunity of being heard, and accordingly directed the Magistrate to give him notice. **22 W.R. Cr. 35.**

Where the accused was subsequently convicted by the Magistrate, the conviction was confirmed by the High Court. **22 W.R. Cr. 72.**

(2315)—Ss. 340, 341, 464—*See* ACCUSED PERSON, 5 B. 262.

(2316)—S. 340—*See* ADVOCATE, 2 Weir 402 =7 M.H.C. App. 40.

(2317)—Ss. 340, 341—*See* DEAF AND DUMB PERSON, A.W.N. 1881, 15, A.W.N. 1881, 54.

(2317-*a*)—S. 340—*See* Nos. 557, 577, 1543, *supra*.

——S. 341 (=1882, s. 341; 1872, s. 186, para 3).

See ACCUSED PERSON.

See DEAF AND DUMB PERSON.

See LUNATIC.

(2318)—*S. 341—Scope of—Deaf and dumb accused—Understanding of proceedings.*—S. 341 does not apply where it is shown that the accused understood the proceedings. **3 Bom. L.R. 371.**

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(2319)—*S. 341 (=Crim. Pro. Code, 1882, s. 341)—Applicability.*—S. 341 of the Crim. Pro. Code, becomes applicable only after a conviction, and where the Magistrate finds for good reasons that the accused is unable to understand the proceedings. **Rat. Un. Cr. C. 836.**

(2320)—*S. 341—Report to High Court under section when to be made.*—S. 341, Crim. Pro. Code, requires that the Court shall proceed to the end of the trial and then report the result to the High Court, if a conviction follows. It does not empower a Magistrate to make the report in the middle of a trial. **4 Bom. L.R. 825.**

(2321)—Before a reference is made to the High Court under s. 186, Crim. Pro. Code, 1872, the Judge should proceed to the end of the trial, and report the trial, if a conviction follows. **2 Weir 403.**

(2322)—The fact of an accused being deaf and dumb is not *per se* sufficient to justify a reference under s. 341, Crim. Pro. Code. An attempt to make such an accused understand the proceedings, and the fact that he could not be made to understand them should appear on the record. **9 C.P.L.R. Cr. 38.**

(2323)—*Ss. 341 and 465—Procedure in case of a lunatic not able to understand proceedings in Court.*—The fact that an accused was of weak intellect, and subject to constant epileptic fits, although not insane, was held to be sufficient proof of unsoundness of mind to show the probable cause of his inability to make his defence; and the trial of such a person should be postponed under s. 465 of the Code. **U.B. R. (1892—1896), Vol. I, 38.**

(2324)—*S. 341 (=Crim. Pro. Code, 1882, s.341)—Reference under section—Duty of Magistrate.*—In submitting a case to the High Court under s. 341, Crim. Pro. Code, the Magistrate must state his view of the conduct of the dumb accused in the commission of the offence, and take some evidence regarding the previous history and habits of the accused. There must also be a finding whether the accused was capable of understanding and did in fact understand the nature of the proceedings and whether he understood the purport of the evidence given by the witnesses, and whether he wanted to call witnesses, in his defence. **Rat. Un. Cr. C. 696=Cr. Rg. 26 of 1894.**

(2325)—*S. 341—Reference under the section—Findings of Magistrate—Power of High Court to pass final order.*—In a case referred under s. 341, the Legislature seems to have contemplated that there should be a finding by the Magistrate, either by what is called a conviction or commitment, that *prima facie*, that is to say, on the evidence for the prosecution, an offence has been committed, and that the accused, though not insane, cannot be made to understand the proceedings, and the High Court is competent to pass sentence in the

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absence of any defence for the above-mentioned reason. In a case of murder reported to the High Court after commitment to Sessions, the High Court, holding that no benefit was likely to result by his being tried by a Court of Sessions and finding that the accused, though guilty, was not responsible for his actions by reason of the unsoundness of his mind, directed the accused to be kept in the District Jail pending the order of the Local Government. **27 C. 368=4 C.W.N. 421.**

(2326)—*S. 341, proviso—Transfer of case under—Application of s. 350.*—A Subordinate Magistrate, before whom the accused was first placed for trial, took down the evidence of the witnesses for the prosecution and also examined the accused with reference to such evidence. After this, records were put in for previous convictions against the accused. Thereon, the case was transferred to the District Magistrate under the proviso to s. 348 of the Code. The District Magistrate acting upon the evidence already recorded, convicted the accused, who called no evidence. *Held*, on appeal, that, as the only section of the Code, which empowers one Magistrate to act upon the evidence recorded by another in s. 350 and that section cannot be held to cover this case of a transfer of a trial from one Court to another, the conviction and sentence by the District Magistrate must be set aside and new trial ordered. **1 N.L.R. 187.**

(2326-*a*)—S. 341—*See* Nos. 2299, 2310, 2311, 2312, 2313, 2314, 2315, 2317, *supra*.

——S. 342 (=1882, s. 342; 1872, ss. 193, 250, 342, 343, 345; 1861, ss. 202, 204, 273).

See ACCUSED PERSON.

See EXAMINATION OF ACCUSED.

(2327)—*S. 342 (=Crim. Pro. Code, 1882, s. 342)—Scope of.*—It is not for the purpose of ascertaining what witnesses the accused intends to call, or what evidence they will give, or what his defence is, that a Court is justified or authorized in examining an accused under s. 342. A Court is only authorized to examine him "for the purpose of enabling him to explain any circumstances appearing in the evidence against him." "The evidence" in that section is the evidence already then given at the trial. **14 A. 242.** [*R.*, 4 N.L.R. 163].

(2328)—S 342 permits an examination of the accused to be made solely for the purpose of enabling the accused to explain facts appearing against him. **7 C.W.N. 345.**

(2329)—The language of s. 342 is mandatory, and the omission to comply with its provisions is not a mere error of form. There may, of course, be circumstances in which the omission could not reasonably be held to have prejudiced the accused, and in which, therefore, the interference of the High Court may be discretionary. But where there are grounds for thinking that the omission on the part of the

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Court to question the accused operated to produce a non-disclosure of the case for the defence and the withholding of evidence material for the defence, the High Court would interfere. **2 Weir 405.**

(2330)—Crim Pro. Code, 1882, s. 342, says that the Court should question the accused generally on the case before he is called on for his defence, for the purpose of enabling him to explain any circumstances appearing in the evidence against him. **U.B.R. (1892—1896), Vol. I, 144.**

(2331)—*S. 342 (=Crim. Pro. Code, 1882, s. 342)—Object of.*—The object of s. 342 is not to fill up a gap in the evidence for the prosecution, but to enable the prisoner to explain any circumstances appearing in the evidence against him. Where a statement purporting to have been made by the accused in a previous proceeding was not properly in evidence against him, the Judge would not be acting properly in asking the accused about it. **26 C. 49.** [*F.*, 27 M. 238=2 Weir 408; *R.*, 5 C.W.N. 670].

(2332)—The object of the examination under the above section is to enable the accused to explain circumstances appearing in the evidence against him. Consequently, the Court cannot cross-examine the accused to elicit admissions. **L.B.R. (1872—1892), 320.**

(2333)—*S. 342 (=Crim. Pro. Code, 1882, s. 342)—Accused person, examination of—Warrant case.*—Under s. 342, Crim. Pro. Code, an accused person, before he is put on his defence, must be examined by the Court. **Rat. Un. Cr. C. 227=Cr. Rg. 5 of 1886.**

(2334)—Where, in a warrant case. the accused is examined by the Magistrate before any evidence has been recorded, *held*, that such procedure is illegal, as the power given by s. 342 to examine the accused "for the purpose of enabling him to explain any circumstances appearing in the evidence against him," has not come into play. **13 A. 345,** [*R.*, Rat. Un. Cr. C. 679, 4 N.L.R. 163].

(2335)—*S. 342 (=Crim. Pro. Code, 1882, s. 342)—"Accused"—Term explained.*—By "accused" is meant a person over whom the Magistrate or other Court is exercising jurisdiction. **16 B. 661.** [*F.*, 23 C. 493, 21 A. 107=18 A.W.N. 185; *R.*, 23 B. 213, 15 P. R. 1900 Cr.=P.L.R. 1900, 59, 5 C.W.N. 749=28 C. 709, 15 C.P.L.R. 112, 24 P.R. 1903 Cr., 21 P.R. 1904 Cr.=135 P.L.R. 1904, 131 P.L.R. 1905=42 P.R. 1905 Cr., 13 C.W.N. 151=36 C. 163=8 C.L.J. 565, 4 N.L.R. 81=8 Cr. L.J. 20; *D.*, 9 C.W.N. 983].

(2336)—*S. 342—Questioning accused about previous conviction—Legality.*—It is not competent to a Magistrate to question an accused, under s. 842 before his conviction, about his previous conviction, with a view to take into consideration, for the purposes of conviction or with a view to dispense with formal evidence as to the alleged previous conviction and as to the identity of the accused, in the event of conviction. **28 B. 129=5 Bom. L.R. 805.**

(2337)—*S. 342—Co-accused examined as witnesses after conviction and before sentence.*—The accused, numbering nine persons, were put up for trial on a charge of dacoity. Two of them pleaded guilty and were at once convicted, but their sentences were postponed till the end of the trial. They were then taken from the dock and examined as witnesses against the rest of the accused. *Held* by *Candy, J.*, that they were competent witnesses as they were no longer accused persons but were convicts, but the fact that they have not been sentenced would affect the value of their evidence, as they might naturally think that it would be for their advantage to tell a story as much as possible in favour of the prosecution. *Held* by *Fulton, J.*, (1) that their evidence should be rejected as the procedure followed was illegal as it contravened the provisions of s. 342, which provided that no oath should be administered to the accused; (2) that the accused, though solemnly affirmed as witnesses, were still under trial and under examination by the Court; and (3) that the trial of the accused did not end with their conviction. **3 Bom. L.R. 437.**

(2338)—*S. 342—Sessions Judge—Trial—Examination of accused—Forms of trial in criminal cases.*—The term "shall," in s. 342 of the Crim. Pro. Code, makes the duty imposed on the Court to question the accused generally on the case, after the witnesses for the prosecution have been examined and before he is called for his defence, mandatory, not discretionary. Having regard to the object of the examination, specified in the section, *viz.*, that the legislature intended it to enable the accused to explain any circumstances in the evidence against him, it is clear that the omission by the Court, to perform such duty in a criminal trial, must be presumed to have seriously prejudiced the accused. **9 Bom. L.R. 356=5 Cr. L.J. 332.** [*F.*, 9 Bom. L.R. 730].

(2339)—*S. 342—Sessions Judge—Trial—Examination of accused.*—The provisions of s. 342, apply to the case of an accused tried before a Sessions Judge. even when he has been questioned on the case generally by the committing Magistrate. **9 Bom. L.R. 730=6 Cr. L.J. 74.**

(2340)—*S. 342 (=Crim. Pro. Code, 1882, s. 342)—Evidence of accused improperly taken—Admissibility—Evidence Act, ss. 21, 26, 29.*—It is not proper to examine the accused under s. 342, Crim. Pro. Code. when no evidence, sufficient to connect him with the crime with which he is charged, has been recorded against him. If the examination takes place contrary to the provisions of s. 342, the statements actually made cannot, if apparently freely and voluntarily given, be rejected as inadmissible, merely on account of this irregularity of

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procedure; *prima facie*, as admissions, those statements are relevant under s. 21 of the Evidence Act, and there is no other section which excludes then. S. 26 of the Act is inapplicable as the statements are made in the immediate presence of a Magistrate, and s. 29 shows that the mere fact of a statement being made in answer to questions is by itself no ground for its exclusion. **Rat Un. Cr C. 679=Cr. Rg. 45 of 1893.**

(2341)—*S. 342 (=Crim. Pro. Code, 1882, s. 342)—Examination of accused before issue of process.*—A Magistrate should not put persons on oath unless he is satisfied of his authority to do so. Where he examines persons against whom a complaint is laid, before issue of process, the procedure is of very doubtful propriety, and the Magistrate ought not to be influenced by any difference between the statements given by them in such examination and statements made by them as accused persons. **Rat. Un. Cr. C. 844=Cr. Rg. 13 of 1896.** (16 B. 668, 13 B. 621, *R.*)

(2342)—*S. 342—Examination of prisoner by Judge—Nature of questions permissible.*—A Judge examining a prisoner, under s. 342 of the Crim. Pro. Code, ought not to cross-examine him; the only permissible questions are such as will enable the prisoner to explain any circumstances appearing in the evidence against him. **10 C. 140=13 C.L.R. 358.**

(2343)—*S. 342 (=Crim. Pro. Code, 1872, s. 250)—Examination of accused for what purposes allowed.*—Under s 250, the Court may, from time to time, at any stage of the case, examine the accused personally. But the Court is not competent to subject the accused to severe cross-examination. The discretion given by the law is not to be used for the purpose of driving the accused to make statements criminating himself; it can only be properly used for the purpose of ascertaining from the accused how he is able to meet facts standing in evidence against him, so that those facts should not stand against him unexplained. **1 C.L.R. 436.** [*F.*, 2 C.W.N. 702; *R.*, 6 C. 96].

(2344)—*S. 342 (=Crim. Pro. Code, 1872, s. 250)—Cross-examination of a prisoner by Court.*—It is not proper for the Court to cross-examine a prisoner with the apparent object of convicting him, out of his own mouth, of false statements, and so making him prejudice himself in respect of the matter with which he is charged. **6 C.L.R. 431.** [*F.*, 10 C.P.L.R. 13; *R.*, 12 A. 551].

(2345)—*S. 342—Retracted confession—Duty of Judge to question the accused regarding it.*—Where the only circumstance appearing in evidence against the accused was his retracted confession, and, as to this he was not questioned at all in the Sessions Court, so that he might be given an opportunity to show cause for the jury to hesitate to convict him on that confession alone, *held*, that the procedure was contrary to that described in s. 342. **2 Weir 507.**

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(2346)—*S. 342, statement made by accused under*—It could scarcely have been intended that, under colour of an examination under s.342, Crim. Pro. Code, an accused person should make statements such as he might make if he were being examined as an approver. **6 O.C. 204.**

(2347)—*S. 342—Statement of accused as witness—Evidence.*—*Held* that an accused person cannot be examined as a witness, because no oath or affirmation can be administered to him until he is acquitted, or discharged or convicted. When, at the trial of several accused persons, the Magistrate in a note to the District Superintendent of Police, ordered that a certain accused person should not be put forward as an accused but as a witness, and the Court Inspector applied to the Magistrate that the said accused should be examined as a witness, and the Magistrate examined him as a witness for the prosecution, *held*, that the statement made by him was inadmissible in evidence. **100 P. L.R. 1902.**

(2348)—*S. 342 (2)—When accused can claim exemption under section—Application for transfer of case to another Court—Application supported by false affidavit—Liability for such statements—Penal Code, ss. 182 and 211.*—An accused person, who was under trial in the Court of a Subordinate Magistrate, applied to the District Magistrate for a transfer and filed an affidavit which was false. *Held* that he could not escape liability under s. 342 (2), Crim. Pro. Code, as the statements contained in the affidavit were not made in answer to questions put by the Court and that the statements in the affidavit being false and made with a view to induce the District Magistrate to order the transfer, the accused would be punishable under the first part of s. 182, and not s. 211, Penal Code. **1 S.L.R. Cr. 124.**

(2349)—*Ss. 342, 310 (b) (c)—Legal evidence of previous conviction.*—Before asking an accused person, questioned under s. 342, Crim. Pro. Code, at the close of the case for the prosecution, whether he had been previously convicted, legal evidence of the previous conviction ought to be put in and read. Legal evidence of previous convictions ought to be obtained before the part of the charge relating to them is framed. Clauses (*b*) and (*c*) of s. 310 indicate in general terms, the preciseness with which charges relating to previous convictions should be tried. **1 U.B.R. (1902—1903), Criminal Procedure, 23.**

(2350)—*Ss. 342, 349—Separate trial of a person charged with a substantive offence and of another charged with abetment—Competency to give evidence.*—Where a person charged with an abetment of an offence under s. 403, I.P.C., applied for summoning as a witness, the principal offender, who had been convicted of the substantive offence under s. 403, I.P.C., by a third class Magistrate, but whose case was pending before another Magistrate, having been referred to the latter by the former for a severe

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sentence under s. 349, Crim. Pro. Code, *held*, that the Magistrate was not competent to refuse to summon him, and s. 342, Crim. Pro. Code, did not apply to the case. **20 A. 426.** [*R.*, 10 C.W.N. 962=33 C. 1353=4 Cr. L.J. 145.]

(2351)—*Ss. 342 and 362—Evidence, recording of, in petty cases—Magistrate to use discretion—Retrial—Transfer.*—S. 362 of the Crim. Pro. Code does not mean that a Presidency Magistrate can act arbitrarily and record nothing by way of evidence in cases in which he is not bound to take down evidence in the manner prescribed in the section. In such cases, the section merely gives him a discretion to take down the evidence or not, and the discretion should be exercised judicially in a reasonable spirit, and not arbitrarily. There may be no necessity to record any evidence in "morning cases." But where a respectable person is charged with an offence, reflecting on his character and serious allegation are levelled against him, there ought to be some record of evidence to enable him in case of conviction to go to the High Court. Even in a summary case a Magistrate is bound to record a summary of the accused's examination and any statement in the course of that examination. S. 342, Crim. Pro. Code, makes it incumbent upon the Magistrate to examine the accused and to give him an opportunity of explaining away whatever may have been decided against him in the evidence for the prosecution. Where a Presidency Magistrate had made up his mind regarding a case, the High Court, on the case coming under its revisional jurisdiction, transferred it to another Magistrate for re-trial. **10 Bom. L.R. 201=7 Cr. L.J. 194.**

(2352)—*Ss. 342 and 539—Omission to examine the accused—Duty of High Court in revision.*—The accused were tried and convicted of offences under ss. 11 and 12 of the Gambling Act. There was an omission, to examine the accused under s. 342 of the Code. They had a right of appeal but did not exercise it. The District Magistrate recommended to the Chief Court, under s. 439, that the conviction might be set aside. From the record of the case. it appeared that the accused had not been prejudiced by the omission of the Magistrate to examine them under s. 342, *held*, it is not imperative on the Chief Court to set aside every void order which comes to its notice, when the person aggrieved does not move the Court to do so. Though the conviction was bad, it was not necessary for the Chief Court to set it aside. **4 L.B.R. 143=7 Cr. L.J. 422.**

(2353)—*S. 342—Duty of Court to question accused before he enters on his defence.*—There is no authority in the Code authorising a written defence to be put in at the trial of cases before the Court of Sessions. But, whether such a written defence can or cannot legally be put in and accepted by the Court, it certainly cannot be allowed to take the place of the examination of the accused which s. 342 imperatively orders to be made. **A.W.N. 1903, 1.**

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(2354)—*Ss. 342, 346 (=Crim. Pro. Code, 1872, s. 345)—Preliminary enquiry—Administering oath to accused.*—The administering of an oath or affirmation to an accused person, although prohibited by s. 345, Crim. Pro. Code, 1872, does not render the statement inadmissible either against him or against a co-accused at the trial. **3 P.R. 1880 Cr.**

(2355)—Ss. 342 (1) and 511—*See* ACCUSED PERSON, L.B.R. (1900—1902), 8.

(2356)—S. 342—*See* ADMISSION, Rat. Un. Cr. C. 769.

(2357)—S. 342—*See* AFFIDAVIT, 19 A. 200.

(2358)—Ss. 342, 287, 208 (1, 3, 4)—*See* COMMITMENT TO SESSIONS COURT, Rat. Un. Cr. C. 100.

(2359)—S. 342—*See* CONFESSION, 6 B. 124.

(2360)—Ss. 342, 343, 337—*See* CONFESSION, 2 A. 260.

(2361)—Ss. 342, 364, 533 (1)—*See* CONFESSION, 5 C. 954=6 C.L.R. 297, F.B.

(2362)—Ss. 342, 485—*See* CONFESSION, 5 A. 253.

(2363)—S. 342 (4)—*See* EVIDENCE ACT, ss. 118, 133, U.B.R. 1906, Evidence, 3=5 Cr. L.J. 300.

(2364)—S. 342 (2)—*See* EVIDENCE ACT, s. 132, 23 B. 213.

(2365 to 2367)—S. 342—*See* PENAL CODE, s. 307, 1 P.W.R. 1910 Cr.

(2368)—S. 342—*See* PREVIOUS CONVICTION, 5 Bom. L.R. 805=28 B. 129.

(2369)—S. 342—*See* SUMMARY TRIAL, L B. R. (1893—1900), 638.

(2369-*a*)—S. 342—*See* WITNESS, 38 P.R. 1887 Cr.

(2369-*b*)—S. 342—*See* Nos. 109, 113, 321, 367, 702, 1088, 1110, 1111, 1112, 1291, 1367, 1401, 1691, 1843, 1979, 2075, 2076, 2078, 2104, 2105, 2128, 2160, 2274, 2278, *supra*.

——S. 343 (=1882, s. 343; 1872, s. 344; 1861, s. 203).

(2369-*c*)—S. 343—*See* Nos. 2241, 2360, *supra*.

——S. 344 (=1882, s. 344; 1872, ss. 194, para 1 Exp., 208, para 1, 219, 264; 1861, ss. 224, 269, 253, 377, Presidency Magistrate's Act, 1877, s. 124).

See ADJOURNMENT.

See REMAND.

(2370)—*S. 344, power of Courts to order payment of the costs of the day on granting adjournments.*—S. 344 of the Code dealing with proceedings in prosecutions expressly empowers the Court to postpone or adjourn an enquiry upon such terms as it thinks fit. This clearly entitles the Court to award costs to the party

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who has been put to unnecessary expenses by the conduct of the other side and to order that the same be paid up by the latter in whose favour the order for adjournment has to be made. **28 A. 207=2 A.L.J. 831=A.W N. 1905, 256.**

(2371)—*S. 344—Adjournment of Criminal cases.*—The reasonable cause intended by s. 344 is some cause which will enable the Court to have before it all the materials relevant and forthcoming, upon which it can come to a decision whether the accused has or has not committed the offence charged. It is not a valid ground for adjourning a Criminal case, that issues similar to those arising in the Criminal Court are concurrently the subject of determination by a Civil Court with the possible result of conflicting decisions upon practically the same evidence, especially when the adjournment of the criminal proceedings would necessarily be very prolonged. **2 A.L.J. 747=A.W.N. 1905, 254.**

(2372)—*S. 344—Scope—Accused person in custody of Magistrate—Power to remand to police custody.*—S. 344, Crim. Pro. Code, does not empower the Magistrate to remand an accused person in custody of the Magistrate to police custody for the purpose of obtaining information with regard to the offences which the accused may be alleged to have committed. **4 Bom. L.R. 878.**

(2373)—*S. 344—Costs of adjournment—Discretion of Magistrate.*—A Magistrate has a discretion to require from the accused the costs of an adjournment, when he is not entitled to the adjournment asked for. **9 C.W.N. 18.** [*F.*, 28 A. 207=2 A.L.J. 831=A.W.N. 1905, 256; *R.*, 28 A. 209 (*N*)=A.W.N. 1905, 257 (*N*)].

(2374)—*S. 344 (=s. 194, Crim. Pro. Code, 1872)—Remanding of accused person to jail and deferring examination of witnesses and postponing enquiry—Record of grounds.*—Where a Magistrate acts under s. 194, by deferring the examination of witnesses and adjourning the enquiry and remanding the prisoners, he is bound to express clearly on the record "the reasonable cause" from which it becomes necessary or advisable to do so. **6 M. 63=2 Weir 409.**

(2375)—*S. 344—Stay of criminal proceedings during pendency of a civil suit.*—There is no hard and fast rule that a criminal case should be stayed pending the disposal of a civil suit from which the criminal case has arisen or with which it is intimately connected. If a Magistrate, on a consideration of all the circumstances, exercises his discretion and either stays proceedings in the criminal case pending the dispcsal of the civil suit, or declines to do so, the High Court, as a Court of Revision, will not, as a general rule, interfere with the exercise of such discretion. If the object of prosecuting criminal proceedings, while a civil suit in relation to the same matter or a matter intimately connected

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therewith is pending, be in reality to have a preliminary enquiry before the Magistrate into the matter of the suit, and to prejudice the trial of the civil suit, or to coerce the accused into a compromise of the civil suit on terms to be practically dictated by the complainant, the Magistrate should, as a general rule, postpone the enquiry into or trial of the criminal case till the disposal of the civil suit. **2 Weir 415.**

(2376)—*S. 344—Adjournment of Criminal Proceedings, costs of, whether Court may order accused to pay.*—The accused, in this case, was absent on the date of the hearing. He was not represented by any pleader or counsel and the adjournment of the case was altogether necessary since the Court could not proceed with the trial or record evidence in the absence of the accused. It was *held* that the costs of the adjournment could not be awarded against the accused person and that it would be entirely opposed to the spirit of conducting criminal trials to impose such terms on the accused, even when granting adjournment for his benefit and at his request. **6 P.R 1906 Cr.=4 Cr. L.J. 78 =114 P.L.R. 1907.**

(2377)—*Ss. 344 and 526—Magistrate declining to postpone hearing of case—Commencement of hearing.*—Where the counsel for the accused made an application for adjournment under s. 344 of the Criminal Procedure Code, and, on this being refused, made an application under s. 526 and the Magistrate holding that the former application was a "commencement of the hearing" refused this application also, *held*, that the action of the Magistrate was illegal and his proceedings were *ultra vires*. It was obligatory on him to postpone the case under s. 526, for an application under s. 344 is an application to postpone the commencement of the enquiry and is not a commencement of the hearing. **24 P.L.R. 1904.** (15 C. 455, *F.*)

(2378)—*S. 344—Adjournment of criminal case—Reasons for adjournment.*—The complainant preferred a charge under ss. 406 and 411 of the Penal Code against the accused in respect of certain jewels. He had already instituted a civil suit for the recovery of the same jewels and got a decree in her favor after the institution of the complaint. The accused, defendants in the civil suit, appealed from the decree and applied to the Criminal Court to adjourn the trial on the ground that the same matter was in dispute in the appeal. *Held*, that "reasonable cause" in s. 344 of the Crim. Pro. Code, is some cause which will enable the Court to have before it all the materials relevant for the enquiry, and that the circumstances of the case would not constitute such cause since the decision in appeal would not be relevant for the criminal case and since the adjournment would delay the case for a long time while all the available evidence was forthcoming, and had also been recorded. **A.W.N. 1905, 254=2 A.L.J. 747.**

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(2379)—S. 344, Crim. Pro. Code, relates to proceedings in inquiries and trials and has nothing to do with police investigation, and it contemplates a remand to jail and not to police custody. **Cr. Rg. 55 of 1897.**

(2380)—*S. 344—Orders as to costs on adjournment.*—A Court, under s. 344 of the Crim. Pro. Code, is entitled to award costs as a condition precedent to adjourning a case and make the same payable by the party for whose benefit the case is adjourned. **A.W.N. 1905, 257 note = 28 A. 209 note.** [*R.*, 28 A. 207 = 2 A.L.J. 831 = A. W.N. 1905, 256].

(2381)—S. 344—*See* ACCUSED PERSON, 2 Weir 414.

(2382)—S. 344—*See* COMPLAINANT, 4 M.H. C. App. S.

(2383)—S. 344—*See* COSTS, 20 P.R. 1904 Cr.

(2384)—S. 344—*See* Nos. 1618, 1839, *supra*, and No. 3478, *infra*.

——S. 345 (=1882, s. 345 ; 1872, s. 188 ; 1861, s. 271) ; para 5 of this section, new.

See COMPOUNDING OFFENCE.

(2385)—*S. 345—Dispute between two sets of persons—Death of one in one set—Compromise with another.*—A person, to whom an injury is caused, is the only persou who can compound a case. Where there was a fight between two sets of persons, and one man in one set died in consequence of the injuries received, *held*, that the other members of the same set could not compromise the case on behalf of the deceased, even though the hurt which resulted in his death was simple hurt. **6 A.L.J. 882.**

(2386)—*S. 345—Compounding an offence—Accused pleading not guilty—Compromise valid—Intervention of respectable persons.*—In a case, wherein the accused does not plead guilty, and the matter is settled by respectable persons and a compromise entered into, the Court is not concerned to inquire into the nature or value of the consideration ; and if the complainant considers that his grievance is redressed, by the fact of respectable persons intervening, even though he may not have received any money payment or even a direct apology from the accused, the complainant is at full liberty to compound the prosecution. **2 S.L.R. 16 Cr. = 10 Cr. L.J. 228.**

(2387)—*Ss. 345, 170 and 63—Compounding of offences by police officers.*—Under ss. 170 and 63 of the above Code, a police officer is not empowered to allow the compounding of any offence himself, but should send it to the Court of the Magistrate to be so compounded. **U.B. R. (1892—1896), Vol. I, 42.**

(2388)—*S. 345—Compounding of offences—Court's discretion.*—When a Court gives permission, for an offence (a compoundable one) to be compounded, it should record particulars sufficient to show that it has reasonably exercised its powers of discretion given by law. **U.B.R. (1892—1896), Vol. I, 43.**

(2389)—The Court is bound to exercise a sound and reasonable discretion in granting permission to compound a charge of an offence, under s. 324, Penal Code, of voluntarily causing hurt with a dangerous weapon. **U.B.R. (1897—1901), Vol. I, 83.**

(2390)—*S. 345 (=Crim. Pro. Code, 1882, s. 345)—Compounding—Acquittal—Retrial.*—A person, charged under s. 324 of the Penal Code, cannot, if the offence has been compounded with the permission of the Court, be again tried on the same facts on a charge under s. 323, I.P.C., if the composition, which has the effect of an acquittal, is still in force. **Rat. Un. Cr. C. 519 = Cr. Rg. 43 of 1890.**

(2391)—*Ss. 345 and 250 (=Crim. Pro. Code, 1882, ss. 345, 560)—Penal Code, ss. 447, 448 and 323—Compounding of offences.*—A Bench of Magistrates directed in a case under ss. 447, 448, 323, I.P.C., which was compounded under s. 345, Crim. Pro. Code, that the complainant should pay one rupee to each of the acoused persons as *compensation* under s. 560, Crim. Pro. Code. *Held*, that the proceedings of the Magistrate were irregular inasmuch as the procedure prescribed by s. 560, Crim. Pro. Code, was not carried out ; they were also bad on the ground that the case did not come under s. 560, an order under which can be passed only when there is a discharge or an acquittal *by the Court on a trial of the case.* **7 C.P.L.R. Cr. 2.**

(2392)—*Ss. 345 (d), 439—Revision of criminal case—Compounding of offence after conviction.*—In two cross-cases, the accused persons were convicted under ss. 325 and 147, I.P.C. On appeal the charges of grievous hurt and rioting were eliminated and their conviction under s. 323, I.P.C., was ordered. On revision, an application was made to give effect to the compounding of offences which the accused persons had agreed to in the meanwhile. The Chief Court granted the application. **67 P.L.R. 1904.**

(2393)—Ss. 345, 250—*See* COMPOUNDING OFFENCE, Rat. Un. Cr. C. 700. Rat. Un. Cr. C. 957.

(2394)—Ss. 345 and 403—*See* COMPOUNDING OFFENCE, L.B.R. (1893—1900), 240.

(2395)—S. 345 (1 to 4, 6, 7)—*See* CRIMINAL TRESPASS, 22 C. 123.

(2396)—S. 345—*See* PENAL CODE, s. 214, 3 A. 283.

(2397)—Ss. 345, 526—*See* TRANSFER OF CRIMINAL CASES, L.B.R. (1893—1900), 392.

(2398)—S. 345—*See* WITHDRAWAL OF PROSECUTION, Rat. Un. Cr. C. 330 = Cr. Rg, 20 of 1887.

(2398-*a*)—S. 345—*See* Nos. 1485, 1859-*b*, 1886, 1887, 1893, 1896, 1928, *supra*.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

——S. 346 (=1882, s. 346; 1872, s. 345, paras 1 and 2; 1861, *cf.* s. 276).

See COMMITMENT TO SESSIONS COURT.

See MAGISTRATE, JURISDICTION OF.

(2399)—*S. 346 (=Crim. Pro. Code, Act X of 1882, s. 346)—Reference by second class Magistrate to Sub-Divisional Magistrate—Procedure.*—Where a second class Magistrate submits a case under s. 346 of the Crim. Pro. Code to the Sub-Divisional Magistrate considering it to be beyond his own jurisdiction, the latter cannot return it on the ground that he had already passed an order that it was only a second class case. He is bound to dispose of the case in one of the ways prescribed by the section. **Rat. Un. Cr. C. 554=Cr. Rg. 30 of 1891.**

(2400)—*S. 346—Case referred to superior Magistrate.*—A subordinate Magistrate referred a case to the District Magistrate under s. 346 of the Code. The District Magistrate would have had power to try it only under that section. He, instead of trying the case himself, accepted the plea put in before the lower Court, which was not actually a plea of guilty. The plea was neither made before the District Magistrate nor was it recorded by himself. He simply contented himself, with taking evidence of the previous convictions without taking any evidence as to the guilt of the accused. Since the reference was under s. 346 and not s. 349 and the evidence taken by the subordinate Magistrate was not evidence in the trial before the District Magistrate, the procedure adopted by the District Magistrate, was illegal. Conviction set aside and re-trial ordered. **106 P.L.R. 1905.**

(2401)—*Ss. 346, 347.*—A Subordinate Magistrate must refer immediately to a superior Court cases in which there is reason to believe that an offence beyond his own jurisdiction has been committed, and must be careful to avoid taking cognizance of a major offence as a minor. **U. B.R. (1897—1901), Vol. I, 84.**

(2402)—*Ss. 346, 347 and 348—Proceedings stayed by first class Magistrate during trial—One of the accused previously convicted—District Magistrate should try case* de novo.—Where a Sub-Divisional Magistrate of the first class, during the trial of two accused, found that one of them had been previously convicted, and accordingly stayed proceedings and submitted the case to the District Magistrate under s. 348, Crim. Pro. Code, *held* that, under s. 346, the Sub-Divisional Magistrate was at liberty to stay proceedings at any time during the enquiry or trial and submit the case to the District Magistrate. *Held, also*, that what the District Magistrate had to do was to try the case himself *de novo* under s. 346 (2), Crim. Pro. Code, 1898. **U.B.R. (1897—1901), Vol. I, 85.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2403)—*Ss. 346, 349 (=Crim. Pro. Code, 1861, ss. 276, 277)—Jurisdiction of Magistrates in respect of the offence of theft.*—When a theft has been committed, any Magistrate has jurisdiction to try it. But if, in the course of the trial, it shall appear to the Magistrate that an offence has been committed which he is not competent to try, or that a more severe punishment is required than he can inflict, his duty is to submit the case to the Magistrate to whom he is subordinate under s. 276 or s. 277, as the case may be. When, therefore, theft is accompanied with a breaking of a closed receptacle and the case is brought before a second class Magistrate, he ought to act under s. 276, for the offence of breaking a closed receptacle is one which he is not competent to try. The lower tribunal cannot properly clutch at jurisdiction by dealing with theft alone. **2 Weir 420.** [*R.*, 24 M. 675=2 Weir 699].

(2404)—*Ss. 346, 349, 350 and 537—Subordinate Magistrate submitting record for severe sentence—Conviction by District Magistrate based on that record, procedure, legality of—Curing of illegalities by consent.*—A subordinate Magistrate having found, after the completion of a trial, that the accused deserved a more severe punishment that he could inflict, sent the case to the District Magistrate. The District Magistrate, treating the case as sent up under s. 346 of the Code, asked the accused whether they wanted the witnesses to be recalled and reheard, and, on their replying in the negative, proceeded to judgment and convicted the accused without trying the case afresh. *Held*, that the procedure adopted by the District Magistrate was illegal. The consent of the accused cannot dispense with compliance with the provisions of the Code; illegalities cannot be cured even by consent. **91 P.L.R. 1905=2 Cr. L.J. 369.**

(2405)—*Ss. 346, 532—Commitment made under s. 346*—De novo *trial, necessity for.*—A commitment made to the Sessions by a Magistrate acting under the powers conferred by s. 346 is not illegal, merely because he has not examined *de novo* the witnesses who were examined by the Magistrate who submitted the case under the provisions of that section. To the case of an accused thus committed to the Court of Sessions, s. 532 has no application. **12 C.W.N. 136.**

(2406)—*S. 346 (=Crim. Pro. Code, 1882, s. 346)—Previous convictions.*—In a charge of stealing after conviction of similar offences, to establish the full charge and to maintain a conviction, it is necessary that the previous convictions be proved, in other words, previous convictions must be proved before conviction for the complex charge. The Magistrate, in such cases, will be justified in taking action under s. 346, Crim. Pro. Code. **A.W.N. 1894, 200.**

(2407)—S. 346—*See* COMPLAINT, 4 B.H.C. Cr. 34.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2408)—Ss. 346, 347—*See* KIDNAPPING, 30 P.R. 1886 Cr.

(2409)—S. 346—*See* MAGISTRATE, JURISDICTION OF, 4 M. 327 = 2 Weir 419.

(2410)—Ss. 346, 350—*See* MAGISTRATE, JURISDICTION OF, Rat. Un. Cr. C. 472.

(2411)—S. 346 (2)—*See* TRANSFER OF CRIMINAL CASES, 1 L.B.R. 308.

(2411-*a*)—S. 346—*See* Nos. 1088, 1970, 1971, 2354, *supra*.

——S. 347 (=1882, s. 347; 1872, ss. 46, para 3, 221, 436, para 3 ; 1861, s. 256).

See COMMITMENT TO SESSIONS COURT.

See MAGISTRATES, JURISDICTION OF.

(2412)—*S. 347 (= Crim. Pro. Code, 1861, s. 256) Commitment to Sessions.*—S. 256 authorises a Magistrate, at any stage of the proceedings in a trial before him, to stop further proceedings under Ch. XIV (Ch. XXI of the Code of 1898) and proceed in accordance with Ch. XII (Ch. XVIII of the Code of 1898). Where the trial is not concluded, although it has arrived at a stage not far off from the conclusion, he is fully competent, at that stage, to refrain from concluding the trial and to commit the case to the Sessions. It is not necessary to make an enquiry *de novo* under Ch. XII(Ch.XVII of the Code of 1898). **1 N.W P. 307.**

(2413)—*Ss. 347, 349 (= Crim. Pro. Code, 1872, s. 46).—Reference to superior Magistrate.*—S. 46 only authorises a reference to the superior Magistrate, when the subordinate Magistrate considers that the accused should receive a severer sentence than he himself is competent to inflict. But, where a subordinate Magistrate is clearly competent to inflict a severer sentence than he proposed, a reference under s. 46 is not proper. **A.W.N. 1881, 99.** [*R.*, A.W.N. 1881, 161].

(2413-*a*)—S. 347—*See* Nos. 166, 1609, 1619, 2018, 2401, 2402, 2408, *supra*.

——S. 348 (=1882, s. 348 ; 1872, s. 350).

(2414)—*S. 348 (= Crim. Pro. Code, 1872, s. 315) —Habitual offender.*—To constitute an "habitual offender" within the meaning of s. 315 of the Crim. Pro. Code, it is necessary that the subsequent offences charged should have been committed by the accused after the previous conviction. **Rat. Un. Cr. C. 143.**

(2415)—*S. 348—Old offenders—Procedure.*—Old offenders should ordinarily be charged before a first class Magistrate. **2 Weir 422.**

(2416)—*Ss. 348, 349—Old offender—Procedure.*—The provisions of s. 349 are subject to the express provisions of s. 348. Where the accused is an old offender, a second class Magistrate trying the offender, should commit him to the Sessions under s. 348, unless he is of opinion that he can himself pass an adequate sentence. **2 Weir 423.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2417)—Ss. 348, 350—*See* FRESH TRIAL, 15 C.P.L.R. Cr. 66.

(2418)—Ss. 348 and 349—*See* MAGISTRATE, JURISDICTION OF, 4 L.B.R. 282.

(2418-*a*)—S. 348—*See* Nos. 2303, 2402, *supra*, and No. 3554, *infra*.

——S. 349 (=1882, s. 349 ; 1872, s. 46 ; 1861, s. 277.

See COMMITMENT TO SESSIONS COURT.

See MAGISTRATE, JURISDICTION OF.

(2419)—*Ss. 349 and 530 (1)—Reference under the section—Powers of the Magistrate to whom reference is made.*—A Magistrate to whom a case is submitted under s. 349, has no power to send it back to the referring Magistrate. He must dispose of it himself by acquitting or convicting and sentencing the accused or committing the accused for trial. **26 A. 344 = A.W.N. 1904, 42.**

(2420)—Though a Magistrate, to whom a case is referred for higher punishment, should, as a rule, pass final orders, and should not refer the case back to the referring Magistrate to pass orders which he could pass himself, he is not debarred from committing the case or referring it to an officer of higher powers than himself. **1 L.B.R. 141.**

(2421)—*Ss. 349, 530.*—Where a case is submitted to a Magistrate under s. 349, he should not transfer it to another Magistrate for disposal. The proceedings of the latter would be void under s. 530 (1). **U.B.R. 1905, Crim. Pro. Code, 33 = 2 Cr. L.J. 464.**

(2422)—*S. 349 (= Crim. Pro. Code, 1872, s. 46)—Reference to superior—Magistrate under —His duty and his powers.*—When the proceedings of a case are submitted, under s. 46 of the Crim. Pro. Code, to the Magistrate of the District, he is bound to pass such judgment, sentence, or order in the case as he deems proper, and as is according to law. He has no power to order a new trial by the Court of Session or any other Court, unless he considers that an offence has been committed which was not within the jurisdiction of the Magistrate before whom the trial was held. **Rat. Un. Cr. C. 130.**

(2423)—Where a case is referred to a District Magistrate under s. 46, by a subordinate Magistrate, it is not competent to him to return the case to the subordinate Magistrate. **6 C.L.R. 276.** [*F.*, Rat. Un. Cr. C. 479, A.W. N. 1904, 42 = 26 A. 344].

(2424)—A Magistrate, to whom an accused person has been sent by a subordinate Magistrate for enhanced punishment, has no power to send the case for enquiry to another Magistrate. **4 M. 233.** [*R.*, 2 L.B.R. 285, F.B.]

(2425)—A Magistrate to whom a case is referred under s. 46, Code of 1872, by a subordinate Magistrate for the purpose of awarding a

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

more severe punishment than he is competent to award, may direct the subordinate Magistrate to commit the case to the Sessions Court. A committal made by the subordinate Magistrate, under such circumstances, is legal. **1 M. 289=2 Weir 425, F.B.** [*R.*, 13 C. 305, Rat. Un. Cr. C. 472, 2 L.B.R. 285, F B.]

(2426)—A Head Assistant Magistrate, to whom an accused is sent up for enhancement of punishment, has no power to send the case for inquiry to another Magistrate. **2 Weir 424.**

(2427)—It is in the discretion of a subordinate Magistrate trying a case to send it up to a superior Magistrate under s. 46. But the latter has no authority to direct the subordinate Magistrate to send up the case to him. **2 Weir 427.**

(2428)—*S. 349 (=Crim. Pro. Code, 1882, s. 349), reference under—Jurisdiction and powers of Magistrate to whom reference is made—Duty of referring Magistrate to record opinion.* —Where proceedings are sent to a Magistrate, under s. 349, the whole case is opened up for him to deal with it according to his discretion. **Rat. Un. Cr. C. 350=Cr. Rg. 40 of 1887.**

(2429)—A Magistrate, to whom proceedings are submitted under s. 349, is not at liberty to return the case to the submitting Magistrate but must dispose of it himself. He has the power to commit to Sessions, if necessary. **9 M. 377=2 Weir 427.** [*F.*, A.W.N. 1904, 42=26 A. 344; *R.*, 2 L.B.R. 285].

(2430)—A Magistrate of the second or third class, in submitting his proceedings to another Magistrate for a severer punishment than he can himself inflict, is required to record his opinion only, but cannot legally convict the accused. It is the duty of the Magistrate to whom a case is so referred to pass judgment according to law. **Rat. Un. Cr. C. 387=Cr. Rg. 38 of 1888.** [*R.*, Rat. Un. Cr. C. 479, 564].

(2431)—A Sub-Divisional Magistrate to whom a case is submitted under s. 349 of the Crim. Pro. Code, cannot send it back to the Magistrate for disposal. He must himself pass such judgment as he thinks fit. **Rat. Un. Cr. C. 479=Cr. Rg. 44 of 1889.**

(2432)—Where a Magistrate of the second or third class submits a case to the District Magistrate with his opinion, the District Magistrate should not confine himself to considering whether the Magistrate's decision is manifestly opposed to the evidence, but should consider the whole evidence and pass a judgment stating the points for determination and the reasons for his decision. **Rat. Un. Cr. C. 636=Cr. Rg. 13 of 1893.**

(2433)—Where a second class Magistrate refers a case to a District Magistrate under s. 349, Crim. Pro. Code, the latter Magistrate is competent to deal with it in his discretion according to law. **Rat. Un. Cr. C. 948=Cr. Rg. 54 of 1897.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2434)—*S. 349—Irregular proceedings under—Power of District Magistrate.*—When a Magistrate acts irregularly under s. 349, it is open to the District Magistrate to take the case on his own file or to transfer it to that of some first class Magistrate, the proceedings, in either case, being taken *de novo*. **2 Weir 422.**

(2435)—*S. 349 (=Crim. Pro. Code, 1882, s. 349)—Several accused persons—Proceedings against some only, when legal—Procedure—Competency of superior Magistrate to act on evidence recorded by referring Magistrate.*—Where several persons are charged, a second class Magistrate is not bound to proceed against all the accused under s. 349, when only some of them deserve, in his opinion, a more severe punishment than it is competent to him to inflict. But it is desirable, however, to forward all the accused to the superior Magistrate. A superior Magistrate, who deals with the accused under s. 349, is not precluded from acting on the evidence recorded by the subordinate Magistrate or from adopting his opinion. It is in the discretion of the superior Magistrate to re-examine witnesses already examined by the subordinate Magistrate and to take further evidence. Although the latter cannot record a judgment against the accused who are sent up for enhanced punishment, yet he is entitled to record his opinion, and there is nothing illegal in his referring to a judgment recorded by him against some of the accused whom he has convicted, as embodying the opinion he has to record. **2 Weir 428.**

(2436)—In cases where several accused persons are charged before a Magistrate, it is competent for him to convict some of them and send up the rest to a superior Magistrate for enhanced punishment. **2 Weir 429.**

(2437)—*S. 349—Recording defence evidence and reference under,—to District Magistrate—District Magistrate sending the case for re-trial to another Magistrate—Legality of procedure.* —A third class Magistrate, after he had drawn up a charge of theft against the accused and recorded evidence for the defence, sent the case to the District Magistrate for enhancement of sentence under s. 349, Crim. Pro. Code. The District Magistrate quashed the proceedings and sent the case to a first class Magistrate for re-trial. *Held*, that the procedure adopted by the District Magistrate was illegal. **P.L.R. 1900, 37 Cr.**

(2438)—*S. 349—Sentence under.*—When a case is sent under the provisions of s. 349 of the Criminal Procedure Code to the District Magistrate, or the Sub-Divisional Magistrate, such Magistrate is not competent to inflict a punishment more severe than he is empowered to inflict under ss. 32 and 33. When the District Magistrate in such a case sentenced the accused under ss. 379, 75, Penal Code, to seven years' rigorous imprisonment, including three months' solitary confinement, the Chief

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

Court, on appeal, reduced the sentence to rigorous imprisonment for two years, including solitary confinement for three months. **163 P.L.R. 1903.** (10 P.R. 1881 Cr., *F.*)

(2439)—*S. 349—Reference to the District Magistrate—Order, meaning of—Antedating a sentence, illegal.*—Where a 3rd class Magistrate refers a case under s. 349, Crim. Pro. Code, to the District Magistrate recording that the accused should receive a punishment different in kind from what he could inflict, the District Magistrate is bound to pass final orders on such reference and cannot return the case to the 3rd class Magistrate for disposal. The word "order" in s. 349 means a final order disposing of the case. It is not legal to antedate a sentence. **1 L.B.R. 124.** (4 B. 240, 10 B. 196, *F.*)

(2440)—*Ss. 349, 364, 367 (=Crim. Pro. Code, 1872, ss. 46, 346, 464)—Reference to superior Magistrate—Return of proceedings for omission to record statements of accused persons—Power of subordinate Magistrate to record a different finding.*—Where a subordinate Magistrate found that the offence committed by the accused persons before him was a grave one and deserving of more severe punishment than he was competent to adjudge, and submitted the proceedings to the District Magistrate, who, however, returned the proceedings on finding that the subordinate Magistrate had omitted to record in writing the statements of the accused as required by s. 346, and directed the Magistrate to supply the defect, *held*, that the District Magistrate was competent to return the proceedings and that the subordinate Magistrate was also competent to come to a fresh and different conclusion as to the guilt of the accused and acquit some of them. **2 Weir 426.** [*R.*, 2 Weir 429].

(2441)—S. 349—*See* DISTRICT MAGISTRATE, 12 P.R. 1903 Cr.

(2442)—S. 349—*See* PRISONER, 7 B.H.C. Cr. 31.

(2443)—S. 349—*See* REFERENCE TO HIGH COURT, Rat. Un. Cr. C. 222.

(2444)—S. 349—*See* SUMMARY TRIAL, 4 L.B.R. 277.

(2445)—S. 349—*See* WHIPPING, Cr. Rg. 8—12—1870.

(2445-*a*)—S. 349—*See* Nos. 166, 167, 168, 171, 420, 430, 431, 1323, 1324, 1332, 1861, 1981, 2350, 2403, 2404, 2413, 2416, 2418, *supra*.

——S. 350 (=1882, s. 350; 1872, ss. 328, 329).

See COMMITMENT TO SESSIONS COURT.

See CONVICTION.

See MAGISTRATES, JURISDICTION OF.

See PRACTICE AND PROCEDURE.

(2446)—*S. 350 (=Crim. Pro. Code, 1882, s. 350)—Scope of.*—S. 350 is intended to provide for a case where an enquiry or trial has been commenced before one incumbent of a particular Magisterial post, and that officer ceases to exercise jurisdiction in that post, and is succeeded by another officer. **12 A. 66.** [*F.*, 1 L.B.R. 301, 15 C.P.L.R. 66, 17 C.P.L.R. 159, 1 N.L.R. 187; *R.*, 25 P.R. 1905 Cr., 175 P.L.R. 1903=14 P.R. 1903 Cr., 12 C.W.N. 140=6 Cr. L.J. 434].

(2447)—S. 350 applies only to a case where a Magistrate ceases to exercise jurisdiction and is succeeded by another Magistrate who has and exercises such jurisdiction. **20 C. 870.** [*R.*, U B.R. (1897—1901), 87 Cr.].

(2448)—*S. 350—Trial by Sessions Judge on evidence recorded partly by another Judge—Applicability of section.*—The Code of Criminal Procedure does not empower a Sessions Judge to try a case partly on evidence not recorded by himself; and the consent on the part of the accused to such a trial cannot vest in him a jurisdiction to do so. S. 350, Crim. Pro. Code, applies solely to Magistrates. **26 B. 50=3 Bom.L.R. 558.**

(2449)—S. 350, Crim. Pro. Code, applied only to Magistrates and not to Sessions Judges. **7 C. P.L.R. Cr. 1.** (3 M. 112, *R.*)

(2450)—*S. 350—Applicability of, to cases transferred from one Magistrate to another—Preliminary inquiry, not a trial and not provided for by proviso (a).* The words of the section are applicable to cases in which the case under inquiry or trial is withdrawn from one Magistrate, who thereupon ceases to exercise jurisdiction *therein*, and is transferred to another, and the latter is not, therefore, bound to re-hear all the prosecution witnesses. A "register case" or preliminary inquiry into an accusation of an offence triable exclusively by a Court of Session is not a trial before the charge is framed, but an inquiry and, therefore, not provided for by proviso (*a*) to s. 350. **5 M.L.T. 218=9 Cr. L.J. 146=32 M. 218=1 Ind. Cas. 54.**

(2451)—*S. 350 (=Crim. Pro. Code, 1872, s. 328)—Medical witness, examination of.*—In order to render the examination of a Civil Surgeon or a medical witness admissible in evidence against any individual, without calling that person as a witness, the examination must have been taken by the Magistrate in the presence of the accused. **12 C.L.R. 233.**

(2452)—*S. 350—Transfer of case—Conviction on evidence partly recorded by the former Magistrate—Validity.*—Where, after several witnesses were examined, the case was transferred to another Magistrate, *held*, that the latter acted irregularly in convicting the accused on evidence partly recorded by the former Magistrate. The irregularity could not be waived by the accused, as s. 350 did not apply to such a case. **12 C.W.N. 140=6 Cr. L.J. 434.** [*Diss.*, 12 C.W.N. 416=35 C. 457=7 C.L.J. 483=7 Cr. L.J. 220; *Approved*, 5 M.L.T. 218].

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2453)—*Ss. 350 and 528*—De novo *trial*—*Change of trying Magistrate—Applicability of s. 350.*—The provisions of s. 350, Crim. Pro. Code, apply to all cases in which cases are transferred for whatever reasons from the file of one Magistrate to that of another. When a case is transferred under s. 528, Crim. Pro. Code, from the file of one Magistrate to that of another, the former ceases to exercise jurisdiction in the case and is succeeded by the latter in the exercise of the jurisdiction within the meaning of s. 350, Crim. Pro. Code. **12 C.W.N. 416=7 Cr. L.J. 220=7 C.L.J. 488=35 C. 457.**

(2454)—*Ss. 350, 528.*—When a case is withdrawn or transferred under s. 528, the proceedings should be commenced afresh. Also, the accused should be informed of their option under s. 350. (20 C. 870, 2 W.R. Cr. 53, *R.*) S. 350 does not apply to cases withdrawn under s. 528. **U.B.R. (1897–1901), Vol. I, 87.**

(2455)—*S. 350—Trial* de novo—*Case of defamation—Final orders should be by Magistrate who examines complainant—Exclusion of documentary evidence—Probative value—Inspection.*—Where, on the transfer of a case, the accused do not apply for a trial *de novo*, the action of the Magistrate, in convicting the accused on the evidence recorded partly by the former Magistrate and partly by himself, is not strictly without jurisdiction. It is most desirable, however, in a case of defamation, that the examination and cross-examination of the complainant should be held in the presence of the Magistrate who has *seizin* of the case, and passes final orders therein. A piece of documentary evidence should not be excluded merely on the ground that it is of little evidentiary value, and without being looked into by the Court. **13 C.W.N. 550.**

(2456)—*S. 350—Part-heard trial—One Magistrate succeeding another—Procedure of succeeding Magistrate—Right of accused.*—S. 350 of the Crim. Pro. Code gives the second Magistrate an alternative. He can act on the evidence recorded by his predecessor or partly recorded by his predecessor and partly recorded by himself, or he may summon the witnesses and recommence the enquiry or trial. But he cannot do both. The accused may demand that the witnesses or any of them be re-summoned and re-heard. Where an accused demands that all the witnesses are to be re-summoned and re-heard, he compels the second Magistrate to adopt the second alternative course and to recommence the trial or enquiry. When the second Magistrate resummons none or only some of the witnesses previously examined and acts on the evidence partly recorded by his predecessor and partly recorded by himself, he adopts the first alternative and does not recommence the enquiry or trial. If the second Magistrate recommences the trial, he has full power to deal with the case and can discharge the accused, or, if he thinks fit, frame a charge. He cannot act on the charge, if any, framed by his predecessor, or on any depositions or examination of the accused recorded by him. **2 L.B.R. 17.**

(2457)—*Ss. 350, 537 (=Crim. Pro. Code, 1882, ss. 350 and 537)—Meaning of word "trial"—Proper time for re-summoning and re-hearing witnesses—Refusal to re-call witnesses—Effect.*—*Per* Maclean, C. J.—The word "trial" means the proceeding which commences when the case is called on, with the Magistrate on the Bench, the accused in the dock, and the representatives of the prosecution and for the defence, if the accused be defended, are present in Court for the hearing of the case. The proper time for the accused to ask for the re-summoning and re-hearing of the witnesses, according to s. 350, proviso (*a*), is, as soon as the trial commences before the second Magistrate, and this is the case even though an interlocutory application for enforcing the attendance of certain witnesses may have been previously granted by the Magistrate. *Per Banerjee, J.*—A trial held by a Magistrate presiding in the Court of first instance on evidence not recorded by him, and on evidence of witnesses whose manner and demeanour he had not the advantage of observing, must be considered to be a trial held not according to law and without one of the most important guarantees for a correct decision, and to have occasioned a failure of justice. S 537 cannot cure such defect. **25 C. 863=2 C.W.N. 465.** [*D.*, 3 P.R. 1903 Cr.]

(2458)—*S. 350 (=Crim. Pro. Code, 1872, s. 328)—Magistrate cannot decide case on evidence taken by his predecessor.*—A Deputy Magistrate must, on succeeding his predecessor who had enquired into the case, recall the witnesses *de novo* and examine them himself. He cannot decide the case on the evidence recorded by his predecessor. **23 W.R. Cr. 62.**

(2459)—*S. 350 (=Crim. Pro. Code, 1872, s. 328)—Evidence heard by one Magistrate and case decided by another—Irregularity not prejudicing accused—High Court will not interfere—See* **24 W.R. Cr. 12.**

(2460)—Ss. 350, 256, 356, 357—*See* ACCUSED PERSON, 1 L.B.R. 238.

(2461)—*S. 350—See* BENCH OF MAGISTRATES, 23 C. 194.

(2462)—Ss. 350, 437—*See* FURTHER ENQUIRY, 6 A. 367.

(2463)—Ss. 350, 537—See JUDGMENT, 3 P.R. 1903 Cr., 6 P.R. 1884 Cr.

(2464)—S. 350—*See* MAGISTRATE, JURISDICTION OF, 22 M. 47=2 Weir 430.

(2465)—Ss. 350, 107 (1)—*See* SECURITY TO KEEP THE PEACE, 4 C.L.R. 452.

(2466)—S. 350—*See* SESSIONS JUDGE, JURISDICTION OF, 3 M. 112=2 Weir 430.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2467)—S. 350—*See* TRANSFER OF CRIMINAL CASES, 12 C.W.N. 138, 1 L.B.R. 287.

(2468)—S. 350—*See* WITHDRAWAL OF CASE, 1 L.B.R. 139.

(2468-*a*)—S. 350—*See* Nos. 54, 121, 123, 1103, 1324, 1552, 1575, 1951, 2017, 2103, 2404, 2410, 2417, *supra*, and No. 2998, *infra*.

——S. 351 (=1882, s. 351; 1872, s. 104; 1861, s. 206).

(2469)—*S. 351 (=Crim. Pro. Code, 1872, s. 104; 1861--1869, s. 206)—Preliminary investigation.*—S. 206, Crim. Pro. Code, 1861, applies to investigations preliminary to commitment for a subsequent trial, and not to cases where the trial is actually being proceeded with. **14 W.R. Cr. 20.**

(2469-*a*)—S. 351—*See* Nos. 1243, 1259, 2051, *supra*.

——S. 352 (=1882, s. 352; 1872, s. 187; 1861, s. 279).

(2470)—*Ss. 352, 537 (=Crim. Pro. Code, 1882, ss. 352, 537)—Evidence given at previous trial taken as examination-in-chief—Evidence Act, ss. 138, 167, 33.*—Where, in a case in which two parties, Hindus and Mahomedans, were accused of rioting, the Magistrate, in the trial of the Hindus, after that of the Mahomedans was over, instead of examining the witnesses, had the copies of the examination-in-chief of the witnesses recorded in the former trial produced in the present trial, and the accused in the second trial cross examined the witnesses, no objection being taken to the procedure, on the prisoner's behalf, *held*, that the procedure adopted was irregular, but the irregularity was cured by the provisions of s. 537, as the matter elicited in cross examination was sufficient to sustain the conviction. **9 A. 609.**

——S. 353 (=1882, s. 353; 1872, s. 191, para 1; 1861, s. 194).

(2471)—*S. 353(=Crim.Pro.Code,1861,s. 194) —Examination of complainant—Presence of accused.*—Under s. 194 of the Crim. Pro. Code, 1861, it is not enough to read over the deposition of the complainant in the presence of the accused person. The examination must take place in his presence. **Rat. Un. Cr. C. 24=Cr. Rg. 23—9—1869.**

(2472)—*S. 353 (=Crim. Pro. Code, 1872, s. 353).*—A Magistrate who reads over the evidence of the witnesses to the accused recorded in their absence, the accused being allowed to cross-examine the witnesses, acts irregularly; a Magistrate reading the deposition of a witness previously recorded and asking him if it is true, commits an illegality as the procedure amounts to putting him a leading question and impliedly intimating to him that the same story is expected from him again. If the accused interrupted the Magistrate intentionally with a view to delay the proceedings, he should be dealt with according to law, but nothing would excuse such an illegal proceeding as covering his face by placing a cloth across his mouth while the evidence was being recorded. **5 C P.L.R. Cr. 33.**

(2473)—*S. 353—Evidence.*—It is irregular to import into a case the evidence given in another case by merely reading over a deposition to a witness and asking him if it was correct. **L.B.R. (1872—1892), 399.**

(2474)—S. 353—*See* WITNESS, S. C. 86, Oudh.

(2474-*a*)—S. 353--*See* No. 325, *supra*.

——S. 354 (=1882, s. 354; 1872, s. 332).

(2474-*b*)—S. 354—*See* No. 423, *supra*.

——S. 355 (=1882, s. 355; 1872, ss. 222, 333; 1861, s. 267).

(2475)—*S. 355 (=Crim. Pro. Code, 1872, s. 333)—Evidence recorded in memorandum form.*—In a case of theft combined with a charge of previous conviction, the Magistrate should not record the evidence in the form of a memorandum, as such offence is not triable summarily. **2 Weir 432.** [*F.*, 2 Weir 433].

(2476)—*S. 355 (=Crim. Pro. Code, 1882, s. 355)—Summons case—Reading over of the recorded deposition.*—In a summons case, the reading over of the recorded deposition is not prescribed by law, and its omission cannot, therefore, *per se* be regarded as a fatal defect. **2 Weir 433.**

(2477)—*S. 355 (=Crim. Pro. Code, 1882, s. 355)—Affirmation of a re-called witness.*—Where a witness is re-called shortly after the close of his first deposition, the further statement must be deemed to be made under the original affirmation. **2 Weir 433.**

(2478)—*Ss. 355, 263, 264—Summary trial—Record, particulars of—Ingredients of offence charged—Substance of evidence must be embodied in judgment—S. 355, applicability of.*—After a summary trial, the petitioner was convicted of being in possession of a stolen bundle of clothing. There was no evidence to show that he had any guilty knowledge. *Held*, that the conviction could not stand, as the proceedings did not disclose any offence against the petitioner. *Held*, also, that the Magistrate's record in summary trials, however brief, must show the necessary ingredients of the offence charged. It is not necessary for a record of evidence to be made in summary trials, even where an appeal lies, but s. 264 provides that the substance must be embodied in a judgment as well as the particulars in s. 264. S. 355 merely prescribes a briefer record in summons cases and other cases, which may be tried summarily, when they are, as a matter of fact, tried regularly. **3 L.B.R. 3=2 Cr. L.J. 375.**

(2479)—*Ss. 355, 356, 357, 537 (=Crim. Pro. Code,1882,ss. 355, 356, 357 and 537)—Summons cases—Power of Native second class Magistrate*

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

to record memorandum of evidence in English. —There is no provision of law which renders it illegal for a Native second class Magistrate to record the memorandum of the substance of evidence of each witness mentioned in s. 355 in English. Even if the procedure were irregular, the irregularity will not vitiate the trial, unless a failure of justice has been occasioned thereby. **19 M. 269=2 Weir 433=6 M.L.J. 134.**

(2480)—Ss. 355 to 364—*See* CONFESSION, 2 C.W.N. 702.

(2481)—Ss. 355, 300, 301, 302, 303, 306, 307—*See* JURY, 4 C.L.R. 405.

(2481-*a*)—S. 355—*See* Nos. 917, 1300, 2033, 2034, 2038, 2480, *supra*.

——S. 356 (=1882, s. 356 ; 1872, s. 334 ; 1861, s. 195).

(2482)—*Ss. 356 and 537—Mode of recording evidence and revision in case of any irregularity, etc.*—A defect in the Magistrate's procedure, *viz.*, recording the evidence of witnesses in English language with his own hand and not in the language of the Court, as required in s. 356 of the Code, is merely an irregularity and not an illegality which would vitiate the trial. The essence of the rule contained in the 1st clause of s. 356 of the Code is the taking down in writing of the evidence of each witness and not the taking down in writing of the same in the language of the Court, as is shown by the provisions of s. 357 of the Code, under which, if the local Government so directs, the evidence may be taken down in the mother tongue of the Judge or in English. **6 O.C. 73.**

(2482-*a*)—S. 356—*See* Nos. 917, 1546, 2234, 2460, 2479, 2480, *supra*.

——S. 357 (=1882, s. 357 ; 1872, s. 335 ; 1861, s. 196).

(2483)—*Ss. 357, 360, 537 and 540 (=Crim. Pro. Code, 1882, ss. 357, 360, 537, 540)—Omission to interpret evidence to witness.*—By the mere fact of the evidence as recorded by a Sessions Judge not being interpreted to the witnesses, the conviction of the accused did not become illegal, such omission, although amounting to an irregularity, not having prejudiced them. **S.C. 275, Oudh.** (8 W.R. Cr. 63, 7 C. 393, *R.*).

(2484)—*Ss. 357, 537 (=Crim. Pro. Code, 1882, ss. 357, 537)—Magistrate taking evidence in his own hand-writing not being so authorised —Commitment—Irregularity.*—Where a Magistrate who is authorised to take down depositions in his own hand-writing, while he is in one district, is transferred to another district, his authority remains in force only so long as he remains in the district in which it has been conferred. But, if after such transfer, he takes down depositions in his own hand-writing and makes a commitment, the commitment, although irregular, is valid, unless the accused has been prejudiced thereby. **2 Weir 434.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2485)—S. 357—*See* PRACTICE AND PROCEDURE, 2 Weir 434=5 M.H.C. App. 9.

(2485-*a*)—S. 357—*See* Nos. 2460, 2479, 2480, *supra*.

——S. 358 (=1882, s. 358 ; 1872, s. 336 ; 1861, s. 268).

(2485-*b*)—S. 358—*See* No. 2480, *supra*.

——S. 359 (=1882, s. 359 ; 1872, s. 338 ; 1861, s. 198).

(2485-*c*)—S. 359—*See* No. 2480, *supra*.

——S. 360 (=1882, s. 360 ; 1872, s. 339 ; 1861, ss. 193, 199).

(2486)—*S. 360 (=Crim. Pro. Code. 1882, s. 360)—Evidence of witnesses.*—S. 360 directs that the evidence of each witness should be read over to him in the presence of the accused, and the accused cannot pay attention to it, if the evidence of the next witness is proceeded with. **2 Weir 435.**

(2487)—*Ss. 360, 361 (=Crim. Pro. Code, 1872, ss. 339, 340)—Witnesses not understanding depositions read over to them.*—S. 339, Crim. Pro. Code, 1872, is for the protection of witnesses. The mere fact that the witnesses did not understand their depositions when read over to them, if they have not required them to be interpreted, does not afford any ground for the accused in the case to have his conviction set aside. **7 C.L.R. 393.**

(2488)—S. 360—*See* FORGERY, 36 C. 955.

(2489)—S. 360—*See* PERJURY, 12 C.W.N. 845=8 Cr. L.J. 116.

(2489-*a*)—S. 360—*See* Nos. 1421, 2480, 2483, *supra*.

——S. 361 (=1882, s. 361 ; 1872, s. 340 ; 1861, s. 200).

(2489-*b*)—S. 361—*See* No. 2487, *supra*.

——S. 362 (=1882, s. 362 ; 1872, s. 338 ; 1861, s. 198).

(2490)—*S. 362—Presidency Magistrate, in what cases bound to record evidence.*—A Presidency Magistrate is not bound to record evidence in any summons cases or warrant cases or cases in which enquiries have to be made as in summons cases or warrant cases, except where he may impose a fine exceeding two hundred rupees or imprisonment for a term exceeding six months. He is bound to record evidence only in cases coming under s. 362 of the Code. But, however, it is desirable that the Presidency Magistrates should keep some record of the statements made by witnesses or that their judgment should indicate what these statements are, so that the High Court, as a Court of Revision, may judge of the propriety or legality of the orders passed by them. **33 C. 1036=4 C.L.J. 408=4 Cr. L.J. 368.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2491)—*Ss. 362 and 370—Presidency Magistrate—Recording of reasons for conviction—Recording of evidence in appealable and non-appealable cases.*—S. 362 of the Code prescribes that the evidence in appealable cases, that is, in which a Presidency Magistrate imposes a fine exceeding Rs. 200 or imprisonment for a term exceeding six months, shall be duly recorded. There is no obligation in law to record evidence in other cases. In s. 370, it is enacted that, instead of recording a regular judgment, a Presidency Magistrate need only record certain specified particulars (*a*) to (*h*) and (*i*) in all cases in which the Magistrate inflicts imprisonment or fine exceeding Rs. 200 or both, a brief statement of the reasons for conviction. The brief statement of reasons must be such as is sufficient to satisfy the High Court, upon revision, that there were sufficient materials before the Magistrate to support the conviction. **31 C. 983 = 8 C.W.N. 839.**

(2491-*a*)—S. 362—*See* Nos. 2351, 2480, *supra*.

——S. 363 (= 1882, s. 363 ; 1872, s. 341 ; 1861, s. 249).

(2492)—*S. 363 (= Crim. Pro. Code, 1882, s. 363)—Untrustworthiness of witness, when to be pronounced by the Judge.*—It is always unsafe to pronounce an opinion on the credibility of a witness, until the whole of the evidence has been taken ; a Judge may note the demeanour of a witness, but except, where there is very clear proof afforded by his own statements that the witness is unworthy of credit, it is unsafe to assume that it is so, till the evidence has been exhausted. **2 Weir 435.**

(2493)—S. 363—*See* CONFESSION, 2 C.W.N. 702.

(2494)—S. 363—*See* PENAL CODE, s. 420, 9 Cr. L.J. 261 = 1 S.L.R. 20 Cr.

(2494-*a*)—S. 363—*See* Nos. 1088, 2480, *supra*.

——S. 364 (= 1882, s. 364 ; 1872, s. 346, paras 1 to 4 ; 1861, s. 205).

See ACCUSED PERSON.

See CONFESSION.

See EXAMINATION OF ACCUSED.

(2495)—*S. 364 (= Crim. Pro. Code, 1882, s. 364)—Right of refusal by accused to disclose witnesses to be examined by him in Sessions Court.*—An accused person is entitled, when before a committing Magistrate, to reserve his defence and to refuse to disclose the names of the witnesses whom he intends to call at the sessions trial. **14 A. 242.** [*R.*, 19 A. 502].

(2496)—*S. 364 (= Crim. Pro. Code, 1882, s. 364)—Statement of accused—Language—Record.*—A second class Magistrate, before whom a *Bhil* accused person makes a statement in the *Marathi* language, should record the statement in that language and not in English. **Rat. Un. Cr. C. 633 = Cr. Rg. 4 of 1893.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2497)—*S. 364 (= Crim. Pro. Code, 1882, s. 364)—Statement—Signature of accused, how to be made.*—The signature of an accused person to a statement recorded under s. 361 should be made in the immediate presence and under the control of the Magistrate himself. To take the signature of the accused in an adjoining room before a clerk, and not in the immediate presence of the Magistrate, is not a proper compliance with the section. **Rat. Un. Cr. C. 687 = Cr. Rg. 8 of 1894.**

(2498)—The signing of a confessional statement by a prisoner in the form of mark is sufficient under s. 364. **2 Weir 437.**

(2499)—*S. 364 (= Crim. Pro. Code, 1861, s. 205)—Examination of accused before a Magistrate—Admissibility in Court of Sessions.*—If the examination of an accused person before a Magistrate is afterwards read in evidence at the trial before the Court of Sessions, under s. 366, the whole of it should be read out. It must be pointed out to the jury or assessors that the statement is evidence against the author only. **5 M.H.C. App. 4.**

(2500)—*S. 364 (= Crim. Pro. Code, 1872, s. 346)—Irregularity in recording confessions—Effect.* The omission to certify a confession as required by s. 346, and to record the whole of the questions put to the prisoner, although irregular, will not be material, unless the accused has been prejudiced thereby. **2 Weir 436.**

(2501)—*S. 364 (= Crim. Pro. Code, 1882, s. 364)—Confessional statements—Procedure of Magistrate.*—A Magistrate, when he is examining a prisoner or asking him whether he pleads guilty or not, should refrain from assuming that he is guilty of the crime with which he is charged. The proper mode is to tell the prisoner that he is charged with a certain offence and ask him if he has any explanation to give, and whether he wishes to make any statement. **2 Weir 438.**

(2502)—*S. 364—Examination of accused—Improper question.*—In examining an accused person under s. 364 of the Code, it is improper to ask him such a question, as, "If you did not commit the murder, who did ?". **7 O.C. 191.**

(2503)—*S. 364 (2)—Accused person refusing to sign record—S. 180, I.P.C., offence under.*—An accused person, who refuses to sign the record, which the Court made of the questions put to and the answers given by him, does not commit an offence punishable under s. 180 of the Penal Code. The procedure indicated by s. 364 (2) of the Criminal Procedure Code involves the Magistrate offering the record for the accused's signature, but it does not empower the Magistrate to require his signature. It is only when a person refuses to sign a statement which a public servant is legally empowered to require him to sign, that he renders himself liable to punishment. **4 Cr. L.J. 205 = 3 L.B.R. 199.**

(2504)—Ss. 364, 424—*See* JUDGMENT, 11 C. 449.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2505)—S. 364—*See* MAGISTRATE, JURISDICTION OF, 24 C. 499=1 C.W.N. 435.

(2506)—S. 364—*See* PENAL CODE, s. 180, 1 Weir 113.

(2506-*a*)—S. 364—*See* Nos. 1104, 1108, 1110, 1112, 1113, 1114, 1115, 1116, 1123, 1124, 1125, 1843, 1980, 2281, 2361, 2440, 2480, *supra*, and No. 3563, *infra*.

——S. 366 (=1872, ss. 211, para 3, 462).

See JUDGMENT.

(2507)—*Ss. 366, 367 (=Crim. Pro. Code, 1882, ss. 366, 367)—Necessity for written judgment before pronouncing decision* —Inasmuch as the sentence in the case of a conviction, and the direction to set aside the accused at liberty in the case of an acquittal, can only follow on the decision and cannot precede it, and inasmuch as the decision must be contained in a written judgment, the sentence is illegal when there is no written judgment when it is passed. **14 A. 242**. [*F.*, 27 M. 237=2 Weir 440; *R.*, 23 C. 502].

(2508)—Ss. 366, 367, 537—*See* JUDGMENT, 21 C. 121, A.W.N. 1892, 157, 23 C. 502.

(2508-*a*)—S. 366—*See* Nos. 1354, 1860, 1926, 1952, 2235, *supra*.

—— S. 367 (=1882, s. 367; 1872, ss. 255, last para, 287, para 2, 461, 463, 464; 1861, ss. 380 and 381; *cf.* ss. 429, 430).

See JUDGMENT.

(2509)—*Ss. 367, 369, 537 (=Crim. Pro. Code, 1872, s. 464)—Scope of.*—The judgment contemplated in s. 464, Crim. Pro. Code, 1872, is the final judgment or order, embracing the sentence as well as the finding. **2 Weir 426.**

(2510)—*S. 367 (=Crim. Pro. Code, 1861, s. 429)—Petitions, applicability of section to.*—S. 429 of the Crim. Pro. Code does not apply to orders on all petitions, but only to final orders made in the trial and investigation of offences. **Rat. Un. Cr. C. 61.**

(2511)—*S. 367—Accused convicted, but no judgment written—Death of Magistrate—Procedure.*—The accused were convicted by a second class Magistrate, who died suddenly after he had sentenced them, but before he had written his judgment in the case. The District Magistrate, thereupon, referred the case to the High Court with a view to get the conviction quashed and to have a re-trial ordered. The High Court declined to interfere in the matter, holding that it was for the accused either to have moved the High Court or to have exercised their right of appeal. **1 Bom. L.R. 117.**

(2512)—The accused was convicted of theft under s. 379, I.P.C., by a second class Magistrate, who died suddenly after he had sentenced the accused but before he had completed his judgment in the case. The District Magistrate,

Crim. Pro Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

thereupon, made a reference to the High Court with a view to get the conviction quashed and to have a re-trial ordered. The High Court, after considering the reasons given by the District Magistrate and also the petition of the accused, reversed the conviction recorded against and the sentence passed upon him, and ordered him to be re-tried by a competent Court. **1 Bom. L.R. 160.**

(2513)—*S. 367 (=Crim. Pro. Code, 1861, s. 429)—Filing of Urdu translation of sentences and final orders by Magistrates in Tirhoot.*—Notwithstanding the fact that the evidence is recorded in the English language alone, it is still necessary that an Urdu translation of all sentences and final orders passed by Magistrates (in Tirhoot) should be filed as enjoined by s. 429. **1 W.R. Cr. Letters, 5.**

(2514)—*S. 367—Judgment written by predecessor, but dated, signed and pronounced by successor—No irregularity.*—Under s. 367 of Crim. Pro. Code, it is not necessary that the presiding officer of the Court, who wrote the judgment, should be the same person as the presiding officer, who is required to date, sign and pronounce it, in open Court. **18 M.L.J. 197=7 Cr. L.J. 459.**

(2515)—*S. 367 (=Crim. Pro. Code, 1872, s. 464)—Omission to record a judgment or final order—Effect—Appeal.*—An omission to record a judgment or final order in all the matters required by the Code of Criminal Procedure, Ch. XXXIV (XXVI of the Code of 1898), is an irregularity. If the circumstances of the case render such irregularity unavoidable, and if the irregularity is not one which can seriously prejudice the accused, the last clause of s. 464 cures it. The right of appeal, wherever it exists, is not taken away by the absence of a complete judgment. **2 Weir 438.** [*R.*, 17 M.L.J. 107].

(2516)—*S. 367—Omission to state in judgment under which of two sections an offence fell —Effect.*—An omission to state in a judgment in express terms, under which of two sections the offence fell, would amount, at the most, to an irregularity and would not vitiate the judgment. **2 Weir 440.**

(2517)—*S. 367—Recording proceedings in pencil—Initialling evidence of witnesses—Writing of judgment.—Held*, that pencil writing, though not precluded in so many words by the law, is precluded by common sense and common usage; that initialling the evidence of witnesses is not signing, and that s.s367, Crim. Pro. Code, clearly prescribes in whose handwriting the judgment must be. **S.C. 192, Oudh.**

(2518)—*S. 367 (=Crim. Pro. Code, 1882, s. 367)—Capital punishment, reasons for not passing, upon a conviction under s. 302, I.P.C.* —The fact that the assessors differed from a Sessions Judge as to the guilt of the accused convicted by him of murder, is not a sound reason for his abstaining from passing a sentence of death. Some of the reasons which

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

appeared to the Court sufficient for not passing a capital sentence on a conviction under s. 302, Penal Code, pointed out. The extreme penalty of the law should be reserved for cases of deliberate murder, for cases where murder is committed to facilitate the commission of some other offence, or to avoid arrest for an offence, and for other heinous cases of murder. **L.B. R. (1893—1900), 112.**

(2519)—*Ss. 367, 369, 421, 422, 423—Dismissal of appeal for default - Jurisdiction of Court to restore—Procedure with regard to appeals.*—A District Magistrate who has ordered the dismissal of a criminal appeal, merely by reason of the non-appearance of the appellant, is competent to set aside such order, and thereafter to hear and decide the appeal according to law, and s. 369 is no bar. The Code does not permit the dismissal of an appeal, upon the ground that the appellant does not appear to support it. If a criminal appeal is not dismissed summarily under s. 421 of the Crim. Pro. Code, its disposal is governed by s. 423, and though the Court *may* select which of the courses therein provided it will follow, it *must* necessarily follow one or more of them. The non-appearance of both parties does not relieve the Court of the imperative duties of sending for the record, perusing it and giving judgment in compliance with ss. 367 and 423, Crim. Pro. Code. Ss. 422 and 423, Crim. Pro. Code, make it imperative in a criminal Appellate Court to hear the appeal at the time and place named in the notices of appeal issued by it, and a hearing of which no notice has been given is illegal. **5 N.L.R. 76=9 Cr. L.J. 553 =2 Ind. Cas. 247.**

(2520)—*Ss. 367, 374 (=Crim. Pro. Code, 1861, s. 380)—Chemical Examiner's report—Admissibility in evidence.*—The Chemical Examiner's report can be read and acted upon as evidence by Magistrates as well as Sessions Judges. **6 M.H.C. App. 11**

(2521)—*Ss. 367 and 421—Summary dismissal of appeal—Duty of appellate Court to write out judgment.*—There is nothing in the Code of Criminal Procedure which requires a Court, when dismissing an appeal summarily under s. 427, to write a judgment in conformity with the provisions of s. 367. There is nothing in Rule No. 7 of the Rules printed at pages 167 to 175, Criminal Rules of Practice, 1896, in conflict with the above principle. The meaning of that rule is that, in all cases other than those dealt with under s. 421, the reason for the decision should be given. **25 M. 534=2 Weir 473.** [*F.*, U.B.R. 1906, 2nd Qr., Crim. Pro. Code, 49=4 Cr. L.J. 284].

(2522)—*Ss. 367 and 537—Judgment, language and script of a—Irregularity, if cured—Going into facts in revision to determine if re-trial necessary.*—Under s. 367 of the Code, the judgment of a Criminal Court should be written in the language of the Court or in English. Where an Honorary Magistrate had written his judgment in Urdu the script used being Persian. *Held*, this was irregular, and that the judgment should have been written in Hindi which was the language of the Court or in English, and the script should have been in the former case, as directed by the local Government, in Kaiti, and Roman in the latter. *Held*, also, that such an irregularity was cured by s. 537 of the Code. Although, ordinarily, the High Court does not go into evidence when exercising its power of revision under s. 439 of the Code, yet it will do so in a particular case, when necessary, for instance, to ascertain whether a re-hearing should be directed. **4 C.L.J. 232=4 Cr. L.J. 162.**

(2523)—*Ss. 367, 369, 537 (=Crim. Pro. Code, 1872, s. 464)—Magistrate signing judgment when accused is at large.*—A Magistrate cannot pronounce and sign a judgment, as under ss. 367 and 537 of the Code, when the accused is at large. Any paper, therefore, purporting to be a judgment not so signed and pronounced is invalid and without effect as a judgment. **Colm. Dig. Cr. 7 of 1873.**

(2524)—*S. 367 (5)—Sentence of death—Responsibility of Judge in respect of practice.*—Where a Judge is in doubt whether a sentence of death or a sentence other than death should be passed in a capital case, the doubt, like all the other doubts, should result in favour of the accused. It is quite erroneous and illegal that, feeling reasonable doubt as to whether death alone can be the proper penalty, the Judge should yet pass a sentence of death leaving the responsibility to the High Court of commuting it if necessary. There is no authority in law for holding that a Sessions Judge has any right to devolve his responsibility, in respect of sentence in a capital case on a higher tribunal. **3 L.B.R. 111=3 Cr. L.J. 25.**

(2525)—*Ss. 367, 369 (=Crim. Pro. Code, 1872, s. 464, para 1)—Alteration of illegal sentence.*—A Sessions Judge cannot alter or set aside a conviction and sentence once made and signed by him. The sentence may be altered on reference to the High Court. **23 W. R. Cr. 49.**

(2526)—*S. 367—Charge to jury—Record of head of charge.*—In a trial by a jury before a Sessions Judge, the record made by the Judge of the heads of his charge to the jury under the proviso to s. 367, Crim. Pro. Code, should include such a statement as will enable an appellate Court to decide whether the evidence has been properly laid before the jury or whether there has been any misdirection in the charge. **A.W.N. 1903, 232.**

(2527)—*Ss. 367 and 424—Appeal—Judgment, contents of—Charges of theft and unlawful assembly—Ss. 379 and 143, Penal Code—Points for determination.*—The judgment of any appellate Court other than a High Court must, under s. 367 read with s. 424, Crim. Pro. Code,

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

contain, among other things, the point or points for determination, the decision thereon and the reasons for the decision. In case of a charge under s. 379, Penal Code, one of the points for determination is, whether there was a dishonest intention on the part of the person taking away the property, especially when the taking away of the property is admitted and the accused sets up a *bona fide* claim of right thereto. And in case of a charge under s. 143, I.P.C., one of the points for determination is, where there was an unlawful assembly, and the judgment should therefore contain a statement as to the presence of the conditions which constitute the unlawful assembly in the particular case. **37 C. 194 = 11 C.L.J. 410.**

(2528)—Ss. 367, 424—*See* APPEAL, Rat. Un. Cr. C. 772.

(2529)—Ss. 367 and 424—*See* APPELLATE COURT, 18 P.R. 1887 Cr.

(2530)—Ss. 367, 424—*See* JUDGMENT, 31 P.R. 1884 Cr., 18 P.R. 1897, A.W.N. 1888, 280.

(2531)—Ss. 367, 537—*See* JUDGMENT, Rat. Un. Cr. C. 137, 20 C. 353.

(2532)—Ss. 367, 537, 369, 372—*See* JUDGMENT, 6 P.R. 1876 Cr.

(2533)—S. 367—*See* MURDER, 1 L.B.R. 216.

(2534)—S. 367—*See* PENAL CODE, s. 441, 5 P.R. 1886 Cr.

(2535)—Ss. 367, 421, 439 (1 to 4)—*See* REVISION, 8 A. 514.

(2536)—Ss. 367, 369—*See* SENTENCE, Rat. Un. Cr. C. 804.

(2536-*a*)—S. 367—*See* Nos. 237, 575, 631, 1077, 1110, 1354, 1576, 1952, 1965, 2047, 2184, 2232, 2440, 2507, 2508, *supra*, and Nos. 2717, 2735, 2736, 2789, 2790, 2829, 3610, *infra*.

——S. 368, para 1 (=1882, para 1; 1872, s. 321; 1861, ss. 50, 51, 53); and para 2 (=1882, s. 368, para 2; 1872, s. 319).

(2537)—S. 368 (p. 1)—*See* MAGISTRATE, JURISDICTION OF, 3 M.H.C. App. 29.

——S. 369 (=1882, s. 369; 1872, s. 464, para 1).

See JUDGMENT.

(2538)—*Ss. 369 and 437—Order for further enquiry—Power of District Magistrate.*—The terms of s. 369 of the Code must be read as controlled by s. 437. The section does not limit the power of a District Magistrate to make further inquiry into a case in which an order of dismissal or discharge may have been passed by a subordinate Magistrate. There is no bar to a District Magistrate making further enquiry himself into a case in which such order may have been passed by himself. **28 C. 102.** [*R.*, 2 M.L.T. 24 = 5 Cr. L.J. 132 = 17 M.L.J. 153].

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2539)—*Ss. 369, 439 (= Crim. Pro. Code, 1882, ss. 369, 439)—Review of judgment—High Court Division Bench.*—A Division Bench of the High Court could not review an order which they have already made, as a Court of revision, under s. 439, Crim. Pro. Code. **10 B. 176.** [*F.*, 14 C. 42, 23 B. 50, 1 P.R. 1909 Cr. = 9 Cr. L.J. 306; *R.*, Rat. Un. Cr. C. 791, 3 Bom. L.R. 271 = 25 B. 675. 4 Bom. L.R. 55, U.B.R. (1905), Crim. Pro. Code, 35; *D.*, Rat. Un. Cr. C. 659, 10 C.L.J. 80, 27 A. 92 = 1 A.L.J. 495].

(2540)—*Ss. 369 and 439.*—When the High Court has passed an order in revision under s. 439, it has no power to review its own order. **U.B.R. (1905), Crim. Pro. Code, 35 = 2 Cr. L.J. 465.**

(2541)—*Ss. 369, 480, 481—Judgment—Interpolation by Magistrate—Contempt of Court—Procedure—Penal Code, s. 228—Interruption or insult—Intention.*—No Magistrate can add to or alter the proceedings or judgment in any case after they are signed and published. It is especially irregular when made in the absence of the accused and without notice to him. The directions contained in s. 481 of the Code are mandatory and the omission to record the particulars mentioned in that section in any proceedings taken under s. 480, is fatal to such proceedings. The principal ingredient of an offence, under s. 228, I.P.C., is intentional insult or interruption, **10 C.W.N. 1062 = 4 Cr. L.J. 415 = 4 C.L.J. 210.**

(2542)—Ss. 369, 537—*See* JUDGMENT, A.W.N. 1898, 11.

(2543)—S. 369—*See* REFERENCE TO HIGH COURT, 22 B. 949.

(2544)—S. 369—*See* REVIEW, Rat. Un. Cr. C. 791, 7 A. 672, 14 C. 42.

(2545)—Ss. 369, 439 (1 to 4)—*See* REVIEW, Rat. Un. Cr. C. 458.

(2545 *a*)—S. 369—*See* Nos. 193, 1442, 1880, 1965, 2024, 2218, 2509, 2519, 2523, 2525, 2532, 2536, *supra*.

——S. 370 (=1882, s. 370).

See JUDGMENT.

(2546)—*S. 370—Recording of reasons for conviction, necessity for—Presidency Magistrates.*—Although s. 370 allows a Presidency Magistrate to record merely the reasons for a conviction, instead of recording a judgment, this must be done in such a manner that the High Court, in revision, may be in a position to judge whether there were sufficient materials before him to support the conviction. Where a Presidency Magistrate convicted a person under ss. 67 and 74 of Bengal Act VII of 1878, and there was not in the record any summary of the evidence, nor such a statement of the facts as would enable the High Court to say whether the materials were sufficient to support

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

the conviction, nor anything to show that the accused had been previously convicted, *held*, that the conviction should be set aside. **8 C.W.N. 587.**

(2547)—S. 370—*See* PRESIDENCY MAGISTRATE, 27 C. 461=4 C.W.N. 467.

(2547-*a*)—S. 370—*See* No. 2491, *supra*.

——**S. 371 (=1882, s. 371).**

(2548)—S. 371—*See* COURT FEES, Rat. Un. Cr. C. 364=Cr. Rg. 9 of 1888.

——**S. 372 (=1882, s. 372; 1872, s. 464, para 3).**

(2548-*a*)—S. 372—*See* No. 2532, *supra*.

——**S. 373 (=1882, s. 373; 1872, s. 302, para 1; 1861, s. 384).**

(2548-*b*)—S. 373—*See* No. 2554, *supra*.

——**S. 374 (=1882, s. 374; 1872, s. 287, para 1; 1861, s. 380).**

(2549)—*S. 374 (=Crim. Pro. Code, 1882, s. 374)—Confirmation of sentence of death—Special verdict—Duty of Judge.*—In cases sent up to the High Court for confirmation of sentence of death under s. 374, Crim. Pro. Code, it is the practice of that Court to be satisfied, on the facts as well as the law of the case, that the conviction is right, before it proceeds to confirm the sentence. S. 342, Crim. Pro. Code, imposes on the trying Court to imperative duty of questioning an accused person for the purpose of enabling him to explain any circumstances appearing in the evidence against him. Where, instead of the ordinary verdict in the form of "guilty" or "not guilty," a special verdict stating facts found by them is returned by the jury, and this special verdict is ambiguous or defective in regard to matters forming part of the offence, *e.g.*, intention, knowledge, common design or abetment, it is the duty of the Judge to ascertain its meaning by questioning the jury under s. 303, Crim. Pro. Code. In dealing with a special verdict, the Judge is confined to the facts positively stated in the verdict, and cannot himself supply by intendment or implication any defect in the statement. **Rat. Un. Cr. C. 710=Cr. Rg. 42 of 1894.**

(2550)—*Ss. 374, 375, 376 (=Crim. Pro. Code, 1862, ss. 374, 375, 376)—Case referred to High Court—Its powers.*—Although the trial of an accused is by a jury, ss. 375 and 376 show that, in a case submitted for confirmation of sentence of death under s. 374, the High Court must deal with the case upon the facts, as well as with reference to any questions of law arising in it, and that its powers are not limited in the way they are in an appeal from a conviction in a trial by jury. **2 C.W.N. 49.**

(2550-*a*)—S. 374—*See* Nos. 2520, 2550, *supra*.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

——**S. 375 (=1882, s. 375; 1872, s. 289; 1861, s. 400).**

(2550-*b*)—S. 375—*See* No. 2550, *supra*.

—— **S. 376 (=1882, s. 376; 1872, s. 288; 1861, s. 399).**

(2551)—*S. 376 (=Crim. Pro. Code, 1872, ss. 288, 287)—Conviction by verdict of jury—Facts of case.*—In a reference to the High Court under s. 287, Act X of 1872, the Court must, under s. 288, go into the facts of the case, notwithstanding that the conviction was by the verdict of a jury. **19 W.R. Cr. 57.**

(2552)—Ss. 376, 439—*See* FULL BENCH, 2 A. 218, F.B.

(2553)—S. 376—*See* REFERENCE TO HIGH COURT, 1 B. 639.

(2553-*a*)—S. 376—*See* No. 2550, *supra*.

——**S. 379 (=1882, s. 379; 1872, s. 301, para 1; 1861, s. 383).**

(2554)—Ss. 379, 373 (=Crim. Pro. Code, 1861, ss. 383, 384 and 386)—*See* WARRANT, 7 W.R. Cr. Cir. 2.

——**S. 380 (=1872, s. 18).**

(2555)—*Ss. 380 and 562—Reference to superior Magistrate—Power of such Magistrate.*—A second class Magistrate found the accused guilty of an offence under s. 322 of the Penal Code and he sent the record and the accused to the District Magistrate under s. 562 of the Crim. Pro. Code. The District Magistrate, sent the case back to the second class Magistrate pointing out s. 562 was inapplicable. *Held*, the District Magistrate's order was illegal inasmuch as s. 380 of the Crim. Pro. Code enacts that such Magistrate may pass such sentence or order as he might have passed or made if the case had originally been heard by him, and he could not have sent the case to the second class Magistrate for the purpose of sentence if he had originally heard it. **4 L.B.R. 150=7 Cr. L.J. 449.**

(2556)—Ss. 380, 562, 563—*See* SECURITY TO KEEP THE PEACE, 2 L.B.R. 137.

(2557)—S. 380—*See* SENTENCE, 9 C.P.L.R. Cr. 29.

(2558)—S. 380—*See* SESSIONS JUDGE, JURISDICTION OF, Rat. Un. Cr. C. 314=Cr. Rg. 69 of 1886.

(2558-*a*)—S. 380—*See* Nos. 196, 198, *supra*.

——**S. 382 (=1882, s. 382; 1872, s. 306).**

(2559)—*S. 382 (=Crim. Pro. Code, 1872, s. 306)—Power of postponing the execution of a sentence of death.*—The High Court is the only judicial tribunal in which the law has vested the power of postponing the execution of a sentence of death passed and confirmed on a woman found to be pregnant. **2 Weir 441.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2560)—*S. 382 (=Crim. Pro. Code, 1872, s. 306)—Capital sentence on pregnant woman.*—Where a woman, who is pregnant, is convicted of murder, capital sentence should be passed on her, notwithstanding her pregnancy, although the execution of the sentence should be deferred, and although it may be a reason for commutation of the sentence by the High Court. **34 P.R. 1878 Cr.**

——**S. 383 (=1852, s. 383; 1872, s. 302-A, cl. 1).**

(2561)—*Ss. 383, 439 and 562—Receiving stolen property—S.411 of the Indian Penal Code—Illegality of sentence of imprisonment for the period already passed in lock-up—Accused aged 18 years—Whipping not proper in the case of an accused of position.—Held*, that a sentence of imprisonment for the period passed in lock-up is illegal, but a sentence of imprisonment until the rising of the Court is good in, and fulfils the requirements of the law. *Held*, also, that a sentence of whipping is not appropriate in the case of an accused person of good position in life. The record was accordingly returned to the lower Court for disposal in accordance with law either for passing proper sentence or to be dealt with under s. 562, Crim. Pro. Code. **9 P.W.R. 1907 Cr.=5 Cr. L.J. 217.**

(2561-*a*)—S. 383—*See* No. 2221, *supra*.

——**S. 384 (=1882, s. 384; 1872, s. 303; 1861, s. 222).**

(2562)—*S. 384 (=Crim. Pro. Code, 1872, s.303)—Signature of Magistrate*—When the law prescribes that a proceeding should be signed by a Judicial Officer, it, ordinarily, intends the signature should be made with a pen and not with a stamp. A warrant of commitment under s. 303 should be signed and not stamped. **6 M. 396=2 Weir 328.**

——**S. 386 (=1882, s. 386; 1872, s. 307, para 1; 1861, s. 61).**

(2563)—*S. 386(=Crim. Pro. Code, 1861, s. 61)—Attachment and sale—Jurisdiction.*—S 61 of the Crim. Pro. Code does not authorize the Magistrate to issue an order for attachment and subsequently one for sale. When he has issued a warrant for the levy of fine, he cannot give direction as to the time of the sale. **Rat. Un. Cr. C. 29=Cr. Rg. 18--1—1870.**

(2564)—*S. 386—Attachment for fine—Claim by third party—Procedure.*—No provision is made in the Code for inquiring into title, where a claim by a third person is made to property attached for the realization of a fine. But the Courts must stay the sale of the property and allow sufficient time to the claimant to establish his right to the property, unless, by reason of the nature of the property, an immediate sale enures for the benefit of the owner in which case the proceeds should be held over. **Rat. Un. Cr. C. 976=Cr. Rg. 30 of 1898.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2565)—*S. 385 (=Crim. Pro. Code, 1861, s. 62)—Order under the section without notice.*—An order under s. 62 without any notice to the accused is illegal. **4 M.H.C. App. 67.**

(2566)—*S. 386 (=Crim. Pro. Code, 1872, s. 307)—Mode of levying pecuniary penalties.*—The mode of levying pecuniary penalties must be strictly confined to the provisions of the law that gives the jurisdiction. S. 307 directs that the warrant for the levy of the fine shall authorize the distress and sale of any moveable property belonging to the offender. The section, therefore, is not applicable to mere rights and interests or shares in joint moveables. **2 Weir 442.**

(2567)—*S. 386—Attachment of moveable property belonging to an Alayasantana family.*—The complainant brought a charge of assault against the first accused and others who, with the complainant, formed members of an Alayasantana family. The accused were acquitted and the complainant was ordered to pay compensation. *Held*, that the seizure of moveable property belonging to the family, in execution of the warrant of attachment, was illegal. **2 Weir 443.**

(2568)—*S. 386 (=Crim. Pro. Code, 1872, s.307)—Levy in State of fine imposed by British Indian Court.*—A fine adjudged by a British Indian Court cannot be levied in a Native State, as the provisions of the Code are applicable only to procedure within British India. **2 Weir 444.**

(2569)—*S. 386 (=Crim. Pro. Code, 1872, s. 307), moveable property—Growing crops.*—Growing crops are not moveable property for the purposes of s. 307. **2 Weir 444.**

(2570)—*S. 386 (=Crim. Pro. Code, 1872, s. 307)—Dispute regarding the ownership of article distrained.*—Where there is a dispute regarding the ownership of moveable property distrained under s. 307, it would be better for a Magistrate, before proceeding to order a sale, to allow the claimant the opportunity of establishing his title in a Court having jurisdiction to determine civil rights. **2 Weir 445.**

(2571)—S. 386—*See* ACT XXVI OF 1850, s. 7, Rat. Un. Cr. C. 58.

(2572)—S. 386—*See* BEN. ACT XXI OF 1856, 17 W.R. Cr. 7.

(2573)—S. 386—*See* FINE, 20 C. 478.

(2574)—S. 386—*See* MAGISTRATE, JURISDICTION OF, 22 C. 935.

(2575)—Ss. 386, 144—*See* PENAL CODE, s. 188, Rat. Un. Cr. C. 30.

(2575-*a*)—S. 386—*See* Nos. 88, 193, 364, 1929, *supra*.

——**S. 387 (=1882, s. 387; 1872, s. 307, para 2).**

(2575-*b*)—S. 387—*See* Nos. 193, 1929, *supra*.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

——S. 388, para 1 (=1882, s. 388); para 2, new.

(2576)--*S. 388 (=Crim. Pro. Code, 1882, s. 388)—Omission to pass sentence of imprisonment in default of payment of fine—Power to bind over the accused to re-appear in his own recognisance.*—Where a Magistrate omits to pass a sentence of imprisonment in default of payment of fine, he has no power to bind over the accused in his own recognisance to appear. **2 Weir 445.**

(2577)—*S. 388, cl. 2—Scope of the section.*—S. 388, cl. 2, clearly contemplates the issue of a warrant, but the object of the section (which in terms applies to all orders for repayment of money whether by way of fine or compensation, on non-recovery of which imprisonment may be awarded) is to enable the Court to pass sentence of imprisonment without waiting for the return of the warrant, if the person ordered to make the payment fails to execute a bond to appear on the day appointed for the return. **26 M. 127=2 Weir 321.**

(2578)—S. 388—*See* PARDON, Rat. Un. Cr. C. 750.

(2578-*a*)—S. 388—*See* Nos. 1915, 1916, *supra*.

——S. 390 (=1882, s. 390; 1872, s. 302-A, cl. 2).

(2579)—*Ss. 390 and 391 (1)—Order of Magistrate postponing sentence of whipping—Accused already under sentence of imprisonment in another case—Illegality of such order.*—The direction contained in s. 390, Crim. Pro. Code, that, when the accused is sentenced to whipping only, the sentence of whipping shall be executed at such place and time as the Court may direct is intended for the case where the accused is not already under another sentence and is not at the same time sentenced to imprisonment. When the accused is under a sentence of imprisonment in another case, the Magistrate should, when passing the order required by s. 390, Crim. Pro. Code, follow the analogy of s. 391 (1) as far as may be. To postpone the whipping to the end of a considerable term of imprisonment is illegal. **1 L. B.R. 53.**

(2580)—S. 390—*See* ACT VI OF 1864, s. 2, Rat. Un. Cr. C. 906.

(2581)—Ss. 390, 407 and 413—*See* SENTENCE. L.B.R. (1893—1900), 310.

——S. 391, paras 1 and 2 (=1882, s. 391, paras 1 and 2; 1872, ss. 310, 311), para 3, new.

See SENTENCE.

See WHIPPING.

(2582)—*S. 391 (=Crim. Pro. Code, 1872, s. 310)—Sentence of whipping, when could be executed immediately.*—Where the punishment of whipping is not awarded in addition to imprisonment, but as a separate sentence for a separate offence, the immediate execution of it would not be illegal. **2 Weir 446.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2583)—*S. 391 (3)—Imprisonment for less than three months—Whipping.*—Under cl. (3) of s. 391, a sentence of whipping cannot be passed in addition to imprisonment, when the term of imprisonment is less than three months. **2 Bom. L.R. 54.**

(2584)—*S. 391 (3)—Whipping Act, s. 3—Conviction for two offences—Sentence of imprisonment for the one and whipping for the other—Appeal from first conviction—Postponement of latter sentence—Validity.*—S. 3 of the Whipping Act, as amended by Act III of 1895, is to be read subject to the provisions of s. 391 (3) of the Crim. Pro. Code. When an accused, is convicted of two offences, for one of which he is sentenced to imprisonment and for the other to whipping, it is not permissible to postpone the whipping merely because the accused appeals against his conviction for the latter offence. **4 Bom. L.R. 436.**

(2585)--*S. 391—Whipping.*—It is illegal to inflict stripes on the hand in whipping. S. 311 para 1 of the Code of 1872 provides that whipping shall be inflicted on such part of the person as is specified by the Local Government which has not directed that the whipping should be inflicted on the hands. The expression "in the way of school discipline" connotes the degree of severity with which the punishment is to be inflicted. **5 C.P.L.R. Cr. 31.**

(2586)—*Ss. 391, 439 (5)—Sentence of imprisonment and whipping passed by a Magistrate of the first class—Revision by District Magistrate before expiry of period of appeal—Sentence of whipping carried out by order of District Magistrate—Order* ultra vires.—When the accused was convicted by a Magistrate of the first class of the offence of theft and sentenced to rigorous imprisonment for one month and 20 stripes, and, before the period prescribed for an appeal had expired, the District Magistrate took up the case on revision, and, holding that, under s. 391 of the Code of Criminal Procedure, whipping should not have been added to the term of imprisonment which was less than three months in duration, directed the accused to be whipped and submitted the case for the orders of the Chief Court, *held*, that the sentence passed by the trying Magistrate was appealable to the Court of Session and that the District Magistrate acted illegally in taking up the case on revision and ordering the accused to be whipped before the period prescribed for appeal had expired. **45 P.L.R. 1902.**

(2587)—*Ss. 391 (3), 439—Sentence of whipping.*—The sentence of whipping in addition to imprisonment, the term of which is less than three months, is illegal under s. 391 (3). **2 Weir 447.**

(2588)—S. 391—*See* ACT VI OF 1874, s. 1, 31 P.R. 1878 Cr.

(2589)—S. 391—*See* SENTENCE, Rat. Un. Cr. C. 803, L.B.R. (1893—1900), 78, Rat. Un. Cr. C. 136.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2589-*a*)—S. 391—*See* Nos. 221, 238, 2579, *supra*.

——S. 392 (=1882, s. 392; 1872, s. 311, paras 1 and 2).

(2590)—*S. 392.*—The expression "in the manner of school discipline" finds no place in s. 392 of the Code of 1898. In the case of a person under 16 years of age, whipping is to be inflicted in such mode and on such part of the person and with such instrument as the Local Government directs, in the manner directed in Criminal Circular III—3. **14 C.P.L.R. Cr. 64.**

(2591)—*Ss. 392, 393.*—Under the provisions of ss. 392 and 393, not more than one sentence of whipping and that not exceeding 30 stripes, should be awarded at one time. **U.B.R. 1906, Crim. Pro. Code, 47=4 Cr. L.J. 281.**

(2592)—S. 392—*See* ACT VI OF 1864, s. 5, L.B.R. (1872—1892), 355.

——S. 393 (=1882, s. 393; 1872, s. 312, para 3).

(2593)—*S. 393—Whipping.*—It is improper to punish an accused person with whipping, when he has been on the same day sentenced in another case to transportation for seven years, this being contrary to the provisions of s. 393 of the above Code. **U.B.R. (1892-1896), Vol. I, 44.**

(2594)—Ss. 393 and 439 (1 to 4)—*See* PENAL CODE, s. 382, Rat. Un. Cr. C. 537.

(2594-*a*)—S. 393—*See* No. 2591, *supra*.

——S. 394 (=1882, s. 394; 1872, s. 312, paras 1 and 2).

(2595)—Ss. 394, 395—*See* SENTENCE, 17 M.L.J. 555=7 Cr. L.J. 5=3 M.L.T. 31.

(2595-*a*)—S. 394—*See* No. 181, *supra*.

——S. 395 (=1882, s. 395; 1872, s. 313).

See SENTENCE.

(2596)—*S. 395—Jurisdiction to revise sentence of whipping.—Held*, that, in the absence of the Magistrate who passed the original sentence, the District Magistrate is "the Court which passed the sentence," within the meaning of s. 395 of the Crim Pro. Code. **20 P.L.R. 1902.** (10 P.R. 1889, *R.*).

(2597)—*S. 395—Procedure in case of persons not able to withstand punishment of whipping mentioned in s. 394.*—A sentence of fine in lieu of a sentence of whipping, owing to the inability of the accused to undergo the whipping, is bad. S. 395 of the Code only gives authority to remit altogether a sentence of whipping, or so much of it as has not been executed, or to impose a sentence of imprisonment for a term not exceeding 12 months in lieu. **U.B.R. (1892—1896), Vol. I, 45.**

(2598)—*Ss. 395, 398—Charge of graver offence—Conviction for minor offence.*—Where a person is charged with an offence, and facts

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are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it. There is not, however, any provision of law which allows of a conviction for a major offence on a charge of a minor one. **1 Bom. L.R. 513.**

(2599)—*S. 395 (=Crim. Pro. Code, Act X of 1882, s. 395)—Whipping—Imprisonment.*—The word "imprisonment" in s. 395 of the Crim. Pro. Code, means a substantive sentence of imprisonment and not imprisonment in default of payment of fine. Where a sentence of whipping cannot be carried out, the only course open to the Court is to remit the sentence of whipping or to order imprisonment in lieu of it. **A.W.N. 1889, 93.**

(2599-*a*)—S. 395—*See* Nos. 181, 183, 2595, *supra*.

——S. 396 (=1882, s. 396; 1872, s. 316; 1861, s. 47).

(2600)—*Ss. 396, 398 and 426—Date from which substantive term of imprisonment should run when accused has been released through error in warrant of commitment.*—In this case, the accused was convicted under s. 447, I.P.C., and sentenced to three months' rigorous imprisonment and a certain fine, or, in default, to 20 days' rigorous imprisonment. Through a mistake in the warrant of commitment to the jail, the substantive term of imprisonment was overlooked; the result being that the accused underwent only the period of imprisonment ordered in default of fine and was released. The error was then discovered, and, five days after the release, the accused was re-arrested and sent back to jail to undergo the substantive term of imprisonment, and the Magistrate directed it to begin on the day on which he was re-arrested. *Held* that the order was legal. **U.B.R. (1897—1901), Vol. I, 89.**

(2601)—S. 396—*See* ESCAPE FROM LAWFUL CUSTODY, 1 Weir 203.

(2602)—S. 396—*See* SENTENCE, Rat. Un. Cr. C. 965.

(2602-*a*)—S. 396—*See* No. 648, *supra*.

—— S. 397 (=1882, s. 397; 1872, s. 317; 1861, s. 48).

See SENTENCE.

(2603)—*S. 397—Concurrent sentences.*—The passing of concurrent sentences is opposed to the provisions of s. 397, Crim. Pro. Code. **2 Bom. L.R. 111.** [*F.*, 4 Bom. L.R. 876].

(2604)—*S. 397 (=Crim. Pro. Code, 1872, s. 317)—Sentence—Subsequent sentence before expiry of previous sentence—Reversal of former conviction.*—A Magistrate of the first class sentenced the accused to two years' rigorous imprisonment on the 6th February on conviction for theft. The Sessions Judge, a month afterwards, sentenced him in another case to three years' rigorous imprisonment, which, he.

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under s. 317, Crim. Pro. Code, directed, should begin to take effect on the expiration of the sentence passed by the Magistrate. On appeal, the conviction and sentence passed by the Magistrate were reversed. *Held* that the sentence passed by the Sessions Judge must be deemed to have commenced from the time it was ordered to commence, *viz.*, from the expiration of the sentence passed by the Magistrate whether by reversal or by completion of the punishment. **Rat. Un. Cr. C. 139.**

(2605)—*S. 397 (=Crim. Pro. Code, 1872, s. 317)—Imprisonment on two separate charges by two different tribunals—Reversal of one of the convictions—Period of imprisonment suffered, whether to be deducted from the other conviction.*—Where a person was convicted and sentenced by two different Magistrates on separate charges and the sentence of one of them was reversed on appeal, *held*, that the imprisonment suffered by him from the date of the conviction to that of reversal of the sentence of one of the Magistrates should be reckoned as the imprisonment in the unreversed conviction. **2 Weir 450.**

(2606)—*S. 397 (=Crim. Pro. Code, 1872, s. 317)—Consecutive sentences.*—Where the accused was separately tried and convicted on two distinct charges on the same day, *held*, that the Magistrate, if he intended the two sentences not to be concurrent, should direct that the imprisonment in one case should commence at the expiration of the imprisonment in the other, and this direction should be embodied in the sentence, and not entered as a foot-note. **2 Weir 451.**

(2607)—*S. 397 (=Crim. Pro. Code, 1882, s. 397)—Term "undergoing" imprisonment explained.*—A person sentenced to imprisonment is "undergoing" that imprisonment within the meaning of s. 397 of the Code from the moment the sentence is passed. When, therefore, the same person is tried, though on the same day, for another offence and sentenced to another term of imprisonment, that imprisonment must, by the terms of s. 397, and independently of any direction given by the Court, commence at the expiration of the imprisonment imposed by the first sentence. **2 Weir 451.**

(2608)—*S. 397—Imprisonment for failure to furnish security for good behaviour—Imprisonment for a substantive offence—Order of commencement.*—Where a person, who was ordered to be in imprisonment on failure to furnish security for good behaviour, escaped from the custody of the Police officer, when he was being taken to jail, and was convicted and sentenced to a term of imprisonment, *held*, that the latter sentence should not be postponed to the expiry of the period of imprisonment for failure to give security. **2 Weir 452.** [*R.*, 4 M.L.T. 223].

(2609)—*S. 397—Sentence on offender already sentenced for another offence.*—S. 397 of the Crim. Pro. Code enacts that, when a person already undergoing a sentence of imprisonment is sentenced to imprisonment, etc., such imprisonment, etc., shall commence at the expiration of the imprisonment, etc., to which he has been previously sentenced. But an order of committal to prison in default of security under Ch. VIII is not a sentence of imprisonment and therefore s. 397 of the Code does not apply to it. **U.B.R. (1892—1896), Vol. I, 46.**

(2610)—*Ss. 397, 398—Scope of s. 397.*—Under s. 397, a Sessions Judge may direct that a sentence of transportation passed on a person already undergoing a sentence of imprisonment, shall commence immediately or on the expiration of the imprisonment to which he has been previously sentenced. S. 398 provides that nothing in s. 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction. **2 Weir 453.**

(2611)—S. 397—*See* APPEAL, Rat. Un. Cr. C. 18.

(2612)—S. 397—*See* TRANSPORTATION FOR LIFE, L.B.R. (1893—1900), 13.

(2612-*a*)—S. 397—*See* Nos. 210, 211, 212, 221, 239, 519, 612, 644, 645. 646, 648, 649, 651, *supra*.

——**S. 398 (=1882, s. 398; 1872, s. 317 proviso).**

(2612-*b*)—S. 398—*See* Nos. 2598, 2600, 2610, *supra*.

——**S. 399 (=1882, s. 399; 1872, s. 318; 1861, s. 433).**

See JUVENILE OFFENDER.

(2613)—*S. 399 (=Crim. Pro. Code, 1882, s. 399)—Juvenile offenders—Duty of Magistrates.*—A Judge or Magistrate is not at liberty in estimating the proper sentence to be passed on juvenile offenders to consider the fact that there is no reformatory. He is bound to pass a sentence of punishment adequate to the offence. **2 Weir 453.**

(2614)—*S. 399 (=Crim. Pro. Code, 1872, s. 318)—Youthful offenders—Confinement in Reformatory.*—Pending the publication by the Local Government of the notification contemplated in s. 1 of Act V of 1876, s. 318 of the Crim. Pro. Code, 1872, contains the provisions of the law for the confinement of youthful offenders in Reformatories, but it is only when such an offender is sentenced to imprisonment that the latter section empowers a Magistrate to direct that be shall, instead of being imprisoned in a criminal jail, be confined in a Reformatory; and neither the said section nor the corresponding s. 7 of Act V of 1876 gives jurisdiction to a Magistrate to pass a sentence of imprisonment in excess of the powers conferred by s. 20 of the Crim. Pro. Code. **Rat. Un. Cr. C. 180.**

(2615)—*S. 399 (=Crim. Pro. Code, Act X of 1882, s. 399)—Reformatory Schools (Act VIII of 1897 and V of 1876), s. 8—Boy of fourteen—Order to be passed.*—S. 399 of the

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

Crim. Pro. Code was repealed by the Reformatory Schools Act of 1876 which came into force in Bombay in 1897. An order passed thereafter, directing the confinement in a Reformatory School for one year, of a boy of fourteen years of age, is illegal under s. 8 of this Act. **Rat. Un. Cr. C. 915 = Cr. Rg. 21 of 1897.**

(2616)—*S. 399 (= Crim. Pro. Code, 1882, s. 399)—Section repealed by extension of Act V of 1876 to the Presidency of Bombay.*—S. 399, Crim. Pro. Code, was repealed when Act V of 1876 (Reformatory Schools) was extended to the Presidency of Bombay. **Rat. Un. Cr. C. 929 = Cr. Rg. 38 of 1897.**

(2617)—*S. 399 (= Crim. Pro. Code, 1872, s. 318)—Crim. Pro. Code, 1882, s. 319—Repeal by Act V of 1876.*—S. 318 of the Code of 1872 having been repealed by s. 2, Act V of 1876, the corresponding s. 399 of the Code of 1882 must be taken to stand repealed in the provinces including Bengal to which Act V of 1876 had been extended. **25 C. 333 = 2 C.W.N. 11.**

(2618)—S. 399—Power of second class Magistrate to send youthful offender to Reformatory —*See* ACT V OF 1876, ss. 2 and 7, 12 M. 94 = 1 Weir 875.

(2619)—S. 399—*See* ACT X OF 1876, s. 399, Rat. Un. Cr. C. 864.

(2620)—S. 399 (1, 2)—*See* MAGISTRATE, JURISDICTION OF, 12 M. 94 = 1 Weir 875.

——S. 401, paras 1 to 5 (= 1882, s. 401; 1872, s. 322, paras 1 and 2; 1861, s. 54); para 6, new.

See SENTENCE.

(2621)—*S. 401 (= Crim. Pro. Code, 1882, s. 401)—Penal Code, s. 84—Unsoundness of mind —Recommendation to Local Government for lenient treatment.*—In a case, where it was held that the accused committed murder without any apparent sane motive and that the accused was at the time suffering from mental derangement of some sort, the High Court holding that the accused was not entitled to be acquitted under s. 84, Penal Code, recommended the case to the Local Government, under s. 401, Crim. Pro. Code, to be dealt with in such manner as it thought fit. **23 C. 604.** [*Diss.*, 40 P.R. 1905 Cr. = 148 P.L.R. 1905].

——S. 402 (= 1882, s. 402; 1872, s. 322, para 3).

See SENTENCE.

(2622)—*S. 402—Appellate Court, power of —Sentence, power to enhance.*—The District Magistrate, on appeal by an accused against a sentence of fine of Rs. 50 under s. 325, Indian Penal Code, altered the sentence to one of two months' rigorous imprisonment including seven days' solitary confinement. *Held*, that the alteration amounted to an enhancement and that the order of the District Magistrate was illegal. He should have referred the case to the Chief Court for orders. **116 P. L.R. 1904.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2622-*a*)—*S. 402*—No complaint—Order of acquittal whether bar to a new trial. **6 A.L.J. 262 = 9 Cr. L.J. 526 = 31 A. 317 = 2 Ind. Cas. 219.**

——S. 403, paras 1 to 4 and Explanation (= 1882, s. 403; 1872, ss. 460, 147, para 2, 195 Exp., 215 Exp. 2; 1861, s. 55).

See AUTREFOIS ACQUIT, PLEA OF.

See AUTREFOIS CONVICT.

(2623)—*S. 403—Charge of an offence under s. 414 of the Indian Penal Code—Previous conviction under s. 411 in respect of other property stolen at the same time and from the same person.—Held*, that, where a person had been convicted under s. 411 of the Indian Penal Code, in respect of certain property stolen on a particular occasion from a particular person, he could not, subsequently, be tried for an offence under s. 414 of the Code in respect of other property stolen on the same occasion from the same person. **A.W.N. 1906, 22 = 3 Cr. L.J. 207 = 28 A. 313.**

(2624)—*S. 403*—Res judicata—*Whether bars any proceedings by general principle or only by special enactment—Dismissal of first application for maintenance—Whether it is a bar to second application on same facts—Where substantial justice has been done by the lower Court—Whether High Court will interfere in revision—Civ. Pro. Code (Act XIV of 1882), s. 13.*—The parties were husband and wife, living apart. The applicant applied to the Sub-Divisional Magistrate for an order against the respondent to pay an allowance for the support of their child. The Magistrate wrote, "Respondent offers to maintain the complainant in a separate house, but she refuses to accept the offer. She alleges no ill-treatment. I have consequently no power to interfere. Case dismissed." This Magistrate was transferred, and the applicant subsequently applied to his successor for an order of maintenance for the child. The case was duly heard and an order made to pay Rs. 5 per month. *Held*, on appeal that *res judicata* does not bar any proceedings by general principle but only by special enactment, as contained in s. 13 of the Civ. Pro. Code, and s. 403 of the Crim. Pro. Code. *Held*, also that, where a Magistrate, to whom an application is made, knows or has reason to believe that a similar application on the same facts has been adjudicated on, he ought not to act on the application without considering the previous decision, but that, when he does so, he is not wrong in law, nor are his proceedings bad and void, regardless of the merits. Where the second Magistrate has done substantial justice, it is a sufficient reason for refusing to interfere in revision. **14 Bur. L.R. 259 = 4 L.B.R. 337 = 9 Cr. L J. 21.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2625)—*S. 403—Offence under Forest Act—Legality of trying accused twice on same facts.*—It is the duty of the prosecution to put before the Court true evidence respecting the measurement of the timber, which the accused cut in excess of his license, and failure to do this at the first trial does not entitle the Crown to prosecute the offender again, in respect of the same timber, on the ground that the measurement stated at the first trial was incorrect and below the amount of timber actually cut. S. 403 of the Code applies to such a case. **3 L. B.R. 253=5 Cr. L.J. 412.**

(2626)—*S. 403—Resumption of trial after acquittal—Validity.*—When once a Sessions Judge had acquitted an accused on a charge for the trial of which he had been committed, the Judge could not take further proceedings in the case, and a second trial on the same facts for the same criminal act, but only under a different section of the Penal Code, would be barred by s. 403, Crim. Pro. Code. There is no provision in the Code which enables a Judge, on a trial for murder, to acquit the prisoner of the murder, refer the case to the High Court and then resume the trial. **2 C.P.L.R. 66.**

(2627)—*S. 403 (1)—No complaint—Order of acquittal—Whether bar to a new trial.*—A soldier from Burma (complainant) sent an intimation to the District Magistrate that he had authorised his brother to file a complaint against the accused for enticing away his wife. When the case came on for hearing, it appeared that the brother had no such authority and the Magistrate acquitted the accused. The complainant then filed a complaint personally. *Held*, that the previous acquittal was no bar to the trial of the present complaint, inasmuch as the finding of the Magistrate amounted to this, that there was no complaint before him. **6 A.L.J. 262=9 Cr. L.J. 526=31 A. 317=2 Ind. Cas. 219.**

(2628)—*S. 403 (=Crim. Pro. Code, 1882, s. 403)—Acquittal on a minor offence—Fresh trial on a major offence, validity of.*—Where, upon a charge of dacoity, the Magistrate split it up and convicted the accused of rioting, using criminal force, and misappropriating the property of a deceased person, and, in appeal, the Sessions Court reversed the conviction, holding that the offence committed, if any, amounted to dacoity, but that, the facts being incredible, there was no occasion to order a committal, *held*, that another Magistrate may try the charge of dacoity on a fresh complaint being lodged and that the order of the Sessions Judge was no bar to further proceeding on the same facts. **7 M. 557=2 Weir 456.** [*R.*, 24 C. 528 =1 C.W.N. 370; *D.*, 28 C. 211=5 C.W.N. 169].

(2629)—*S. 403 (3)—Conviction for hurt—Re-trial for murder.*—A conviction for simple hurt is no bar to a commitment and subsequent trial for an offence under s. 302 or 304, I.P.C., if the person to whom the hurt is caused dies subsequent to the conviction, from the result of the injuries inflicted upon him. **3 P.R. 1901 Cr.**

(2630)—*S. 403 (4)—Conviction under s. 323, I.P.C., while complaint was for the offence of culpable homicide—Subsequent trial for latter offence not barred.*—Where a Magistrate convicts the accused of the offence of hurt, while the offence complained of by the police was one of culpable homicide, *held*, that the conviction, although it may not amount to a discharge of the accused of the latter offence, is yet, under para 4 of s. 403, no bar to the trial of the accused for an offence under s. 304, which the Magistrate is not competent to try. **5 Bom. L.R. 125.**

(2631)—*Ss. 403, 235, sub-secs. (1) and (2)—Penal Code, ss. 210, 202, 176—Acquittal of offence under s. 202, I.P. Code—Subsequent trial for an offence under s. 176, I.P. Code, on same facts—Legality.*—A person, who has been tried for offences under ss. 201, 202 of the Penal Code and acquitted by the Sessions Court, cannot be tried again for an offence under s. 176 of the Penal Code, based on the same facts, by an inferior Criminal Court, as the case of such a person does not come under sub-sec. (1) of s. 235 of the Crim. Pro. Code, but rather under sub-sec. (2) of that section. The charge, under s. 176 of the Penal Code might have been framed at the former trial on the very same facts and the Sessions Court, which tried him under s. 202 of the Penal Code, was competent to try him under s. 176, Penal Code. **10 C.W.N. 518=3 Cr. L.J. 388.**

(2632)—*Ss. 403, 236, 237—Previous acquittal of co-accused, if bar to trial—Additional facts ascertained subsequently—Penal Code, ss. 380 and 411.*—On a charge of theft under s. 380, I P.C., against three persons, A, B and C, two of them A and B, were placed on their trial and acquitted by a competent Court. Subsequently, some of the stolen properties having been discovered in the house of the third accused, C, C was put upon his trial for an offence under s. 411, I.P. C., and convicted. *Held*, that the previous acquittal of A and B was no bar to the subsequent trial and conviction of C, as there were certain additional facts before the Court, ascertained subsequent to the acquittal, which supported the charge under s. 411, I.P.C. **10 C.W.N. 1031=4 Cr. L.J. 173.**

(2633)—*Ss. 403 and 423 (b) (=Crim. Pro. Code, 1882, ss. 403, 423)—Trial on several charges—Acquittal on some and conviction on other charges—Appeal from conviction—Power of appellate Court.*—When an act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, an appeal from a conviction for any one of such offences must lay the whole case open to the interference of the appellate Court, notwithstanding any order of acquittal by the first Court in regard to any of

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

the other offences. The interference of the appellate Court in such cases must be directed primarily, not against the acquittal, but against the conviction which is called in question by the accused, though if the interference is to be rational and complete, the appellate Court must deal with the whole case. If the verdict of a jury is found in such cases to be erroneous, owing to a misdirection by the Judge, it must be set aside in its entirety, as the appellate Court cannot go into facts and substitute its own verdict for that of the jury. Where, therefore, the appellate Court reverses the verdict of a jury and orders a re-trial, such re-trial, unless the appellate Court has limited the scope, must be taken to be one upon all the charges originally framed. **22 C. 377.** [*R.*, 23 C. 975, 110 P.L.R. 1904 = 12 P.R. 1904 Cr.]

(2634)—*Ss. 403, 436, 437, 439 (= Crim. Pro. Code, 1882, ss. 403, 436, 437, 439)—Power of Presidency Magistrate to refer a dispute to arbitration.*—Where a Presidency Magistrate referred a complaint of extortion to arbitration and discharged the accused, and, on the arbitration falling through, revived the complaint, *held*, that the Magistrate should not have allowed a reference to the arbitration and his order of discharge was, therefore, illegal, and *held*, further, that he could revive the complaint even after the discharge, as the provisions of ss. 426 and 437 would not apply to Presidency Magistrates. **1 C.W.N. 49.** [*Appr.*, 5 C.W.N. 457 = 28 C. 652; *F.*, 28 C. 211 = 5 C. W.N. 169; *R.*, 2 L.B.R. 27; *D.*, 1 C.W.N. 370 = 24 C. 528].

(2635)—*Ss. 403, 437—Discharge of accused person—Dismissal of complaint—Fresh proceedings.*—Although the discharge of an accused person or the dismissal of a complaint is no bar to the institution of fresh proceedings otherwise than under s. 437, Crim. Pro. Code, yet, a Magistrate entertaining a complaint under such circumstances is bound to exercise a proper discretion. **U.B.R. 1904, 2nd Qr., Crim. Pro. Code, 19.** (28 C. 652, 29 C. 726, L.B.R. (1903), 27, U.B.R. (1892—1896), Vol. I, 48, *R.*).

(2636)—*Ss. 403, 530 (= Crim. Pro. Code, 1882, ss. 403, 530)—Acquittal by Court having no jurisdiction—Retrial.*—An acquittal by a Magistrate having no jurisdiction is simply void under s. 530. The accused may, therefore, be retried under s. 403, by a competent Court, without having the acquittal set aside. **8 B. 307.** [*Diss.*, 4 L.B.R. 49; *R.*, U.B.R. (1897—1901), 91, 2 N.L.R. 149 = 4 Cr. L.J. 422; *D.*, 13 B. 502].

(2637)—*Ss. 403, 409*—Autrefois acquit—*Separate charges—One transaction—Pending trial—Revision.*—The accused along with some others was charged before a Sessions Court with offences under ss. 467, 114 of the Penal Code, in respect of the forgery of six documents under circumstances constituting a single transaction, but the charge in respect of the accused was only in respect of the forgery of three of these documents. The accused was eventually acquitted, but the District Magistrate commenced another prosecution against the accused in respect of the other three statements. *Held*, on an application to stop the proceedings, that the accused was not entitled in law, under s. 403 of the Crim. Pro. Code, to have the proceedings quashed, but that, under the circumstances of the case, it was not expedient to carry the proceedings further. **A.W.N. 1905, 238 = 2 A.L.J. 673 = 2 Cr. L.J. 790.**

(2638)—S. 403—*See* ACQUITTAL, 1 L.B.R. (1900—1902), 340.

(2639)—S. 403—*See* ACT III OF 1877, 6 O.C. 153.

(2640)—S. 403—*See* ACT IV OF 1889, ss. 6 and 7, 23 C. 174.

(2641)—S. 403—*See* BEN. ACT VII OF 1878, s. 61, 23 C. 174.

(2642)—S. 403—*See* BUR. ACT III OF 1898, ss. 92 (1, 2, 3), 180, 5 L.B.R. 12 = 9 Cr. L.J. 578 = 2 Ind. Cas. 357.

(2643)—S. 403—*See* PUN. ACT XX OF 1891, s. 164, 63 P.L.R. 1904.

(2644)—Ss. 403 (1 to 4) and Expln. 436—*See* COMMITMENT TO SESSIONS COURT, Rat. Un. Cr. C. 337.

(2645)—S 403—*See* CONVICTION, 6 M.H.C. App. 7.

(2646)—Ss. 403 (Expl.) and 437—*See* MAGISTRATE, 2 L.B.R. 27.

(2647)—S. 403—*See* PENAL CODE, ss. 409, 424, 1 U.B.R. 1903, Penal Code, 9.

(2648)—S. 403—*See* PUNJ. REG. IV OF 1873, 30 P.R. 1884 Cr. and 23 P.R. 1885 Cr.

(2649)—S. 403—*See* RES JUDICATA, 1 L.B.R. 340 F.B.

(2650)—Ss. 403, 439—*See* TRIAL, 2 A.L.J. 673 = A.W.N. 1905, 238 = 2 Cr. L.J. 790.

(2650-*a*)—S. 403—*See* Nos. 34, 1517, 1582, 1588, 1670, 1776, 1778, 1780, 1782, 1795, 1799, 1800, 1840, 1857, 1868, 1873, 1874, 1885, 1953, 1961, 1964, 1965, 1974, 2023, 2062, 2394, *supra*, and No. 2840, *infra*.

——S. 404 (= 1882, s. 404; 1872, s. 286; 1861, s. 414).

See APPEAL.

(2651)—*S. 404 (= Crim. Pro. Code, 1872, s. 286)—Scope.*—S. 286, by the words "except in the cases provided for by this Act," must include cases in which the power to alter or annul the order of a Magistrate is expressly given. **1 C.L.R. 339 = 3 C. 379.**

(2652)—*Ss. 404 to 417 (= Crim. Pro. Code, 1882, ss. 404, 417)—Appeal from acquittal.*—Where a person is tried on one charge only and is acquitted on it, or is tried on several charges and is acquitted on them all, the acquittal cannot in any way be interfered with, except upon appeal by the Local Government. **22 C. 377.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869)—continued.

(2653)—*Ss. 404, 408 (b), 423 (b), 439. 518, 519 and 520—Order for disposal of suspected property—Control of superior Courts over such order.*—Order under ss. 517, 518, or 519 of the Code of Criminal Procedure, 1898, are revisable once by any one of the Courts mentioned in s.520 of that Code, notwithstanding that, in respect of the main case in connection with which such order was passed, an appeal or revision has not taken place in any Court, or could have been entertained by the Court revising the order. *Quære.*—Whether s. 423 (*d*) of the said Code overlaps s. 520. In any case, an appellate Court proceeding under s. 423 (*d*) is only competent to deal with such an order simultaneously along with the appeal before it, and not by any separate proceeding commenced after the disposal of the appeal. If jurisdiction over such an order is exercised by any one Court acting under s. 423 (*d*) or s. 520, the control provided by those sections is exhausted and further revision is only possible under Ch. XXXII of the Code. Orders under ss. 517. 518 and 519 are in their essence orders of an executive nature and s. 520 provides a summary control, also of an executive nature, which is wider and more speedy than the slow process of judicial revision under Ch. XXXII. Revisional jurisdiction under s. 439 or under s. 520, will not be exercised by the High Court except as a Court of last resort. **17 C.P.L.R. 107.** (7 C.P.L.R. Cr. 47, *F.*)

(2654)—*Ss. 404, 522 (=Crim. Pro. Code, 1882, ss. 404, 522)—Order restoring possession of immoveable property—Jurisdiction of appellate Court.*—Having regard to the general rule laid down by s. 404, an order directing restoration of possession of immoveable property under s. 522 is not appealable, and it is final so far as the Criminal Courts are concerned. Such order cannot be regarded as an integral part of the judgment appealed from, so as to stand or fall, according as the judgment is upheld or reversed. **25 C. 630=2 C.W.N. 225.** [*D.*, 29 C. 724, 27 A. 415=A.W.N. 1905, 19=2 A.L.J. 64].

(2654-*a*)—*Ss. 404 and 406*—An order to furnish security under s 106, Cr. P.C., being a separate order and no part of a sentence, is not appealable. **2 Weir 450.**

(2655)—S. 404—*See* ACT I OF 1871, s. 22, 19 M. 238=2 Weir 461.

(2656)—Ss. 404, 517, 520—*See* ACT IX OF 1872, ss. 76, 108, 1 C.L.R. 339.

(2657)—Ss. 404, 407—*See* APPEAL, 10 B. 230.

(2658)—S. 404—*See* APPEAL—APPEAL FROM ACQUITTAL, A.W.N. 1891, 120.

(2659)—S. 404—*See* HIGH COURT, JURISDICTION OF, 5 N.W.P. 130.

(2659-*a*)—S. 404—*See* Nos. 424, 1355, 1875, *supra*, and No. 3115, *infra*.

——**S. 405 (=1882, s. 405).**

See APPEAL.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869)—continued.

(2659-*b*)—S. 405—*See* No. 2652, *supra*.

——**S. 406 (=1882, s. 406; 1872, s. 267; 1861, s. 409).**

See APPEAL.

See SECURITY FOR GOOD BEHAVIOUR.

(2659-*c*)—S. 406—*See* Nos. 424, 467, 563, 591, 613, 614, 615, 618, 2652, *supra*.

——**S. 407 (=1882, s. 407; 1872, s. 266; 1861, s. 412).**

See APPEAL.

See TRANSFER OF CRIMINAL CASES.

(2660)—*S. 407—Withdrawal of part-heard appeal by District Magistrate from the file of Sub-Divisional Magistrate—Sub-Divisional Magistrate issuing summons for examination of certain witnesses—Whether District Magistrate is bound to examine such witnesses.*—A District Magistrate has jurisdiction to withdraw a part-heard appeal to his own file from the file of a Sub-Divisional Magistrate, by whom it has been heard in part. Where such Sub-Divisional Magistrate had issued summons for the examination of certain witnesses as Court witnesses, it is not incumbent on the District Magistrate, on the withdrawal of the case to his own file, to examine those witnesses. The Court, to which an appeal is transferred for disposal, and on which the responsibility for its correct disposal rests, is not bound by any opinion as to the necessity for taking further evidence formed by the Court from which the appeal was transferred, and which is no longer responsible for the decision of the appeal. **18 M.L.J. 89=31 M. 277=7 Cr. L.J. 329.**

(2661)—*S. 407 (=Crim. Pro Code, Act XXV of 1861, s. 412)—Acquittal in appeal by Court without jurisdiction—Re-arrest.*—An accused person acquitted and discharged by a Sessions Judge in an appeal which he had no jurisdiction to hear, may be re-arrested even after the period to which he was originally sentenced to be imprisoned, and made to undergo the rest of his term. **Rat. Un Cr. C. 17=Cr. Rg. 20—7—1869.**

(2662)—*S. 407 (2)—Power of District Magistrate to delegate revisional work.*—A District Magistrate directed that the Assistant Collector under him should perform the "routine work of the Collector's office, including the criminal, appellate and revisional work." *Held* that the order was *ultra vires* as regards the revisional work, but was good so far as the appellate work was concerned. **2 Bom. L.R 536.**

(2663)—Ss. 407, 438, 436 (=ss. 266 and 296 of the Code of 1872)—*See* APPEAL, 24 P.R. 1878 Cr.

(2663-*a*)—S. 407—*See* Nos. 68, 1356, 1357, 1426, 1427, 1857, 2052, 2581, 2652, 2657, *supra*.

——**S. 408 (*a*) and (*b*) (=1882, s. 408; 1872, ss. 79, 269, 270; 1869, s. 445-*c*; 1861, ss. 409, 422); s. 408 (*c*), new.**

See APPEAL.

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Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2664)—*S. 408 (a) (= Crim. Pro. Code, Act X of 1882, s. 408, proviso (a)—Sessions Judge—Jurisdiction in appeal.*—When a Sessions Judge has confirmed the sentences passed by an Assistant Sessions Judge on some of the accused persons, he has no jurisdiction to hear the appeals preferred by any of the prisoners in the same case, as such appeals lie to the High Court under s. 408, proviso (*a*) of the Crim. Pro. Code. **Rat. Un. Cr. C. 655 = Cr. Rg. 19 of 1893.**

(2665)—*S. 408, cl. (b) of proviso—"Sentence of imprisonment exceeding four years," meaning of.*—The words "sentence of imprisonment exceeding four years" must be taken to mean the substantive sentence of imprisonment, apart from any sentence of fine or imprisonment in default of payment of the fine. An appeal in such cases lies to the Sessions Court. **1 L.B.R. 57.** (6 C. 624, *R.*).

(2666)—*S. 408 (b)—Cases in which a sentence of transportation or of imprisonment for more than four years is passed—Appeal*—The intention of proviso (*b*) to s. 408 is that, in a case in which a sentence of transportation or of imprisonment for more than four years is passed, any appeal or appeals in the case shall lie to the High Court. **U.B R. (1897—1901), Vol. I. 94.**

(2667)—*Ss. 408 and 413, construction of—"Case" meaning of—Joint trial of two or more persons by a Magistrate of the first class—Appealable sentence passed on one of them—Whether others on whom appealable sentence not passed have the right of appeal under s. 413*—When more persons than one are convicted at one trial by a Magistrate of the first class, and an appealable sentence is passed on any one of them, s. 413 does not take away from the other convicts, their right of appeal conferred by s. 408, even though the sentence passed on any one of such persons may not be an appealable one. The word "case" in s. 413, includes a trial at which two or more persons are convicted, and the grammatical meaning of the section is that there shall be no appeal in a case in which no sentence exceeding any of those described in the section is passed on any of the persons convicted. **4 L.B.R. 354 = 9 Cr. L.J. 356.**

(2668)—*Ss. 408, 428 (= Crim. Pro. Code, 1861, s. 422)—Order for additional evidence by Sessions Judge—Act X of 1872, s. 282.*—Upon an appeal from a sentence passed by a Magistrate, the Sessions Judge remanded the case for the purpose of additional evidence being taken by the lower Court. The Magistrate took such evidence and returned the case to the appellate Court, and the Sessions Judge then disposed of the case in the manner prescribed by s. 419 of the Criminal Procedure Code. *Held*, no appeal lay to the High Court on the merits. **6 B.L.R. 483 = 15 W.R. 33 Cr.**

(2669)—*Ss. 408, 428 (= Crim. Pro. Code, 1861, s. 422)—Judgment of Sessions Judge confirming illegal sentence of Magistrate.*—Where a judgment of the Sessions Judge (though in form confirming the Assistant Magistrate's judgment and sentence) might in substance be an original judgment, an appeal was held to lie from it to the High Court upon the merits under s. 408 of Act XXV of 1861. **2 W.R. Cr. 13.**

(2670)—*Ss. 408, 562.*—A conviction without sentence by a first class Magistrate under s. 562, Crim. Pro. Code, is appealable to the High Court. **U.B.R. 1904, 1st Qr., Crim. Pro. Code, 7.**

(2671)—*Ss. 408, 562 and 439 (5)—Conviction for theft and release under s. 562 upon probation of good conduct—Whether appeal lies against—Whether the proceedings can be revised under s. 439.*—Where A was convicted of theft on a regular trial held by a first class Magistrate and was released upon probation of good conduct under s. 562, *held*, an appeal lies under s. 408 against a conviction without a sentence under s. 562 and the proceedings by way of revision cannot be entertained under s. 439 (5). **5 L.B.R. 129.**

(2672)—S. 408—*See* ACT I OF 1859, 2 Weir 461 = 2 M.H.C. 473.

(2673)—Ss. 408, 413 and 416—*See* ACT III OF 1880, s. 28, 40 P.R. 1884 Cr.

(2673-*a*)—S. 408—*See* Nos. 169, 171, 174, 175, 225, 2652, 2653, *supra*, and No. 3115, *infra*.

——S. 409 (= 1882, s. 409).

See APPEAL.

(2674)—S. 409—*See* CRIMINAL BREACH OF TRUST BY PUBLIC SERVANT, 8 Cr. L.J. 160 = 1 S.L.R. 38 Cr.

(2674-*a*)—S. 409—*See* Nos. 2637, 2652, *supra*.

——S. 410 (= 1882, s. 410; 1872, ss. 80, 270, 271; 1861, s. 408).

See APPEAL.

(2675)—*Ss. 410, 486 (= Crim. Pro. Code, 1861, ss. 408, 413)—Conviction by Sessions Judge under s. 228, Penal Code—Appeal.*—An order by a Sessions Judge under s. 228, Penal Code, imposing a fine on a person for intentional insult to the Judge, when sitting in a stage of a judicial proceeding, amounts to a trial, although by a summary mode, and is, therefore, appealable. **4 M.H.C. 146.**

(2675-*a*)—S. 410—*See* Nos. 169, 174, 175, 2185, 2652, *supra*.

——S. 411 (= 1882, s. 411; Presidency Magistrate's Act, 1877, s. 167).

See APPEAL.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2676)—*S. 411 (=Crim. Pro. Code, 1882, s. 411)— Appeal from sentence of Presidency Magistrate.*—No appeal lies from the decision of a Presidency Magistrate inflicting a sentence of six months' rigorous imprisonment and a fine of Rs. 200 and, in default of payment of the fine, three months' simple imprisonment. **16 C. 799.** [*F.*, 20 B. 145, 33 C. 1036=4 C.L.J. 408; *R.*, 33 C. 1036=4 C.L.J. 408].

(2676-*a*)—S. 411—*See* No. 2652, *supra*.

——S. 412 (=1882, s. 412; 1872, s. 273; Presidency Magistrate's Act, 1877, s. 167).

See APPEAL.

(2677)—*S. 412 (=Crim. Pro. Code, 1872, s. 273)—Separate sentences—Appeal.*—Where a person is charged with two separate offences in one trial, the amount of the whole punishment awarded for the two offences must be regarded as one sentence, for the purpose of determining whether an appeal lies under s. 273 or not. **3 C.L.R. 511.**

(2678) *Ss. 412, 413 (=Crim. Pro. Code, 1872, s. 273).*—No appeal lies against a conviction under this section, where a prisoner is convicted on her own plea, even though she may like to withdraw it later on. **Colm. Dig. Cr. 31 of 1876.**

(2679)—Ss. 412, 418, 424—*See* APPEAL, Rat. Un. Cr. C. 826.

(2680)—S. 412—*See* SESSIONS JUDGE, JURISDICTION OF, 22 B. 759.

(2680-*a*)—S. 412—*See* Nos. 115, 1691, 2652, *supra*.

——S. 413 (=1882, s. 413; 1872, s. 273; paras 1 and 2; 1861, s. 411).

See APPEAL.

(2681)—*S. 413 (=Crim. Pro. Code, 1861, s. 411)—Right of appeal in petty cases.*—S. 411 must be construed strictly. If so construed, it will apply only to cases in which either imprisonment or fine has been awarded by the sentence to the extent specified in the section, and it will not apply to a case in which both punishments are awarded. In the latter case, the right of appeal is not barred. **1 N.W.P. 302.**

(2682)—S. 413—*See* ACT V OF 1861, 5 W.R. Cr. 22.

(2683)—S. 413—*See* ACT VII OF 1870, s. 31, 20 C. 687.

(2684)—S. 413—*See* BOM. ACT IX OF 1863, s. 2, 3 B.H.C. Cr. 12.

(2685)—S. 413—*See* PRACTICE AND PROCEDURE, L.B.R. (1893—1900), 535.

(2685-*a*)—S. 413—*See* Nos. 2581, 2652, 2667, 2673, 2678, *supra*.

——S. 414 (=1882, s. 414; 1872, s. 274, para 1).

See APPEAL.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2686)—S. 414—*See* ACT I OF 1871, s. 23, 22 P.R. 1886 Cr.

(2687)—Ss. 414, 415—*See* BUR. ACT IV OF 1899, ss. 30, 31-A, 4 L.B.R. 359=9 Cr. L.J. 368.

(2688)—S. 414—*See* CONFISCATION, 1 L.B.R. 3.

(2688-*a*)—S. 414—*See* Nos. 2043, 2652, *supra*.

——S. 415 (=1882, s. 415; 1872, s. 274, para 2).

(2688-*b*)—S. 415—*See* Nos. 2043, 2652, 2687, *supra*.

——S. 416 (=1882, s. 416; 1872, s. 274, para 3),

(2688-*c*)—S. 416—*See* Nos. 2043, 2652, 2673, *supra*.

—— S. 417 (=1882, s. 417; 1872, s. 272, paras 1 and 2; Presidency Magistrate's Act, 1877, s. 168).

See APPEAL.

(2689)—*S. 417—Appeals from acquittals by Government.*—The powers conferred by the above section should be exceptionally used. **7 N.W.P. 196.**

(2690)—*S. 417 (=Crim. Pro. Code, 1882, s. 417) —Application to Sessions Judge for addition of new charges—Rejection—Appeal to High Court.*—Where an application is made to the Sessions Court on behalf of the Crown for an alteration of the charge under s. 204, I.P.C., by the addition of counts under ss. 423, 424, I.P.C., at the commencement of the trial, the Sessions Judge should not postpone passing any order on the application, especially if it is based on the same facts contained in the depositions recorded by the committing Magistrate. His order rejecting the application, while acquitting the accused of the charge, after hearing the evidence for the prosecution on the original charge without going into the defence and without recording the opinion of the assessors, is not a proper order. Nor is the fact that a complaint regarding the charges proposed to be added was made to and dismissed by the Magistrate, a bar to the Sessions Judge's adding them. But it is not open to the Government under s. 417 to appeal to the High Court on an interlocutory order, *e.g.*, on the ground of the Sessions Judge's refusal to add new charges. **16 B. 414.**

(2691)—*S. 417—Appeal by Local Government against acquittal.*—Under the Crim. Pro. Code, the Local Government has the same right of appeal against an acquittal, as a person convicted has of appealing against his conviction and sentence, and there is no distinction between the mode of procedure and the principles upon which both classes of appeals are to be decided. **2 L.B.R. 303.** (4 A. 148, 16 A. 212, *Diss.*; 17 C. 485, 20 A. 459, 19 B. 51, *F.*).

(2692)—*S. 417—Acquittal—Revision—Power of High Court.*—When a Sessions Judge acquits an accused on appeal, the High Court has no

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

power on revision to convert the acquittal into a conviction. If the District Magistrate thinks that the accused should have been convicted and not acquitted, his proper course is to apply through the usual channel (not the High Court to the Local Government) to appeal against the acquittal (s. 417, Crim. Pro. Code). **U.B.R. (1892—1896), Vol. I, 47.**

(2693)—*S. 417.*—The discovery of fresh evidence, after an acquittal, is not a sufficient reason for setting aside an acquittal, and, *a fortiori*, it would be still less a sufficient reason where, by the exercise of due diligence on the part of the prosecution, the evidence might have been produced at the original trial. **1 U.B.R. (1902—1903), Crim. Pro. Code, 9.** (L. G. Cr. Mis. Cir. No. 63 of 1899, not *F.*)

(2694)—*Ss. 417, 428—Appeal from acquittal—Additional evidence discovered whether a ground for the appeal.*—The accused was tried on a charge of culpable homicide not amounting to murder. He was acquitted on that charge convicted of the minor offence under s. 504, I.P.C. Appeal was presented against the order of acquittal under the directions of the Local Government. The main ground of appeal was, however, one that went entirely outside the record. It was that the evidence of the Civil Surgeon examined as a witness in the case was incorrect as to facts. Affidavits were filed in support of the ground. *Held*, the affidavits could not be accepted for the reason that, though under the provisions of s. 428 of the Code an appellate Court is competent to admit additional evidence, yet the necessity for taking such additional evidence must be apparent from something on the record, and cannot be derived from external information and, in an appeal from an acquittal, the fact that fresh evidence against the accused has been discovered subsequent to the acquittal is not a sufficient reason for setting aside the acquittal or ordering a new trial. **3 L.B.R. 114.**

(2695)—*Ss. 417, 423 (=Crim. Pro. Code, Act X of 1872, s. 272)—Appeal from acquittal.*—The procedure to be adopted by the High Court in appeals by the Local Government from acquitting judgments is that laid down in 1 A.W.N. 159 (1881). **A.W.N. 1882, 64.**

(2696)—Ss. 417 and 439—*See* ACQUITTAL. L.B.R. (1893—1900), 126.

(2697)—Ss. 417, 418, 423—*See* APPEAL, 10 C. 1029.

(2698)—Ss. 417, 421—*See* APPEAL, 16 A. 218.

(2699)—Ss. 417 and 422—*See* APPEAL, 11 B.H.C. A.C.J. 117.

(2700)—Ss. 417, 423—*See* APPEAL, 4 A. 148, 7 M.H.C. 339=1 Weir 476.

(2701)—Ss. 417, 423, 439—*See* APPEAL, 2 A. 340, F.B.

(2702)—Ss. 417, 427—*See* APPEAL, 9 A. 528.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2703)—S. 417—*See* HIGH COURT, JURISDICTION OF, 2 Weir 569=7 M.H.C. App. 5.

(2704)—S. 417—*See* PENAL CODE, ss. 425, 430, 14 P.R. 1909 Cr.

(2705)—Ss. 417, 423 and 439—*See* RETRIAL, 6 C.P.L.R. Cr. 15.

(2706)—Ss. 417, 423, 426, 439 (1 to 4), 440—*See* REVISION, 2 A. 448.

(2707)—Ss. 417 and 439—*See* REVISION, 2 Weir 570, 6 A. 484.

(2707-*a*)—S. 417—*See* Nos. 732, 2084, 2652, *supra*.

——S. 418 (=1882, s. 418; 1872, s. 271, last para).

See APPEAL.

(2708)—*S. 418.*—The provisions of s. 418 apply equally to all criminal appeals, whether made by the Government or by accused persons; and, except as provided in s. 423, there is no distinction between the mode of procedure and the principles upon which an appeal by the Government against an acquittal and an appeal by a convicted person against his conviction and sentence are to be decided. **17 C.P.L.R. 75.** (17 C. 485 and 20 A. 459, *F.*; 4 A. 148 and 16 A. 212, *Diss.*).

(2709)—*Ss. 418 and 423 (=Crim. Pro. Code, 1882, ss. 418, 423)—Misdirection by the Judge—Power of High Court to reverse the verdict of a jury.*—In s. 423 (*d*), the word "erroneous" is not to be read as meaning "wrong on the facts," it must rather be read in connection with the words that follow as meaning that the verdict has been vitiated and rendered bad or defective by reason of a misdirection or a misunderstanding of the law. The effect of the clause is, evidently, to prevent the appellate Court from reversing the verdict of a jury on account of any misdirection by the Judge or any misunderstanding on the part of the jury of the law as laid down by him, unless such misdirection or misunderstanding of the law is on a point material to the verdict, so that the verdict can be said to be tainted with the error in the process by which it has been arrived at. It throws on the appellate Court the duty of ascertaining whether the process or method which the Judge directed the jury to follow as to the acceptance or discarding of evidence or as to the view taken of the law was erroneous on any material point, but not certainly the duty of determining for itself whether the verdict, as a conclusion of fact, was right or wrong. To hold otherwise would be tantamount to holding an appeal would lie upon the facts from the verdict of a jury in the face of the provisions of s. 418. **21 C. 955.**

(2710)—*Ss. 418, 423 (=Crim. Pro. Code, 1882, ss. 418, 423, cl. (d))*—It is not open to the High Court, in an appeal against a conviction in a trial by a jury, to go into the facts, and the

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

appeal must only be limited, as laid down in ss. 418 and 423, cl. (*d*), to points of law, notwithstanding the appeal is heard along with a reference made under s. 374, in the case of a co-accused. **2 C.W.N. 49.**

(2711)—*Ss. 418, 439, 536—Trial by jury instead of with the aid of assessors—Appeal.*—No appeal lies on matters of fact where an accused person, who ought to have been tried with the aid of assessors, is tried by a jury. *Per Jenkins, C.J.*—The words "where the trial was by a jury" in s. 418, Crim. Pro. Code, mean "where the trial in fact was by jury" and not where the trial should have been by jury. **25 B. 680=3 Bom. L.R. 279, F.B.** [*R.*, 11 Bom. L.R. 350=33 B. 423].

(2712)—Ss. 418, 323, 537—*See* CHARGE TO JURY, 1 C.W.N. 301.

(2713)—Ss. 418, 423 (2)—*See* CHARGE TO JURY, 27 B. 626=5 Bom. L.R. 599.

(2714)—S. 418—*See* VERDICT OF JURY, Rat. Un. Cr. C. 730.

(2714-*a*)—S. 418—*See* Nos. 1818, 2189, 2219, 2229, 2679, 2697, *supra*.

——S. 419 (=1882, s. 419; 1872, s. 275; 1861, s. 416).

See APPEAL.

(2715)—*Ss. 419, 420 (=Crim. Pro. Code, 1882, ss. 419, 420), distinguished.*—S. 420 is not derogatory to the rule laid down in s. 419. The latter section applies as much to a prisoner in jail, as to any other appellant, and requires that the petition shall be prepared in a certain form, while s. 420 is only concerned with the question of presentation of appeal from jail. *Per Mahmood, J.* **13 A. 171.**

(2716)—*Ss. 419, 420 (=Crim. Pro. Code, 1882, ss. 419, 420)—Presentation of petition of appeal by an appellant in jail to officer in charge of jail—Limitation Act, s. 12, Sch. II, Art. 154.*—Under the provisions of s. 420, Crim. Pro. Code, presentation of the petition of appeal, by an appellant in jail, to the officer in charge of the jail is equivalent to presentation to the Court, so far as the requirements of the Limitation Act are concerned. **9 M. 258=1 Weir 789.**

(2717)—Ss. 419, 548, 367, 537—*See* JUDGMENT, Rat. Un. Cr. C. 82.

(2717-*a*)—S. 419—*See* No. 3240, *infra*.

——S. 420 (=1882, s. 420; 1872, s. 277; 1861, s. 418).

See APPEAL.

(2718)—*Ss. 420, 421, 422 and 423 (=Crim. Pro. Code, 1882, ss. 420, 421, 422, 423)—Appeal by prisoner in jail—Power to dispose of appeal in the absence of the appellant.—Held*, by the Full Bench (*Mahmood, J., dissenting*):—The limitation which s. 423 provides is that the appellate Court, before disposing of the appeal, must peruse the record, and if the appellant is present, or is represented by a pleader, the appellant in person or his pleader must be heard. It cannot be contended, under that section, that in the case of an appeal, which has been admitted, the appellate Court, notwithstanding that notice has been properly given under s. 422, notwithstanding that the record of the case has been sent for and perused by the Court, is incompetent to dispose of the appeal, if the appellant who is not represented by a pleader, is not present. *Per Mahmood, J. (contra)*:—Where an appeal is admitted and is not summarily rejected under s. 421, the appellant must have an opportunity of being heard. On a proper understanding and interpretation of s. 423, it will be seen that the condition precedent for the disposal of the appeal is that either the appellant is heard or at least choice is given to him to appear. **13 A. 171.** [*R.*, Rat. Un. Cr. C. 739].

(2718-*a*)—S. 420—*See* Nos. 2715, 2716, *supra*.

——S. 421 (=1882, s. 421; 1872, s. 278; 1861, s. 417).

See APPEAL.

(2719)—*S. 421 (=Crim. Pro. Code, 1882, s. 421)—Meaning of proviso.*—The proviso to s. 421 is limited to appeals which have not been presented from jail. Therefore a man in jail, whilst on the one hand, he has the privilege of sending his appeal in the manner which s. 420 prescribes, has not, on the other hand, the privilege of insisting that he should be heard, or even his pleader, if he retains one, after sending up an appeal from jail. *Per Mahmood, J.* **13 A. 171.**

(2720)—*S. 421—Practice—Appeal—Summary dismissal of—Reasons not recorded—Pleader not heard.*—A convict filed an appeal from jail to the Court of Sessions and also presented a petition of appeal through a legal practitioner; *held* that the Sessions Judge was not competent to dismiss the appeal from jail summarily, but should have heard the convict's pleader. **3 A.L.J. 693=4 Cr. L.J. 373=A.W.N. 1906, 303.**

(2721)—*S. 421 (=Crim. Pro. Code, Act X of 1882, s. 421)—Dismissal for non-appearance—Appeal.*—It is not competent to a District Magistrate to dismiss a criminal appeal on the ground that no one appeared to support the petition. He must consider the facts and write a judgment. **Rat. Un. Cr. C. 593=Cr. Rg. 11 of 1892.**

(2722)—*S. 421—Duty of appellate Court—Judgment of appellate Court, contents of.*—S. 421, provides for summary dismissal of an appeal, but not for rejection thereof. It is desirable that an appellate Court, without going to the length of writing an elaborate judgment, should, in deciding an appeal, notice briefly, but clearly, what objections were urged on appeal, and how they were disposed of. **32 C. 178.** [*R.*, 9 Bom. L.R. 250].

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2723)—*S. 421—Summary dismissal, reasons for.*—Having regard to the language of s. 421, it is not necessary where an appeal is summarily dismissed under that section, for the Magistrate to give any reason for his decision. It must be taken, if he dismisses an appeal summarily, that he considered there were no sufficient grounds for interfering. **9 C.W.N. 623=2 Cr. L.J. 344.**

(2724)—*S. 421—Summary dismissal of appeal—Reasonable opportunity of being heard to be given to appellant or his pleader.*—On presentation to a Court, by the party, in person, of a memorandum of appeal signed by the pleader, it is not competent for the Court to summarily reject the appeal, under s. 421 of the Code, without giving a reasonable opportunity to the pleader to appear and without calling for the records of the case, where appellant urges reasonable grounds for discrediting the evidence of the witnesses of the other side. **29 M. 236=4 Cr. L.J. 57.**

(2725)—*S. 421—Dismissal of appeal under this section—Alteration of the conviction—Validity.*—Where an appeal is dismissed under s. 421, the appellate Court has no power to alter the conviction. **2 Weir 475.**

(2726)—*S. 421—Judgment, if should be written.*—An appellate Court, in dismissing an appeal summarily, is not bound to write a judgment. **U.B.R. 1906, 49=4 Cr. L.J. 284.**

(2727)—*Ss. 421, 422 (=Crim. Pro. Code, 1882, ss. 421, 422)—Summary rejection of appeal—Alteration of sentence.*—Where the appellate Court rejects an appeal summarily, acting under s. 421, Crim. Pro. Code, without giving the notices required by s. 422, it is not competent to alter the nature of the sentence. **Rat. Un. Cr. C. 384.**

(2728)—*Ss. 421, 423 (=Crim. Pro. Code, 1882, ss. 421, 423)—Power of appellate Court to direct prisoner's presence.*—If an appellate Court thinks it necessary, for the purpose of disposing of an appeal, to have a prisoner before it, it has the same power to direct that he should be brought before it, as a Court of first instance has, when, in pursuance of the direction of an appellate Court, it takes further evidence in the presence of the prisoner. **2 Weir 473.**

(2729)—*Ss. 421, 423 (=Crim. Pro. Code, 1882, ss. 421, 423)—Rejection of appeal and reduction of sentence.*—The accused was charged with voluntarily causing grievous hurt and convicted and sentenced to four months' rigorous imprisonment and a fine of Rs. 30 or in default further rigorous imprisonment for two months under s. 325, I.P.C. The District Magistrate rejected the appeal, but reduced the sentence of imprisonment in default of payment of fine to one month: *Held* that the Magistrate could not, after rejecting the appeal diminish the sentence, but should either

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

have reported the case to the High Court or have heard the appeal as directed by s. 423, Crim. Pro. Code. **Rat. Un. Cr. C. 304=Cr. Rg. 53 of 1886.** [*R.*, Rat. Un. Cr. C. 384].

(2730)—*Ss. 421, 423, 424 (=Crim. Pro. Code, 1882, ss. 421, 423, 424)—Summary rejection of appeal—Rejection of appeal and dismissal, difference between—Grounds of order.*—An order of summary rejection of an appeal under the provisions of s. 421, Crim. Pro. Code, does not amount to a judgment and s. 424 has no application to such an order. A judgment under s. 424 of the Code implies a trial. The essential difference between the rejection of an appeal under s. 421 and its dismissal under s. 423 is that, in the latter case, the appeal is disposed of after trial, whereas, in the former, the Court, by summarily rejecting it, refuses to try it at all. Every order passed in the exercise of judicial discretion should show on the face of it the ground on which it is made. **6 C.P.L. R. Cr. 24.**

(2731)—*Ss. 421, 423, 426 (=Crim. Pro. Code, 1861, ss. 417, 419, 421)—Appellant in jail—Appearance in Court.*—Neither ss. 417, 419, 421 of the Crim. Pro. Code, nor any other provision of law authorize a Sessions Judge to cause an appellant undergoing sentence of imprisonment to be brought before him at the hearing of the appeal. **Rat. Un. Cr. C. 22=Cr. Rg. 14—9—1869.**

(2732)—*Ss. 421, 435 (=Crim. Pro. Code, 1872, ss. 278, 294, 295)—Judicial proceedings—Originals to be retained for being supplied to appellate Court—Copies only to be given for Executive Government.*—No Court is at liberty to part with its judicial records except when these are called for by an appellate Court or on the demand of a superior Court under s. 294 or s. 295 of the Crim. Pro. Code. They must be retained in order to meet the contingency of such legal requisitions being made. For the purposes of any reference or report to the Executive Government, copies of proceedings are sufficient, but for purposes of appeal to, or revision by, superior Courts, the originals are indispensable. **Rat. Un. Cr. C. 128.**

(2733)—*S. 421 (=Crim. Pro. Code, 1882, s. 421)—Summary rejection of appeal.*—Although a Judge would be acting within his powers under s. 421, Crim. Pro. Code, in rejecting an appeal without sending for the record, such a course is ordinarily very inconvenient and should not be adopted. **A.W.N. 1883, 145.**

(2734)—S. 421 (=s. 278, Crim. Pro. Code, 1872)—Power of appellate Court rejecting appeal to enhance sentence—*See* **ACT XI OF 1874**, s. 26, 24 W.R. Cr. 29.

(2735)—Ss. 421, 367, 531—*See* **APPEAL**, 31 P.R. 1881 Cr.

(2736)—Ss. 421, 423, 424 and 367—*See* **APPELLATE COURT**, L.B.R. (1893—1900). 606.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2737)—Ss. 421, 426, 440—*See* APPELLATE COURT, 35 P.R. 1882 Cr.

(2738)—S. 421—*See* JUDGMENT, 20 B. 540, 17 A. 241, F.B.

(2739)—S. 421—*See* LETTERS PATENT, (MAD.), s. 15, 1 Weir 788-*a*.

(2740)—S. 421—*See* PRACTICE AND PROCEDURE, 36 C. 385=13 C.W.N. 684=9 Cr. L. J. 401=1 Ind. Cas. 868.

(2741)—Ss. 421, 430—*See* REVIEW, 19 B. 732.

(2742)—Ss. 421, 423, except. 1 (*d*), 430—*See* REVISION, 4 B. 101.

(2743)—S. 421—*See* SENTENCE, Rat. Un. Cr. C. 74.

(2744)—Ss. 421, 422—*See* SENTENCE, Rat. Un. Cr. C. 131.

(2744-*a*)—S. 421—*See* Nos. 1428, 2519, 2521, 2535, 2698, 2718, *supra*.

——S. 422 (=1882, s. 422; 1872, ss. 62, 269, 279).

See APPEAL.

(2745)—*S. 422—Rules issued by the High Court.*—Rules issued by the High Court are addressed to the District Magistrates as a matter of convenience and in accordance with the practice for appeals followed under s. 422, Crim. Pro. Code, the Local Government having under that section appointed the District Magistrate as the officer to receive notices of appeals. If a rule is granted against the order of a Sessions Judge, he is the proper person to show cause. **7 C.W.N. 80.**

(2746)—*S. 422—Disposal of appeal before the date fixed for hearing.*—Where a Magistrate disposed of an appeal before the day fixed for an adjourned hearing, and without giving notice to the appellant or his pleader, *held*, that it was a material error in procedure. **2 Weir 475.**

(2747)—*Ss. 422, 423—Summary reversal of conviction by appellate Court.*—Where an appellate Court set aside the convictions of an accused person without giving notice of the appeal to the Prosecuting Inspector, the respondent, and without calling for and perusing the records of the case, *held*, that the Court had acted in contravention of the provisions of ss. 422, 423, that the acquittal should be set aside and that it should be re-heard. **2 Weir 474.**

(2748)—*Ss. 422, 423 (=Crim. Pro. Code, 1882, ss. 422 and 423)—Notice to the appellant.*—Where an appeal is disposed of under ss. 422 and 423 of the Code, notice to the appellants is obligatory under s. 422. **2 Weir 475.**

(2749)—S. 422—*See* COMPENSATION, 29 M. 187=3 Cr. L.J. 452.

(2750)—S. 422—*See* NOTICE, A.W.N. 1881, 46.

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(2750-*a*)—S. 422—*See* Nos. 174, 1556, 1930, 2519, 2699, 2718, 2727, 2744, *supra*.

——S. 423, except. 1 (*d*) (=1882, s. 423; 1872, ss. 271, 272, para 3, 280, 284, 299, para 3; 1861, s. 419).

See APPEAL.

See APPELLATE COURT.

See COMMITMENT TO SESSIONS COURT.

(2751)—*S. 423 (=Crim. Pro. Code, 1872, s. 280)—Scope of—Trial under Crim. Pro. Code.*—This section does not authorise an appellate Court to order the retrial of an appellant with reference to matter extraneous to the proceedings before him as an appellate Court. It is not essential to the regularity and completeness of a trial under the Criminal Procedure Code to enquire into previous convictions. A trial properly held does not become an improper one by a sufficient extra-judicial discovery that the accused was a habitual offender. **Colm. Dig. Cr. 26 of 1875.**

(2752)—*S. 423 (=Crim. Pro. Code, 1882, s. 423 (1) (b)—Scope of the clause.*—The words "Court of competent jurisdiction subordinate to such appellate Court" in s. 423, do not appear to exclude the power of such latter Court to order a new trial before itself. **2 Weir 481.** [*F.*, 16 M.L.J. 546=2 M.L.T. 46 =30 M. 228=5 Cr. L.J. 104=6 Cr. L.J. 133].

(2753)—*S. 423 (=Crim. Pro. Code, 1872, s. 280)—Powers of Sessions Judge under, on appeal—Retrial.*—A Sessions Judge, on appeal, can only enhance, with reference to s. 280 of this Code, the punishment that has actually been awarded, but has no power under it to add another punishment to that which has been awarded by the Magistrate; for example, fine to an imprisonment. The power "*to alter*" a sentence conferred on an appellate Court under this section is only restricted to the enhancement of any punishment that has been awarded. **Colm. Dig. Cr. 51 of 1876.**

(2754)—An appellate Court has the power to order a case to be retried, if it thinks fit to do so. A Sessions Judge is competent to order the retrial of a case which is before him on appeal, **2 C.L.R. 511.**

(2755)—*S. 423 (=Crim. Pro. Code, 1872, s. 284)—Sentence beyond jurisdiction—Subsequent investiture of superior power to take effect from a date prior to that of sentence—Effect.*—Where a Magistrate, who had only third class powers awarded a sentence which he was not competent to award, and, between the date of the sentence and the order of the appellate Court annulling the sentence and directing a new trial, the Magistrate was invested, by a Government notification, with second class powers to take effect from a date previous to that of the sentence, *held*, that the notification did

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not render the sentence valid, and that the order of the appellate Court was a valid one. **3 C.L.R. 281.**

(2756)—*S. 423 (=Crim. Pro. Code, 1882, s. 423)—"Relating to trial," scope of the expression.*—The words "relating to trial" in the Code of 1882, are used in a sense wide enough to include the trial of appeals as used in ss. 342, 344, 352, and some sections of Ch. XXV. **13 B. 506.** [*F.*, Rat. Un. Cr. C. 584].

(2757)—*S. 423 (a) (=Crim. Pro. Code, 1872, s. 272)—Discretionary powers of the High Court.*—The discretionary powers of the High Court under s. 272 will be exercised, only when it is satisfied that the case is of sufficient consequence to justify it in acting under this very exceptional section. **2 Weir 476=7 M.H.C. 339.** [*F.*, 7 N.W.P. 176; *R.*, 3 C.W.N. 653=26 C. 863].

(2758)—*S. 423—Power of appellate Court to order re-trial.*—There is nothing in the above section limiting the power of an appellate Court, on an appeal from a conviction, to order a re-trial of the appellant. **17 C.P.L.R. 97.**

(2759)—*S. 423, cl. (b) (=Crim. Pro. Code, 1882, s. 423 (b))—Appellate Court's power to alter a sentence of fine into one of imprisonment and to order a re-trial—Duty of appellate Court.*—A Sessions Judge has no power to enhance a sentence in appeal, by altering a sentence of fine into one of imprisonment. **18 B. 751.**

(2760)—The appellant was convicted of causing simple hurt and was sentenced to a fine. On appeal, the appellate Court altered the conviction to one of causing grievous hurt under s. 325, Penal Code, and, in order to make the sentence legal under that section, recorded a sentence of one day's imprisonment, which, however, was to be taken to have been already undergone. *Held*, that the appellate Court had no power to enhance the sentence. The proper course would have been to let the conviction stand as one under s. 323, or to have referred the case to the High Court. **2 Weir 486.**

(2761)—The appellate Court, in a judgment which did not deal with the pleas in appeal, quashed a conviction and ordered a new trial on the ground that, although the accused were shown by the evidence to have committed some offence, it was clear that they had been convicted under a wrong section. All the facts, on which a conviction for any offence could be sustained, had been put in issue before the trying Magistrate. *Held*, that, before quashing the sentence and directing a new trial, the appellate Court should have come to a certain conclusion as to the offence which the accused were shown by the evidence to have committed; and that it should have considered whether, if the evidence showed that the accused should properly have been convicted of another offence than that charged, they would be prejudiced by amending the conviction. **2 Weir 480.**

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(2762)—Under s. 423 of the Code, the appellate Court can, in an appeal from conviction, alter the finding of the lower Court and find the appellant guilty of any offence of which he may have been acquitted by that Court, maintaining the sentence of the lower Court, but not enhancing it. **23 C. 975.** [*Appl.*, 7 C.W.N. 301; *F.*, 4 C.W.N. 166=27 C. 172; *R.*, 2 Weir 485, 12 P.R. 1904 Cr.=110 P.L.R. 1904; *D.*, 13 M.L.J. 263=2 Weir 483=26 M. 478].

(2763)—*S. 423 (=Crim. Pro. Code, 1882, s. 423)—Reversal of conviction and order for re-trial by a specific Court.*—Where an appellate Court reverses a conviction and sentence, it can, under s. 423 of the Crim. Pro. Code, order the appellant to be re-tried by a specified Court of competent jurisdiction. **Rat. Un. Cr. C. 367.**

(2764)—*S. 423—Power of appellate Court to reverse finding of acquittal.*—The words "reverse the finding and sentence" in s. 423 (1) (*b*) mean reverse the finding upon which a conviction is based, and do not empower the appellate Court (or at any rate an appellate tribunal other than the High Court) to reverse or set aside an acquittal. Where persons were charged with being members of unlawful assembly, rioting, hurt and theft, and were convicted on all the charges except on that of theft, *held*, that the appellate Magistrate was not competent to reverse the acquittal on the charge of theft. **26 M. 478=2 Weir 483=13 M.L.J. 263.**

(2765)—*S. 423 (=Crim. Pro. Code, 1882, s. 423)—Meaning of the term "Verdict."*—The term "verdict" in s. 423 (*d*) means the entire verdict on all the charges, and not merely the verdict upon each charge separately. **22 C. 377.**

(2766)—*S. 423—Enhancement of sentence, order directing payment of complainant's costs not an—Court Fees Act, VII of 1870, s. 31.*—An order passed by an appellate Court, directing the accused person to pay the costs of the complainant, under s. 31 of the Court Fees Act, correcting the omission of the Court below to order such payment, does not amount to an enhancement of the sentence, the order under the Court Fees Act forming no part of the penalty or sentence passed in the case. **29 M. 188=3 Cr. L.J. 460.**

(2767)—*S. 423—Accused sentenced to imprisonment by lower Court—Reduction of period of imprisonment on appeal, but with the addition of fine—Alteration or enhancement of sentence—Power of appellate Court.*—Where the lower Court convicted an accused and sentenced him to imprisonment for a certain period, and, on appeal, the period of imprisonment is reduced, but a fine is imposed in addition, and, in default, a further period of imprisonment, the fact that a fine is imposed by the appellate Court would not in law be an enhancement of

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the sentence, if the aggregate period of imprisonment, which the accused may have to undergo, is, to any extent, less than the period of the original sentence. In a case, where such an alteration of the sentence has the effect of rendering it, in the circumstances of the case, excessive or inappropriate, the interference in revision of a superior Court may be called for. **1 M.L.T. 375, F.B.=30 M. 103=5 Cr. L.J. 36 =16 M.L.J. 560, F.B.**

(2768)—*S. 423 (1) (b) (=Crim. Pro. Code, 1872, s 272)—Commitment to Sessions, being so directed by Sessions Judge—Preliminary investigation, whether necessary.*—Where a Deputy Magistrate had convicted some persons of the offence of house-breaking by night and of voluntarily causing hurt, but the Sessions Judge, on appeal, being of opinion that the offence committed was that of dacoity, directed a commitment for trial to the Court of Sessions, *held*, that an investigation preliminary to commitment was not necessary. **2 Weir 479.**

(2769)—*S. 423 (=Crim. Pro. Code, 1882, s. 423 (1) (b)—Conviction for lesser offence—Procedure to be adopted, when the appellate Court thinks the accused guilty of graver offence —Appellate Court's duty and its powers.*—Where a second class Magistrate, although finding that the facts constituted an offence under s. 211, Penal Code, which was triable by a first class Magistrate, convicted the accused of an offence under s. 182, but, on appeal, the Head Assistant Magistrate acquitted the accused, on the ground that, although the accused had committed an offence under s. 182, Penal Code, he should have been convicted of an offence under s. 211, Penal Code, *held*, that the procedure of the Appellate Magistrate was wrong. He should have confirmed the conviction and he should, then, have considered whether, in all the circumstances of the case, it was desirable that the accused should again be tried for the more serious offence. **2 Weir 482.**

(2770)—Where a Head Assistant Magistrate, on appeal from a conviction under ss. 323, 379, Penal Code, thought that the offence committed was robbery which the lower Court was not competent to try, and referred the matter to the District Magistrate, *held* that the procedure adopted by the Head Assistant Magistrate was not legal and his proper course was to follow the procedure laid down in s. 423 (1) (*b*). If there was no Court of competent jurisdiction subordinate to the Head Assistant Magistrate, he should have directed the committal of the accused to the Sessions. **2 Weir 484.**

(2771)—On appeal from a conviction, the appellate Court has power to alter the finding of the lower Court and convict the accused of a different offence. The only restriction on such power is that it cannot enhance the sentence. **2 Weir 485.**

(2772)—Where a Magistrate having jurisdiction to try the charge against the accused, committed an error in procedure in convicting the accused upon evidence which was not given in their presence, *held*, that the appellate Court was competent to order a re-trial. **2 Weir 481.**

(2773)—*S. 423 (1) (b)—Additional fine in lieu of imprisonment—Enhancement of sentence—Sentence on appeal.*—Where, in lieu of imprisonment, the appellate Court imposed an additional fine, *held*, that it amounted to an enhancement of sentence. An appellate Court cannot pass, on appeal, a sentence which the original Magistrate was not competent by law to pass. **2 Weir 487.**

(2774)—*S. 423 (=Crim. Pro. Code, 1882, s. 423 (1) (b))—Enhancement by appellate Court—Addition of sentence of whipping.*—The addition of a sentence of whipping by the appellate Court, although the sentence of imprisonment is reduced, amounts to an enhancement of the sentence. **2 Weir 487.**

(2775)—*S. 423 (1) (b)—Quashing of conviction on one of three charges—Maintaining sentence in its integrity, validity of.*—Where a Magistrate convicted a person of three offences, and, on appeal, the Divisional Magistrate set aside the conviction on one of them, *held*, that it was not competent to the latter to uphold the sentence that had been given in respect to all the offences. The proper course for the Magistrate was to have referred the case to the High Court for the exercise by it of its powers of revision. **2 Weir 487-*a*.**

(2776)—*S. 423 (=Crim. Pro. Code, 1882, s. 423 (2))—Evidence of convicted co-accused whether corroborative of approver's evidence.*—The evidence given by a co-accused, after he is convicted and sentenced, stands on a different footing from that of an approver or unconvicted accomplice. The Judge is justified in saying that the jury may look to the evidence of such person for confirmation of the story told by an approver. **2 Weir 520.**

(2777)—*S. 423 (=Crim. Pro. Code, 1872, s. 284)—Trial by Court without jurisdiction—Duty of appellate Court to order re-trial.*—Where the appellate Court discharged the accused on the ground that the lower Court had no jurisdiction to try him and did not order a re-trial, as it was not satisfied that the charge made by the accused, who was convicted for an offence under s. 211, Indian Penal Code, was a false one, *held*, that the appellate Court should have ordered a re-trial. **1 P.R. 1879 Cr.**

(2778)—*S. 423 (2)—Misdirection to jury.*—Where in a case of dacoity and receiving stolen property there was no evidence except that of possession of stolen property some ten days after the commission of the dacoity, *held*, that the Judge ought to have left it to the jury to decide whether the accused were guilty of dacoity or guilty of receiving stolen property, and that with reference to the latter charge he should have told them to consider whether they were

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satisfied that the prisoners knew that the property was stolen in a dacoity. *Held* also that the summing up should contain a reference to the lapse of time between the dacoity and the finding of the property. **2 Weir 47=2 Weir 515.**

(2779)—*Held* that, in a case of theft, the failure on the part of the Judge to call attention to the whole of the evidence telling against the accused and especially his observation as to the case resting wholly on the identification of certain jewels with which the evidence went to show that the accused had dealt, constituted a misdirection. **2 Weir 488.**

(2780)—*S. 423 (=Crim. Pro. Code, 1882, s. 423 (2))—Power of High Court to order a re-trial before a new jury.*—It is open to the High Court to direct, when ordering a new trial, that the accused be tried by a new jury, when it is found that the verdict of the jury is tainted with prejudice, and is based on rumours as to the prisoner's previous conduct. **2 Weir 384=2 Weir 493.**

(2781)—*S. 423 (=Crim. Pro. Code, 1882, s. 423 (2))—Questions of fact—Jury asked to give finding on one question of fact before the conclusion of the charge on the other—Validity.* —*Held*, that the procedure adopted by the Judge, in requiring the jury to give a finding on one of two questions of fact constituting the proof in the case, before he concluded his charge with reference to the other question of fact, was irregular, if not illegal and was certainly calculated to embarrass the jury in arriving at a proper verdict as to the character of the offence, if any, proved. **2 Weir 499.**

(2782)—*Recording heads of charge to jury.*— The Judge should record the heads of charge to the jury. The mere writing of a judgment is not sufficient, as it will be quite impossible to see from such judgment how the case was left to the decision of the jury. **2 Weir 499.**

(2783)—*S. 423 (=Crim. Pro. Code, 1882, s. 423 (2))—Retracted confession—Duty of Judge.*—Where a confession is subsequently retracted, and it is not corroborated by independent evidence, the Judge should point out to the jury that it is not safe to rely on the subsequently withdrawn confession, unless corroborated in material respects. **2 Weir 507.**

(2784)—Although, generally, in the case of a confession made and subsequently withdrawn, corroborative evidence of the truth of it should be required, the real question is whether, owing to the withdrawal of the confession, reasonable doubt must be entertained of the truth of the confession. It was not intended, in the case reported in 10 M. 295 to lay down, as an absolute rule of law, that a retracted confession must, in order to justify a conviction, be supported by independent evidence corroborating it in material particulars. **2 Weir 510.** [*R.*, **2 Weir 503=21 M. 83**].

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(2785 and 2786)—*S. 423 (=Crim. Pro. Code, 1882, s. 423 (2))—Jury provided by Judge with a paper containing the different counts against each prisoner and the evidence on them—Validity of procedure—Direction to jury to re-consider verdict.*—The act of a Judge in giving the jury, who did not appear to be intelligent men, a paper in which it was noted what were the different counts against each prisoner on which evidence had been offered, and the witnesses whose testimony bore upon each count, is not objectionable. Where the jury appear to be confused and to have failed to understand the remarks of the Judge, he is not acting improperly in telling them to reconsider the verdict. **2 Weir 514.**

(2786-*a*)—*S. 423, cl. 2—Charges of dacoity and dacoity with murder—Charge to jury.*— Where a prisoner was charged with dacoity under s. 395, Penal Code, and also with dacoity with murder under s. 396, Penal Code, *held*, that the Judge should, in the first instance, have placed clearly before the jury the evidence against the prisoner on the charge of dacoity only, and should not, in doing so, have alluded, except in general terms, to the charge under s. 396, Penal Code. When the jury had returned their verdict on the charge of dacoity, the Judge should then have set clearly before them as assessors the evidence connected with the charge under s. 396, Penal Code. **2 Weir 517.**

(2787)—*Ss. 423, 237, 238—Alteration of finding—Power of appellate Court under s. 423 —How to be exercised—Power to find accused guilty of abetment, on a charge of principal offence.*—No doubt under s. 423, Crim. Pro. Code, the appellate Court has power to alter a finding, but the power cannot be used arbitrarily, but only in accordance with the other provisions of the Code to be found in ss. 237, 238 thereof. It is not open to a Court to find a man guilty of the abetment of an offence, on a charge of the offence itself. **7 M.L.T. 79.**

(2788)—*Ss. 423, 307, 282 (=Crim. Pro. Code, 1882, ss. 423 (2), 307, 282)—Conviction of accused by jury without hearing defence witnesses—Duty of Judge.*—Six persons were charged with dacoity. The Sessions Judge, after the evidence of the prosecution witnesses had been given and the statements of the prisoners read out, thinking that the jury would not be likely to convict upon the evidence which had been given, asked the jury if they desired the case to go further and to hear the defence of the prisoners and the reply of the public prosecutor and his own summing up. To this question the jury, evidently misunderstanding the reason of the question being put to them at that stage, replied that they found some of the accused guilty and others not guilty. The Judge, thereupon dismissed the jury and tried the case *de novo* with a fresh jury. *Held*, that the action of the Judge in recommencing the trial with the aid of a fresh jury was not authorised by law. The proper course would have

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been for the Judge to have explained to the jury that they had misunderstood the purport of his question, and to have directed them that it was their duty to hear the defence of the persons whom they had found guilty, before either expressing an opinion or definitely making up their minds that they were guilty. **2 Weir 497.** [*D.*, 2 Weir 493].

(2789)—*Ss. 423, 367, 537 (=Crim. Pro. Code, 1872, ss. 284 and 464)—Sessions Judge annulling conviction by Magistrate for want of jurisdiction—Omission to order a re-trial—Subsequent order for re-trial, validity of—Sanction to prosecute.*—Where a Sessions Judge, on appeal, annuls the conviction of the accused on the ground of want of jurisdiction of the Magistrate who tried the case, but omits to order a new trial before a competent Court, the Judge is not precluded from passing such order subsequently. The order annulling the conviction is not an acquittal. No doubt the order is in the nature of a judgment or final order, which, under s. 464, when once dated and signed, cannot be reviewed. But this provision refers to the mode in which the appeal is dealt with, not to direction in regard to ulterior proceedings. Where the conviction of the accused persons for giving false evidence and for making a false charge is annulled by the Sessions Judge on the ground of incompetency of the Magistrate, who tried the case, without passing any order for re-trial, a competent Court may proceed to re-try the case upon the sanction originally given, and still subsisting, and upon which no legal proceedings had been taken. **3 M. 48=2 Weir 756.**

(2790)—*Ss. 423, 424, 367—Summary disposal of appeal, if allowed.*—In dealing with an appeal under s. 423, the District Court has no power to dismiss it summarily, but is bound to comply with the requirements of ss. 424 and 367. **1 Bom. L.R. 225.**

(2791)—*Ss. 423, 427, 435, 439—Powers of High Court in revision—Order of discharge or acquittal by Presidency Magistrate—Charter Act (24 and 25 Vic., C. 104), s. 15—Letters Patent, 1865, s. 28—Appellate Court—Power to direct further enquiry.*—Under the Code, the High Court has not the power to interfere, in revision, with an order of discharge or dismissal passed by a Presidency Magistrate. But it has powers of revision in respect of such orders under s. 15 of the Charter Act, but not under s. 28 of the Letters Patent. S. 15 of the Charter Act has always been interpreted in a very extended meaning so as to give ample powers of superintendence, *i.e.*, to say, powers of revision over proceedings of subordinate Courts. [*R.*, 2 Weir 255, 28 C. 709 ; *Diss.*, 27 B. 84]. S. 423 does not enable a Court of appeal to direct that further enquiry be made into a case, in which an order of discharge or dismissal may have been passed. S. 423 confers a power to direct further enquiry only in respect of a case of an appeal from an order of acquittal, and that this

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power is so limited is shown by an express enactment in s. 437 to provide for such orders being passed. **27 C. 126=3 C.W.N. 601.** [*Diss.*, 28 C. 652, F.B.]

(2792)—*Ss. 423, 428 (=Crim.Pro.Code, 1882, ss. 423 (1) (b), 428)—Omission to examine all witnesses for defence—Power of appellate Court to set aside the conviction.*—An appellate Court is not competent to set aside a conviction, merely on the ground that all the witnesses cited for the defence have not been examined. The proper course for it is to have the evidence taken of the other witnesses before disposing of the appeal. **2 Weir 481.**

(2793)—*Ss. 423, 428 and 430—Appeal—Power of appellate Court.*—The appellate Court is not competent to pass a fresh sentence. Power to enhance is expressly prohibited. The appellate Court cannot consider and determine a new case disclosed by additional evidence, except in so far as to confirm or modify or set aside the sentence under appeal, or to act as otherwise provided by s. 423 *(b)*. The function of the appellate Court is to dispose of the appeal, and s. 430 declares that, save in certain cases, "judgments and orders passed by an appellate Court upon appeal shall be final." **27 C. 372=4 C.W.N. 497.**

(2794)—*Ss. 423, 435, 439 (=Crim. Pro. Code, 1882, ss. 423, 435, 439)—Revisional powers of High Court—Order for committal—Scope of s. 423.*—The powers of the High Court under ss. 435 and 439 have been extended by the Code of 1882. They can call for records to satisfy themselves of the correctness and propriety of the proceedings. The infliction of an inadequate punishment is an impropriety which the jurisdiction in revision is intended to remedy. S. 423 gives an appellate Court the power to order an accused person to be committed for trial, when it considers that that was the proper procedure to have been adopted. That power can, under the provisions of s. 439, be exercised by the High Court as a Court of revision. [*F.*, 15 A. 205=13 A.W.N. 105]. S. 423, which gives the appellate Court the power to direct a committal, is not limited to persons exclusively triable by a Court of Sessions. **16 B. 580=Rat. Un. Cr. C. 577.** [*F.*, 23 C. 350, 27 C. 172 ; *R.*, 16 P.R. 1895 Cr., 17 C.P.L.R. 97].

(2795)—*Ss. 423, 435 and 439—Evidence Act (I of 1872), s. 30—Statement of accused after conviction—Revision—Criminal cases—Interlocutory order.*—Ss. 423, 435 and 439 of the Crim. Pro. Code invest the High Court with power to be exercised, when the Court thinks fit, to correct errors in procedure committed by Subordinate Criminal Courts, before the final order of acquittal or conviction is passed by such Subordinate Courts. At a joint trial of three accused persons, two were discharged and the third convicted. The conviction was upheld on appeal. The order of discharge was set

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aside and further inquiry was directed to be made as regards the persons discharged. In the course of further inquiry, the Magistrate declined to record the statement of the other accused who was convicted previously and tendered by the prosecution as their witness, the Magistrate being of opinion that his evidence would be inadmissible. On revision, the Chief Court set aside the Magistrate's order on the ground that the evidence was not inadmissible and that the postponement of the rectification of the error of the Magistrate may very possibly lead to a considerable waste of time or to a miscarriage of justice. **70 P.L.R. 1904.** (12 P.R. 1902 Cr. = 100 P.L.R. 1902, *D.*; 45 P. R. 1885 Cr., *R.*).

(2796)—*Ss. 423, 438—Retrial and recording further evidence, difference between.*—Where an appellate Court passes an order of remand under s. 423, it cannot restrict the evidence to be taken to that mentioned in its order, but it should order the case to be retried in view of the instructions contained in its order. In such a case, it is open to the accused person to adduce such additional evidence as he may desire. **3 C.L.J. 303 = 3 Cr. L.J. 304.**

(2797)—*Ss. 423 and 439—Power of High Court to alter finding on revision.*—The Chief Court can, on the revision side, when an accused has been convicted of one charge and acquitted of another, convert the acquittal into conviction. **12 P.R. 1904 Cr. = 110 P.L.R. 1904.** (22 C. 164, 9 A. 134, *R.*)

(2798)—*Ss. 423, 439—Finding of lower Court, whether superior Court could alter on appeal or revision.*—The question in this case was whether the alteration, by the Sessions Judge, of the finding of the lower Court and that of the conviction of that Court, under s. 379 of the Penal Code, to one under s. 392 of the same Code was within the powers conferred on him by s. 423. *Held*, it is competent for a superior Court to alter a finding of the lower Court, provided that the accused is not thereby convicted of a more serious offence than the original one. The ordinary rule applicable to such cases is that, on appeal or revision, an accused person cannot be convicted of an offence of which he could not have been convicted by the Court which tried him. **3 L.B.R. 232.**

(2799)—*Ss. 423, 495 (= Crim. Pro Code, 1882, ss. 423 and 495)—Vakil instructed to support the prosecution—Right to be heard.*—There is nothing in s. 423 which prevents an appellate Court from hearing a Vakil privately instructed to support the prosecution, and when the Public Prosecutor does not appear on behalf of the Government, it would generally be discreet on the part of the Court to do so. **2 Weir 476.**

(2800)—*Ss. 423 (d), 517—Order for restoration of property—Powers of appellate Court—Revision.*—It is oompetent to a Court, in the exercise of appellate or revisional powers, to cancel or modify an order passed by a lower Court under s. 517 of the Code and even to extend such order to property which it did not previously include. **A.W.N. 1906, 256 = 3 A.L. J. 770 = 4 Cr. L.J. 370.**

(2801)—*Ss. 423 (d) and 522—Power of appellate Court to set aside lower Court's order putting complainant in possession of land.*—*Held*, that under s. 423 (*d*), Crim. Pro. Code, a Sessions Judge had power to set aside an order under s. 522 of the Code, for putting a complainant in possession of a land in dispute and for removing certain fencing which had been erected. **7 O.C. 208.**

(2802)—*Ss. 423, 537, cl. (a)—Rioting—Judgment of appellate Court, absence of finding in, as to common object of unlawful assembly—Penal Code, s. 147—Failure of the common object charged—Defective description in the charge—Applicability of s. 537, cl. (a) of the Code.*—The charge against the accused was to the effect that they committed a riot "with the common object of taking possession of some property by means of criminal force, or to enforce a right or supposed right on it." It was found by the lower appellate Court that the opposite party was trying to encroach upon the disputed land, possession of which had been given to the accused by an order under s. 145 and as the accused were thus already in possession of the land, their common object could not have been to take possession of the same by force. Neither the judgment of the lower appellate Court nor that of the Magistrate contained any statement which, even by implication, might be supposed to contain a finding as to what the common object, if any, of the accused was. *Held, per* Woodroffe and Mookerjee, JJ., it being essential to sustain a conviction, under s. 147, I. P. Code, that the persons forming the unlawful assembly should be animated by a common object and, the common object alleged in the charge in the present case not having been made out, the conviction ought to be set aside and the accused acquitted. The present case is covered by the principle laid down in the case of *Rahimuddy* v. *Asgar Ali*, 29 C. 990, where it was *held* that, if the common object fails and the substantive charge is disbelieved, the accused should be acquitted, and that it is not proper for an appellate Court, while disbelieving the common object of an unlawful assembly, to find out a different common object, regarding which the accused were never called upon to plead nor tried, and to affirm the conviction. Further, the accused in this case have been prejudiced by reason of the omission in the charge to specify the property, in respect of which the riot is alleged to have taken place, and the omission could not be cured by having recourse to s. 537, cl. (*a*) in a case like the present, where the specification in the charge of the property in respect of which the riot is said to have taken place, would alter the whole complexion of the case. *Held*, further, the present case falls within

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the rule that, if persons are rightfully in possession of land and find it necessary to protect themselves from aggression, they are justified in taking precautions and using such force as is necessary to prevent the aggression and the accused, therefore, merely exercised their right of private defence against the encroachment by the opposite party. **33 C. 295 = 2 C.L.J. 516.** [*R.*, 35 C. 103, 12 C.W.N. 384].

(2803)—*Ss. 423 (d) and 562—Powers of the High Court to act under s. 562 on appeal.*—The new provisions inserted in s. 423 (*d*) empower the High Court, as a Court of appeal, to exercise the powers conferred by s. 562. **24 A. 306.** [*Appr.*, 29 M. 567 = 5 Cr. L.J. 136].

(2804)—*S. 423 (=Crim. Pro. Code, 1882, s.423)—Power of Court to deal with case of accused who has not appealed.*—Both the parties to a riot were jointly tried before a Deputy Magistrate and convicted. One of the parties appealed to the District Magistrate, who quashed the convictions and directed that each side should be tried separately. The Sessions Judge, being of opinion that the District Magistrate's order as to the party who had not appealed was made without jurisdiction, reported the case for the orders of the High Court. *Held*, setting aside the orders of the Deputy Magistrate and the District Magistrate, that those persons who had not appealed should be tried by a competent Court according to law. **A.W.N. 1883, 163.**

(2805)—*S. 423 (=Crim. Pro. Code, Act X of 1872, s. 284)—Powers of appellate Court.*—Where an appellate Court finds that the appellant has been properly convicted under s. 448 of the Penal Code, but thinks that the Magistrate should have committed for trial under s. 450, the proper procedure is to enhance the punishment or to report the matter to the High Court under s. 296 of the Crim. Pro. Code, and not to annul the conviction and direct a re-trial by a competent Court. **A.W.N. 1882, 112.**

(2805-*a*)—*S. 423.*—The question "what offence are you going to confess" was held to be an improper form of question to an accused person. **2 Weir 507.**

(2806)—S. 423—*See* ACT VI OF 1864, s. 3, 3 L.B.R. 112 = 3 Cr. L.J. 348.

(2807)—S. 423 (*d*)—*See* ACT VII OF 1870, s. 31, 22 M. 153 = 1 Weir 724, 26 M. 421.

(2808)—S. 423—*See* ACT XI OF 1874, s. 23, 2 C.L.R. 511, 24 W.R. Cr. 24.

(2809)—Ss. 423, except. 1 (*d*), 426, 439 (1 to 4), 440—*See* APPEAL, 2 B. 564.

(2810)—Ss. 423 and 492—*See* APPELLATE COURT, 16 P.R. 1895 Cr.

(2811)—S. 423—*See* CHARGE, 27 C. 660, 3 C.W.N. 367.

(2812)—S. 423 (*d*)—*See* CHARGE TO JURY—25 C. 561, 25 C. 711 = 2 C.W.N. 369, 2 Weir 489, 2 Weir 493, 2 Weir 500.

(2813)—Ss. 423 (*d*), 537—*See* CHARGE TO JURY, 25 C. 230.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2814)—S. 423—*See* COMMITMENT TO SESSIONS COURT, A.W.N. 1885, 297, 23 C. 350, 8 A. 14.

(2815)—Ss. 423, 439—*See* COMMITMENT TO SESSIONS COURT, 15 A. 205.

(2816)—S. 423 (2)—*See* DACOITY, 5 M.L.T. 100 = 32 M. 179.

(2817)—Ss. 423, 435, 439—*See* HIGH COURT, JURISDICTION OF, 26 C. 746 = 3 C.W.N. 598.

(2818)—Ss. 423 (*d*), 522—*See* MAGISTRATE, JURISDICTION OF, 29 C. 724 = 6 C.W.N. 713.

(2819)—S. 423—*See* PENAL CODE, ss. 109, 417, 457, 468, 471 and 511, 30 C. 822 = 7 C.W.N. 639.

(2820)—S. 423—*See* PENAL CODE, s. 289, 3 N.L.R. 90 = 6 Cr. L.J. 100.

(2821)—S. 423—*See* RETRIAL, 11 P.R. 1879 Cr.

(2822)—Ss. 423, 232, 535—*See* RETRIAL, L.B.R. (1893—1900), 238.

(2823)—Ss. 423, 428—*See* RETRIAL—28 P.R. 1884 Cr.

(2823-*a*)—Ss. 423, 426, 439, 440—*See* REVISION, 25 P.R. 1876 Cr.

(2824)—Ss. 423, 439—*See* REVISION, 27 B. 84 = 4 Bom. L.R. 779, A.W.N. 1890, 225, 9 A. 134, F.B., 8 B. 197, 18 P.R. 1883 Cr., 16 P.R. 1884 Cr., 10 P.R. 1900 Cr.

(2825)—S. 423—*See* SENTENCE, 10 Bom. L.R. 93 = 7 Cr. L.J. 119 = 32 B. 162, 23 A. 497, 27 C. 175, 3 N.L.R. 67 = 6 Cr. L.J. 43, 17 A. 67, 23 B. 439.

(2826)—S. 423—*See* SESSIONS COURT, JURISDICTION OF, A.W.N. 1881, 62, A.W.N. 1883, 99, 18 B. 751.

(2826-*a*)—S. 423—*See* Nos. 98, 169, 233, 244, 415, 425, 432, 1244, 1336, 1350, 1358, 1443, 1456, 1670, 1734, 1736, 1737, 1751, 1803, 1819, 1961, 2129, 2130, 2156, 2182, 2189, 2219, 2519, 2633, 2653, 2695, 2697, 2700, 2701, 2705, 2706, 2709, 2710, 2713, 2718, 2728, 2729, 2730, 2731, 2736, 2742, 2747, 2748, *supra*, and Nos. 3229, 3453, *infra*.

——S. 424 (=1882, s. 424).

See APPEAL.

See APPELLATE COURT.

See JUDGMENT.

(2827)—*S. 424 (=Crim. Pro. Code, 1882, s. 424)—Appellate Court—Imputation on the motives of the lower Court.*—It is improper for an appellate Court to record in its judgment grave imputations on the motives of an officer whose decision is under appeal, when such imputations have no other foundation than suspicion. **2 Weir 535.**

(2828)—*S. 424 (=Crim. Pro. Code, 1882, s. 424)—Duty of appellate Court.*—It is the duty of an appellate Court in every case to

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examine the evidence for itself and to give to an accused person, the benefit of any reasonable doubt which it may entertain after such examination. In every case, it is its duty to arrive at an independent opinion. **2 Weir 535.**

(2829)—*Ss. 424, 367 (=Crim. Pro. Code, 1882, ss. 424 and 367)—Duty of appellate Court.*—The appellate Court should decide both on the sufficiency of the prosecution evidence to warrant a conviction, and on its reliability. **2 Weir 536.**

(2830)—S. 424—*See* HIGH COURT, JURISDICTION OF, 2 Weir 534.

(2830-*a*)—S. 424—*See* Nos. 575, 2504, 2527, 2528, 2530, 2679, 2730, 2736, 2790, *supra*.

——S. 426 (=1882, s. 426; 1872, ss. 281, 297; 1861, s. 421).

See APPEAL.

(2831)—*S. 426 (=Crim. Pro. Code, 1882, s. 426)—Suspension of sentence.*—The only Courts which have power to suspend the execution of a sentence or order, are the Court to which an appeal lies and the High Court. A Sessions Judge has no power, therefore, to suspend the operation of the sentence passed on certain accused persons by a second class Magistrate under s. 426. It is only when the convicted person had been released that the term during which the sentence is suspended shall be excluded. **2 Weir 536.**

(2832)—*Ss. 426, 439, 440 (=Crim. Pro. Code, 1872, s. 297)—Revisional powers of the High Court.*—The High Court exercised its revisional powers by taking judicial notice of a letter from the Government enquiring "whether in the opinion of the High Court the judgment of the Magistrate was legal and equitable" and by disposing of it under s. 297, Crim. Pro. Code. **2 A. 522.** [*F.*, A.W.N. 1887, 144].

(2833)—*Ss. 426, 439, 440 (=Crim. Pro. Code, 1872, s. 297)—Improper acquittal—When High Court can interfere.*—(*a*) Under Act X of 1872, provision is made for an appeal by Government in cases of improper acquittal. (*b*) From this, and from the circumstance that s. 297 of the Crim. Pro. Code, 1872, while it expressly gives power to the High Court to correct errors in cases of improper discharge, conviction and sentence, says nothing of improper acquittal, the intention of the Legislature seems to have been that there should be no interference with an acquittal, except on a formal appeal. **3 B. 150.** [*R.*, L.B.R. (1872-1892), 241].

(2834)—*Ss. 426, 439, 440 (=Crim. Pro. Code, 1872, s. 297)—Improper discharge—Powers of High Court.*—The High Court's interference with an improper dischargs is not limited to cases where there has been an error in law, the facts having been properly found by the Magistrate, the law has been misapplied and the accused erroneously declared not to have committed any offence. It can set aside the order of discharge and order a re-trial, in cases where the evidence shows sufficient grounds for putting an accused person on his defence. **1 C.L.R. 83.**

(2835)—*Ss. 426, 439, 440, 477 (=Crim. Pro. Code, 1872, ss. 297, 472)—Powers of commitment of a Court of Sessions--Revision by High Court.*—Where a Sessions Judge directed the commitment to the Sessions of a person, under s. 472, Crim. Pro. Code, for trial on charges under ss. 193, 195, 211, I.P.C., *held*, that the order of commitment was not bad, merely because it included the charge under s. 193, I.P.C., an offence not exclusively triable by a Court of Sessions. *Held* by Stuart, C.J., (Spankie, J. *doubting*.) The High Court has power under s. 297 to set aside the commitment made by a Sessions Judge under s. 472 before the trial. **2 A. 398.**

(2836)—*Ss. 426, 439, 440, 523 (=Crim. Pro. Code, 1872, ss. 297, 416)—Proclamation under s. 416—Judicial proceeding—Quære*:—Whether the issue by the Magistrate of a proclamation under s. 416 of Act X of 1872 is a "judicial proceeding" within the meaning of s. 297 of that Act. **2 A. 276.** [*R.*, 12 A.W.N. 102].

(2837)—*Ss. 426, 514 (=Crim. Pro. Code, Act X of 1882, ss. 426, 514)—Defect in bail bond—Forfeiture.*—Where a bail bond fixes neither the time for the production of the prisoner nor the place, it cannot be forfeited on the non-appearance of the prisoner. Where the bond is for the appearance of an appellant before the High Court, the District Magistrate has no jurisdiction to order forfeiture. **A.W.N. 1885, 44.**

(2838)—*Ss. 426, 439, 440, 476 (=Crim. Pro. Code, Act X of 1872, ss. 297, 471)—District Munsiff—Penal Code, s. 209.*—Where a District Munsiff, after the confirmation of his decree dismissing a suit as false, called on the plaintiff to show cause and eventually sent him to be tried by a Magistrate for an offence under s. 209 of the Penal Code, *held* that the order was one passed under s. 471 of the Crim. Pro. Code, and that, since the enquiry was not one in the nature of a judicial proceeding, the High Court could not revise it under s. 297 of the Crim. Pro. Code. **A.W.N. 1882, 92.** [*Discussed*, A.W.N. 1882, 229].

(2839)—Ss. 426, 439 (1 to 4), 440—*See* ACT VII OF 1878, s. 58, 4 A. 417.

(2840)—Ss. 426, 439, 403—*See* APPEAL. Rat Un. Cr. C. 73.

(2841)—Ss. 426, 439, 440—*See* APPELLATE COURT, A.W.N. 1882, 47.

(2842)—Ss. 426, 439, 440, 487—*See* CONTEMPT OF COURT, 3 P.R. 1875 Cr.

(2843)—Ss. 426, 439 (1 to 4), 440—*See* BAIL, 6 M. 63=2 Weir 409.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2844)—Ss. 426, 439 (1 to 4), 440 and 144—*See* NUISANCE, 6 N.W.P. 16.

(2845)—Ss. 426, 439, 440—*See* REVISION, 13 P.R. 1880 Cr., 26 P.R. 1880 Cr., 41 P.R. 1880 Cr., 6 P.R. 1875 Cr., 15 P.R. 1875 Cr., 3 A. 545, F.B., Rat. Un. Cr. C. 177, 1 A. 139, 1 A. 1, F.B., A.W.N. 1881, 63, 10 P.R. 1877 Cr.

(2846)—Ss.426, 439, 440,144—*See* REVISION, 17 P.R. 1875 Cr.

(2847)—Ss. 426, 439, 440, 144, 435—*See* REVISION, 33 P.R. 1878 Cr., 2 P.R. 1880 Cr.

(2847-*a*)—S. 426—*See* Nos. 98, 774, 1521, 1883, 1966, 2303, 2600, 2731, 2737, 2809, 2823-*a*. *supra*, and Nos. 2889, 3041, 3043, 3612, *infra*.

——S. 427 (=1882, s. 427 ; Presidency Magistrate's Act, 1877, s. 168).

(2848)—S. 427—*See* APPEAL FROM ACQUITTAL, 1 C. 281.

(2848-*a*)—S. 427—*See* Nos. 2702, 2791, *supra*.

——S. 428 (=1882, s. 428 ; 1872, s. 282, paras 1, 3, 4 ; 1861, s. 422).

See APPEAL.

(2849)—*S. 428—Appellate Court directing further enquiry by police.*—S. 428 of Crim. Pro. Code, does not authorise an appellate Court to send a case to the police for further investigation, the case having been originally started by a complaint in Court. **A.W.N. 1900, 130.**

(2850)—*S. 428 (=Crim. Pro. Code, 1872, s. 282)—Order for further enquiry.*—When persons accused of an offence are committed to the Court of Sessions under distinctly framed charges, and that Court takes all the evidence produced by the prosecution, and that evidence fails to sustain the charge, the High Court will not, except in very exceptional circumstances, direct that further enquiry should be made or that additional evidence should be taken. **5 A. 217.**

(2851)—*S. 428—Dismissal of appeal after taking additional evidence—Right of accused to appeal to High Court.*—An appellant whose appeal is dismissed by an appellate Court, after it has taken additional evidence, under s. 428, has no right of appeal to the High Court. **27 C. 372=4 C.W.N. 497.**

(2852)—*Ss. 428, 437, 439—Power of Sessions Judge or District Magistrate to take, or to direct the taking of, evidence supplementary to the evidence given in the lower Court.*—S. 437 does not authorise a Sessions Judge or District Magistrate to take evidence or to direct evidence to be taken supplementing the evidence given in the lower Court. He is authorised to direct a further enquiry, but not to take evidence or direct evidence to be taken. Under s. 428, an appellate Court dealing with an appeal may direct additional evidence to be taken and itself record such evidence. The High Court, under s. 439, has powers as an appellate Court to direct evidence to be taken. No such powers are given to the Sessions Judge or the District Magistrate under s. 437. **6 C.L.J. 251 =6 Cr. L.J. 357.**

(2853)—*S. 428 (=Crim. Pro. Code, 1872, s. 282)—Enquiry as to place where assault was committed—Power of appellate Court*—*See* **23 W.R. Cr. 34.**

(2854)—S. 428—*See* APPELLATE COURT, 31 C. 710.

(2855)—S. 428—*See* ASSESSORS, 15 A. 136.

(2855-*a*)—S. 428—*See* Nos. 1679, 2668, 2669, 2694, 2792, 2793, 2820, *supra*.

—— S. 429 (=1882, s. 429 ; 1872, s. 271-B).

See APPEAL.

(2856)—*Ss. 429, 439 (=Crim. Pro. Code, 1882, ss. 429 and 439)—Rule issued by High Court on a Magistrate—Procedure* —Where a Division Bench of the High Court issues a rule calling upon the Magistrate to show cause why the conviction and sentence should not be set aside on the ground that there was no evidence on the record connecting the accused with the offence, the High Court is not confined to see whether there is any evidence to go to the jury. The rule should be read, with the judgments which were before the Court at the time it was granted, reasonably in favour of the accused. **2 C.W.N. 81.**

(2857)—Ss. 429 and 439—*See* THEFT, 27 C. 501=4 C.W.N. 480.

(2857-*a*)—S. 429—*See* Nos. 943, 2225, *supra*.

——S. 430 (=1882, s. 430 ; 1872, s. 285 ; 1861, s. 428).

See APPEAL.

(2858)—S. 430—*See* REVIEW, 7 B.H.C. Cr. 67.

(2859)—S. 430—*See* SESSIONS JUDGE, JURISDICTION OF, 1 M.H.C. 4.

(2859-*a*)—S. 430—*See* Nos. 2741, 2742, 2793, *supra*, and No. 2932, *infra*.

——S. 431 (=1882, s. 431).

See ABATEMENT OF APPEAL.

See APPEAL.

(2860)—*S. 431 (=Crim. Pro. Code, 1882, s. 431)—Death of appellant pending appeal—Effect.*—Where one of two appellants who had appealed against their convictions, dies pending the decision of the appeal, his appeal abates under s. 431, Crim. Pro. Code. The matter cannot be considered in the revision side of the High Court, when the case depends on appreciation of evidence. The remedy open to the representatives of the deceased appellant is by application to the Governor-in-Council ; and these representatives will, if they so desire, be

Crim. Pro. Code (Acts V of 1898, X of 1882. X of 1872, XXV of 1861 and VIII of 1869) —continued.

furnished with a copy of the judgment of the High Court in the appeal of the co-prisoner to support any such application. **Rat. Un. Cr. C. 707 = Cr. Rg. 40 of 1894.**

(2860-*a*)—S. 431—*See* ABATEMENT OF REVISION, 6 P.R. 1893 Cr.

(2861)—S. 431—*See* REVISION, 19 B. 714.

——S. 432 (=1882, s. 432).

See REFERENCE.

See REVISION.

See HIGH COURT, SUPERINTENDENCE AND POWERS OF.

See HIGH COURT, JURISDICTION OF.

(2862)—*S. 432--Reference by District Magistrate—Opinion sclicited.*—Except in cases where there is a reference under s. 432, a High Court cannot and will not express an opinion upon any question, unless it is brought before it in the ordinary way by application for revision. **9 Cr. L.J. 248 = 1 S.L.R. 4 Cr.**

(2863)—S. 432 (2)—*See* CHARGE TO JURY, 2 Weir 501.

(2863-*a*)—S. 432—*See* No. 1880, *supra*.

——S. 433 (=1882, s. 433).

(2864)—Ss. 433, 439—*See* HIGH COURT, JURISDICTION OF, 5 C.W.N. 330.

(2865)—S. 433—*See* REVIEW, Rat. Un. Cr. C. 638.

(2865-*a*)—S. 433—*See* No. 1670, *supra*.

——S. 434 (=1882, s. 434; Act X of 1875, s. 101).

(2866)—*S. 434 (=Crim. Pro. Code, 1882, s. 434)—Reserving of question of law on application by prisoner's counsel—Right to begin—Nature of High Court's power under section.*—Where, on the application of the prisoner's counsel, a question of law has been reserved for the decision of the Court under s. 434, the counsel for the prisoner has the right to begin. The power which the High Court exercises under s. 434 is that of review, and the Court is a Court of reference and revision. **8 B. 200.** [*R.*, 3 L.B.R. 75].

(2867)—*S. 434—Reservation of points.*—At the close of the summing up by the Judge, the Counsel for the accused asked for a reservation, under s. 434, Crim. Pro. Code, upon the following points :—(1) Whether there is any sufficient order or authority, within the meaning of s. 196, Crim. Pro. Code, for the complaint made in this case. (2) Whether the High Court had power, notwithstanding the absence of a sufficient order or authority, to accept the commitment under s. 532, and to proceed with the trial. (3) Whether disaffection means simply want of affection in any degree towards the British rule or its representatives. The Judge refused to reserve them. The Full Bench refused leave to appeal to the Privy Council. **22 B. 112.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2868)—Ss. 434 and 439—*See* SENTENCE, 3 M.L.T. 312=7 Cr. L.J. 361.

(2868-*a*)—S. 434—*See* Nos. 918, 2281, *supra*.

——S. 435, paras 1 to 3 (=1882, s. 435; 1872, ss. 294, 295, para 1, 520; 1861, ss. 405, 434).

See REVISION.

See REFERENCE.

See HIGH COURT, SUPERINTENDENCE AND POWERS OF.

See HIGH COURT, JURISDICTION OF.

(2869)—*S. 435 (=Crim. Pro. Code, 1872, ss. 294 and 295, para 1; 1861—1869, s. 405)—Power of Joint Sessions Judge.*—A Joint Sessions Judge cannot act where a Magistrate has made an order as to possession of land without judicial enquiry, under s. 295, which applies only to the Sessions Judge of the division. **25 W.R. Cr. 21.**

(2870)—*S. 435—Practice.*—The object of the legislature in s. 435 of the Crim. Pro. Code is to set right some patent defect or error and not to give the High Court a roving commission to look out for some trace of a possible error. **A.W.N. 1899, 135.**

(2871)—*S. 435 (=Crim. Pro. Code, 1882, s. 435)—Scope of.*—The reason for the substitution of the word "inferior" in the Code of 1882 for the word "subordinate" used in the corresponding s. 295 of the Code of 1872 is to meet the rulings, that a District Magistrate is not subordinate to the Sessions Judge, and to provide that, nevertheless, the revisional authority of the latter over the former should remain unquestionable. Of course, other Magistrates of the District are "subordinate" and, therefore, "inferior" to the District Magistrate. **12 C. 473, F.B.**

(2872)—*Ss. 435, 517 (=Crim. Pro. Code, 1882, ss. 435 and 517)—"Any proceeding," scope of the expression.*—The words "any proceeding" in s. 435 are wide enough to empower the High Court to revise an order made by Magistrates under s. 517. **2 Weir 538.**

(2873)—*Ss. 435, 439 (=Crim. Pro. Code, 1861, s. 405)—"Sentence or order," scope of the expression.*—The words "sentence or order" in s. 405 are wide enough to include an order of discharge. **4 M.H.C. App. 70.**

(2874)—*S. 435 (=Crim. Pro. Code, 1882, s. 435)—Powers of High Court under—Revision.*—Under s. 435 of the Code of 1882, the High Court has power to call for and examine the record of any proceeding before an inferior Court for the purpose of satisfying itself as to the correctness, ligality or propriety of any sentence or order recorded or passed, and as to the regularity of any proceeding of such inferior Court. **2 Weir 538.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2875)—*Ss. 435, 439, Per Birdwood, J.*— Under ss. 435, 439, Crim. Pro. Code, the High Court can, in the exercise of its revisional jurisdiction, examine the records of cases for the purpose of satisfying itself as to the correctness or propriety, as well as the legality of any finding, sentence or order; and where there are exceptional circumstances for its interference, it will, in the interest of justice, exercise the powers of a Court of appeal in dealing with them. *Per Jardine, J.*:—The jurisdiction of the High Court to revise findings of facts exists as regards findings of Courts of appeal, as well as original Courts, as may also be inferred from the words of s. 430. The law does not impose any limit to this jurisdiction, except the discretion of the Judges who have regulated the discretion by rules which in practice limit its use. As a rule, while allowing a suitor to come to the revisional jurisdiction of the High Court, the High Court will not interfere (*a*) where, as a rule, the Legislature intended the original or appellate decisions on the facts to be final, (*b*) where the relief sought might be got from a Court of concurrent revisional jurisdiction below, and (*c*) where the lower Court's decision on the facts is not shown to be clearly or manifestly wrong. **14 B. 331.** [*F.*, Rat. Un. Cr. C. 708, 826, 837, 908; *R.*, 16 B. 580= Rat. Un. Cr. C. 577, 22 C. 998, 21 B. 567, 28 B. 533].

(2876)—*S. 435—Non-exercise or improper exercise of powers of discretion vested in a Magistrate--High Court's powers of interference.*— S. 435 of the Code gives the High Court ample power to interfere, should it see fit to do so, in any case where a Magistrate has either refused to exercise a discretion vested in him by the law, or has exercised that discretion in an improper manner, or on improper grounds. **19 C. 52.**

(2877)—*S. 435 (3)—Jurisdiction of High Court.*—The jurisdiction of a High Court not appointed by Royal Charter to interfere on revision in proceedings taken under Ch. XII is entirely barred by sub-s. 3 of s. 435 of the Crim. Pro. Code. **2 L.B.R. 239.** (24 B. 527, 27 C. 892, 6 C.W.N. 737, 26 C. 188, 27 C. 259, 30 C. 155, 34 P.R. Cr. 5, 37 P.R. Cr. 59, 25 B. 179, *R.*).

(2878)—*S. 435 (=Crim. Pro. Code, 1872, s. 435)—Revisional powers of District Magistrate.*—A District Magistrate is justified, under s. 435, Code of Criminal Procedure, 1882, in calling for and examining the proceedings of any Magistrate of whatever class in his own district, even a Magistrate of the first class exercising jurisdiction in the same district. **L. B.R. (1872—1892), 387.**

(2879)—A District Magistrate is competent to call for and examine the record of the proceedings before a first class Magistrate, situate within the local limits of his jurisdiction. **S. C. 88, Oudh.** (5 A.W.N. 257 and 8 M. 18, *R.*).

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2880)—A District Magistrate is competent, under s. 435 of the Criminal Procedure Code, to call for, and deal with, the record of any proceeding before any Magistrate of whatever class in his own district. **12 C. 473, F.B.** [*F.*, L.B.R. (1872—1892), 387].

(2881)—*S. 435—Reference to District Magistrate—Power of District Magistrate to record evidence.*—The Code does not empower a District Magistrate to record evidence of his own motion in a case which comes before him under s. 435. **3 Bom. L.R. 677.**

(2882)—*S. 435—High Court—Criminal revision jurisdiction—Penal Code, s. 124-A—Sedition—Attempt to publish sedition—Intention in sedition is a question of fact.*—It is the settled practice of the High Court to refuse to interfere, in the exercise of its revisional jurisdiction, in regard to findings of fact, except on very exceptional grounds, such as mis-statement of evidence by the lower Court or the misconstruction of documents, or the placing by that Court of the *onus* of proof on the accused contrary to the law of evidence. To constitute an attempt punishable under the Penal Code, all that is necessary is some external act, something tangible and ostensible, of which the law can take hold as an act showing progress towards the actual commission of the offence. It does not matter that the progress was interrupted. An attempt to publish sedition is complete as soon as the copy containing it is sold. It is none the less an attempt because something external to the accused happened, which prevented a perusal of the article by the buyers or any other member of the public. In offences punishable under s. 124-A, Penal Code, the question of intention in one of fact. *Held*, on construction of the article in question, that its object and intention was to bring the Government contemplated by s. 124-A into hatred and contempt. **12 Bom. L.R. 21.**

(2883)—*S. 435—Revision of order passed by Civil Court under s. 643, Civ. Pro. Code.*—In a civil case, the Court, after delivering judgment, recorded an order which was stated to have been passed under s. 643, Crim. Pro. Code, 1882, sending "the case with the document to the District Magistrate for enquiry. Ss. 193, 199 and 471, I.P.C., relate to the offence committed." There was nothing to show that any enquiry was made by the subordinate Judge, who recorded the order to satisfy himself that there were sufficient grounds for sending the case under s. 643, Crim. Pro. Code, to the Magistrate for investigation. *Held*, that, although the application was headed as one under s. 435, Crim. Pro. Code, it might be regarded as one made under s. 622, Crim. Pro. Code, that, as the order said to have been passed under s. 643, Crim. Pro. Code, did not contain any of the reasons which led the inferior Court to consider that there were sufficient grounds for sending the charge to the Magistrate for investigation, it was illegal, and that, if the

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order was to be treated as one passed under s. 476, Crim. Pro. Code, it was equally open to the objection that there was no preliminary enquiry by the Court. **4 O.C. 96.**

(2884)—*S. 435—Judgment, contents of—Revision—Criminal cases—Power of Chief Court to expunge passage from judgment.*—It is improper on the part of a Magistrate to record an opinion of the guilt of a person who is discharged, when the evidence for the prosecution does not justify the framing of a charge. When a Magistrate discharged the accused, but, by a passage in the judgment, recomended the police to insert his name in their list of bad characters, and the Sessions Judge, on the authority of Punjab Law Reporter No. 164 of 1901, sent the case to the Chief Court for orders, the Chief Court directed the recommendation to be expunged from the judgment. **80 P.L.R. 1904.**

(2885)—*S. 435 (=Crim. Pro. Code, 1882, s. 435)—Appeal to District Magistrate by one of several accused—Power of the latter to take cognizance of the sentence passed on another who has not appealed.*—A District Magistrate has no jurisdiction, while dealing with the appeal of one of several accused persons, to take cognizance of the conviction and sentence passed on another accused who has not appealed to him, except by reporting it to the High Court. Where the District Magistrate set aside the conviction and sentence passed on an accused person not appealing and transferred the case to a Sub-Divisional Magistrate, who committed that accused to the Court of Sessions, *held*, that the order of the District Magistrate, with the proceedings taken thereunder, up to and inclusive of the order of commitment, should be set aside. **Rat. Un. Cr. C. 358=Cr. Rg. 1 of 1888.**

(2886)—*S.435 (=Crim.Pro.Code,1872, s.295) —Submission of record of inferior Court to High Court by Sessions Judge—Explanation for order passed.*—A Sessions Judge calling for the record of an inferior Court under s. 295 must, in submitting the records of the case for the orders of the High Court, also obtain and submit an explanation, from the inferior Court, of the order passed by it. **8 C. 644.**

(2887)—*S. 435 (=Crim. Pro. Code, 1882, s. 435)—Inferior Criminal Court, meaning of.*—The words "inferior Criminal Court" in s. 435 of the Crim. Pro. Code mean inferior so far as regards the particular matter in respect to which the superior Court is asked to exercise its revisional jurisdiction. **10 C. 268.** [*F.*, 10 C. 551, 7 A. 134, A.W.N. 1884, 286; *Overruled*, 12 C. 473, F.B.; *Diss.*, 8 M. 18, F.B.=2 Weir 540, 9 B. 100].

(2888)—*Ss. 435, 107, 514 (=Crim. Pro. Code, 1872, ss. 294 and 502)—Forfeiture of security bond—Order for levying the penalty, whether appealable.*—An order levying penalty on

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forfeiture of a bond for keeping the peace is not appealable, inasmuch as the person held liable to the penalty is not, within the meaning of the Code convicted on a "trial." Where a Deputy Magistrate, deciding that a bond for keeping the peace had been forfeited, levied the penalty under s. 502, and the Sessions Judge on appeal reversed the order, *held*, that the order of the Magistrate was not open to appeal. **2 M. 169.**

(2889)—*Ss. 435 (1, 2 and 3), 426, 439 (1, 2, 3 and 4), and 440 (=ss. 295 and 297 of the Code of 1872)—Remand of dismissed case for re-trial—Procedure of superior Magistrate.*—A District Magistrate cannot remand a case, once enquired into and dismissed, for retrial by a subordinate Magistrate. (20 W.R. Cr. Rul. 47, 1 Cal. 282 (p. 2, *supra*), *referred to*. He can accept a fresh complaint, if fresh evidence be procurable, or report the case, in the absence of fresh evidence, for the orders of the High Court under s. 297. **4 C. 647.** [*R.*, 5 C.W.N 457, 2 L.B.R. 27, 29 M. 126=16 M.L.J. 79=1 M.L.T. 31].

(2890)—*Ss. 435, 437 (=Crim. Pro. Code, 1882, ss. 435 to 437)—Distinction between inferior and subordinate Magistrates—Powers of District Magistrate under s. 435.*—The term "subordinate" in s. 437 is comprised in the term "inferior" in s. 435. The reason for the employment of the latter term in ss. 435 and 436, was that in both those sections, the Court of Sessions and the District Magistrate are combined, and the Magistrates other than the District Magistrate, though subordinate to him are not generally so to the Court of Sessions. It was necessary, therefore, in ss. 435 and 436, to employ a term applicable to the relation of the Magistracy both to the supervising authority and the appellate tribunal. In s. 437, in which the District Magistrate is dealt with separately from the Court of Session, the use of the term "inferior" is no longer necessary and therefore the term "subordinate" is used. [*R.*, 12 C. 473.] Reading ss. 435 and 437 with s. 17, a District Magistrate has jurisdiction to entertain an application to call for and examine the record of a case in which a complaint was dismissed by a first class Magistrate under s. 203, Crim. Pro. Code. **8 M. 18=2 Weir 540.**

(2891)—*Ss. 435, 436, 437 and 532—Discharge of accused charged with an offence exclusively triable by Court of Session—Further enquiry—Powers of District Magistrate and Sessions Judge.*—Under s. 436, the Sessions Judge and the District Magistrate have co-ordinate powers, in a case exclusively triable by a Court of Session, either to order commitment upon the evidence already taken or to direct a fresh enquiry, if the Magistrate has improperly discharged the accused person. **28 C. 397=5 C. W.N. 574.** [*F.*, 3 M.L.T. 25=7 Cr. L.J. 29=30 M. 40].

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2892)—*Ss. 435, 437—Revision application dismissed by Sessions Judge for want of prosecution—District Magistrate's power to order further enquiry into case.*—Where, at the time when a District Magistrate exercised his power of revision, there was no application before the Sessions Judge, nor had the latter exercised his power of revision, having merely rejected one before him for want of prosecution, *held*, that the District Magistrate had power to entertain the subsequent application and to order further enquiry into the case. The intention of the Legislature in enacting the last clause of s. 435, Crim. Pro. Code, is to prevent the Sessions Judge and the District Magistrate from simultaneously exercising their powers of revision in such a way as would amount to one of them, as it were, hearing an appeal from, or reviewing, an order passed by the other of them. **4 O.C. 119.**

(2893)—*Ss. 435, 438 (=Crim. Pro. Code. 1872, ss. 295 and 296)—Powers of Sessions Judge to call for records.*—The powers of a Sessions Judge to call for records under s. 295 are powers which are at all times to be exercised ; and such powers may be put in force, not merely on matters coming before the Judge, but also on matters coming to his knowledge on reliable information. **2 Weir 538.** [*R.*, 2 Weir 566=2 M. 38].

(2894)—*Ss. 435, 438, power of District Magistrate to report to High Court under, about an improper decision of a Sessions Judge.*—By the words 'or otherwise' in s. 438 of the Code, the Legislature never intended to give to a Magistrate the power to question the propriety of a judgment or sentence passed by a superior criminal authority. The High Court will, therefore, not interfere in revision with orders passed by a Sessions Judge upon a report submitted by a District Magistrate under the section. Nor is it desirable that a District Magistrate, who is for certain purposes subordinate to the Sessions Judge, should make a report of cases in which he may be dissatisfied with that Judge's decision. **2 N.L.R. 149=4 Cr. L.J. 422.**

(2895)—*Ss. 435, 438 (1)—Power of additional Sessions Judge to revise or to refer to the High Court.*—An Additional Sessions Judge as such has not the powers of a Sessions Judge to call for the proceedings of Magistrates under s. 435 or to refer proceedings to the High Court under s. 438 (1), Crim. Pro. Code. **1 L.B.R. 119.** (5 C.W.N. 71, 9 B. 164, *R.*).

(2896)—*Ss. 435, 438 (=Crim. Pro. Code, 1882, ss. 435, 438)—Sessions Judge—Enhancement of sentence—Procedure of District Magistrate.*—A District Magistrate who considers the sentence passed by a Sessions Judge inadequate should, instead of referring the case to the High Court under s. 438 of the Crim. Pro. Code, communicate with the Local Government or with the Public Prosecutor. **Rat. Un. Cr. C. 601=Cr. Rg. 20 of 1892.** (9 A. 362, 10 A. 146, *R.*).

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(2897)—*Ss. 435, 438, 439—Appeal not preferred by Government from acquittal—Revision.*—Where the Local Government has not appealed from an acquittal, or where the District Magistrate does not move the Local Government to appeal, it is not proper and expedient for the High Court, as a general rule, to exercise the powers of revision, on a reference direct from the District Magistrate. **24 A. 346.** [*F.*, 88 P.L.R. 1906=4 Cr. L.J. 37 ; *R.*, 2 S.L.R. 25 Cr.].

(2898)—*Ss. 435, 438 and 488 (3)—Imprisonment on non-payment of maintenance to wife, order of—Reference by Sessions Judge to High Court on point of law.*—*Held*, that an order for commitment to prison for default in payment of a wife's maintenance-allowance cannot be made without proof that non-payment was due to the wilful neglect of the person ordered to pay. *Held*, further, that the Sessions Judge could properly report a case to the Judicial Commissioner's Court, if he was satisfied that the Magistrate's order was illegal, or if he was doubtful as to its illegality, but not if he was satisfied that it was legal. In s. 438, the words "the result of such examination" mean that the Sessions Judge or District Magistrate is to report the incorrectness, illegality or impropriety, if in his opinion such exists, of the finding, sentence or order recorded or passed by the inferior Court, or the irregularity, if in his opinion such exists, of the proceedings of such Court, and not that he is to refer abstract points of law to the High Court. **5 O.C. 316.** (9 A. 240, 22 C. 291, 25 C. 291, 20 M. 3, *R.*).

(2899)—*Ss. 435, 439—Conviction for two offences—Conviction for one offence set aside without reduction of the sentence—Effect.*—*Held* that, where the accused has been convicted for two offences, and on appeal the conviction for one is set aside, there must be a reduction of the sentence, except where the Magistrate did not mean to pass any sentence for the offence, the conviction for which has been set aside. **7 M.L.T. 81.**

(2900)—*Ss. 435, 439—Appeal—Disposal by appellate Magistrate on prosecution evidence only—Legality.*—Where an appellate Magistrate dealt with the prosecution evidence only, and did not even allude to the evidence of the defence or the nature of the defence, *held*, that the Magistrate did not give the evidence the consideration which he was bound to give it, and that his order ought to be set aside. If the appellate Magistrate gives a judgment, which makes it appear probable that he has not fully heard and considered the appeal, his disposal of the appeal ought not to be allowed to stand. **7 M.L.T. 182.**

(2901)—*Ss. 435, 439—Administrative circular of a District Magistrate—Prohibiting uncertificated pleaders from practising in the criminal Courts of the District—Procedure for aggrieved party.*—A circular by a District Magistrate,

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prohibiting uncertificated pleaders from practising in the Criminal Courts in his District, is not open to revision by the High Court. The proper course for the pleader, who has been refused appearance in a particular case by a Magistrate in pursuance of such circular, is to apply for the revision of the illegal or improper order of the Magistrate refusing to allow him to appear. **4 Ind. Cas. 876 Cr.**

(2902)—*Ss. 435, 439—Revisional powers of High Court — Practice and Procedure.*—Although s. 439 gives the High Court power to call for cases, not only on judicial information, but also "which otherwise come to its knowledge," yet, in most cases, it is the right practice that Judges should be moved in open Court; publicity is thus secured and a fuller hearing of the reasons which move the Government in the interests of the public order, or a private individual in his own. It is, therefore, desirable that such motions should be made in the usual manner, however wide the powers of the Judges may be to interfere on knowledge otherwise acquired. **16 B. 580=Rat. Un. Cr. C. 577.**

(2903)—*Ss. 435, 439 and 478 (=Crim. Pro. Code, 1882, ss. 435, 439, 478)—District Munsiff acting under s. 478—Power of Sessions Judge.*—Though certain magisterial powers have been given to a District Munsiff under s. 478, Crim. Pro. Code, for the purpose of investigating cases of contempt of Court, he still remains, while exercising those powers, a Civil Court and is not an inferior Criminal Court within the meaning of s. 435. He is not, therefore, amenable to the jurisdiction of the Sessions Judge. The Sessions Judge, therefore, has no jurisdiction to revise his proceedings. **5 M.L.J. 226.**

(2904)—*Ss. 435 and 476—Calling for records under s. 435, whether a "judicial proceeding"—Section under s. 476, when could be taken.*—Where a District Magistrate calls up the record under s. 435, Crim. Pro. Code, his proceedings is not a judicial proceeding within the meaning of s. 476. To adopt the procedure under s. 476, immediate action is contemplated, and to take such procedure after the lapse of several months is illegal. **15 M.L.J. 489=3 Cr. L.J. 118.** [*R.*, 17 M.L.J. 584=3 M.L.T. 79=7 Cr. L. J. 54].

(2905)—*S. 435—British Consul in the dominions of Sultan of Muscat—Revisional jurisdiction of Bombay High Court.*—The High Court at Bombay has no criminal revisional jurisdiction over the proceedings of Her Majesty's Consul within the dominions of the Sultan of Muscat. **24 B. 471.**

(2906)—S. 435—*See* ACT IX OF 1890, s. 113, 13 P.R. 1891 Cr.

(2907)—S. 435—*See* BEN. ACT III OF 1899, s. 449, 3 C.L.J. 90=10 C.W.N. 182=3 Cr. L. J. 211=33 C, 287.

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(2908)—Ss. 435, 439—*See* BEN. ACT II OF 1907, ss. 2, 3, 6, 14 C.W.N. 404.

(2909)—S. 435 (1, 2, 3)—*See* BOM. ACT IV OF 1890, s. 43, Rat. Un. Cr. C. 540=Cr. Rg. 13 of 1891.

(2910)—S. 435—*See* BOM. ACT IV OF 1890, s. 46, Rat. Un. Cr. C. 692.

(2911)—S. 435—*See* BOM. ACT III OF 1901, s. 86, 9 Bom. L.R. 1347.

(2912)—Ss. 435, 439—*See* MAD. ACT II OF 1907, s. 23 (3), 7 M.L.T. 183.

(2913)—Ss. 435, 438—*See* APPEAL, W.R. 1864 Cr. 23, 11 W.R. Cr. Cir. 5, 5 M.H.C. App. 10.

(2914)—S. 435 (4)—*See* COMMITMENT TO SESSIONS COURT, 26 M. 477=2 Weir 542.

(2915)—Ss. 435, 439, 250—*See* COMPENSATION, Cr. Rg. 6 of 1890.

(2916)—Ss. 435 and 436 (*b*)—*See* DISTRICT MAGISTRATE, L.B.R. (1893—1900), 135.

(2917)—Ss. 435, 438—*See* DISTRICT MAGISTRATE, 7 W.R. Cr. Cir. 1, A.W.N. 1882, 135.

(2918)—Ss. 435 and 437—*See* FURTHER ENQUIRY, 5 M.L.T. 356=32 M. 214=3 Ind. Cas. 488, 7 A. 134, 6 M.L.T. 157.

(2919)—Ss. 435, 439—*See* GAMING, 7 M.L.T. 189.

(2920)—S. 435—*See* HIGH COURT, JURISDICTION OF, 7 Bom. L.R. 18=2 Cr. L.J. 28, 24 B. 471=1 Bom. L.R. 840, 26 C. 188=3 C.W.N. 49.

(2921)—Ss. 435 to 439—*See* HIGH COURT, SUPERINTENDENCE AND POWERS OF, 5 M. L.T. 233, F.B.=9 Cr. L.J. 192=19 M.L.J. 157=32 M. 220=1 Ind. Cas. 228.

(2922)—Ss 435, 439—*See* PENAL CODE, s. 411, 4 P.W.R. 1907 Cr.

(2923)—Ss. 435 (1 to 3), 433 (1), 436—*See* REFERENCE TO HIGH COURT, 6 C.L.R. 245.

(2924)—Ss. 435, 438, 439—*See* REFERENCE TO HIGH COURT, 8 Cr. L.J. 161=1 S.L.R. 40 Cr., 23 C. 250.

(2925)—Ss. 435 (1 to 3), 436, 438 (1), 439 (1 to 4), 440 and 426—*See* REFERENCE TO HIGH COURT, 8 C. 875.

(2926)—S. 435—*See* REVISION, 28 B, 479=6 Bom. L.R. 324, 10 C. 1047, 4 L.B.R. 75=6 Cr. L.J. 291.

(2927)—Ss. 435, 118—*See* REVISION, 9 Bom. L.R. 1385=7 Cr. L.J. 24=3 M.L.T. 53.

(2928)—Ss. 435, 438, 436—*See* REVISION, A.W.N. 1882, 146.

(2929)—Ss. 435, 438, 439—*See* REVISION, 13 C.W.N. 753=10 Cr. L.J. 190=2 Ind. Cas. 846 =36 C. 643, 4 B.H.C. Cr. 1, 12 B. 377, 14 M. 363=2 Weir 571, 5 M.L.T. 258, 9 Bom. L.R. 706=6 Cr. L.J. 70.

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(2930)—Ss. 435 and 195—*See* SANCTION TO PROSECUTE, 2 Weir 160.

(2931)—S. 435—*See* SENTENCE, 22 B. 760.

(2932)—Ss. 435, 439, 430—*See* SENTENCE, 4 M.H.C. App. 36.

(2933)—Ss. 435 and 437—*See* SESSIONS JUDGE, JURISDICTION OF, 17 M.L.J. 153=2 M.L.T. 24=5 Cr. L.J. 132.

(2934)—Ss. 435, 438, 436—*See* SESSIONS JUDGE, JURISDICTION OF, A.W.N. 1881, 76.

(2934-*a*)—S. 435—*See* Nos. 69, 104, 125, 126, 127, 128, 130, 269, 361, 522, 673, 779, 781, 791, 796, 798, 813, 909, 919, 920, 921, 922, 923, 928, 929, 944, 964, 1161, 1162, 1290, 1429, 1430, 1431, 1432, 1433, 1434, 1443, 1523, 1538, 1577, 1628, 1954, 2169, 2732, 2791, 2794, 2795, 2817, 2847, 3102, *supra*, and Nos. 3186, 3187, *infra*.

——S. 436 (=1882, s. 436; 1872, s. 296, paras 2 and 3; 1861, s. 435).

See REFERENCE.

See COMMITMENT TO SESSIONS COURT.

(2935)—*S. 436—Discharge by Magistrate—Committal ordered by Sessions Judge—Revision.*—S. 436 of the Code of Criminal Procedure gives the fullest discretion to a District Magistrate or a Sessions Judge to order a commitment where he considers an accused person has been improperly discharged. *Per Aikman*, J.—A Magistrate holding an enquiry under Chap. XVIII of the Code of Criminal Procedure, into cases triable by the Court of Sessions or by the High Court, is empowered not only to consider whether the evidence for the prosecution, if true, furnishes sufficient grounds for committing the accused for trial, but he can go further and weigh that evidence, *i.e.*, consider whether it is true. This power, however, should be sparingly used. *Per Knox*, J.—The Magistrate holding the enquiry has no power to declare an accused either guilty or innocent of the offence with which he is charged. He is not a Magistrate holding a trial, and cannot write a judgment. **26 A. 564=A.W.N. 1904, 125=1 A.L.J. 292.**

(2936)—*S. 436—Discharge—Commitment by District Magistrate—Case not "triable exclusively by the Court of Session"—Jurisdiction.*—*Held*, that a case does not come within the purview of s. 436 of the Code of Criminal Procedure merely because in the opinion of the District Magistrate the offence alleged to have been committed could not be adequately punished by a Magistrate. **A.W.N. 1908, 189=8 Cr. L.J. 47.**

(2937)—*Ss. 436, 437, 438 (=Crim. Pro. Code, 1861, s. 435)—Conviction by Magistrate in case triable by him—Powers of Sessions Judge on appeal to direct commitment.*—Where a Magistrate competent to try a case under s. 425, I.P.C., tried it and convicted the accused, the Sessions Judge, on the hearing of an appeal by the prisoner, was not competent to direct the Magistrate to commit the accused to the sessions on the same charge, on the ground that the case was so grievous that it should not have been disposed of summarily. **2 N.W.P. 285.**

(2938)—*Ss. 436, 438 (=Crim. Pro. Code, 1872, s. 296)—"Sessions case," meaning of.*—"Sessions case" in s. 296 means a case triable exclusively by the Court of Sessions. **3 C.L.R. 263.**

(2939)—The term, 'Sessions case,' in s. 296 of the Crim. Pro. Code of 1872, meant a case triable exclusively by the Court of Session. **4 C. 16.**

N.B.—It may be noted that the term "Sessions case" has now been omitted and the words 'case triable exclusively by the Court of Session' substituted therefor. (*Vide* s. 436 of Act V of 1898).

(2940)—The term "Sessions case" in s. 296 means a case triable by the Court of Sessions only. **7 C.L.R. 168.**

(2941)—*S. 436—Discharge of accused person—Fresh evidence—Order for committal, validity of.*—Where, after the order of discharge of an accused person, fresh evidence comes to light, the District Magistrate should not direct a Subordinate Magistrate to commit the accused, for it will amount to committal for trial on the evidence of witnesses whom the accused has not had an opportunity of cross-examining. The proper course for the District Magistrate is to direct a fresh inquiry. **2 Weir 550.**

(2942)—*Ss. 436, 437, 438 (=Crim. Pro. Code, 1861, s. 435)—Act VIII of 1869—Reference to High Court.*—S. 435 of the Crim. Pro. Code, having been altered by Act VIII of 1869, it is unnecessary to refer to the High Court in cases where failure of justice has occurred owing to the case not having been committed to the Sessions Court. The Sessions Court has power to direct a commitment. **7 B. H.C. Cr. 72.**

(2943)—*Ss. 436,438 (=Crim. Pro. Code, 1882, ss. 436 and 438)—Improper discharge of accused person—Powers of District Magistrate.*—If, in cases not falling under s. 436, a District Magistrate sees reason to think that a Subordinate Magistrate has improperly discharged an accused person by a reason of his having misapprehended the law or committed a material error in procedure, the District Magistrate should, under s. 438, report the case for the opinion and orders of the High Court. **8 M. 336.** [*R.*, 1 L.B.R. 311].

(2944)—*Ss. 436, 438 (=Crim. Pro. Code, 1872, s. 296)—Reasons far submission of report under.*—A Sessions Judge submitting a report under this section must state the reasons on which his opinion leading to the report is founded. **Colm. Dig. Cr. 70 of 1877.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2945)—*Ss. 436, 438 (=Crim. Pro. Code, 1872, s. 296)—Order directing commitment—Notice to parties.*—Before a Sessions Court can direct the committal of a party against whom a complaint has been dismissed by the Magistrate, that Court is bound to give him notice of the application for such committal, and an opportunity of showing cause why the committal should not be made. **1 C.L.R. 93.**

(2946)—*Ss. 436, 438 (=Crim. Pro. Code, 1872, s. 296)—Discharge of the accused without examining principal witness.*—Where a Deputy Magistrate discharges the accused without examining the principal witnesses in the case, his order is bad and the District Magistrate is competent to revive the proceedings. **3 C.L.R. 263.**

(2947)—*Ss. 436 and 476—Order by Sessions Judge to commit a person under s. 195, Penal Code, after acquittal under s. 193, Penal Code, on the same facts, validity of.*—A Sessions Judge acting under s. 476 sent an accused person to a Magistrate to be tried for an offence under s. 193, Penal Code. But the Magistrate discharged the accused. *Held* that the Sessions Judge was not, thereupon, competent, to direct the accused to be committed for trial under s. 195, on the same facts, **2 Weir 549.**

(2948)—*S. 436 (=Crim. Pro. Code, Act X of 1882, s. 436)—Absence of notice to show cause.*—It is an essential condition precedent to a valid order under s. 436 of the Crim. Pro. Code, that the accused should have an opportunity of showing cause against his commitment. **A.W.N. 1888, 236.**

(2949)—*Ss. 436, 438 (=Crim. Pro. Code, 1872, s. 296; 1861-1869, s. 435)—Power of a Sessions Court to order committal of accused discharged by a Magistrate.*—An order by a Judge under s. 296 of Act X of 1872, directing a Magistrate to commit an accused person, discharged at a preliminary inquiry, to take his trial in a Court of Session, must specify the particular act constituting the offence charged. The Judge cannot order a committal for offences with which the accused was in no way charged before the Magistrate. **10 B.L.R. 285 =19 W.R. Cr. 30.**

(2950)—*Ss. 436, 438 (=Crim. Pro. Code, 1861, s. 435)—Jurisdiction of Magistrate—Commitment to Sessions.*—The Sessions Judge has no power to commit to the Sessions a case in which persons were convicted by the Deputy Magistrate of an offence under s. 457 of the Penal Code: such a case being one triable by the Deputy Magistrate, ss. 427 and 435 of the Code of 1861. do not apply. **2 B.L.R.S.N. 2 =10 W.R. Cr. 35.**

(2951)—*Ss. 436, 438 (=Crim. Pro. Code, 1872, s. 296)—Commitment by Sessions Judge—Offence of cheating.*—An order of commitment by a Sessions Judge would be bad in form where it fails to specify the offence for which the parties are to be committed for trial at the Sessions. **21 W.R. Cr. 41.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(2952)—*Ss. 436, 438 (=Crim. Pro. Code, 1872, s. 296)—Summoning or giving notice to accused person.*—Although there is nothing in s. 296 with regard to summoning or giving notice to the accused person, no person should be affected in his personal liberty without having an opportunity given him to answer the charge for which he is arrested and locked up. If the accused had no opportunity given them of meeting the charge, the commitment was not a good commitment. **22 W.R. Cr. 67**; **24** W.R. Cr. 70, 1 C.L.R. 93.

(2953)—Ss. 436, 437, 438—*See* ACT XVIII OF 1854, s. 26, 6 M.H.C. App. 41.

(2954)—Ss. 436, 438—*See* ACT VI OF 1872, s. 5, 21 W.R. Cr. 31.

(2955 to 2959)—Ss. 436, 437—*See* FURTHER ENQUIRY, 15 M. 39 = 2 Weir 542.

(2960)—Ss. 436, 437—*See* MAGISTRATE, JURISDICTION OF, 18 C. 75.

(2961)—Ss. 436, 437, 438—*See* MAGISTRATE, JURISDICTION OF, 5 M.H.C. Ap. 32.

(2962)—S. 436—*See* SESSIONS JUDGE, JURISDICTION OF, 23 M. 225.

(2963)—Ss. 436, 437, 438 (1)—*See* SESSIONS JUDGE, JURISDICTION OF, 3 N.W.P. 90, 4 N.W.P. 50.

(2963-*a*)—S. 436—*See* Nos. 127, 172, 352, 1032, 1443, 1522, 1523, 1587, 1629, 1631, 1632, 1641, 1642, 1662, 1663, 1665, 1668, 1940, 2103, 2280, 2634, 2644, 2663, 2891, 2916, 2923, 2925, 2928, 2934, *supra*, and Nos. 3032, 3036 3041, 3042, 3043, 3045, 3048, *infra*.

——S. 437 (=1882, s. 437; 1872, s. 298; 1861, s. 435).

See FURTHER ENQUIRY.

See REFERENCE TO HIGH COURT.

See REVISION.

(2964)—*S. 437 (=Crim. Pro. Code, 1882, s. 437)—Scope.*—S. 437, Crim. Pro. Code, contemplates a case, where a superior Court thinks that a further enquiry should be made into any complaint which has been dismissed, or into the case of an accused person who has been discharged; but it does not contemplate a case of such Magistrate directing a subordinate Magistrate to issue warrants for the apprehension of a person. **1 C.W.N. 650.**

(2965)—*S. 437, Crim. Pro. Code, 1898,* is the only law which authorises a Magistrate to re-open the proceedings in which a person has been released. **6 C.W.N. 163.**

(2966)—*S. 437 (=Crim. Pro. Code, 1882, s. 437)—Further enquiry on the same materials—Notice.*—1. When a Magistrate has discharged an accused person under s. 253, Crim. Pro. Code, the High Court or the Court of Sessions has, under s. 437, jurisdiction to direct further enquiry on the same materials, and a District

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Magistrate may, under like circumstances, himself hold further enquiry or direct further enquiry by a subordinate Magistrate. But, in exercising the powers conferred by s. 437, Judges and District Magistrates should, in the first place, always allow the person who has been discharged an opportunity of showing cause why there should not be further enquiry, before an order to that effect is made, and in the next place, they should use them sparingly and with great caution and circumspection, especially in cases where the questions involved are mere matters of fact. As to the mode in which their discretion should be regulated, the remarks of *Straight and Tyrrell, JJ.*, in 4 A. 148, in reference to appeals from acquittals, may appropriately apply and should be consulted. **9 A. 52=6 A.W.N. 281, F.B.** [*F.*, 5 C.P.L R. 20, 14 M. 334=2 Weir 557, P.L.R. 1900, 33 Cr.; *Applied*, 15 C. 608; *R.*, 6 C.P. L.R. 11 Cr., L.B.R. (1893—1900), 169, 14 C.P. L.R. 161; *Appr.*, Rat. Un. Cr. C. 328; *R.*, 29 P. R. 1885 Cr. 20 A. 339, 20 A. 459, 21 A. 122, U.B.R. (1897-1901), 100 Cr., 17 C.P.L. R. 75].

(2967)—Before any order is made under s. 437, Crim. Pro. Code, 1898, to the prejudice of an accused person, notice should be given to that person to appear and to show cause why the order should not be passed. **20 A. 339.** [*R.*, 3 Bom. L.R. 703].

(2968)—Although no notice to the accused, under the law, is necessary before an order under s. 437 may be passed, yet, a Court would not be exercising a proper discretion in such matter if, before proceed.ng under s. 437 to order a further enquiry in a case in which an accused person may have been discharged, it did not give him an opportunity, by service of a notice, to show cause against such an order being made. But no notice would be necessary before an order to set aside an order of dismissal under s.203 could be passed, since, that order was not passed with a notice to the accused person or in his presence, and therefore would, probably, be unknown to him. **15 C. 608.** [*F.*, 2 C.W. N. 196, 3 C.W.N. 249, 2 P.R. 1901 Cr., 5 Bom. L.R. 877; *Expl.*, 29 C. 457; *R.*, 17 P.R. 1895 Cr., U.B.R. (1897—1901), 100 Cr.].

(2969)—The power conferred by s. 437 of the Code, 1898, to direct a further enquiry, should be used sparingly and with great caution. Though it is not illegal to make an order directing further enquiry under s. 437 of the Code, without notice to the accused, it is always desirable that notice should be given. The ordinary rule is that no order should be passed against an accused without notice to him. A question may be very clear to a Court directing further enquiry, but, still, it ought to give an accused, already discharged, an opportunity to be heard. **11 C.W.N. 173=5 Cr. L.J. 16.** [*R.*, 31 M. 133 =3 M.L.T. 230=18 M.L.J. 57].

(2970)—*Per* ASTON, J.—The Code, Crim. Pro. Code, 1898, does not require notice to be given to an accused person before a further enquiry is ordered under s. 437 of the Code. It is a matter dependent on the circumstances of each case. *Per* BEAMAN, J.—It is true that s. 437 of the Code does not compel a Magistrate to issue notice, and an order passed under that section without having issued notice is not illegal. But it is a fundamental principle of the administration of English justice that no error to the prejudice of an accused person should, ordinarily, be made without giving him an opportunity of being heard in his defence. And the mere omission, from the section, of any direct and positive command to give invariable effect to that principle was never meant to absolve Magistrates from doing so in all ordinary cases. **8 Bom. L.R. 694=4 Cr.L.J. 329.**

(2971)—Though s. 437 does not require notice to be given before directing further enquiry in respect of a complaint dismissed under s. 203, yet, it is exercising a sound discretion if notice of the application to set aside the order of dismissal is given to the party concerned. **2 Weir 244.**

(2972)—Though the Legislature did not intend that the issue of a notice under the above section should be indispensable in the case of an order of discharge, still, no Court would be exercising a proper discretion in such a matter, if, before proceeding under the above section to order a further enquiry in a case in which the accused persons may have been discharged, it did not first give him an opportunity by service of a notice to show cause against such an order being made. The incorrectness of the order of discharge on the merits may be a sufficient ground for an order for further enquiry under the above section, and a Court should not set aside an order of discharge under this section, unless it has and assigns solid and sufficient reasons for doing so. **2 O. C. 363.** (15 C. 608, 20 A. 339, *F.*).

(2973)—In point of law the issue of a notice to an accused is not required, but, it has been constantly held that no Court would be exercising a proper discretion in such a matter, if, before proceeding under s. 437 of the Code to order a further enquiry in a case in which the accused person may have been discharged, it did not first give him a notice to show cause against such an order being made. **13 C.P.L. R. Cr. 189.** (15 C. 608, 3 C.W.N. 249, 20 A. 339, 10 B. 131, *R.*).

(2974)—Under s. 437 of Crim. Pro. Code, 1898, a Sessions Judge has no power to order the re-opening of the proceedings, merely because, in his opinion, the subordinate Magistrate has failed to rightly appreciate the credit due to the witnesses. **12 C. 522.**

(2974-*a*)—*Held*, that unless an order of discharge is perverse or foolish, and in a case in which the Magistrate has dealt at length with

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the evidence and recorded what appear sound reasons for the discharge, interference under s. 437, Crim. Pro. Code, is improper. Before setting aside an order of discharge, notice should ordinarily be given to the accused to show cause why the order should not be set aside. **101 P.L.R. 1902.**

(2975)—It is competent to the High Court under s. 437, Crim. Pro. Code, 1882, to direct a further enquiry into a complaint which has been dismissed under s. 203, or in which the accused has been discharged, although no further evidence is forthcoming for the prosecution. **14 P.R. 1891 Cr.** (33 P.R. 1887 Cr., 15 C. 608, *R.*).

(2976)—The Court acting under s. 437, Crim. Pro. Code, 1882, has a discretion to give notice to an accused person and to hear him before passing orders. There is no rule rendering the issue of such a notice obligatory. **17 P.R. 1895 Cr.** (16 C. 600, F.B., *R.*).

(2977)—A case cannot be tried a second time after an order of discharge has been passed, without the crder of the District Magistrate. S. 437, Crim. Pro. Code, 1898, does not expressly require notice to be given to an accused person. But it has been well enough understood that ordinarily notice should be given. The District Magistrate's omission to give the applicant notice before passing his order directing a further enquiry is irregular, but it does not make the retrial illegal. **U.B.R. (1897—1901), Vol. I, 96.** (U.B.R. 1892—1896, Vol. I, 48 and 19 B. 247, *R.*).

(2978)—Where further enquiry is made under s. 437 by a Magistrate, who has not already dealt with the case, the evidence already recorded cannot be treated as evidence in the further enquiry, but the enquiry must be taken up from the beginning, whether the accused wishes it or not. *Held* also, that it is not legally necessary to give the accused an opportunity of showing cause before taking action under s. 437, but that the Court should usually give the accused an opportunity of being heard. **U.B.R. (1897—1901), Vol. I, 100.** (10 B. 131, 9 A. 52, 20 A. 339, 15 C. 608, 4 C.W.N. 100, 2 Bom. L.R. 586, *R.*)

(2979)—The words "further enquiry" in s. 437, Crim. Pro. Code, 1882, mean the taking of additional evidence, and not a mere rehearing, or a further consideration of the case on the same evidence. **63 P.R. 1887 Cr.**

(2980)—*S. 437 (=Crim. Pro. Code, 1882, s. 437)—Order under the section by the Sessions Court—Contrary order by the District Magistrate, validity of.*—When the Sessions Judge has passed orders under s. 437, the District Magistrate will not be justified in passing orders of an exactly opposite kind in the same matter. It is open to the District Magistrate, if so advised, to submit to the High Court the

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orders of the Sessions Judge through the medium of the Public Prosecutor. **12 A. 434.** [*R.*, Rat. Un. Cr. C. 525, 1 S.L.R. 40 Cr.; *D.*, 15 A.W.N. 38].

(2981)—*S. 437—Revision—Practice—Lower Court having concurrent jurisdiction in revision with the High Court.*—Where the Magistrate of the District dismissed a complaint under the provisions of s. 203 of the Code of Criminal Procedure, the High Court declined to entertain an application by the complainant asking for further enquiry under s. 437 of the Code, when no application for that object had been made to the Sessions Judge. **A.W.N. 1905, 279=3 Cr. L.J. 53=28 A. 268.**

(2982)—*S. 437—Further enquiry—Additional evidence—Notice.*—On the dismissal of a complaint under s. 203, Crim. Pro. Code, or the discharge of an accused person by a subordinate Magistrate, whether the case is one triable by a Court of Sessions and the order of discharge one under s. 209 or under s. 253, the District Magistrate is competent to direct any subordinate Magistrate to make further enquiry into the complaint dismissed, or into the case of the accused person discharged. It is not necessary, for directing a further enquiry, that there should be further evidence forthcoming or disclosed. It is not also necessary that notice should be given to the party concerned before an order for further enquiry is made. The subordinate Magistrate who is directed to make further enquiry is not competent to question the propriety of the order, but is bound to carry it out. **10 B. 131.** [*F.*, 9 A. 52, 14 C. 608, 14 M. 334=2 Weir 557, F.B.; *R.*, L.B.R. (1893—1900), 169, 14 C.P.L.R. 161, 6 C.P.L.R. 11 Cr., 3 Bom. L.R. 703, U.B.R. (1897—1901), 100, 6 Bom. L.R. 856].

(2983)—*S. 437—Discharge by subordinate Magistrate—Power of District Magistrate to order re-trial—Notice—Duty of Court ordering re-trial.*—A District Magistrate is competent, under s. 437, Crim. Pro. Code, to deal with a case in which he considers that a subordinate Magistrate has improperly discharged the accused under s. 253, Crim. Pro. Code, though it may only involve the re-consideration of the evidence already taken, without any additional investigation of facts. **1 Bom. L.R. 222.**

(2984)—*Under s. 437,* it will be more convenient that an order directing a subordinate Magistrate to make a further enquiry in the case of a person improperly discharged, should be made in the District Magistrate's Court than in the Chief Court. **7 P.R. 1888 Cr.**

(2985)—It is not competent to a Magistrate to order a re-trial, by merely acting upon a resolution passed by the Legal Remembrancer to Government, without giving notice to the accused. [*Cons.*, 6 Bom. L.R. 479; *R.*, U.B.R. (1897—1901), 101]. All that a District Magistrate can do under s. 437, Crim. Pro.

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Code, is to direct further enquiry, leaving it entirely to the enquiring Magistrate to determine whether or not the evidence justified the accused being charged and put on his trial. **2 Bom. L.R. 586.**

(2986)—A District Magistrate in setting aside an order of discharge would exercise a sound discretion, if he hears the accused before passing his order, and satisfies himself that there are sufficient grounds for it. **6 Bom. L.R. 479.** [*R.*, 8 Bom. L.R. 694, 3 S.L.R. 7 Cr.].

(2987)—*S. 437 (=Crim. Pro. Code, 1882, s. 437)—Discharge of accused by one Magistrate —Revisional powers of High Court—Fresh trial by another Magistrate.*—Where a trying Magistrate has arrived at the conclusion that no *prima facie* case had been made out against an accused person, the High Court cannot command him to arrive at a different conclusion on the facts. If the complainant had a good case, according to law, against the accused, he may make a complaint to another Magistrate who will not be prevented from enquiring and adjudging by a mere discharge of the accused in a warrant case. **Rat. Un. Cr. C. 209.** [*R.*, 2 L.B.R. 27].

(2988)—*S. 437 (=Crim. Pro. Code, 1882, s. 437)—Discharge by subordinate Magistrate —Powers of District Magistrate—Further enquiry.*—When a District Magistrate considers that a Magistrate subordinate to him has improperly discharged an accused person, under s. 253, Crim. Pro. Code, he need not refer the case to the High Court, but may deal with it under s. 437. **Rat. Un. Cr. C. 213.**

(2989)—The question referred to the Full Bench in this case was, "Whether a Dt. Magistrate has jurisdiction under s. 437 of the Code to order a further enquiry, after the discharge of an accused, when such further enquiry entails only a re-hearing on the same materials which were already before the subordinate Magistrate, that is to say, when no further evidence is forthcoming. It was answered in the affirmative, by the Full Bench, which ruled that the authority given by s. 437 to order a further enquiry was unfettered by any other provision of law. **3 L.B.R. 97, F.B.**

(2990)—*S. 437, Crim. Pro. Code, 1898,* confers only on the District Magistrate and the Courts above him, the power of directing a further enquiry in the case of any accused person who has been discharged, and, on the District Magistrate alone, the power of making such an enquiry without such direction. The direct connection of the police with a case in which they have arrested an accused person is at an end, when they have proceeded under s. 169 or s. 170 and have completed the investigation as required by s. 173, and there is no provision enabling them to make a second arrest or second investigation, except upon the authority of an order of the Magistrate under s. 437. **U.B.R. (1892—1896), Vol. I. 48.**

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(2991)—*S. 437 (=Crim. Pro. Code, 1882, s. 437)—Naming particular Magistrate to make further enquiry—Further enquiry, meaning of.* —The further enquiry under s. 437 of the Crim. Pro. Code should not be ordered by a Sessions Judge to be made by a particular Magistrate by name. The discretion as to the selection of such Magistrate vests in the District Magistrate and not in the Sessions Judge. [*Diss.*, 9 A. 52, F.B.=6 A.W.N. 281]. S. 437 contemplates a *further enquiry, i.e.*, an enquiry upon further materials or further evidence, not a re-hearing of the matter upon the same evidence which was before the Magistrate, who held the first enquiry. **10 C. 207.**

(2992)—*S. 437—Further enquiry—Reasons for the order—Magistrate, duty of—Revision by High Court.*—An order for further enquiry under s. 437 of the Crim. Pro. Code should give reasons for the order; the mere opinion of a Magistrate that there should be a further enquiry in a particular case is of no value without a statement of his reasons therefor; and, in the absence of such reasons, it is not possible for the High Court to exercise such supervision over the Magistrate's proceedings as is necessary. The practice of Magistrates not complying with the orders and directions of the High Court condemned. **3 C.L.J. 43=32 C. 1090=3 Cr. L.J. 120.**

(2993)—*S. 437 (=Crim. Pro. Code, 1882, s. 437)—Further enquiry when can be ordered after discharge.*—Where a Magistrate discharges the accused after all the evidence against him has been recorded, s. 437 does not empower the Sessions Court to order a fresh trial in order that another Magistrate may consider the same evidence and give his opinion on it. The section is intended to provide for power to order enquiry in cases when a complaint has been dismissed or when an accused person had been discharged, without full enquiry and the examination of witnesses. When a Magistrate takes the whole of the evidence, and completes the enquiry and then discharges the accused in a warrant case, there is only a technical difference between the discharge and an acquittal. An acquittal could not be reversed without hearing the accused, and it never could have been intended that an accused person should be placed in so much worse a position, merely because the Magistrate considered the evidence for the prosecution so untrustworthy that he would not proceed to draw up a formal charge. A discharge does not bar a second enquiry or trial, but, if the District Magistrate who has power to take up the case of an accused discharged by his predecessor were to convict the accused on the same evidence as that on which his predecessor discharged him, he would be acting wrongly. A Magistrate has no power to review the judgment of his predecessor, and, if the Magistrate convicts an accused person on the same evidence as that on which another Magistrate discharged that person, the former Magistrate is reviewing the judgment of the latter. **2 C.P.L.R. 82.**

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(2994)—The accused was sent up by the police for trial for an offence under s. 392, I.P. C. The case was inquired into by a subordinate Magistrate, who, after recording the evidence for the prosecution, discharged the accused. Thereafter the District Magistrate, holding that the accused had been improperly discharged, held a further enquiry into the case, and, after charging the accused and taking his evidence, convicted him of an offence under s. 392. The Sessions Judge acquitted him on the ground that his conviction by the District Magistrate on the same evidence on which the subordinate Magistrate had previously discharged him was wrong. *Held* that the Sessions Judge erred in acquitting the accused on the ground that the action of the District Magistrate in reconsidering the case against the accused and in convicting him on the same evidence on which he had previously been discharged, was illegal. A Sessions Judge or District Magistrate is competent, under s. 437 of the Crim. Pro. Code, to direct a further enquiry or a re-hearing upon the same materials which were before the subordinate Magistrate, when no more evidence is available. **5 C.P.L.R. 20.**

(2995)—*S. 437—Summons cases—Order for further enquiry—Indian Forest Act, VII of 1878, s. 25.*—In a summons case, when a subordinate Magistrate acquits a person, neither the District Magistrate nor the Sessions Judge has power to direct a further enquiry. A case under s. 25 of the Forest Act, 1878, is a summons case. **19 P.R. 1900 Cr.**

(2996)—*S. 437 (=Crim. Pro. Code, 1882, s. 437)—Order of discharge—Retrial on the same facts.*—Where an order of release by a Magistrate, although irregular because no evidence was taken, amounted to an order of discharge, *held*, that no second complaint could be entertained regarding the same matter, until the previous order has been set aside by a competent authority. **33 P.R. 1894 Cr.**

(2997)—*Ss. 437, 192 (=Crim. Pro. Code, 1882, ss. 437, 192)—Order for further enquiry—Power of the Magistrate, so ordered, to transfer the case for trial by subordinate Magistrate.*—A Sub-Divisional Magistrate dismissed a complaint of defamation under s. 203, holding that the offence was not disclosed by the complaint. Holding that the complaint disclosed the commission of other offences and had been dismissed on insufficient grounds, the District Magistrate, under s. 437, directed the Sub-Divisional Magistrate to make further enquiry. The latter then examined the complainant again and referred the complaint for disposal to the second class Magistrate as one of assault under s. 352, I.P.C. *Held*, that the Sub-Divisional Magistrate had not exceeded his power in transferring the case. **2 Weir 563.**

(2998)—*Ss. 437, 350 (=Crim. Pro. Code, 1882, ss. 437 and 350)—Further enquiry—Nature of.*—The further enquiry which a District Magistrate may order is an additional investigation of the facts, or a reconsideration of the evidence by the Magistrate whose order is set aside or a new enquiry before another Magistrate. There is nowhere in the Code any authority for a different Magistrate from the one who originally made the enquiry, taking the record of the evidence recorded by the latter, treating it as recorded by himself, taking a different view of the truthfulness of witnesses whose evidence had been recorded, and then proceeding to try and convict the accused on that evidence. Such a conviction is bad and s. 350 of the Code would, in no way, justify such procedure. **6 C.P.L.R. Cr. 11, 1891.** (15 C. 608, 10 B. 131, *Appr.*; 9 A. 52, *F.*).

(2999)—*S. 437 (=Crim. Pro. Code, Act X of 1882, s. 437)—Accused person—Meaning.*—The term "accused person" in s, 437 of the Crim. Pro. Code includes persons against whom proceedings under s. 110 and the following sections of the Crim. Pro. Code have been taken. **A. W.N. 1891, 106.**

(3000)—*Ss. 437, 476 (=Crim. Pro. Code, Act X of 1882, ss. 437, 476)—Criminal appeal—Directing prosecution of witness.*—Neither s. 437 nor s. 476 of the Crim. Pro. Code, authorise a Judge who hears a criminal appeal and sets aside a conviction, to direct in such judgment the prosecution of a witness in the case. **A. W.N. 1889, 95.**

(3001)—S. 437—*See* ACQUITTAL, 1 A.L.J. 415.

(3002)—S. 437—*See* COMPLAINT, 4 C.W.N. 242.

(3003)—S. 437—*See* DISCHARGE OF ACCUSED, Rat. Un. Cr. C. 926.

(3004)—Ss. 437, 438—*See* DISCHARGE OF ACCUSED, 9 Cr. L.J. 366=1 Ind. Cas. 686.

(3005)—S. 437—*See* DISMISSAL OF COMPLAINT, Rat. Un. Cr. C. 988.

(3006)—Ss. 437 and 119—*See* FURTHER ENQUIRY, 2 L.B.R. 80.

(3007) S. 437—*See* MAGISTRATE, JURISDICTION OF, 10 C. 551, 11 C. 236.

(3008)—Ss. 437, 438 (1)—*See* MAGISTRATE, JURISDICTION OF, Rat. Un. Cr. C. 290.

(3009)—S. 437—*See* REFERENCE TO HIGH COURT, 1 L.B.R. 311.

(3010)—S. 437—*See* REVIEW, A.W.N. 1895, 38.

(3011)—S. 437—*See* REVISION, Rat. Un. Cr. C. 499, 8 P.L R. 1905 Cr., 2 S.L.R. 25 Cr.=10 Cr. L.J. 237.

(3012)—S.437—*See* SESSIONS JUDGE, JURISDICTION OF, 14 M. 334=1 M.L.J. 343=2 Weir 557, F.B., 4 Ind. Cas. 312.

(3013)—S. 437—*See* SUMMARY TRIAL, 1 L.B.R. 9.

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(3014)—S. 437—*See* Nos. 48, 83, 126, 128, 173, 318, 324, 352, 490, 559, 560, 578, 593, 616, 625, 626, 627, 703, 717, 813, 932, 985, 1058, 1159, 1260, 1518, 1540, 1544, 1550, 1559, 1573, 1577, 1578, 1579, 1580, 1581, 1582, 1586, 1587, 1588, 1591, 1594, 1642, 1858, 1881, 1892, 1940, 1942, 1943, 1952, 1955, 1956, 1959, 1965, 1967, 1975, 2462, 2538, 2634, 2635, 2646, 2852, 2890, 2891, 2892, 2918, 2933, 2937, 2942, 2953, 2959, 2960, 2961, 2963, *supra*.

——S. 438, para 1 (=1882, s. 438; 1872, s. 296, para 1; 1861, ss. 434, 435); para 2, new.

See REFERENCE TO HIGH COURT.

(3015)—*S. 438 (=Crim. Pro. Code, Act X of 1882, Ch. XXXI, s. 438)—Procedure.*—Where a Sessions Judge in appeal considers that the sentence in respect of some of the accused is inadequate, that the convictions of some of the accused should be reversed and that an order under s. 106 of the Crim. Pro. Code, in respect of some, should be set aside, *held* that the proper procedure was to dispose of the appeal so far as it could be disposed of by him and to report separately to the High Court as to necessary matters, and not to let the appeal wait for the reference to the High Court. **A.W.N. 1884, 130.**

(3016)—*S. 438 (=Crim. Pro. Code, 1882, s. 438)—Scope of.*—S. 438 enables a District Magistrate to report to the High Court for orders the proceedings of any inferior Criminal Court whose records he has examined under s. 435; but the law gives him no power to criticise or refer the proceedings of a Court superior to his own, *e.g.*, the Sessions Court. **2 Weir 565.** [*F.*, 2 Weir 566, 2 Weir 565 (Cr. Rev. Case No. 343 of 1901), 2 Weir 565 (Cr. Rev. Case No. 272 of 1903).]

(3017)—It is very doubtful, if the framers of s. 438 contemplated references of the proceedings of a superior Court by one subordinate to it. In any case, such a reference would be justifiable, if at all, only in very special cases. **2 Weir 566.**

(3018)—A DistrictMagistrate is not warranted by s. 438, Crim. Pro. Code, in referring for the orders of the High Court a case in which the Sessions Judge, on appeal, acquitted and discharged the accused. That section, having regard to s. 435 of the Code, empowers the District Magistrate only to refer to the High Court proceedings before an inferior Criminal Court, which the Sessions Court is not. If the District Magistrate thinks a failure of justice has occurred in such a case, his proper course is to have steps taken for an appeal to be preferred against the order of acquittal by the Sessions Judge. **Rat. Un. Cr. C. 212.**

(3019)—*S. 438—Revision against acquittal.*—Where the object of a reference under s. 438, by a District Magistrate, is to induce the

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High Court to set aside an order of acquittal by an inferior Court, the reference will not be entertained by the High Court. If the Local Government desire to appeal from the acquittal, s. 417 is open to it. **25 A. 128=A.W.N. 1902, 200.** [*R.*, 5 N.L.R. 4].

(3020)—*S. 438—Practice—Report by District Magistrate against order made by Sessions Judge.*—It would be contrary to every principle to allow a District Magistrate to report against an order of the Sessions Court to whom he is subordinate. The words, "or otherwise" in s. 438, were not intended to confer upon a Magistrate the power to question the propriety of an order of a Sessions Court and make a reference to the High Court upon that ground. **2 A.L.J. 589=A.W.N. 1905, 198=28 A. 91=2 Cr. L.J. 515.**

(3021)—*S. 438—Inadequate sentence by subordinate Magistrate—Reference by District Magistrate.*—When a District Magistrate finds that a sentence passed by a Magistrate of the First Class and confirmed on appeal by the Sessions Judge is inadequate, it is only open to him to bring the fact to the notice of the Local Government or to instruct the Government Pleader to move the High Court in the matter. It is not competent to him, in such a case, to report the case for orders of the High Court, under s. 438. **6 Bom. L.R. 1099.**

(3022)—*S. 438 (=Crim. Pro. Code, 1872, s. 296)—Power of Sessions Judge to admit a convicted person to bail.*—A Court of Sessions, acting under s. 296, has no power to admit a convicted person to bail. **3 C.L.R. 404.**

(3023)—*S. 438—Reference to High Court against order of Magistrate issuing warrant for attendance of absent party in proceedings under s. 145, Crim. Pro. Code.*—On application to the Sessions Judge for redress against the illegality of an order passed by a Magistrate under s. 145, Crim. Pro. Code, issuing a warrant to compel the attendance of an absent party in such proceedings, he should report the matter under s. 438 for the orders of the High Court, if he is of opinion that the order is illegal and without jurisdiction. **5 C.W.N. 71.**

(3024)—*S. 438—Offences not exclusively triable by Court of Session, disclosed in preliminary enquiry—Commitment—Whether ought to be quashed.*—The fact that the offences disclosed by the evidence taken at the preliminary enquiry are not exclusively triable by a Court of Session is no ground for quashing a commitment. **7 M.L.T. 186.**

(3025)—*S. 438—Commitment to Court of Session of some accused—Other accused not arrested—Whether commitment to be quashed.*—The mere fact that the accused who have been committed to the Court of Session were acting in concert with those who have not yet been arrested is no reason for quashing the commitment; nor the inconvenience, if any,

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which will be caused by the trial in the Sessions Court of the accused already committed, before that of others, is of serious importance. **7 M.L.T. 187.**

(3026)—*S. 438—Duty of District Magistrate to report cases of illegal order by Subordinate Magistrates to the High Court.*—The District Magistrate should refer to the High Court all cases in which he considers the order of a Subordinate Court illegal, as it is for the High Court to determine whether or not the illegality requires correction. **2 Weir 564.**

(3027)—*S. 438—Separate appeals by accused persons in one case—Appeal by some of them barred by limitation—Conviction of the other accused set aside on appeal—Practice.*—When separate appeals are filed by several accused persons against the order of conviction in a case passed by a Magistrate and some of them are barred by limitation and the appellate Court sets aside the conviction of the accused whose appeals are within limitation, the Court must refer to the Chief Court the appeals barred by limitation for revision of the order of the Magistrate as regards the appellants whose appeals are barred by limitation. **121 P.L.R. 1903.**

(3028)—*S. 438—Power of a subordinate Magistrate to revise illegal sentence.*—When a subordinate Magistrate finds that he has passed an illegal sentence, his proper course is to submit the record to the District Magistrate for action under s. 438, Crim. Pro Code. He has no authority to revise his own order. **2 L.B. R. 43.**

(3029)—*S. 438 (=Crim. Pro. Code, 1882, s. 438)—Reporting by District Magistrate of a case to the High Court on letter from complainant—District Superintendent of Police.*—The District Magistrate reported the proceedings of the second class Magistrate under s. 438 of the Crim. Pro. Code, on representation of the District Superintendent of Police, who had himself been the complainant in the case before the second class Magistrate: *Held*, that the District Magistrate should have been guided by the Criminal Circulars, p. 15, s. 42, and that he had acted irregularly in forwarding, with his own incomplete report, the communication addressed to him by the complainant protesting against the second class Magistrate's decision. The circumstance that the complainant holds office as District Superintendent of Police can give him no right to make any representation to the District Magistrate in the form of an official letter or memorandum in a case in which he was personally interested; nor can the High Court take such letter or memorandum into consideration when dealing with the case. **Rat. Un. Cr. C. 340=Cr. Rg. 31 of 1887.**

(3030)—*S. 438 (=Crim. Pro. Code, 1882, s. 438)—Old offender, conviction of—Procedure under section.*—Where the Presidency Magistrate convicted under ss. 457 and 380, I.P.C., an accused whom he found to be an old offender, *held*, that the Magistrate should have acted under s. 438, Crim. Pro. Code, and committed the accused to the High Court. **Rat. Un. Cr. C. 704=Cr. Rg. 35 of 1894.**

(3031)—*S. 438 (= Crim. Pro. Code, 1882, s. 438)—Reference to High Court of questions of law.*—Provincial Magistrates are not competent to refer questions of law that may arise before them for the decision of the High Court. **S.C. 71, Oudh.**

(3032)—*Ss. 438, 436 (=Crim. Pro. Code, 1872, s. 296)—Applicability of section where term for appeal unexpired.*—Where the term for appeal has not expired, it was held to be inadvisable to take action under s. 296. **S.C. 2, Oudh.**

(3033)—*Ss. 438 and 439—Acquittal—Revision—Appeal.*—Where no appeal has been preferred by Government, it is very rarely correct to interfere, on revision, with an acquittal. **13 P.W.R. Cr. 1907=5 Cr. L.J. 438.**

(3034)—*Ss. 438, 439 (= Crim. Pro. Code, 1882, ss. 438, 439)—Reference to High Court by District Magistrate of a case decided by Sessions Judge.*—A District Magistrate, if he considers that there has been a miscarriage of justice in an appeal heard by the Sessions Judge, should not report the case to the High Court for orders under s. 438, but should communicate with the Public Prosecutor and invite his attention to it. **9 A. 362.** [*R.*, 2 N.L.R. 149 =4 Cr. L.J. 422, 2 A.L.J. 589=A.W.N. 1905, 198=28 A. 91, 1 Sind L.R. 40].

(3035)—Ss. 438, 439—*See* **BEN. ACT III OF 1884, 29 C. 491.**

(3036)—Ss. 438. 436—*See* **COMMITMENT TO SESSIONS COURT, A.W.N. 1882, 105.**

(3037)—S. 438 (1)—*See* **HIGH COURT, JURISDICTION OF, A.W.N. 1893, 51.**

(3038)—S. 438 (1)—*See* **MAGISTRATE, JURISDICTION OF, Rat. Un. Cr. C. 652.**

(3039)—Ss. 438, 439—*See* **PENAL CODE, ss. 417, 420, 27 A. 302=A.W.N. 1904, 265.**

(3040)—Ss. 438, 439—*See* **PENAL CODE, s. 441, 27 A. 298=A.W.N. 1902, 235.**

(3041)—Ss. 438, 436, 426, 439. 440, 199—*See* **PENAL CODE, ss. 497, 498, A.W.N. 1881, 112.**

(3042)—Ss. 438, 436—*See* **REFERENCE TO HIGH COURT, 2 A. 771.**

(3043)—Ss. 438, 436, 426, 439, 440—*See* **REFERENCE TO HIGH COURT, A.W.N. 1881, 12.**

(3044)—S. 438—*See* **REVISION, 4 A.L.J. 805=6 Cr. L.J. 454 = A.W.N. 1908, 28=3 M.L.T. 115=30 A. 109.**

(3045)—Ss. 438 (1), 436—*See* **REVISION, 10 C.L.R. 14.**

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(3046)—Ss. 438, 439—*See* REVISION, Rat. Un. Cr. C. 977.

(3047)—S. 438—*See* SESSIONS JUDGE, JURISDICTION OF, A.W.N. 1898, 12, A.W.N. 1903, 28.

(3048)—Ss. 438, 436—*See* SESSIONS JUDGE, POWER OF, 7 C. 662.

(3048-*a*)—S. 438—*See* Nos. 324, 467, 576, 621, 985, 1032, 1431, 1522, 1523, 1582, 1587, 1605, 1641, 1664, 1931, 2663, 2796, 2893, 2894, 2895, 2896, 2897, 2898, 2913, 2917, 2923, 2924, 2925, 2928, 2929, 2934, 2937, 2938, 2942, 2943, 2944, 2945, 2946, 2949, 2950, 2951, 2952, 2953, 2954, 2956, 2961, 2963, 3004, 3009, *supra*.

——S. 439, paras 1 to 4 (=1882, s. 439; 1872, s. 297; 1861, ss. 404, 405); para 5, new.

(3049)—*S. 439—Discretion of High Court—Conditions—Practice.*—It is not the practice of the High Court to entertain an application for revision on the criminal side where there exists a lower Court having concurrent revisional jurisdiction, unless an application for revision has been made to the latter Court. **A.W.N. 1904, 232.** (A.W.N. 1890, 164, *F.*) [*F.*, 28 A. 268 =A.W.N. 1905, 279=3 Cr. L.J. 53, 30 A. 116 =A.W.N. 1908, 25=3 M.L.T. 124=1 Cr. L.J. 48].

(3050)—*S. 439—Acquittal—High Court's powers of revision—Motion in Court.*—Although the High Court has power to interfere, in revision, with an original or appellate judgment of acquittal, it will not ordinarily do so. **27 A. 359=A.W.N. 1904, 278.** [*R.*, 5 N.L.R. 4].

(3051)—Though the High Court has power to interfere, in revision, with an order of acquittal, yet, ordinarily, it does not interfere with such an order in the exercise of its revisional jurisdiction, because an appeal can always be made by the Local Government under s. 417, Crim. Pro. Code. **15 B. 349.** [*F.*, L.B.R. 1893—1900, 41; *R.*, 23 C. 975, 5 N.L.R. 4].

(3052)—The power under s. 439 ought to be exercised with great care, and, with regard to pending trials, only in the most exceptional cases. **2 A.L.J. 673=A.W.N. 1905, 238=2 Cr. L.J. 790.**

(3053)—The High Court, in revision, has the power of ordering a retrial, though it may not convert a finding of acquittal into one of conviction. **L.B.R. (1893—1900), 41.** (15 B. 350, 6 A. 484, *F.*).

(3054)—The powers of revision conferred upon the High Court under s. 439 of the Code of 1882 are larger than any exercised by them under the old Act. **2 Weir 538.**

(3055)—*S. 439 (=Crim. Pro. Code, 1872, s. 297)*—Under s. 439, the High Court is not incompetent to interfere in revision as well as to interfere on appeal. But it could not have been the intention of the Code that

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a person who, as appellant, has had the opportunity of advancing any objection he desires to take to the proceedings of a Court by which he has been convicted, should again have the opportunity of raising any points of law he may have omitted to raise, by an application for revision. **2 Weir 573.**

(3056)—*S. 439 (=Crim. Pro. Code, 1882, s. 439).*—S. 439 empowers the High Court, in the case of any proceedings to exercise any of the powers given to a Court of Appeal under s. 423 (*c*) and, therefore, to alter or reverse such order. The High Court has, therefore, power to set aside or modify the Magistrate's order or to direct further enquiry. **2 Weir 575, F.B.**

(3057)—Though s. 439 of the Crim. Pro. Code, 1882, gives the High Court power to call for cases not only on judicial information, but also when they otherwise come to its knowledge, yet, in most circumstances, the right practice is that Judges should be moved in open Court. **Rat. Un. Cr. C. 577=16 B. 580.**

(3058)—*Per* Banerjee, J.—The last paragraph of s. 439, Crim. Pro. Code, 1882, cannot be held to limit the powers of a Court of appeal. It is intended only to limit, in certain respects, the revisional powers of the High Court, which would otherwise have been competent in revision to convert a finding of acquittal into one of conviction. As to the extent of this limitation on the powers of the High Court as a Court of revision, there is some conflict of opinion. But there is no such restriction imposed under s. 423 (*b*). **23 C. 975.**

(3059)—*Under s. 439, Crim. Pro. Code, 1882*, although it is not usual for the High Court to interfere with the decision of the lower Court, when the decision is based upon a consideration of the evidence, yet, if the lower Court has not valued the testimony of accomplices as it ought to be, and has admitted, improperly, hearsay evidence on important points, the High Court is justified in going into the facts of the case in exercise of their revisional powers. **2 C.W.N. 672.** [*R.*, 16 C.P.L.R. 171].

(3060)—Clause 5 of s. 439 does not oust the jurisdiction of the High Court to deal with cases on revision reported by the District Magistrate or Sessions Judge of his own motion, and not on the application of the accused. **2 L.B.R. 209.**

(3061)—*S. 439—High Court's power to rectify improper acquittals.*—There is nothing in the last clause of s. 439, Crim. Pro. Code, 1882, to prevent the High Courts from rectifying improper acquittals in the exercise of their jurisdiction under this section; *e.g.*, they may reverse an acquittal and order a retrial. **S.C. 191, Oudh.**

(3062)—*Ss. 439, 476—Revisional jurisdiction of High Court to interfere with orders of subordinate Civil Court under s. 476—Civ. Pro. Code, s. 622.*—The propriety of an order of a

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subordinate Civil Court under s. 476, Crim. Pro. Code, directing an enquiry into an offence believed to have been committed before that Court, or brought under its notice in the course of a judicial proceeding, cannot be considered by the High Court under its criminai revisional jurisdiction, under s. 439, Crim. Pro. Code. But the High Court has revisional jurisdiction over such proceedings under s. 476, conferred by s. 622 of the Code of Civil Procedure. This jurisdiction is exercisable only in cases where the subordinate Civil Court has acted without jurisdiction or has failed to exercise its jurisdiction, or has acted in the exercise of its jurisdiction, illegally or with material irregularity. *Per Banerji, J., contra* :—The High Court has the power, under s. 439, Crim. Pro Code, to interfere when a subordinate Court, civil, criminal, or revenue, has taken proceedings under s. 476 of that Code, but it should not exercise its powers where a Court of competent jurisdiction has held the proceedings, unless in its opinion, a failure of justice has actually taken place. **26 A. 249 = A.W.N. 1904, 15.** [*R.*, A.W.N. 1904, 170, 28 A. 551 = 3 A.L.J. 394 = A.W.N. 1906, 103 = 1 M.L.T. 219 = 3 Cr. L.J. 400, 21 T.L.R. 85, 3 L.B.R. 234, F.B., U.B.R. 1907, 1st Quarter, Crim. Pro. Code, 1 = 6 Cr. L.J. 25, 7 P.W.R. 1908 Cr. = 103 P.L.R. 1908 = 5 P.R. 1908 Cr. = 7 Cr. L.J. 281, A.W.N. 1907, 277 = 4 A.L.J. 701, 4 M.L.T. 404 = 19 M.L.J. 42 = 32 M. 49 = 9 Cr. L.J. 41].

(3063)—*Ss. 439, 476.*—The High Court, as a Court of revision, has no power, under s. 439 of the Code of Crim. Procedure, 1898, to interfere when a Court has taken action under s. 476 of the Code. The reasons for the decision in 21 M. 124 are not applicable to the amended section (s. 476). That decision was passed under the Code of 1882. **26 M. 98 = 2 Weir 576.** [*F.*, 8 C.W.N. 73; *R.*, 26 A. 249 = A.W.N. 1904, 15, U.B.R. 1907, 1st Qr., Cr. Pro., 1 = 6 Cr. L.J. 25. 17 M.L.J. 584 = 3 M.L.T. 79 F.B.; *D.*, 9 C.W.N. 1030, 29 M. 100 = 3 Cr. L.J. 376; *Diss.*, 4 A.L.J. 803 = A.W.N. 1908, 27, 34 C. 42 = 11 C.W.N. 125 = 4 Cr. L.J. 460, 3 L.B.R. 234, F.B., 7 P.W.R. 1908 = 103 P.L.R. 1908 = 5 P.R. 1908 Cr.].

(3064)—The High Court has power in revision to set aside an order passed by a Civil, Criminal or Revenue Court under s. 476 of the Code of Criminal Procedure. But such power should not be exercised where the Court below has arrived at a judicial opinion on evidence that there is ground for inquiring into an offence referred to in s. 195, merely because the High Court disagrees with that opinion. **78 P.L.R. 1902.**

(3065)—*Ss. 439, 476.*—The High Court has power in revision to set aside an or derpassed by a Civil or Criminal or Revenue Court under s. 476 of the Code. If the Subordinate Court forms a real opinion, which amounts to a judicial opinion, founded on the evidence, to

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the effect that there are grounds for enquiry into any offence referred to in s. 195, the High Court ought not in revision to interfere merely on the ground that it disagrees with that opinion. Where a Magistrate, having power to make an order under s. 476, misdescribing or misconceiving the authority which he had to make, signed the order as "Magistrate" instead of as "Collector," *held*, that there was not sufficient ground for the High Court to interfere in revision. **23 A. 249 = A.W.N. 1901, 59.** [*F.*, 26 A. 514 = A.W.N. 1904, 90, 163 P.L.R. 1905 = 3 Cr.L.J. 73, 35 C. 909; *R.*, 21 A.W.N. 177, 78 P.L.R. 1902 = 18 P.R. 1902 Cr., 26 A. 249 = A.W.N. 1904, 15, 4 A.L.J. 701 = A.W.N. 1907, 277 = 6 Cr. L.J. 350].

(3066)—*S. 439—High Court—Revision—Acquittal—Practice and procedure.*—Although the High Court does not ordinarily interfere with orders of acquittal in revision, yet it cannot be expected that it would hesitate to do so, where the acquittal is based, not upon an appreciation of doubtful evidence, but upon a manifest error in law appearing on the face of the judgment. It is not open to Courts to question the discretion of public bodies, vested in them by law. **9 Bom. L.R. 156 = 5 Cr. L.J. 171.**

(3067)—Where, upon the evidence in a case which was not contradicted, and upon the facts admitted, the accused were clearly guilty under s. 504, and one of them under s. 342, Penal Code, neither of them being a summons case, *held*, that the acquittal of the accused was clearly illegal. The High Court set aside the order of acquittal and directed the restoration of the case to the file. **2 Weir 572.**

(3068)—*S. 439 (= Crim. Pro. Code, 1882, s. 439)—Error in law committed by appellate Court—High Court's powers of revision.*—The refusal by a Sessions Judge in appeal to consider the depositions of the complainants made on the night of the occurrence, which were contradicted by them in their subsequent evidence before the Magistrate, was held to be such an error in law as would justify the High Court in setting aside the appellate judgment of the Sessions Judge. **2 Weir 573.**

(3069)—*S. 439—Practice—Summary rejection of an appeal by the Sessions Judge—Revision of the Judge's order—High Court's practice where evidence found insufficient—Circumstantial evidence—Suspicion—Subsequent conduct of the accused confirming suspicion.*—On an application to the High Court to set aside on order of the Sessions Judge, summarily dismissing an appeal, which the applicants preferred from an order of a Magistrate, convicting them of an offence under the Penal Code, the High Court, finding that the evidence, on which the conviction was based, was insufficient, instead of remanding the appeal for a hearing on its merits, set aside the conviction and sentence and acquitted and discharged the accused. One G., a servant of the complainant,

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deposited for safe custody a sum of money with I (one of the accused), who put into a box, locked it and kept the key with himself. The other accused C used the box as a bed during the greater part of the night and the next morning the lock was found to have been forced and the money was missing. Neither I nor C was in continuous possession of the box from the time the money was put into it to the time that it was missed. It was found by the Magistrate that the accused set up a false story to account for the loss of the money and the evidence showed that the accused had opportunities to take away the money unnoticed. On a charge, on these facts, against the accused under ss. 406, 109 of the Penal Code, with respect to the money lost, *held*, that these facts could not support a conviction. *Per* STEPHEN, J:—In a case of this kind, where there is no eye-witness and where the stolen property has not been found, the possibility of any other person being a culprit must be excluded before the accused can be convicted. **10 C.W.N. 446=3 Cr. L.J. 385.**

(3070)—*S. 439 (=Crim. Pro. Code, 1882, s. 439)—Acquittal on one charge and conviction on another—Power of High Court to change the conviction.*—Where a person, who is charged under ss. 295 and 379, Penal Code, is acquitted under the former section, but is convicted under the latter section, it is doubtful, having regard to the last para of s. 439, Crim. Pro. Code, whether the High Court has the power, after setting aside the conviction under s. 379, Penal Code, to alter the conviction to one under s. 295, Penal Code. **1 Weir 430.**

(3071)—*S. 439 (5)—Appealable sentence—High Court's power of revision, when no appeal is preferred.*—Although a sentence is an appealable one, and no appeal is preferred, yet s. 439 (5) does not preclude the High Court exercising its powers of revision, otherwise than at the instance of the party who could have appealed. **2 Weir 447.**

(3072)—*S. 439 (=Crim. Pro. Code, 1882, s. 439)—Conviction without knowledge of the fact of the accused being an old offender—Revision—Previous convictions not proved.*—The fact of the prisoner being an old offender not having been brought to the Magistrate's notice, is no reason why he should be re-tried, with a view simply to enhancement of the punishment, nor should the sentence be revised with reference to such convictions, when they were not proved, nor admitted in the trial. **2 Weir 574.**

(3073)—The Chief Court declined to grant the petition for revision filed on behalf of the Crown under s. 439, Crim. Pro. Code, 1898, praying that a retrial of the case may be ordered before a Court competent to pass an adequate sentence, having regard to certain previous convictions, of which a detail was given in the application, when it appeared that the prosecution had been given ample opportunity

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to tender proof of the previous convictions by the trying Magistrate, and the prosecution had neglected to prove them. **144 P.L.R. 1902.**

(3074)—The accused was convicted and sentenced by a Magistrate for an offence under s. 380 of the Penal Code. When the sentence was passed, there was no suggestion whatever that he was a previous convict. Subsequent enquiry, directed by the District Magistrate on Police report, showed that the accused had a number of previous convictions. On a motion to the Chief Court under s. 439, Crim. Pro. Code, 1898, for an order for retrial by a competent Court with a view to enhanced punishment, *held* that it had no power to order a new trial, under the circumstances, except in cases where the omission to take evidence of previous convictions was due to neglect or misconduct on the part of the Magistrate. **43 P.R. 1905 Cr.=42 P.L.R. 1906=3 Cr. L.J. 341.**

(3075)—*S. 439—Revision—Acquittal—Act XII of 1896 (Excise), s. 46 (e).*—The accused, licensed sub-contractors for the sale of liquor in a Native State, were found travelling in a train at a station in British territory proceeding to their place of business in the State with liquor which they had purchased in the State under a State pass. As they had failed to obtain a pass from the Collector of the District in which they were found travelling, they were arrested and charged with an offence under s. 46 (*e*) of Act XII of 1896, but acquitted by the trying Magistrate on the strength of remarks on page 106 of the Punjab Excise pamphlet. The District Magistrate reported the case to the Chief Court for revision under s. 438 of the Crim. Pro. Code. *Held*, that interference on revision would be quite improper, it being open to the Government to appeal, if they so desired. **1 P.L.R. 1904.**

(3076)—*S. 439—Revision—Limitation.*—An application for the revision of an order of acquittal would be refused when the application was not received till the time allowed by the law of limitation for an appeal from an acquittal had all but expired. **U.B.R. (1897—1901), Vol. I, 103.**

(3077)—*Ss. 439 (1 to 5), 476—Stay of criminal proceeding during pendency of civil suit—Discretion of Magistrate.*—The High Court declined to order the stay of criminal proceeding under s. 499, Penal Code, initiated under the provisions of s. 476, Crim. Pro. Code, until the decision of a civil suit regarding the same subject-matter. *Per* RAMPINI, J.—The High Court has no power to direct that criminal proceedings before a Magistrate should be stayed until the disposal of civil appeal in which the question of dispute in the criminal proceedings shall have been decided. *Per* GHOSE, J.—Having regard to the large powers the High Court possesses under s. 439 of the Code of 1882, under s. 50 of the Charter Act and ss. 28 and 29 of the Letters Patent, it must be held that the High Court has power to order a

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Magistrate to stay proceedings in his Court, if a sufficient case, in that behalf, is made out. But inasmuch as the Legislature has given to a Magistrate the power to regulate the proceedings of his own Court, discretion should ordinarily be left to the Magistrate either to stay proceedings or not, as he, in the circumstances of the case, may think it right and proper. It cannot be said that, as a general rule, a proceeding in a Criminal Court should be stayed pending a decision of a Civil suit in regard to the same subject-matter ; but ordinarily it is not desirable, if the parties to the two proceedings are substantially the same and the prosecution before the Magistrate is but a private prosecution, and issues in two Courts are substantially identical, that both the cases should go at one and the same time. It is open to the Magistrate, having regard the facts before him, to consider whether it is not desirable that the proceedings in his Court should be stayed till the decision of the civil suit, or for a limited period of time ; and it is also open to him to put the defendant on terms as to appearance or otherwise, if he does stay proceedings. **23 C. 610.** [*R.*, 26 B. 785, 31 C. 858 ; *D.*, 30 M. 226].

(3078)—*S. 439—Appeal against acquittal—High Court's powers.*—The case reported in 14 M. 363, does not lay down that, when no appeal has been preferred by the Government against an acquittal, the High Court has no power to revise. What it lays down is, that revision, in such circumstances, should be discouraged. **2 Weir 571=14 M. 363.**

(3079)—*Ss. 439, 464, 466—Accused, lunatic—Procedure of Magistrate.*—If the Magistrate finds that the accused was of unsound mind at the time when the offence was committed and continues so at the time of the trial, he should proceed under ss. 464 and 466. In the former case, his proceedings are open to revision under s. 439, Crim. Pro. Code, as the final order for detention in an asylum is not appealable. **20 A.W.N. 47.**

(3080)—*Ss. 439 and 497—Release of prisoner on bail--Powers of the High Court.—Per* WHITE C.J.—Where a prisoner has been released on bail by a Sessions Judge, the High Court will not interfere with the order of the Sessions Judge. *Per* DAVIES, J.—The High Court has jurisdiction to interfere in revision, if the Judge has passed an illegal order. *Per* WHITE, C.J. and DAVIES, J :—Where a Sessions Judge, after considering the evidence, thinks that there are no reasonable grounds for believing the accused to be guilty of the offence of which he is accused, and releases him on bail, the High Court will not go behind this finding and cancel the order of the Judge releasing the accused on bail. **10 M.L.J. 411.**

(3081)—S. 439—*See* ACQUITTAL, 9 A. 134, F.B.

(3082)—S. 439—*See* ACT XVIII OF 1879, s, 36, 21 A. 181.

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(3083)—S. 439—*See* ACT VIII OF 1897, ss. 1 and 16, 28 C. 423=5 C.W.N. 211.

(3084)—S. 439—*See* ACT XV OF 1903, s. 7, 36 P.W.R. 1908 Cr.=3 P.R. 1909=9 Cr. L.J. 3.

(3085)—S. 439—*See* PUNJ. ACT XX OF 1891, ss. 42 (1) (*f*), 201, 109 P.L.R. 1909=23 P.W.R. 1909, 2 P.R. 1910 Cr.

(3086 and 3087)—S.439(1 to 4)—*See* CHARGE, 21 C. 827.

(3088)—S. 439—*See* CRIMINAL MISAPPROPRIATION, 11 P.R. 1908=27 P.W.R. 1908=8 Cr. L.J. 250.

(3089)—S. 439—*See* DEFAMATION, 6 P.W.R. 1910 Cr.=10 P.R. 1910 Cr.

(3090)—S. 439 (*b*)—*See* DISCHARGE, 8 P.R. 1900 Cr.

(3090-*a*)—S. 439—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, A.W.N. 1905, 260=3 Cr. L.J. 48.

(3091)—S. 439—*See* HIGH COURT, JURISDICTION OF, 2 Weir 570, 4 M.H.C. App. 60, 2 Weir 569, 8 Bom. L.R. 851=4 Cr. L.J. 446 =1 M.L.T. 444.

(3092)—Ss. 439 and 476 – *See* HIGH COURT, JURISDICTION OF, 8 C.W.N. 73.

(3093)—Ss. 439, 144—*See* HIGH COURT, SUPERINTENDENCE AND POWERS OF, 19 C. 127.

(3094)—S. 439 —*See* PENAL CODE, ss. 302, 304, L.B.R. (1872—1892), 241.

(3095)—Ss. 439, 522—*See* RESTORATION OF PROPERTY, 27 A. 415=A.W.N. 1905, 19=2 A.L.J. 64=2 Cr. L.J. 24.

(3096)—S. 439—*See* REVISION, 42 P.R. 1885 Cr., 45 P.R.1885 Cr., 21 P.R. 1886 Cr., 14 P.R. 1888 Cr., 31 P.R. 1890 Cr., 13 P.R. 1891 Cr., 10 P.R. 1894 Cr., 124 P.R. 1866 Cr., 13 P.R. 1867 Cr., 10 P.R. 1869 Cr., 2 P.R. 1889, 18 P.R. 1902, 23 P.R. 1902, 23 P.R. 1903, 30 P.R. 1903, 8 P.R. 1904, 12 P.R. 1904, 22 P.R. 1904, 15 P.R. 1905, 5 P.R. 1906.

(3097)—Ss. 439, 476—*See* REVISION, 34 C. 42=11 C.W.N. 125=4 Cr. L.J. 460, Rat. Un. Cr. C. 895. 21 M. 124=2 Weir 593, 6 M.L.T. 327, F.B., 3 S.L.R. 66, Cr., 4 L.B.R. 339=9 Cr. L.J. 24, A.W.N. 1897, 54.

(3098)—Ss. 439 (1 to 4), 488—*See* REVISION, 5 B.H.C. Cr. 81.

(3099)—Ss. 439 and 520—*See* REVISION, 27 A. 630=A.W.N. 1905, 139=2 Cr. L.J. 331.

(3100)—S. 439—*See* SENTENCE, 142 P.L.R. 1902.

(3101)—S. 439—*See* SESSIONS JUDGE, JURISDICTION OF, 4 N.W.P. 6.

(3102)—Ss. 439, 435—*See* SESSIONS JUDGE, JURISDICTION OF, 7 B.H.C. Cr. 73.

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(3102-*a*)—S. 439—*See* Nos. 68, 98, 361, 482, 562, 576, 579, 592, 613, 774, 778, 798, 925, 926, 927, 929, 941, 988, 1251, 1355, 1358, 1377, 1407, 1432, 1435, 1443, 1445, 1486, 1521, 1540, 1542, 1559, 1582, 1592, 1605, 1628, 1663, 1696, 1706, 1709, 1753, 1829, 1883, 1931*a*, 1954, 1956, 1961, 1966, 2024, 2076, 2169, 2198, 2303, 2393, 2535, 2539, 2540, 2545, 2552, 2561, 2586, 2587, 2594, 2634, 2650, 2653, 2671, 2696, 2701, 2705, 2707, 2711, 2791, 2794, 2795, 2797, 2798, 2809, 2815, 2817, 2823-*a*, 2824, 2832, 2833, 2834, 2835, 2836, 2838, 2839, 2840, 2841, 2842, 2843, 2844, 2845, 2846, 2847, 2852, 2856, 2857, 2864, 2868, 2873, 2875, 2889, 2897, 2899, 2900, 2901, 2902, 2903, 2908, 2912, 2915, 2919, 2921, 2922, 2924, 2925, 2929, 2932, 2957, 3033, 3034, 3035, 3039, 3040, 3041, 3043, 3046, *supra*, and Nos. 3187, 3188, 3612, *infra*.

——S. 440 (=1882, s. 440; 1872, s. 297).

(3103)—S. 440—*See* CRIMINAL CASE, 10 C. L.J. 80=3 Ind. Cas. 393.

(3103-*a*)—S. 440—*See* Nos. 98, 774, 1428, 1521, 1883, 1966, 2303, 2737, 2809, 2823*a*, 2832, 2833, 2834, 2835, 2836, 2838, 2839, 2841, 2842, 2843, 2844, 2845, 2846, 2847, 2889, 2925, 3041, 3043, *supra*, and No. 3612, *infra*.

——S. 441 (=1882, s. 441).

(3103-*b*)—S. 441—*See* No. 1541, *supra*.

——S. 443 (=1882, s. 443; 1872, s. 72, paras 1 and 2, 74, para 1).

(3104)—S. 443—*See* EUROPEAN BRITISH SUBJECT, 6 C. 83=6 C L.R. 463.

(3105)—Ss. 443, 446, 453—*See* JURISDICTION OF CRIMINAL COURTS, 4 A. 141.

(3106)—Ss. 443 and 454—*See* MAGISTRATE, JURISDICTION OF, 16 M. 308=2 Weir 579.

——S. 446 (=1882, s. 446; 1872, s. 74, para 2).

(3106-*a*)—S. 446—*See* No. 3105, *supra*.

——S. 447 (=1882, s. 447; 1872, ss. 75, para 1, 438, para 2).

(3107)—S. 447—*See* COMMITMENT TO SESSIONS COURT, A.W.N. 1881, 150.

(3108)—Ss. 447, 449—*See* TRANSFER OF CRIMINAL CASES, 29 B. 575=7 Bom. L.R. 104.

(3108-*a*)—S. 447—*See* No. 2058, *supra*.

——S. 449 (=1882, s. 449; 1872, s. 76).

(3108-*b*)—S. 449—*See* No. 3108, *supra*.

——S. 450 (=1882, s. 451).

(3109)—*S. 450 (=Crim. Pro. Code, 1882, s. 451)—"European" explained.*—The word "European" in s. 451 means a person born in Europe. **16 A. 88.**

(3110)—*S. 450 (=Crim. Pro. Code, 1882, s. 451)—European British Subject—Sessions trial—Trial by mixed jury.*—Even in cases of trials of European British subjects as accused, trials before Sessions Court must ordinarily be with the aid of assessors, unless they claim to be tried by a jury, when they are entitled to have a mixed jury, and not a jury consisting entirely of Europeans. **11 P.R. 1896 Cr.**

(3110-*a*)—S. 451—*See* Nos. 2087, 2226, *supra*.

——S. 451, paras 1 to 8 (=1882, s. 451-A), paras 9 and 10 (=1882, s. 451-B).

(3111)—*S. 451 (1)—European British subject—Right to be tried by a jury.*—An European British subject charged with an offence under s. 354, I.P.C., a warrant case, when asked at the outset of the proceedings against him, did not wish to be tried by a jury. A charge was framed against him, and at his request certain witnesses who had been examined for the prosecution were ordered to be re-called for cross-examination. At this stage of the trial, before a date had been fixed for the re-appearance of the prosecution witnesses asked for by the accused, an application was presented on his behalf asking that he might be tried by a jury. *Held*, that the mere fact that the accused, before the trial had begun, stated that he did not wish for a jury, did not prevent him altering his mind afterwards, and claiming a jury within the time allowed by the section, and that the Magistrate should have allowed the application. **24 A. 511 =A.W.N. 1902, 142.** [*R.*, 1 P.R. 1908 Cr.=4 P.W.R. 1908 Cr.=7 Cr. L.J. 274=136 P.L.R. 1908].

(3112)—*Ss. 451, 127 (=Crim. Pro. Code, 1872, ss. 137, 480)—Order by officer superior in rank to an officer in charge of police station—Likelihood of breach of peace—Relevancy of opinion of policeman.*—An order by a Deputy Commissioner of Police, who is an officer superior in rank to an officer in charge of a police station, directing the dispersal of an assembly of five or more persons likely to cause a disturbance of the public peace, is an order by a lawful authority within the meaning of s. 480. Whether a disturbance of the peace is likely to be caused must of necessity be very much a matter of opinion, and the police officer, to whose discretion the law leaves the duties of dispersing assemblies, must of course act upon his own opinion, one way or the other; if his opinion is relevant, the grounds upon which it is based are also relevant. The Magistrate himself must look to the surrounding circumstances and from his own conclusion, whether the acts committed were reasonably likely to lead to a breach of the peace. **7 B. 42.**

(3113)—S. 451 (9)—*See* EUROPEAN BRITISH SUBJECT, 1 L.B.R. 158.

(3114)—*S. 451 (=Crim. Pro. Code, 1882, s. 451-A)—European British subject—Claim for trial by jury—Transfer to another Magistrate.*—Where the proceedings against an European British subject have reached the stage mentioned in s. 451-A, and he has claimed a trial by jury, the District Magistrate is not competent to transfer the trial to a Magistrate, before

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whom no claim for such a trial could be made, and to deprive him thereby of his right. **2 P.R. 1896 Cr.**

(3114-*a*)—S. 451-A—*See* No. 2058, *supra*.

(3114-*b*)—S. 451-B—*See* No. 2058, *supra*.

——S. 452 (=1882, s. 452; Act X of 1875, s. 37).

(3115)—*Ss. 452, 408, 404 (=Crim. Pro. Code, 1882, ss. 452, 408, 404)—Non-European British subject jointly tried with European British subject—Appeal.*—A British subject, but not an European British subject jointly tried with a European British subject, is not entitled, under s. 452, to appeal to the High Court on a conviction by the District Magistrate, the right of appeal to the High Court being given only to European British subjects. **14 B. 160.** [*D.*, L.B.R. (1893—1900), 516].

——S. 453 (=1882, s. 453; 1872, s. 83).

(3116)—Ss. 453, 454—*See* JURISDICTION OF CRIMINAL COURT, 12 B. 561.

(3116-*a*)—S. 453—*See* No. 3105, *supra*.

——S. 454 (=1882, s. 454; 1872, s. 84).

(3117)—*S. 454 (=s. 454, Crim. Pro. Code, 1882)—Cross cases of rioting—Procedure.*—In cross cases of rioting, the Magistrate held the trial on "parallel lines"—the witnesses for the prosecution in each case in turn were examined in chief, then followed their cross-examination also in each case in turn, and next such re-examination as was necessary—discharged the accused in one case, and called upon the accused in the other case to go into his defence. *Held*, that Magistrate acted improperly, and a new trial should be ordered. **13 C.L.R. 275.** [*Applied*, 30 M. 233=2 M.L.T. 89=5 Cr. L.J. 290; *R.*, 8 C.W.N. 344; *D.*, 1 C.W.N. 426].

(3118)—*S. 454 (=Crim. Pro. Code, 1882, s. 454)—Scope of the section.*—The Magistrate is not bound, by virtue of the provision contained in the last clause of s. 454, Crim. Pro. Code, 1882, to ask an accused person categorically whether he claims his right as an European British subject, much less is he obliged to explain his rights to him as such subject. **5 P.R. 1885 Cr.**

(3119)—*S. 454 (=Crim. Pro. Code, 1872, s. 84)—European British subject—Waiver of right to be tried as such—Appeal.*—An European British subject, who has not claimed to be tried as such, cannot claim to appeal to the Chief Court as an Europeon British subject from his conviction. **17 P.R. 1878 Cr.**

(3120)—*S. 454 (=Crim. Pro. Code, 1882, s. 454)—European British subject.*—Where either the name or the personal appearance of the accused suggests that he may be an European subject, the proper course for the Magistrate is to question the accused as to his status under s. 454, Crim. Pro. Code. **L.B.R. (1872—1892), 408.**

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(3121)—S. 454—*See* WAIVER, 6 C. 83=6 C. L.R. 463.

(3121-*a*)—S.454—*See* Nos. 3106, 3116, *supra*.

——S. 456 (=1882, s. 456; 1872, s. 81, para 1).

(3121-*b*)—S. 456—*See* No. 2221, *supra*.

——S. 460 (=1882, s. 460; 1872, s. 234, para 1, cl. 2; 1861, s. 323).

(3122)—Ss. 460, 309, 276, 284, 277—*See* SESSIONS JUDGE, 3 W.R. Cr. Cir. 1.

——S. 463 (=1882, s. 463; 1872, s. 87).

(3122-*a*)—S. 463—*See* No. 166, *supra*.

——S. 464 (=1882, s. 464; 1872, ss. 423, 424, para 3; 1861, s. 388).

(3123)—*Ss. 464, 466 (=Crim. Pro. Code, 1882, ss. 464, 466)—Proceedings against persons of unsound mind.*—Where the Magistrate is of opinion that the accused is of unsound mind and therefore incapable of making his defence, he cannot legally acquit him. But he is bound to postpone further proceedings in the case, and either release him on bail or report the case to Government. **2 Weir 581.**

(3124)—*Ss. 464 and 466—Procedure in cases of lunatics.*—The District Magistrate should, as soon as he saw reason to believe that the accused was of unsound mind and consequently incapable of making his defence, proceed according to ss. 464 and 466 of the Crim. Pro. Code. Again, he should take evidence as to his unsoundness of mind *at the time of committing the offence* before he proceeds to acquit him on the ground that he did not know the nature of the act, or that he was doing what was either wrong or contrary to law. **U.B.R. (1892-1896), Vol. I, 50.**

(3125)—*Ss. 464, 466—Lunacy of accused—Procedure.*—A Magistrate who finds that an accused person was of unsound mind both when he committed the offence and at the time of the trial, should not continue the trial but pass orders under ss. 464 and 466 of the Crim. Pro. Code. It is not a trial in which a verdict of guilty or not guilty could be legally pronounced. **A.W.N. 1900, 47.**

(3126)—*Ss. 464, 466, 470 (=Crim. Pro. Code, 1872, ss. 423, 424, 429)—Proceedings against lunatics.*—An order making over an accused person to his brother for safe custody, on the ground of the weak intellect of the accused cannot be passed upon the mere report of the Civil Surgeon. If the order is made under s. 422, the Magistrate should examine the Civil Surgeon as directed in s. 422. If it is made under s. 429 (470), he should detain the accused in custody and report the case to Government. **2 Weir 580.**

(3127)—*Ss. 464, 469, 465, 466 (=Crim. Pro. Code, 1872, ss. 423, 424, 425, 426)—Proceedings against person incapable of making defence.*—A person who is incapable of making a

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defence is not according to ss. 423—426 to be tried. Ss. 427, 428 and 432 (ss. 467, 468 and 473 of the Code of 1898) provide for the trial of such an accused person when he is found to be capable of making a defence, and if tried under the former of those sections, he might be acquitted under s. 429 (s. 470). **2 Weir 581.**

(3128)—*Ss. 464, 471 (=Crim. Pro. Code, 1861, ss. 388 to 394)—Accused person a lunatic—Course to be pursued—Rules embodying ss. 388 to 394.*—If a person charged with an offence appear to be of an unsound mind, and incapable of making a defence when brought before a Magistrate, that officer, after ascertaining the *prima facie* truth of the charge, and making the enquiries prescribed in s. 388 of the Crim. Pro. Code, regarding the state of mind of the accused, if he consider the person to be of unsound mind, is to stay all further proceedings.

If the offence be bailable, the Magistrate may release the party on sufficient security being given that he shall be properly taken care of, be prevented from doing injury to himself or others, and for his appearance when required. If the offence be not bailable, or if the required bail be not given, the accused must be kept in safe custody in such place as the Local Government shall direct. The Magistrate may at any time, if he has reason for believing that the person is of sound mind, resume the investigation; but if the accused person, when again brought before the Magistrate, shall still appear to be of unsound mind and incapable of making a defence, the Magistrate shall act as provided by ss. 388 and 390: the course taken under s. 390 following, as a necessary consequence, the enquiry held under s. 388. If the offence be one triable by a Magistrate, he should complete the trial. If he determines that the offence was committed by the accused in a sound state of mind, he should pass sentence on him according to law; if not, the Magistrate should retain him in safe custody till the orders of the Local Government be received for his removal to and detention in a Lunatic Asylum. If the offence be not triable by the Magistrate, he must, if the accused is in a fit state of mind to make a defence, complete his investigation and must commit him for trial. If, in the course of the trial, the prisoner appear to be of unsound mind, the Sessions Judge must suspend proceedings, and follow the course prescribed by s. 389. Under no circumstances should a party accused of an offence, being at the time of unsound mind, and incapable of making a defence, be examined by a Magistrate, or committed for trial. **1 W.R. Cr. Cir. 1.**

(3129)—S. 464—*See* ACCUSED, 11 P.R. 1994 Cr.

(3130)—S. 464—*See* INSANITY, A.W.N. 1905, 2.

(3130-*a*)—S. 464—*See* Nos. 2315, 3079, *supra.*

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——S. 465 (=1882, s. 465; 1872, ss. 45, 425; 1861, s. 389),

(3131)—*S. 465 (=Crim. Pro. Code, 1882, s. 465)—Power of Sessions Judge.*—A Sessions Judge has no power to stay proceedings and to direct an enquiry as to the state of an accused's mind, because it appears to him "problematic," whether the accused is capable of making a defence. In such cases, the proper procedure to be followed is provided for in s. 465. **2 Weir 137.**

(3131-*a*)—S. 465—*See* Nos. 1331, 2077, 2323, 3127, *supra.*

——S. 466 (=1882, s. 466; 1872, s. 426; 1861, s. 390).

(3132)—S. 466—*See* INSANITY, 2 C. 356.

(3132-*a*)—S. 466—*See* Nos. 3079, 3123, 3124, 3125, 3126, 3127, *supra.*

——S. 468 (=1882, s. 468; 1872, s. 428; 1861, s. 392).

(3133)—S. 468—*See* FALSE EVIDENCE, 6 C. 440=7 C.L.R. 330.

——S. 469 (=1882, s. 469; 1872, s. 424, paras 1 and 2).

(3133-*a*)—S. 469—*See* No. 3127, *supra.*

——S. 470 (=1882, s. 470; 1872, s. 429; 1861, s. 393).

(3134)—*S. 470 (=Crim. Pro. Code, 1882, s. 470)—Insanity—Medical evidence.*—When the prisoner killed his brother-in-law, there was apparently no enmity or quarrel between them, and the only motive given out by the prisoner was that he might be killed by the authorities and get to heaven, *held*, that the opinion of a medical witness would be necessary. It was directed that the prisoner should be placed under the supervision of the Medical Officer in charge of the jail who was to send report after one month's observation. *Held* by Turner, C. J.—If we are to accept the explanation of the motive as truly representing the thoughts of the prisoner at the time he committed the offence, his case does not fall within the legal definition of unsoundness of mind sufficient to excuse a crime. That definition has always been regarded by medical science as excluding cases in which a person of unsound mind ought to be dealt with as a lunatic and not as a criminal. **2 Weir 583.**

(3135)—*Ss. 470, 471 (=Crim. Pro. Code, 1882, ss. 470, 471)—Crime committed, while suffering from temporary insanity.*—Where a Magistrate finds, after examination of some of the prosecution witnesses, that the accused committed the offence, while he was suffering from temporary insanity, he should act under ss. 470, 471 of the Code. He is not competent to discharge him under s. 253, if it does not appear that the accused is of unsound mind at the trial. **2 Weir 582.** [*R.*, 17 C.P.L.R. 113].

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(3136)—S. 470—*See* JURISDICTION OF CIVIL AND CRIMINAL COURTS, 6 C.L.J. 713=6 Cr. L.J. 405.

(3137)—Ss. 470 and 471—*See* UNSOUNDNESS OF MIND, L.B.R. (1893—1900), 630.

(3137-*a*) S. 470—*See* Nos. 1636, 3126, *supra*.

——**S. 471, paras 1 and 2 (=1882, s. 471; 1872, s. 430; 1861, s. 394); para 3 (=1882, s. 475-A); para 4 (=1882, s. 475-B).**

(3138)—Ss. 471. 473—*See* ACT I OF 1877, s. 42, 22 W.R. 329.

(3138-*a*)—S. 471—*See* Nos. 1331, 1636, 3128, 3135, 3137, *supra*.

——**S. 473 (=1882, s. 473; 1872, s. 432; 1861, s. 395, cl. 2).**

(3138-*b*)—S. 473—*See* No. 3138, *supra*.

——**S. 474 (=1882, s. 474; 1872, s. 433; 1861, s. 395, cl. 3).**

(3139)—Ss. 474, 476—*See* PERJURY, 4 A. L.J. 811=7 Cr. L.J. 3=A W.N. 1908, 22.

——**S. 476 (=1882, s. 476; 1872, ss. 471, 477; 1861, ss. 171, 176).**

(3140)—*S. 476 (=Crim. Pro. Code, 1872, s. 471)—Scope of.*—It is only in cases exclusively triable by the Court of Sessions, that the Judge is empowered to commit, or hold to bail and try an accused person charged with the offences mentioned in ss. 467, 469, 471. In cases of a light nature, such as, cases of giving false evidence, not triable by the Court of Sessions exclusively, all that the Judge is empowered to do, is to send the case for enquiry to any Magistrate, having power to try or to commit for trial the accused person under s. 471. The words "commit the case itself" occurring in s. 471, do not mean that the Court of Sessions may commit the case to itself. **3 C.L.R. 599.**

(3141)—S. 476 applies only to offences referred to in s. 195, when such offences are committed before the Court which makes the order, or are brought to its notice in a judicial proceeding. Where the offence of giving false evidence was committed before a Deputy Magistrate, the District Magistrate could not, on making a local inquiry, order the prosecution of the offender, when the offence was not brought to his notice in a "judicial proceeding." **9 C.W.N. 1030=2 Cr. L.J. 851.**

(3142)—*Ss. 476, 195 (=Crim. Pro. Code, 1882, ss. 476 and 195)—Scope of the sections—Sanction given on motion of Court.*—Proceedings taken by a Court under s. 476 operate of themselves to set a prosecution in motion without the necessity of any other complaint, the Court itself being the complainant. But it is otherwise with a sanction granted under s. 195. This has no effect at all, unless a complaint is formally made in pursuance of the sanction, and if no complaint is made within six months, the sanction itself expires. The proceedings of a Court recording a sanction, presumably under s. 195, which has not been

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granted upon the petition of any person, but on the mere motion of the Court, cannot be viewed as taken under s. 476, when no preliminary inquiry is either taken or dispensed with, when no steps are taken to ensure the attendance of the accused before the Magistrate and when the proceedings are forwarded to the District Magistrate, but not to the nearest Magistrate of the first class. **2 Weir 589.**

(3143)—*S. 476—Persons competent to pass order under s. 476.*—Orders under s. 476 can be passed only by a civil, criminal, or revenue Court. But an order which purported to be one passed as by a "Divisional Officer," that is to say, by the Deputy Collector to whom a Tahsildar, before whom the alleged false statement was made, was subordinate, was held to be *ultra vires*. **2 Weir 598.**

(3144)—*S. 476—Order under section when to be made.*—Where a matter has not come within the cognizance of a Magistrate, in the course of any judicial proceeding, an order under s. 476 cannot be made. **2 C.L.J. 612=3 Cr. L.J. 81.**

(3145)—*S. 476—Necessary conditions for instituting proceedings under the section.*—Before proceedings under s. 476 can be instituted, there must be direct evidence fixing the offence upon the persons whom it is sought to charge, either in the course of the preliminary enquiry held by the Magistrate, or in the earlier proceedings out of which the enquiry arises. It is not sufficient that the evidence in the earlier case may induce some sort of suspicion that these persons had been guilty of an offence; but there must be distinct evidence of the commission of an offence by such person. **16 C. 730.** [*F.*, 23 C. 532; *R. and D.*, 20 C. 474; *R.*, Rat. Un. Cr. C. 701, Rat. Un. Cr. C. 895].

(3146)—*S. 476—Order under s. 476, whether a proceeding.*—An order under s. 476 is a proceeding, and a criminal proceeding, if it is an order made by a Criminal Court. It directs the prosecution of a person after a judicial enquiry. **34 C. 42=11 C.W.N. 125=4 Cr. L.J. 460.**

(3147)—*S. 476 (=Crim. Pro. Code, 1872, s. 471)—Order under section—Preliminary enquiry—Showing cause against.*—An order under s. 471 is not necessarily bad, because the Court acting under the section, has not held a preliminary enquiry before sending the case to the Magistrate for enquiry. The law requires only such preliminary enquiry as may be necessary. Where a Munsiff sent, under s. 471, to a Magistrate, a proceeding embodying the facts of a case tried before him, and charging both the parties to the suit for giving and producing false evidence, and where there was nothing to show that any enquiry the Munsiff could have made would have put the Magistrate in a better position, the omission to hold a preliminary enquiry before sending the case for trial was not bad. **5 A. 62.**

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(3148)—*Ss. 476, 195.*—If a Sessions Judge is of opinion that there is ground for inquiring into any offence referred to in s. 195, Crim. Pro. Code, committed before himself or brought to his notice in the course of a judicial proceeding, his action must be taken under s. 476, and the accused should be given an opportunity to show cause against such order. **2 Weir 587.**

(3149)—*S. 476—Powers of Magistrate under this section* —A Magistrate has no power to act *suo motu* under s. 476 after the case in which the alleged offence has been committed has been closed by his predecessor without any action being taken under the section. **2 Weir 597.** [*R.*, 17 M.L.J. 584=3 M.L.T. 79=7 Cr. L.J. 54=31 M. 140].

(3150)—*S. 476—Powers of Magistrate after transfer.*—A Magistrate who, after trying a case, has been transferred from the charge of the particular Court in which the case was tried to some other duty in the same district, is not competent to make an order under s. 476 in respect of a case which he tried as a presiding officer of such Court. **1 A.L.J. 315.** [*Not F.*, 3 A.L.J. 825=A.W.N. 1906, 201=4 Cr. L.J. 140].

(3151)—*S. 476—Opinion of officer ordering prosecution—Superior Court interfering.*—Where a Munsiff, having been directed by the District Judge, sanctioned prosecution of a party under s. 476, Crim. Pro. Code, and it appeared that the case did not come before the Judge in the course of a judicial proceeding, and that the offence was not committed before him, *held*, that the order was without jurisdiction. **6 A.L.J. 924.**

(3152)—*S. 476—Order of Subordinate Court, under s. 476—Powers of High Court.*—It is competent to the High Court, in the exercise of its revisional jurisdiction, to interfere with an order of a Subordinate Court made under s. 476, directing the prosecution of any person for offences referred to in the section. **26 B. 785 =4 Bom. L.R. 618.** [*R.*, 26 A. 249=A.W.N. 1904, 15, U.B.R. 1907, 1st Qr., Cr. P.C., 1 =6 Cr. L J. 25, 3 L.B.R. 234, 7 P.W. R. 1908 Cr.=103 P.L.R. 1908=5 P.R. 1908 Cr.=7 Cr. L.J. 281, 4 M.L.T. 404=19 M.L.J. 42=32 M. 49=9 Cr L J. 41, 35 C. 909].

(3153)—*S. 476—Necessity for notice.*—For the purposes of s. 476, neither notice to show cause why the party should not be sent before a Magistrate for trial, nor a preliminary enquiry, is indispensable. **7 Bom. L.R. 84=2 Cr. L.J. 54.**

(3154)—*S. 476—Court—Income Tax Collector —Sanction by the Income Tax Collector—Revision by the High Court.*—The Income Tax Collector is not a Court within the meaning of s. 476 of the Code. **8 Bom. L.R. 477=4 Cr. L.J. 34.** [*Diss.*, 3 S.L.R. 66 Cr.].

(3155)—*S. 476—Indian Penal Code (Act XLV of 1860), s. 193—Examination of accused on oath —Perjury—Sanction to prosecute.*—A complaint

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was preferred against the petitioners for Criminal Breach of Trust. The Magistrate examined the complainant on oath in support of the allegations made in the plaint. He next examined the petitioners on oath, and, being of opinion that they had perjured themselves, he granted, under s. 476 of the Crim. Pro. Code, a sanction to prosecute the petitioners. *Held*, that the Magistrate was not justified in examining the petitioners on oath; his proceedings were irregular and illegal and his order under s. 476 of the Crim. Pro. Code was *ultra vires*. **8 Bom. L.R. 587=4 Cr. L.J. 165.**

(3156)—*S. 476— Prosecution under s. 471, Crim. Pro. Code, 1872=Civ. Pro. Code, 1882, s. 643.*—A prosecution under s. 471 (Crim. Pro. Code, 1872=s. 476 of the Code of 1898) is quite a different thing from one instituted by a private party on sanction. In the former case, the responsibility is entirely on the Judge sending the case before the Magistrate. The High Court quashed the proceedings in this case in the exercise of its revisional powers. **1 C. 450.** (23 W. R. Cr. 39, *R.*). [*R.*, 7 C. 208, 13 B. 109 and 384; *F.*, 16 C. 730].

(3157)—*S. 476—Deputy Collector acting under Land Acquisition Act—Proceedings of the Deputy Collector—Authority to require verified petition — Power to sanction prosecution for perjury.*—A Deputy Collector acting, under the Land Acquisition Act, is not a judicial Officer, nor can he be regarded as a Revenue Court within the meaning of s. 476 of the Code. The proceedings of the Deputy Collector, under the Land Acquisition Act, are not regulated by the Code of Civil Procedure. He is not entitled to require a petition under the Land Acquisition Act put in before him to be verified in accordance with the Code, so as to make any false statement punishable as perjury. For these reasons a Deputy Collector has no power to pass orders under s. 195, sanctioning the prosecution of certain person for giving false evidence in relation to proceedings taken by him under the Land Acquisition Act. Further, the Deputy Collector is not in a position to pass any final orders in the matters of the value of the land or the right to claim the price fixed. A party dissatisfied can claim a reference to the Civil Court whose duty it is to settle the matter judicially. Therefore to subject parties claiming the right to such reference to a criminal prosecution, when the matters, on which the Deputy Collector had formed an opinion as a Revenue Officer under the Land Acquisition Act, must be submitted for the determination of a Court, is obviously premature and improper and is almost certain to operate very prejudicially towards them in the trial before the Civil Court. **27 C. 820.** [*F.*, 30 C. 36; *R.*, 8 O.C. 118; *D.*, 187 P.L.R. 1905=44 P.R. 1905 Cr.=3 Cr.L.J. 128.]

(3158)—*S. 476—Offence committed before one Munsif—Prosecution ordered by another—Validity.*—An affidavit which was sworn to by the petitioner was filed before an additional Munsif

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in a suit pending before him. That officer was transferred, and the suit was made over to the second Munsif; but the miscellaneous proceeding in which the matter contained in the affidavit was the subject of inquiry was continued by the first Munsif who ordered the petitioner to be prosecuted under s. 476, Crim. Pro. Code. *Held*, that such an order can only be passed by the officer before whom the affidavit was filed, and that as the affidavit in this case was filed before the additional Munsif, the first Munsif had no jurisdiction to make the order. **35 C. 114=7 Cr. L.J. 134.**

(3159)—An order for prosecution passed by a Munsif, when the alleged offence of perjury was committed before his predecessor in office, does not fall within s. 476 of the Code. **9 C.W.N. 859=4 Cr. L.J. 209.** [*F.*, 2 M.L.T. 298=11 C.W.N. 568=5 C.L.J. 508=5 Cr. L. J. 398=35 C. 551; *R.*, 5 C.L.J. 176; *D.*, 33 C. 193=3 Cr. L.J. 365; *Doubted*, 11 C.W.N. 119 =4 Cr. L.J. 454].

(3160)—*S. 476—Indian Penal Code, ss. 114, 119, 193 and 210—Power of Court to order prosecution under s. 476, Crim. Pro. Code—Execution-proceedings, whether judicial proceedings.*—The powers conferred by s. 476, Crim. Pro. Code, can only be exercised if the offences in respect of which a prosecution is ordered, have come to the cognizance of the Court in a judicial proceeding. Execution proceedings subsequent to the trial of a suit are not judicial proceedings. **35 C. 133=7 Cr. L.J. 159.**

(3161)—The offence of making a false statement in a case, regarding the illegal release of cattle brought to the notice of an appellate Magistrate on the revenue side, cannot be said to have been brought to the notice of the Magistrate in the course of a judicial proceeding. **2 Weir 598.**

(3162)—*S. 476—Offence coming to the notice of Court in the course of a judicial proceeding, what amounts to.*—Where a Magistrate, to whom a case had been transferred, ordered the prosecution of a witness for giving false evidence before the original Court, but that deposition was not put in evidence in the trial before the second Magistrate, nor was the person himself examined, *held*, that he could not direct the prosecution of the witness, as the offence did not come to his notice in the course of a judicial proceeding. **2 Weir 598.**

(3163)—*S. 476—Power of interference of High Court exercising civil jurisdiction—Civ. Pro. Code, s. 622—S. 15, Charter Act—Considerations to be had in regard to exercising revisional jurisdiction of High Court—Stay of criminal proceedings pending a civil appeal—Conditions under which stay can be made.*—In a probate case before a District Judge, the present petitioners, among others, opposed the grant of probate. The District Judge, after hearing the evidence of both the parties, held that the will propounded had been duly executed and that the petitioners had conspired to prevent the grant of probate and had given false evidence in furtherance of that conspiracy. He, thereupon, instituted proceedings against the petitioners, under s. 476, Crim. Pro. Code, and directed their prosecution, under s. 193, I.P.C., in respect of the false statements made by them. *Held*, that it was doubtful whether the High Court, exercising civil jurisdiction, could stay the criminal proceedings, that no case had been made out for the interference of the High Court, under s. 622, Civ. Pro. Code, and that the provisions of s. 15 of the Charter Act did not appear to give the High Court power to interfere in the case. *Held*, also, that the High Court must have regard to the nature of the revisional jurisdiction and must not, in a case arising under s. 476, any more than in any other case, allow, what would virtually be, an appeal from the order of the Court below. *Held*, further, that where the Court below, being asked to postpone passing orders, under s. 476, Crim. Pro. Code, until the disposal of the appeal to the High Court, refused to do so, but thought it fit, in the interests of justice, to take immediate action, the High Court ought not to stay proceedings, merely on the ground that a civil appeal is pending before it. **35 C. 909.**

(3164)—*S. 476—Order for prosecution—Complaint before Police, proved false—Enquiry by Deputy Magistrate—Order for prosecution by Deputy Magistrate—Jurisdiction—Judicial proceeding.*—A complaint lodged with the Police was reported false. The District Magistrate thereupon directed an enquiry, which was held by a Deputy Magistrate, who also considered the case to be false. The District Magistrate, then passed final orders on the Police report, intimating that the complaint was false and directing the prosecution of the person, who had lodged the complaint, for an offence under s. 211 of the Penal Code. *Held*, that the order for prosecution was without jurisdiction as it was passed with regard to a matter, which did not come up to his cognizance in the course of a judicial proceeding. **10 C.W.N. 30=33 C. 30 =3 Cr. L.J. 125.** [*F.*, 7 C.L.J. 371; *D.*, A.W. N. 1907, 288=6 Cr. L J. 396=30 A. 52=4 A.L.J. 790].

(3165)—*S. 476—Order for prosecution—Proceeding in execution of decree—Attachment—Obstruction—Judicial proceeding.*—A decree-holder, proceeding to execute a warrant of attachment of the moveable properties of judgment-debtor issued by a Munsif, was prevented by the judgment-debtor and several other persons who beat the decree-holder and threatened to beat the peon. The peon reported the matter to the Munsif and the decree-holder also complained before him. The Munsif, after holding an enquiry, ordered the prosecution of the offenders under s. 183 of the Penal Code. *Held*, that the Munsif had power, under s. 476, Crim. Pro. Code, to direct

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the prosecution, as the facts did come to his knowledge while he was engaged in a judicial proceeding, namely, in a proceeding in an execution-case which had not been finally disposed of. **10 C.W.N. 55=3 Cr. L.J. 142.**

(3166)—In execution of a decree for money, attempt was made by the officers of the Court to attach and seize the moveables of the judgment-debtor. Resistance was thereupon offered by persons present on the spot. The Court held an enquiry, and under s. 476, Crim. Pro. Code, directed the prosecution of the persons who had offered resistance. *Held*, that an execution proceeding is a judicial proceeding, and the resistance having taken place and having been brought to the notice of the Court in the course of such proceeding, the order under s. 476 was made with jurisdiction. **10 C. L.J. 450.**

(3167) — *S. 476—Perjury — Indian Penal Code (Act XLV of 1860), s. 193—Prosecution for perjury—Propriety of order for, by the appellate Court.*—It is an unusual and not a proper procedure for an appellate Court, which did not hear the evidence, to order the prosecution for perjury of a witness for making false statements in his deposition in the lower Court on materials in support of the prosecution, which were not before the lower Court and which the witness had no opportunity of explaining while in the box. **10 C.W.N. 1091=4 Cr. L.J. 219.**

(3168)—*S. 476—Duty of Criminal Court to give effect to final judgment of Civil Court.*—Where in a suit on a registered bond alleged to have been executed by the defendant, the Munsiff held, notwithstanding the denial of the execution of the bond by the defendant, that the bond was genuine, and directed his prosecution under s. 476, Crim. Pro. Code, for an offence under s. 193, I.P.C., and on appeal the judgment of the Munsiff was reversed by the Sub-Judge who held that the bond was not genuine and the defendant had not executed it. *Held*, that the result of the judgment of the appellate Court must be taken to be, that the order for the prosecution of the defendant was not maintainable, and that the conviction of the defendant by the Criminal Court ought to be set aside by the High Court, although he did not move the High Court to quash the proceedings against him as soon as the judgment of the Sub-Judge was pronounced. **12 C.W.N. 1=6 C.L.J. 703.**

(3169)—*S. 476—Order for further inquiry—Trial, by whom to be held.*—S. 476 requires the Court, after making any preliminary inquiry that may be necessary, to send the case for inquiry or trial to the nearest Magistrate of the first class. **1 C.L.J. 630=2 Cr. L.J. 656.**

(3170)—*S. 476—Penal Code, s. 193—Propriety of taking proceedings under s. 476, Crim. Pro. Code, until final orders are passed in the case in which the offence is committed.*—Proceedings under s. 476, Crim. Pro. Code, should not be taken against a person for giving false evidence or fabricating false document under s. 193, Indian Penal Code, until the case, in which the said evidence was given or such document was used, has been finally decided. **3 C.L.J. 302=3 Cr. L.J. 303.**

(3171)—*S. 476, power to take proceedings under, given to the Court and not to the individual Magistrate.*—On the discharge of the accused in a criminal case, the Magistrate who tried the same, granted sanction for prosecuting one of the complainant's witnesses for perjury. A complaint, for the offence, was preferred thereon by the accused, but it was rejected as not properly stamped. Subsequently, the Magistrate, who granted the above sanction was succeeded by another, who directed the prosecution of the said witness and certain others under s. 476 of the Code. *Held* that the new Magistrate was competent to pass the above order, since the power provided for by the above section is one conferred on the Court as such and not on the individual Magistrate presiding. Nor could the fact, that a complaint, presented after the sanction, happened to be rejected as unstamped, in any way, bar the jurisdiction of the Court to proceed under s. 476. **29 M. 331=4 Cr. L.J. 175.** [*R.*, 17 M.L.J. 584=3 M.L.T. 79].

(3172)—*S. 476—Order under the section—Time for making such order.*—*Held*, (by the Full Bench Miller, J., *dissenting*) that an order under s. 476 of the Code should be made either at the close of the proceeding, or so shortly thereafter, that it may be reasonably said that the order is part of the proceeding. The history of the section and the case-law on it are considered in detail. **17 M.L.J. 584, F.B.=3 M.L.T. 79=31 M. 140=7 Cr. L.J. 54.**

(3173)—Although the Full Bench of the Madras High Court has decided in a case reported in 3 M.L.T. 79, that an order under s. 476 should be made either at the close of the proceedings or so shortly thereafter that it may be reasonably said that the order is part of the proceedings yet, the reasons for holding the opposite view are so strong, that it would be desirable that the question is further considered by the Full Bench. **4 M.L.T. 269.**

(3174)—*Held*, by the majority of the Full Bench (Miller, J., *dissentiente*) that an order under s. 476, Crim. Pro. Code, should be made either at the close of the judicial proceedings or so shortly thereafter that it may reasonably be said that the order is part of the proceedings, and that an order passed under s. 476 of the Criminal Procedure Code after the termination of the judicial proceedings was passed without jurisdiction. **9 Cr. L.J. 41=4 M.L.T. 404=19 M.L.J. 42=32 M. 49.**

(3175)—An order under s. 476, Crim. Pro. Code, is one made without jurisdiction, in the absence of anything to show that the order was

part of the proceedings in the trial in which the alleged offence was committed. **6 M.L.T. 92 = 2 Ind. Cas. 425.**

(3176)—*S. 476*—"*Nearest Magistrate.*"—The word "nearest" in s. 476 must be construed reasonably. The word does not necessarily refer to the Head-quarters of the Magistrate, but has reference to the area of his jurisdiction. **2 Weir 590.**

(3177)—*S. 476 (=Crim. Pro. Code, 1882, s. 476) - Institution of proceedings under section by an officer of Court.*—A Court is empowered by s. 476 to send a case referred to in s. 195 and brought to his notice in the course of a judicial proceeding for inquiry or trial to the nearest first class Magistrate; but he is not precluded from sanctioning the institution of a complaint by an officer of his Court. **2 Weir 596.**

(3178)—*S. 476—Civil Court ordering enquiry by Magistrate—Revision—Jurisdiction of Chief Court.*—Where the Dt. Judge, being of opinion that forgery of a document on the record of a civil case before him was committed either by the plaintiff or the defendant, passed an order under s. 476 of the Code, required both the parties to furnish bail and sent them to the Magistrate for enquiry with a view to prosecution of the guilty person and the case was submitted for revision by the Sessions Judge to the Chief Court under s. 438 of the Code. *Held*, that the order was illegal and must be set aside on revision. That the Chief Court is competent to interfere in revision with the order of a Civil Court passed under s. 476 of the Code. **163 P. L.R. 1905 = 3 Cr. L.J. 73.**

(3179)—*S. 476*—"*Court*"—*Successor in office, whether can take action under—Jurisdiction.*—It is only the individual Magistrate, before whom the offence was committed in Court, who can take action under s. 476, Crim. Pro. Code. **6 P.R. 1909 Cr. = 104 P.L.R. 1909 = 10 Cr. L. J. 158 = 2 Ind. Cas. 812.**

(3180)—*S. 476—Petition to Collector under s. 25, Income Tax Act—Judicial proceedings.*—A Collector acting under Chapter IV of the Income Tax Act is a Revenue officer, and his proceedings are judicial proceedings within the meaning of s. 476, Crim. Pro. Code. In this respect, the Income Tax Act differs from the Land Acquisition Act. **44 P.R. 1905 Cr. = 187 P.L.R. 1905 Cr. = 3 Cr. L.J. 128.** (24 M. 121, *R.*; 27 C. 820, *D.*).

(3181)—*S. 476—Witness at Sessions trial contradicting evidence given before the Magistrate, when Judge could order prosecution of, for false evidence.*—The accused, when examined as a witness before the Court of Session, stated to that Court that she had given false evidence before the committing Magistrate under threats and coercion, and thus contradicted the above evidence previously given by her. *Held*, it was not competent for the Sessions Court to order, as it did, the trial of accused for perjury, without specifying which of the depositions made by the accused was false, especially because there was nothing on the record to show that the Judge was satisfied that the evidence given before himself was false. **3 L.B.R. 204 = 4 Cr. L.J. 469.**

(3182)—*S. 476—Stay of criminal proceedings pending civil suit between the parties—Ordinary prosecution under ss. 182 and 211, Indian Penal Code—Report to police of theft when no theft took place—Suspicion against opposite party.*—The petitioner laid an information to the Police to the effect that there had been a burglary in his house. The Magistrate directed judicial enquiry by a Deputy Magistrate who came to the conclusion that the report of burglary was false and submitted his report to the Magistrate who ordered the prosecution of the petitioner under s. 211, Indian Penal Code. That order was set aside by the High Court, as being made without jurisdiction, and the record was returned to the Deputy Magistrate, who again enquired into the matter and ordered the prosecution of the petitioner under ss. 182 and 211, Indian Penal Code. *Held*, that this order is illegal under s. 476, Crim. Pro. Code. No hard and fast rule can be laid down to the effect that a criminal trial or enquiry should of necessity be stayed simply because a civil suit has been instituted between the parties in which some or all the matters materially in issue in the criminal case would have to be determined, until the civil litigation was finally decided. A Court may well hesitate to give sanction to a private individual to prosecute his adversary for an offence alleged to have been committed during the pendency of a civil litigation. But it is very desirable in the ends of justice that when a competent Court has taken upon itself the responsibility of ordering prosecution under s. 476, Crim. Pro. Code, that that prosecution should be entertained as speedily as possible while the evidence on both sides is fresh. Where the petitioner reported to the Police the fact of a theft having taken place in his house, and although he did not name any one as being the actual offender, yet he stated his suspicion that the opposite party had instigated it, and it was found by the Court that as a matter of fact there was no theft at his house as alleged by him: *Held*, that the Court was quite justified in ordering the prosecution of the petitioner under ss. 182 and 211, Indian Penal Code. **11 Cr. L.J. 4 = 4 Ind. Cas. 485 = 13 C.W.N. 398.**

(3183)—*Ss. 476, 190 and 195—Presidency Magistrate — Magistrate, First class—Procedure.*—A Presidency Magistrate does not fall within the definition of a Magistrate of the first class as used in s. 476 of the Crim. Pro. Code, 1898. Where therefore, a Presidency Magistrate has ground for inquiring into any offence referred to in s. 195 of the Crim. Pro. Code and committed before him or brought under his notice in the course of a judicial proceeding,

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the only course which he can adopt is either to commit the case to the sessions or have the complaint filed under s. 190 read with the provisions of s. 195 of the Crim. Pro. Code. **9 Bom. L.R. 1160=6 Cr. L.J. 326.**

(3184)—*Ss. 476, 192 and 202—Proceeding under s. 476—Competency of Magistrate to whom a case is sent for inquiry and report to institute.*—Where a Magistrate, after taking cognizance of a case on a petition of complaint, sent it to another Magistrate for inquiry prior to the issue of process against the accused, and the latter Magistrate made the inquiry, examined witnesses, and came to the conclusion that the case was false, and then took proceedings under s. 476, Crim. Pro. Code, against the complainant and committed him for trial under s 211, I.P.C. *Held*, whether the case was transferred to the latter Magistrate under the provisions of s. 492, or s. 202. Crim. Pro. Code, as he, in carrying out the order received with the order of transfer, examined witnesses and recorded evidence on oath, the proceeding conducted by him was a judicial proceeding within the meaning of s. 4, cl. (*m*), Crim. Pro. Code, and therefore he was competent to draw up proceedings under s. 476, Crim. Pro. Code, against the complainant for any offence referred to in s. 195, Crim. Pro. Code, and committed before him or brought to his notice in the course of the proceeding. **13 C.W.N. 122 =36 C. 72=1 Ind. Cas. 203.**

(3185)—*Ss. 476, 195 (=Crim. Pro. Code, 1882, ss. 476, 195)—Application for sanction —Duty of Court.*—Where an application for the sanction required by s. 195 is made, the Court should either give or refuse it. It is not open to the Court to act under s. 476 when it is no longer in a position to adopt the procedure prescribed by that section. **2 Weir 596.**

(3186)—*Ss. 476, 435—"Judicial proceedings" calling for records under s. 435 does not constitute a—Order under s. 476* ultra vires *and illegal.*—A Sub-Magistrate had refused to grant the sanction sought from him to prosecute petitioner, who was a witness in a trial before him, for having given false evidence. The Dist. Magistrate, who called for the records of the case, under s. 435 of the Code, passed an order, under s. 476, sending petitioner for trial by a Magistrate on a charge of perjury. *Held*, on revision, that, in his action under s. 435 of the Code, the Dist. Magistrate was not acting in a "judicial proceeding" so as to have given himself jurisdiction to pass the order that he did under s. 476 of the Code. His calling up the records under s. 435 was not a "judicial proceeding" and he had no power to have acted under s. 476. His order committing the petitioner for trial was, therefore, *ultra vires*, as passed without jurisdiction, and, further, since, in proceedings under s. 476, immediate action is contemplated, such procedure in the present case taken several months after the trial was illegal. **15 M.L.J. 489=3 Cr. L.J. 118.** [*R.*, 17 M.L.J. 584=3 M.L.T. 79=7 Cr. L.J. 54].

(3187)—*Ss. 476, 435, 439—Proceedings under s. 476, when open to revision by High Court—Departmental enquiry, not a judicial proceeding.*—Orders purporting to have been made under s. 476 of the Code are open to revision by High Court, when they have been made without jurisdiction. A departmental enquiry by an officer is purely an executive matter, and there is no provision of law empowering such officer to issue summonses to persons to compel their attendance before him in connection with the enquiry. Where an accused had been sentenced to pay a fine and the fine has been paid, the pendency of an appeal preferred by him would not give any Court authority or power to arrest him or to take recognizances from him for further appearances. On the presentation of a petition to a Magistrate, containing imputations on him by two vakils in regard to, and in the course of, the illegal detention of their client by the Magistrate, it is not competent for the Magistrate to take action under s. 476 of the Code, because, to warrant an order under that section directing a person to be prosecuted, the offence stated to have been committed by him should have been committed before the Court in the course of a judicial proceeding or should have been brought under its notice in the course of such a proceeding. **29 M. 100=3 Cr. L.J. 376.** [*R.*, 3 L.B.R. 234, F.B.].

(3188)—*Ss. 476, 439, 537 (=Crim. Pro. Code, 1882, ss. 476, 439, 537)—Sanction upon report by bailiff of obstruction.*—Where a Subordinate Judge, acting upon the report of a bailiff, gave sanction for the prosecution of the persons who obstructed him in executing a warrant of attachment, without making an enquiry of his own, *held* that, although the Subordinate Judge would have done well had he complied with the requirements of s. 476, it was not necessary to interfere in revision. **Rat. Un. Cr. C. 701=Cr. Rg. 33 of 1894.**

(3189)—*Ss. 476, 478 (=Crim. Pro. Code, 1872, ss. 471, 474)—Power of Civil Court to commit a case to Sessions.*—The power of a Civil Court to commit a case to the Sessions is limited to cases triable exclusively by the Court of Sessions, and to such cases only when the offence charged has been committed before the Civil Court itself. *Per F. D. Melvill, J.*—S. 471 merely lays down the procedure that may be followed in certain cases and does not confer any new jurisdiction on a Court. That section does not by itself give to the Civil Court the powers of committal in the cases referred to in that section. *Per Pinhey, J:*—Although the committal contemplated in s. 471, is undoubtedly a committal for trial before the Court of Sessions, the section merely prescribes the procedure, and does not confer on the Court the power of committal, and that is why s. 474 is enacted. **4 B. 287.**

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(3190)—*Ss. 476, 477—Scope of s. 477—False evidence given before Magistrate—Power of Sessions Judge, on appeal, to act under s. 477,* —S. 477 deals with cases which transpire before the Sessions Court itself, and in which the Sessions Judge is in a position to declare, without any further inquiry, that the person against whom action is necessary, under that section, has in fact committed an offence under s. 193, I.P.C. Where the evidence given by a witness was not believed by the Deputy Magistrate, as it was in conflict with the statements of certain other witnesses, and the Sessions Judge, on appeal, was inclined to take the same view and committed him to the Sessions, *held*, that there was no fact before him upon which he could come to the conclusion that the offence of giving false evidence had been committed either before him or before the Deputy Magistrate. The only conclusion to which he could come was that the offence of giving false evidence may have been committed before the Deputy Magistrate; and, therefore, the case was not ripe for commitment, until a further inquiry was made on the matter. **5 C.W.N. 630.**

(3191)—*Ss. 476, 477—Preliminary inquiry before ordering the committal of a complainant under s. 211, Penal Code.*—A Magistrate cannot order the committal of a complainant under s. 211, Penal Code, for preferring a false charge, without holding a preliminary inquiry. **2 Weir 585.**

(3192)—*Ss. 476, 478—Brought under the notice of Court—Meaning of—Order under section, when to be made.*—In order to make an order under ss. 476, 478, Crim. Pro. Code, there must be a judicial proceeding before the Court and it is in course of that judicial proceeding that some supposed offence must be brought under its notice. The words "brought under its notice" are wide enough to cover an offence which may have been committed in another *forum* and on some previous occasion, but it must be an offence brought under the notice of the Court holding the enquiry. A civil suit was brought against N and was decreed *ex parte*. N was arrested and put in jail and his application for restoration of the case was dismissed. Another plaintiff then brought a suit and obtained a decree and arrested N in execution. N was rescued. A report was made before the Munsif who held an enquiry, and in the course of that enquiry, he came to the conclusion that both the suits against N were false suits and were brought by G in the names of the plaintiffs. He made an order committing G to Sessions for certain offences. *Held*, that the offences were brought to the notice of the Court in course of judicial proceedings and the Munsiff's order was a valid order. **6 A.L.J. 392=9 Cr. L.J. 219=1 Ind. Cas. 306.**

(3193)—*Ss. 476, 478 (=Crim. Pro. Code, 1882, ss. 476, 478)—Power to act under s. 478, after acting under s. 476.*—It is clearly stated

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in s. 478, Crim. Pro. Code, that the procedure therein prescribed is only alternative, that is to say, that the Court itself may proceed under it instead of sending the case to a Magistrate under s. 476, but the section gives no power to a Court on failure of one, that is to say, on the discharge of the accused by the Magistrate, to adopt the other mode of procedure. **Rat. Un. Cr. C, 959=Cr. Rg. 12 of 1898.**

(3194)—*Ss. 476, 526—Affidavit, false allegation in—Magistrate's explanation—Statements of persons in support thereof—"Nearest Magistrate of the first class"—Presidency Magistrate not a Magistrate of the first class—Practice—Original side.*—Though, in showing cause to a rule why a conviction should not be set aside, it is not open to the Magistrate to submit observations with a view to supplement or add to his judgment, yet there is nothing to prevent him from sending, along with his explanation in answer to a rule for transfer, statements of persons, who might be in a position to contradict the allegations of misconduct made against the Magistrate by the petitioner in his application. S. 476 of the Code does not appear to provide for the case of an offence before a Court in a Presidency town. It empowers a Court to send a case for enquiry or trial to the nearest Magistrate of the first class. The nearest Magistrate, namely, the Presidency Magistrate, is not a Magistrate of the first class. The practice on the original side of the High Court is to lay the papers before the Government Solicitor for him to take action thereon, if he thinks fit. An analogous course, *viz.*, of laying the papers before the Legal Remembrancer, was adopted. **3 C.L.J. 357=3 Cr. L.J. 329.**

(3195)—*Ss. 476 and 537—Construction of the expression "Nearest Magistrate, first class" —Directory or mandatory—Trial by another Magistrate, a mere irregularity.*—The word "nearest" in s. 476, Crim. Pro. Code, is merely directory; it does not confer jurisdiction; and the Magistrate to whom an accused person is sent under s. 476 must be a Magistrate of local jurisdiction over the offence. Where, therefore, Court being of opinion that a person had given false evidence before it, sent him for trial under s. 476, not, as it appeared, to the nearest Magistrate, first class, but to a Magistrate, first class, having local jurisdiction, *held*, that the defect in the order of the Magistrate, who sent the case to the Magistrate having local jurisdiction only, though not the nearest Magistrate, was merely an irregularity curable under s. 537, Crim. Pro. Code. **1 Sind L.R. Cr. 84=8 Cr. L.J. 209.**

(3196)—*S. 476 (=Crim. Pro. Code, 1872, s. 471)—Preliminary enquiry—Procedure.*—Under s. 471, Crim. Pro. Code, 1872, the Court must first hold a preliminary enquiry to satisfy itself that a specific charge coming under the sections mentioned in it ought to be preferred

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against the accused ; and after being so satisfied, it must either commit the case or send it to the Magistrate for enquiry as to whether a committal should be made or not. **23 W.R. Cr. 39.**

(3197)—*S. 476 (2)—Order transferring case sent for enquiry or trial under s. 476 (1).*—A Revenue Court, in a proceeding under the Northern India Canal and Drainage Act, passed an order under s. 476, Crim. Pro. Code, sending a case for enquiry or trial to the District Magistrate. The latter transferred the case to a subordinate Magistrate. *Held* that neither the Sessions Judge nor the High Court had any jurisdiction to interfere with the order of the Revenue Court sanctioning the prosecution. **A W.N. 1902, 202.** [*R.*, 26 A. 249 = A.W.N. 1904, 15].

(3197-*a*)—*S. 476*—Order for prosecution—Power of successor in office to make order—"Court"—*See* **34 C. 551 = 5 C.L.J. 508 = 11 C.W.N. 568 = 5 Cr. L.J. 398 = 2 M.L.T. 298.**

(3198)—S. 476.—Whether an order under the above section requires also a preliminary enquiry by the lower Court—*See* CRIM. PRO. CODE, 1898, s. 435, 4 O.C. 96.

(3199)—Ss. 476, 477, 480, 485 and 487—*See* CONTEMPT OF COURT, 13 M. 24 = 2 Weir 610.

(3200)—S. 476 and Ch. XVI—*See* DISTRICT JUDGE, JURISDICTION OF, Rat. Un. Cr. C. 515.

(3201)—S. 476—*See* FALSE CHARGE, 2 C.L.R. 315.

(3202)—S. 476—*See* FALSE EVIDENCE, 14 C.W.N. 132 = 5 Ind. Cas. 62.

(3203)—S. 476—*See* HIGH COURT, JURISDICTION OF, 4 M.L.T. 186.

(3204)—S. 476—*See* PERJURY, 6 C. 308, 4 Bom. L.R. 778.

(3205)—S. 476—*See* REVISION, 4 A.L.J. 803 = A.W.N. 1908, 27 = 2 M.L.T. 512 = 7 Cr. L.J. 1, 4 A.L.J. 701 = A.W.N. 1907, 277 = 6 Cr. L. J. 350, S.C. 284, Oudh.

(3206)—Ss. 476, 477—*See* REVISION, A.W.N. 1882, 229.

(3207)—S. 476—*See* SESSIONS JUDGE, JURISDICTION OF, 23 M. 205 = 2 Weir 161.

(3207-*a*)—S. 476—*See* Nos. 57, 59. 111, 657, 781, 1008, 1017, 1019, 1021, 1022, 1141, 1245, 1251, 1331, 1339, 1351, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1388, 1390, 1394, 1401, 1406, 1407, 1419, 1433, 1436, 1437, 1444, 1478, 1490, 1545, 1551, 1562, 1563, 1574, 1932, 2169, 2170, 2838, 2904, 2947, 3000, 3062, 3063, 3065, 3077, 3092, 3097, 3139, 3234, *supra*.

——S. 477 (= 1882, s. 477 ; 1872, s. 472 ; 1861, s. 172).

(3208)—*S. 477—Scope of the section.*—S. 477 contemplates that there should be a charge upon which the complaint is based, in other words, the person accused of having committed

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the offence should know the specific nature of the accusation against him, so as to be able to answer it. **5 C.W.N. 615.**

(3209)—*S. 477—Power of Judge to commit a person on his own charge.*—Where the facts do not make out any case as against the accused which would justify the Judge in committing without further inquiry under s. 477, he ought not to convict him on his own charge. **2 Weir 601.**

(3210)—*S. 477 (= Crim. Pro. Code, 1882, s. 477) —Contradictory statement by witness before committing Magistrate and Sessions Judge—Jurisdiction of Sessions Judge.*—Where, before a Court of Session, a statement is made by a witness contradicting that made by him before the committing Magistrate, and no evidence is adduced to show which of the statements is true, no offence has been committed within the cognizance of the Court of Session under s. 477, Crim. Pro. Code. **S.C. 172, Oudh.** [*F.*, S.C. 206, Oudh].

(3211)—*S. 477 (= Crim. Pro. Code, 1882, s. 477)—Alternative charges—Jurisdiction of Sessions Judge.*—Nor has a Sessions Judge in such circumstances, jurisdiction under s. 477, Crim. Pro. Code, to charge the witness, in the alternative, with having intentionally given false evidence, either in his evidence before himself, or in his evidence before the committing Magistrate and to commit and try the said witness on such charge. **S.C 206, Oudh.** (4 B.L.R. A. Cr., S.C. 172, Oudh, *F.*) [*R.*, S.C. 232, Oudh.]

(3212)—*Ss. 477, 487 (= Crim. Pro. Code, 1872, ss. 472, 473)—Sanction by District Judge for prosecution for forgery—His competency to try the case as Sessions Judge*—Where a District Judge, on appeal, sanctions the prosecution of a party to the suit, for forgery, he, as a Sessions Judge, is not debarred from trying the case himself. **6 B. 479.** [*F.*, U.B.R. (1897—1901), 127 ; *Appl.*, 16 C. 766, F.B.; *R.*, 2 C.W.N. 613, 14 A. 354].

(3213)—*Ss. 477, 487 (= Crim. Pro. Code, 1872. ss. 472, 473)—Jurisdiction of Sessions Judge under s. 473, when arises.*—Where an offence committed before a Sessions Judge in contempt of his authority is not taken up by him under the authority of s. 472, he cannot try it, notwithstanding that it is exclusively triable by a Sessions Court. **2 Weir 609.** [*F.*, 2 Weir 609].

(3214)—*S. 477 (= Crim. Pro. Code, 1872, s. 472)—Power of commitment by Sessions Judge —False evidence—See* **21 W.R. Cr. 37.**

(3215)—Ss. 477, 478, 479—*See* CONTEMPT OF COURT, 4 M.H.C. App. 52.

(3216)—S. 477—*See* FALSE EVIDENCE, 6 A. 103.

(3216-*a*)—S. 477—*See* Nos. 1141, 1335, 1339, 1369, 1370, 1653, 1654, 1806, 2297, 2835, 3190, 3191, 3199, 3206, *supra*.

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——S. 478 (=1882, s. 478; 1872, ss. 474, 476; 1861, ss. 173, 175).

(3217)—*S. 478 (=Crim. Pro. Code, 1872, s. 474)—Power of Civil Court to order commitment.*—A Civil Court cannot order the commitment of persons for offences under ss. 471, 465 and 193 of the Penal Code without making a preliminary enquiry as required by s. 474, Crim. Pro. Code, 1872. **22 W.R. Cr. 52.**

(3218)—*S. 478 (=Crim. Pro. Code, Act XXV of 1861, s. 173)—Penal Code, Act XLV of 1860, s. 199—District Magistrate refusing to investigate—Act XXIII of 1861, s. 16.*—Where a District Magistrate refused to investigate a case sent to him by a subordinate Judge sanctioning prosecution of a person for false verification of a plaint, on the ground that the subordinate Judge should have committed the case to the Court of Session by which the offence was exclusively triable, *held*, that the Magistrate was wrong and that he was bound, under s. 16 of Act XXIII of 1861, to investigate the case according to law. **7 B.H.C. Cr. 29.** [*R.*, 13 B. 109].

(3219)—*S. 478 (=Crim. Pro. Code, Act XXV of 1861, s. 173)—Penal Code, s. 465—Small Cause Judge—Commitment—Procedure.*—A Small Cause Judge who, in the course of the trial of a suit, finds that a person has committed forgery, cannot commit him for trial by the Sessions Court, since the offence was not committed before the Court, which could therefore only sanction the institution of criminal proceedings against the person. The complaint is to be preferred before a Magistrate with the sanction of the Civil Court. **Rat. Un. Cr. C. 31=Cr. Rg. 31—3—1870.**

(3220)—*Ss. 478, 195 (=Crim. Pro. Code, 1882, ss. 478, 195)—Power of Civil Court to commit to sessions parties and witnesses to civil suit.*—The power given to the Civil Court under Ch. XXXV, Crim. Pro. Code, to take action regarding "any offence referred to in s. 195" is not ordinarily restricted, in regard to offences relating to document, to such offences only when committed by a party to the proceeding in which the document was given in evidence. Although the prosecution of a witness for an offence relating to documents is permissible without sanction, that could not invalidate a prosecution commenced on a sanction which included both a party and a witness. **18 B. 581.** [*R.*, 32 M. 49=19 M.L.J. 42=4 M.L.T. 404=9 Cr. L.J. 41, F.B.].

(3220-*a*)—*S. 478*—Government order as to tribunal for trial of offences—Bribery. **15 M. 36=2 Weir 218.**

(3221)—S. 478—*See* APPEAL, 6 C.L.R. 427.

(3221-*a*)—S. 478—*See* FALSE EVIDENCE, 11 P.R. 1870 Cr.

(3221-*b*)—S. 478—*See* Nos. 1297, 1371, 1372, 1434, 1437, 1488, 1653, 1669, 1806, 2903, 3189, 3192, 3193, 3215, *supra*.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

——S. 479 (=1882, s. 479; 1872, s. 475; 1861, s. 174).

(3221-*c*)—S. 479—*See* No. 3215, *supra*.

——S. 480 (=1882, s. 480; 1872, s. 436, para 1; 1861, s. 163).

(3222)—*Ss. 480, 481, 482 (=Crim. Pro. Code, 1872, ss. 435, 436; 1861—1869, s. 163)—Sub-Registrar—Offence during judicial proceeding—Penal Code, s. 228.*—A was accused before an Assistant Magistrate by a Sub-Registrar of having committed an offence under s. 228, Penal Code, and fined. *Held*, that the Sub-Registrar should have tried the matter himself under ss. 435 and 436 of the Criminal Procedure Code, 1872, and as the Magistrate acted without jurisdiction, the order must be quashed. **13 B.L.R. Ap. 40=22 W.R. Cr. 10.**

(3223)—*S. 480—Contempt of Court—Punishment by the Court in which the contempt occurred—Penal Code, s. 228.*—Where the Court which deals with the offence of contempt of Court is the Court in which the contempt occurred, it cannot pass the sentence prescribed by s. 228, Penal Code, but should, under s. 480, C.P.C., limit the punishment to Rs. 200 with imprisonment in default for 30 days. **2 Weir 603.**

(3224)—*S. 480 (=Crim. Pro. Code, 1882, s. 480)—Inquiry by Magistrate preliminary to reporting to superior officer—Contempt shown to the Magistrate during such inquiry.*—Where a Magistrate was conducting merely an inquiry into a case of a breach of the peace in order to ascertain whether he should make a report to his official superior, and possibly to satisfy himself whether he ought to act under s. 108, Crim. Pro. Code, he could not be considered to be exercising any powers conferred by the Code or conducting any proceeding in the course of which evidence might be legally taken. Therefore, a person behaving insolently towards him in such proceedings could not be proceeded against under s. 480, Crim. Pro. Code. **2 Weir 605.**

(3225)—*Ss. 480 and 481—Procedure in cases of contempt of Court.*—It is necessary for the protection of persons dealt with under s. 480, Crim. Pro. Code, to insist upon a strict and careful compliance with the procedure laid down in s. 481 of the above Code. **U.B.R. (1892-1896), Vol. I, 52.**

(3225-*a*)—*Ss. 480, 481, 487 (=Crim. Pro. Code, 1872, ss. 435, 436 and 473).*—If a contempt is committed in view of the Court, the Magistrate should take action under s. 435 or s. 436 of the Code. Any trial (other than the one under s. 435) conducted by the Deputy Commissioner himself of such an offence is illegal under s. 473 of the Code. **Colm. Dig. Cr. 45 of 1876.**

(3226)—*Ss. 480 and 487—Proceedings in contempt cases.*—A Magistrate not following the procedure prescribed by s. 480 is barred by s. 487 from himself trying the offender. **L.B.R. (1893—1900), 20.**

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(3227)—S. 480 --*See* ACT X OF 1873, s. 6, 47 P.L.R. 1902.

(3228)—S. 480—*See* APPEAL, Rat. Un. Cr. C. 978.

(3229)—Ss. 480,423—*See* CHARGE TO JURY, 25 C. 416=2 C.W.N. 347.

(3230)—S. 480—*See* CONTEMPT OF COURT, 34 P.R. 1869 Cr., 12 B. 63, 5 M.L.T. 286=1 Ind. Cas. 560, 12 C.P.L.R. Cr. 15, 16 P.R. 1897 Cr.

(3231)—Ss. 480, 537—*See* CONTEMPT OF COURT, 11 A. 361.

(3232)—S. 480—*See* PENAL CODE, s. 228, 137 P.L.R. 1903.

(3233)—Ss. 480, 482—*See* SENTENCE, 6 M. H.C. App. 16.

(3233-*a*)—S. 480—*See* Nos. 1391, 2541, 3199, *supra*.

——S. 481 (=1882, s. 481; 1872, s. 435, paras 2 and 3).

(3234)—*Ss. 481, 482, 195, 476 (=Crim. Pro. Code, 1872, ss. 435, 436, 467 to 471)—Offence under s. 193, Penal Code, whether an offence in contempt of Court—Jurisdiction of Magistrates.—Held, by the Full Bench (Stuart, C.J., dissenting)*:—An offence under s. 193, Penal Code, committed before a Court, is not only an offence against public justice, but also a contempt of the Court's authority. Therefore, a Magistrate cannot try himself, by reason of the provisions of s. 473, Crim. Pro. Code, a charge under s. 193, Penal Code, if the false evidence has been given in his own Court. **1 A. 625, F.B.** [*R.*, 14 A. 354; *D.*, 4 A. 322].

(3235)—Ss. 481, 482—*See* ACT III OF 1877, s. 84, 22 W.R. Cr. 10=13 B.L.R. Ap. 40.

(3236)—S. 481—*See* CONTEMPT OF COURT, 36 P.R. 1886 Cr., 10 B.H.C. 69, 40 P.R. 1881 Cr.

(3236-*a*)—S. 481—*See* Nos. 2541, 3222, 3225, 3225-*a*, *supra*.

——S. 482 (=1882, s. 482; 1872, s. 436, paras 1 and 2; 1861, s. 163).

(3237)—*S. 482 (=Crim. Pro. Code, 1872, s. 436)—Contempt of Court—Absence of explanatory statement by accused—Procedure.*—A barrister-at-law, in the course of the trial of a case in which he was the complainant, used insulting language to the Sub-Magistrate. The Magistrate then recorded proceedings required by s. 436, but failed to take any statement from the accused explanatory of his conduct, as he left the Court at once. *Held*, that the case ought not to be dismissed on the ground of the omission to take such statement. **2 Weir 604.**

(3237-*a*)—S. 482—*See* Nos. 1391, 3222, 3234, 3235, *supra*.

—— S. 483 (=1882, s. 483).

(3238)—*S. 483 (=Crim. Pro. Code, 1882, s. 483), scope of.*—Although it appears from s. 483, Crim. Pro. Code, that the Local Government may constitute a Sub-Registrar a Court for the purposes of certain sections, as those dealing with contumacious contempts, still, from the fact of authorisation under that section being deemed necessary, it is to be implied that he is not to be considered a Court for ordinary purposes. A provision that a particular officer may, for particular purposes, be deemed a Court, does not warrant the extension of that provision so as by inference to produce a group of rules in conflict with the general system. A provision such as that contained in s. 483 is an excrescence on the general system, and exceptional provisions are not to be drawn out into all their logical consequences. **12 B. 36.**

——S. 485 (=1882, s. 485; 1872, ss. 356, 364; 1861, ss. 192, 365).

(3238-*a*)—S. 485—*See* Nos. 2362, 3199, *supra*.

——S. 486 (=1882, s. 486; 1872, s. 268; 1861, s. 413).

(3239)—S. 486—*See* APPEAL, 16 P.R. 1887 Cr.

(3240)—Ss. 486 and 419—*See* APPEAL, 8 W. R. Cr. Cir. 7.

(3240-*a*)—S. 486—*See* No. 2675, *supra*.

——S. 487 (=1882, s. 487; 1872, s. 473).

(3241)—*S. 487—Scope of.*—The prohibition under the section extends only to contempts of authority of a Magistrate as such. **U.B.R. (1897—1901), Vol. I, 61.**

(3242)—*S. 487*—The prohibition in s. 473, Crim. Pro. Code, 1872, is a personal prohibition, the mischief to be prevented being that the same person should not decide a matter which he may have already prejudged. It does not refer to the office of the Magistrate or Judge before whom an offence of the class described in the section is committed, but only refers to the person of the Magistrate. **1 M. 305=2 Weir 606.**

(3243)—*S. 487 (=Crim. Pro. Code, 1872, s. 473)*—*" Giving false evidence," nature of the offence of--Trial--"Court," scope of the word.*—Giving false evidence in a judicial proceeding is a contempt of the Court's authority and a Judge, before whom such evidence is given, cannot, under s. 473 of this Code, in his capacity as a Judge of a Criminal Court, try a person accused of giving such evidence. The term *" Court "* in this section refers not only to a Court of a particular class, such as a Civil, Criminal or Revenue Court, but also to a *Judge* constituting a Court. **Colm. Dig. Cr. 27 of 1875.**

(3244)—*S. 487 (=Crim Pro. Code, 1872, s. 473)—False evidence—Making contradictory statements before a Magistrate and a Sessions Judge—Competency of Sessions Judge to try accused on a charge of false evidence and to hear appeal from conviction.*—A person charged with having given false evidence in the alternative before a Magistrate or Court of Session, by making contradictory statements on oath, was

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convicted by the same Court of Session. *Held*, that the Sessions Court was precluded by the terms of s. 473, from trying the charge. **3 M. 254.** [*F.*, 2 Weir 609; *R.*, 14 A. 354].

(3245)—Where the Sessions Judge sanctioned the prosecution of a person for giving false evidence, action not being taken in accordance with either s. 476 or s. 477, Crim. Pro. Code, 1882, and the accused was committed by the same Sessions Judge, *held*, that the Sessions Judge was precluded from trying the case by the provisions of s. 487. **2 Weir 609.**

(3246)—*Held by Forbes and Innes, JJ., (Kernan, J., dissenting)*—A Sessions Judge before whom an offence under s. 193 was committed is not incompetent to hear the appeal from a conviction for that offence. **2 Weir 607.**

(3247)—*S 487 (=Crim. Pro. Code, 1882, s. 487)—Judicial proceeding—Hearing of appeal by the Judge who had sanctioned the prosecution.* —The expression "shall try a person," in s. 487 of the Code, includes the trial of an appeal. The hearing of an appeal from an order refusing sanction is a "judicial proceeding" within the meaning of the Code. Where a Judge, reversing the order of a Munsif, sanctions the prosecution of a decree-holder, under s. 210 of the Penal Code, he is not competent to entertain an appeal from the conviction of the decree-holder for that offence. **16 C. 121.** [*Overruled*, 16 C. 766].

(3248)—*S. 487—Applicability to Presidency Magistrates—Indian Penal Code, s. 188—Retrial, High Court when to order*—Under s.487 of the Crim. Pro. Code, the Chief Presidency Magistrate has no jurisdiction to try a person for an offence under s. 188, I.P.C., for disobedience of his own order. The terms of s. 487, Crim. Pro. Code, as contained in the Code of 1898, are wide enough to include Presidency Magistrates. It is not ordinarily the duty of the High Court to order a retrial of a person, whose conviction is set aside by the High Court on account of an illegality in his trial. When the conviction and the sentence passed upon an accused is set aside by the High Court, on the ground that the Magistrate, who tried him, had no jurisdiction to do so, the order of the High Court setting aside the conviction and sentence is no obstacle to the accused being retried on the same charge at the instance of the prosecution. **12 C.W.N. 246=7 C.L.J. 70=3 M.L.T. 154=7 Cr. L.J. 103.**

(3249)—*S. 487 (=Crim. Pro. Code, 1882, s. 487)—Disobedience to summons—Power of the Magistrate issuing summons.*—Under s. 487 of the Code, the Magistrate whose summons was disobeyed has no jurisdiction to try the offence. **3 M.L.J. 241.**

(3250)—Under s. 487, the Magistrate whose summons was disobeyed has no jurisdiction to try the offence. **2 Weir 612.**

(3251)—*S. 487 (=Crim. Pro. Code, 1872, s. 473)—Class of cases excepted by the section—*

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Power of Sessions Judge to try such cases, when he has pronounced an opinion prejudicial to the accused.—The offence of fabricating false evidence is one exclusively triable by a Sessions Court, and is one of the class of cases excepted by s.473 from the general rule that no Court shall try a person for an offence committed in contempt of its own authority. Where such offence is committed before a Sessions Judge, there is nothing illegal in his trying it, and the fact that the Sessions Judge had expressed an opinion prejudicial to the accused is no ground for the transfer of the case, as that is a circumstance which the law necessarily contemplates when it authorises a Sessions Court to try such cases. **2 Weir 608.**

(3252)—*S. 487(=Crim.Pro.Code, 1882,s.487) —Sanction by an officer as a Revenue Officer—Competency of the same person to try the case as Magistrate.*—Where sanction is given by a Deputy Collector and Magistrate, as a Revenue Officer, he is not debarred from trying the case himself as a Deputy Magistrate. **2 Weir 613.**

(3253)—*S. 487 (=Crim. Pro. Code, 1872, s. 473)—Penal Code, s. 174—Trial of offences under—Legality.*—It is illegal to hold trials of offences under s. 174, I.P.C., by a Magistrate in contempt of his own authority. **Colm. Dig. Cr. 41 of 1876.**

(3254)—*S. 487 (=Crim. Pro. Code, 1872, s. 473)—Penal Code, s. 228—Offence under.*—A Deputy Commissioner, himself trying an offence under s. 228, I.P.C., committed against his own Court commits an illegality under this section. **Colm. Dig. Cr. 44 of 1876.**

(3255)—*S. 487—Procedure in cases of offences affecting administration of justice.*—When an offence referred to in s. 195, Crim. Pro. Code, is committed before a Sessions Judge or Magistrate, or in contempt of his authority, or brought to his notice in the course of a judicial proceeding, the Judge or the Magistrate is precluded by s. 487 from trying it himself, except as provided in ss. 477, 480 and 485. The contrary rule of the old Regulation has been altered by the new Regulation (1892). **U.B.R. (1892—1896), Vol. I, 53.**

(3256)—Where the offence charged against the accused was either committed before the Magistrate himself, or brought under his notice in the course of a judicial proceeding, *held* that he was absolutely precluded by the said section from trying the accused. **U.B.R. (1897—1901), Vol. I, 59.**

(3257)—*Ss. 487, 195 (=Crim. Pro. Code, 1882, ss. 487, 195)—Meaning of s. 487—Sanction to prosecute given by District Judge—Trial by same Judge as Sessions Judge—Penal Code, s. 196.*—In s. 487, effect must be given to the words "as such Judge or Magistrate," and the meaning of the section is that, when an offence referred to in s. 195 has been committed before a Judge of a Criminal Court or Magistrate, or in contempt of his authority, or brought under his notice in the course of a judicial proceeding,

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he cannot himself try such offence. A Sessions Judge has power to try a person for an offence punishable, under s. 196 of the Penal Code, when he has, as a District Judge, given sanction for the prosecution under the provisions of s. 195 of the Crim. Pro. Code. **16 C. 766, F.B.** [*F.*, 18 B. 380, 7 C.W.N. 708 ; *R.*, 2 Weir 613, 14 A. 354 ; *F.*, U.B.R. (1897-1901), 127 Cr., U.B.R. (1897—1901), 61 Cr.]

(3258)—*S. 487 (=Crim. Pro. Code, Act X of 1872, s. 473)—Jurisdiction of appellate Court.* —A District Judge, being of opinion that a person had abetted the giving of false evidence in a case before him, sent the case for inquiry by a Magistrate. The latter convicted him and the accused appealed to the District Judge. *Held*, that though it was doubtful whether the offence was one committed in contempt of the District Judge, the latter had jurisdiction to hear the appeal since the term "try" in s. 473 of the Crim. Pro. Code does not apply to appeals. **A.W.N. 1882, 86.**

(3259)—*S. 487, para 1 (=Crim. Pro. Code, 1872, s. 473)—Giving false evidence in judicial proceeding—Power of Magistrate.*—The Magistrate before whom the offence of intentionally giving false evidence in a judicial proceeding is committed may himself try and commit the persons so offending. **18 W.R.Cr. 15.** 10 B. H.C. 73.

(3260)—*Ss. 487, para 1, 476 (=Crim. Pro. Code, 1872, ss. 473, 471)—Jurisdiction of Magistrate—Giving false evidence.*—A witness charged with having given false evidence in a criminal proceeding before a Magistrate of the first class was tried and convicted of that charge by that Magistrate, and the conviction was confirmed on appeal by the Sessions Judge. *Held* that the jurisdiction of the Magistrate was not barred by the operation of s. 473, Act X of 1872, for the giving of false evidence in the presence of a Court was not an offence committed in contempt of the authority of the Court within the meaning of that section. The Magistrate's jurisdiction in such a case was, however, held barred by s. 471 of the Code, the Magistrate being bound under that section either to commit or to send the case for enquiry to another Magistrate. **22 W.R. Cr. 49.**

(3261)—*S. 487—S. 174, I.P.C.*—A Magistrate is not debarred by law from trying an accused person under s. 174, I.P.C., for disobedience to a summons, issued by him in his capacity of Mamlatdar. **Cr. Rg. 28 of 1893.**

(3261-*a*)—*S. 487—Applicability to offences under the Registration Act III of 1877, s. 82.*—S. 487 of the Crim. Pro. Code, does not apply to offences under the Registration Act. A Sessions Judge, who, in his capacity, as District Registrar, sanctioned the prosecution of a person for an offence under s. 82, cl. (*a*) of the Registration Act, is not thereby rendered incompetent to try the case. **A.W.N. 1896, 181.**

(3262-*b*)—*Ss. 487 and 556.*—Act I of 1879 (Stamp Act), ss. 61, 69—Crim. Pro. Code, s. 555

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

—Execution of instrument not duly stamped—"Receipt"—Interest of Judge in case. **A.W.N. 1884, 37.**

(3262)—S. 487—*See* CONTEMPT OF COURT, 25P R.1873 Cr., 7 P.R. 1874 Cr., 4 P.R. 1876 Cr. and 30 P.R. 1882 Cr.

(3263)—S. 487—*See* CONTEMPT OF LAWFUL AUTHORITY, Rat. Un. Cr. C. 70.

(3264)—S. 487—*See* MAGISTRATE, JURISDICTION OF, 18 B. 380. F.B.

(3265)—Ss. 487, 195—*See* MAGISTRATE, JURISDICTION OF. L.B.R. (1893—1900), 190.

(3266)—Ss. 487, 242 and 243—*See* PENAL CODE, s. 172, Colm. Dig. Cr. 38 of 1876.

(3267)—S. 487—*See* PENAL CODE, s. 174, 1 Weir 82.

(3267-*a*)—S. 487—*See* Nos. 60, 366, 705, 782, 1141, 1368, 1373, 1400, 1439, 1477, 1478, 1654, 2842, 3199, 3212, 3213, 3225-*a*, 3226, *supra*.

——S. 488, paras 1 to 6 (=1882, s. 488 ; 1872, s. 536 ; 1861, s. 316) ; paras 7, 8, 9 and proviso to 6. new.

See BASTARDY PROCEEDINGS.

See MAINTENANCE.

(3268)—*S. 488 (=Crim. Pro. Code, 1882, s. 488)—Application under the section—Its basis—Bastardy proceedings, nature of.*—The basis of an application for the maintenance of a child, under the provisions of s. 488 of the Code, is the paternity of the child, irrespective of its legitimacy or illegitimacy. The fact of the marriage of the parents may be not only strong evidence to show paternity, but also raises a presumption which has a very strong bearing upon the question of paternity. Bastardy proceedings, under s. 488 of the Code, are Civil proceedings within the meaning of s. 120 of the Evidence Act, and the defendant thereto may give evidence on his own behalf. [*R.*, 18 B. 468, L.B.R. (1893-1903), 662, 168 P. L.R. 1903=19 P.R. 1903 Cr., 17 C.P.L.R. 127.] Where, in a proceeding under s. 483, the Magistrate found that an alleged marriage had not been proved, but held the child was the illegitimate child of the defendant on the ground of the similarity of the features and the name of the child with those of the defendant, who did not appear before the Magistrate during the proceedings, but with whom the Magistrate stated that he was well acquainted, and made an order for maintenance of the child, *held*, on appeal, that the Magistrate was wrong in making use of the similarity in features and in names. *Held*, also, that apart from these circumstances, there was ample evidence in the case, upon which the Magistrate could have made the order of maintenance. **16 C. 781.**

(3269)—*S. 488—Refusal to allow mukhtyar to appear for applicant*—Ex parte *hearing of case.*—In a proceeding under s. 488, the applicant appeared by a pleader. The hearing was twice adjourned, and, on the adjourned day of hearing the applicant instructed a mukhtyar to appear for him, as his pleader could not

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

remain present on that day. The Magistrate refused to allow the mukhtyar to appear, and thinking that the personal attendance of the applicant was not dispensed with, heard the case *ex parte*. *Held*, setting aside the order passed *ex parte*, that although the Magistrate might have been fully justified in refusing to allow the mukhtyar to appear, he ought not to have treated the absence of the accused as due to wilful neglect to attend. **2 Bom. L.R. 700.**

(3270)—*S. 488 (=Crim. Pro. Code, 1882, s. 488)—Offer to maintain wife, sufficiency of.*—A husband's offer to maintain his wife on condition of her living with him, must be an offer to maintain with the consideration due to her position as wife, in order to disentitle the wife to claim a separate maintenance. **17 M. 260=2 Weir 641=4 M.L.J. 83.**

(3271)—*S. 488 (=Crim. Pro. Code, 1882, s. 488)—Wife's refusal to live with husband on the ground of husband's adultery—Maintenance.*—Adultery on the part of the husband, not being such adultery as would justify a conviction under the Indian Penal Code, may, nevertheless, constitute sufficient cause for the wife separating from the husband and enable her to claim maintenance under the provisions of the Crim. Pro. Code. **20 M. 470=2 Weir 643=7 M.L.J. 303, F.B.** [*R.*. 2 M.L.T. 166=17 M.L.J. 279=5 Cr. L.J. 359=30 M. 332, 3 M. L.T. 269].

(3272)—*S. 488—Refusal of wife to live with her husband—Ground for habitual cruelty or adultery.*—The mere fact of the respondents having a chief wife, and having added a third, assuming he was at liberty to take more than one wife at all, does not constitute cruelty on his part, nor entitle the applicant, who had chosen to unite herself to a man already legally married, to object to live with him or claim to live apart. No other ground than habitual cruelty or adultery could be treated as a sufficient reason for the refusal of a wife to live with her husband, under s. 488, Crim. Pro. Code, 1898. **U.B.R. (1897—1901), Vol. I, 104.**

(3273)—*S. 488 (=Crim. Pro. Code, 1861, s. 316)—Imprisonment on default of payment of maintenance, when could be ordered.*—An order for maintenance provided that, in the event of the defendant failing to pay the monthly maintenance, or of there not being sufficient distrainable goods belonging to him, he should be rigorously imprisoned for the term of fifteen days for every breach of the order. *Held*, that the provision was an anticipation of a procedure to take place on a wilful default, if such should occur, and was, therefore, illegal. **2 Weir 637 =5 M.H.C. App. 34.**

(3274)—*S. 488—Claim for maintenance for child—Settlement between father and mother—Evidence.*—In an application under the above section of the Code, in respect of the maintenance of a child, proof of a settlement between father and mother is not conclusive against the claim; but it is necessary to make enquiry into the present circumstances of the child and the father in accordance with the provisions of the section. **U.B.R. (1892—1896), Vol. I, 55.**

(3275)—Where the father makes over certain property to the mother in consideration of her agreement to maintain the child, an order of maintenance would be rightly refused, when the property still exists and furnishes sufficient means for the support of the child. But where the property is not made over for the support of the child, and though it has probably not been all expended when the application for maintenance is made, the mother would be entitled under the section to apply for maintenance. **U.B.R. (1897—1901), Vol: I, 108.**

(3276)—*S. 488—Revision of order under—Re-opening of proceedings once disposed of—Legal union—Maintenance, how payable.*—The District Magistrate has no authority to revise a case under the above section of the Code; and a Magistrate of competent jurisdiction having once disposed of the matter, his successor is not at liberty to go into it again. Mere cohabitation does not in Burma constitute a legal union. The maintenance allowed is payable only from the date of the order according to the old Code, and from the date of the application according to the new one. It should not at all be made payable from the date of the child's birth. **U.B.R. (1892—1896), Vol. I, 61.**

(3277)—*S.488—Conditions of section to be fulfilled—Maintenance.*—In an application under the above section of the Code, the Magistrate should make a complete enquiry and satisfy himself that the conditions of the section have been fulfilled. As regards costs that may be claimed by the applicant, there is no provision for it in the Code, and the Court cannot go into that question at all. **U.B.R. (1892-1896). Vol. I, 62.**

(3278)—*S. 488—Effect of dismissal of application for maintenance—Second application, if admissible.*—The effect of the dismissal of an application for maintenance under the above section of the Code, is the same as an order passed for default of the appearance of the complainant in a summons case, *i.e.*, an acquittal. If once an application under the above section is dismissed for default, a second application on exactly the same ground is not admissible; but the Magistrate, before rejecting or dismissing a second application, should ascertain whether any change of circumstances or fresh cause has occurred since the first application was thrown out. **U.B.R. (1892—1896), Vol. I, 64.**

(3279)—*S. 488—Maintenance, payment of—Discretion of Magistrate—Enquiries to be made by Magistrate.*—A wife, who first applies for maintenance to herself under the above section, and, seeing that her application is dismissed, again applies a second time for the maintenance of her child, is possibly evading the law by trying to obtain an order for payment to herself of allowance on account of her child.

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Hence, the Magistrate should be careful and should use his discretion in determining the person to whom an allowance should be made payable. If the father is willing to support the child in his own house, and is not permitted to do so because the mother will not part with it and will not live with her husband, he is not liable for either neglect or refusal on account of the child any more than on account of the mother. **U.B.R. (1892—1896), Vol. I, 67.**

(3280)—*S. 488—Maintenance—Ability of children to maintain themselves.*—A Magistrate should necessarily enquire as to whether children can maintain themselves. *Quære:*—Whether, under the Buddhist Law, a wife can separate herself from her husband for upwards of a year, and whether a husband can take a second wife contrary to the wishes of the first; whether a father can be made liable for maintaining his child, if his child declines to live with him and insists on living with the mother, who improperly refuses to live with her husband; to whom should the payment be made for maintaining the child, when its mother is not entitled to receive the same. **U.B.R. (1892—1896), Vol. I, 68.**

(3281)—*S. 488—Husband, when not liable to maintain wife—Legitimacy of child—Presumption.*—The husband is bound to maintain the wife under the above section of the Code, unless she refuses to live with him without sufficient excuse, or some other of the disqualifications mentioned in the above section applies. Furthermore, the presumption is that a child born during coverture is the child of both husband and wife, and this presumption may be strengthened by the future conduct of the husband in returning to live with his wife after she denied that he was the father. The Magistrate must not, in considering a case of this kind, pass an order on the general grounds of separation. **U.B.R. (1892-1896), Vol. I, 72.**

(3282)—*S. 488—Maintenance application for, when to be dismissed—S. 112, Evidence Act—Legitimacy.*—An application under the above section of the Code for the maintenance of a child by the father should be dismissed when no neglect or refusal to maintain is proved. S. 112 of the Evidence Act applies to the legitimacy of the children of married persons only. **U.B.R. (1892—1896), Vol. I, 74.**

(3283)—*S. 488—Divorce under Buddhist law and Burman custom—Effect of—Questions to be considered.*—Where the parties have been divorced in the usual Burman fashion, it is a question whether provision has not already been made for the maintenance of the children of the marriage by the arrangements concluded at the time of divorce, or by the decree in a subsequent civil suit between the parties; and this matter ought to be considered in dealing with an application under s. 488, Crim. Pro. Code. In an application under the above section, the questions to be considered are whether the husband has sufficient means to support his children, who are infants, and what sum is required for their support. **U.B.R. (1897—1901), Vol. I, 106.**

(3284)—*S. 488—Pregnancy by the same man who marries the woman, not a bar to marriage under Mahomedan Law—Husband liable for maintenance of wife and child.*—There is no authority for the assertion that pregnancy is a bar to marriage under the Mahomedan Law. Where a woman is pregnant by fornication with the same man who marries her, the marriage is lawful and connubial intercourse is not forbidden them. Such a person would be liable for the woman's maintenance. **U.B.R. (1897—1901), Vol. I, 110.**

(3285)—*S. 488—Order under, if can be altered by Civil Court.*—An order under the above section cannot be set aside or modified by a Civil Court. **U.B.R. (1897—1901), Vol. I, 112.** (6 W.R. Cr. 57, 20 W.R. Cr. 58, 19 A. 50, *R.*)

(3286)—*S. 488—Arrears of maintenance, payment of, how enforced.*—It is never the intention, as manifested in Ch. 36, Crim. Pro. Code, of the legislature that arrears of maintenance should be allowed to accumulate for a long number of years, and that payment of the accumulated arrears should then be enforced in a summary manner under s. 488, Crim. Pro. Code. **1 U.B.R. (1902-1903), Crim. Pro. Code, 3.** (10 A. 350, 4 Bur. L.R. 29, 6 M.H.C. App. 22, *R.*).

(3287)—The levy of accumulated arrears of maintenance by a single warrant is not illegal under s. 536. **7 M.H.C. App. 37.**

(3288)—*S. 488—Powers of Magistrate under—Mother's refusal to hand over child to husband, if ground to stop allowance.*—A Magistrate proceeding under s. 488, Crim. Pro. Code, has no authority to determine the question, who is the lawful guardian of the child; and a woman's refusal to surrender her child to the husband is no ground for stopping an allowance previously ordered. **1 U.B.R. (1902—1903), Crim. Pro. Code, 7.** (4 C. 374, U.B.R. 1892-1896, Vol. I, 67, *R.*).

(3289)—*S. 488 (=Crim. Pro. Code, 1872, s. 536)—Maintenance—Father's liability.*—A father is liable to maintain his children, whether he is a Hindu or Mahomedan or Buddhist, notwithstanding that their mother may have been legally divorced. S. 536, Crim. Pro. Code, 1872, is intended to apply to fathers who are proved to have sufficient means and who neglect or refuse to maintain their children. **L.B.R. (1872—1892), 145.** (17 W.R. Cr. 49, *R.*).

(3290)—*S. 488 (=Crim. Pro. Code, 1882, s. 488)—Maintenance--Buddhist Law (Divorce).*—A Burmese divorced wife is not barred by the provisions of the fifth paragraph of s. 488, Crim. Pro. Code, from instituting proceedings under that section for the maintenance of a child born to her, against her former husband, the father of the child. **L.B.R. (1872—1892), 362.**

(3291)—*S. 488 (3)—Mode of enforcement of order of maintenance.*—An order for imprison-

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

ment in execution of an order for maintenance, when no order for levying the amount of the maintenance due had previously issued, is illegal, and it is only on account of the amount due after the execution of "the warrant" that imprisonment may be ordered. *Held*, further, that it should have been shown that there had been wilful neglect to comply with the order for maintenance. **U.B.R. (1897—1901), Vol. I, 111.**

(3292)—*Ss. 488, 250—Petition for maintenance, not a complaint of an offence within s. 250—Compensation, illegal.*—An application for an order of maintenance is not a complaint or an accusation of an offence, and consequently an order for payment of compensation under s. 250, and imprisonment in default, is illegal. **6 M.L.T. 261.**

(3293)—*Ss. 488 and 490 (=Crim. Pro. Code, 1882, ss. 488, 490)—Mahomedan husband—Objecting to order for maintenance of wife on ground of her divorce.*—A Bench of Honorary Magistrates were held to be bound to enquire into an objection raised by a Mahomedan husband, against an order of maintenance passed by them on the ground of the divorce of his wife, and, if they found that the husband had, in fact, validly divorced his wife, to abstain from enforcing their order. **S. C. 239, Oudh.** (5 C. 558, 7 B. 180, 5 A. 226, 14 C. 276, *R.*)

(3294)—*Ss. 488, 490—Imprisonment in default of payment of maintenance—Construction of s. 488.*—A Township Magistrate has jurisdiction under s. 490 to enforce the maintenance order as the section says that "such order may be enforced by any *Magistrate.*" There is a conflict of opinion between the High Courts in India concerning the proper construction of s. 488 with respect to a sentence of imprisonment. It will be safest to treat imprisonment in default of payment under s. 488 of the Code as not an '*offence*' and to award simple imprisonment as a means of coercion. **U.B.R. (1892—1896), Vol. I, 70.**

(3295)—*S. 488 (=Crim. Pro. Code, 1872, s. 536)—Imprisonment in default of payment of maintenance.*—A Magistrate cannot, under s. 536. Crim. Pro. Code, 1872, order imprisonment, unless he is compelled to issue a warrant for the levy of the amount due. **A.W.N. 1881, 19.**

(3296)—S. 488—*See* COMPLAINT, 13 P.R. 1885 Cr.

(3297)—Ss. 488, 528—*See* DISTRICT MAGISTRATE, 5 P.R. 1905 Cr.

(3298)—S. 488—*See* INTERVENOR, 4 C. 650, 3 C.L.R. 551.

(3299)—S. 488—*See* JURISDICTION OF CIVIL COURTS, 158 P.L.R. 1901.

(3300)—S. 488—*See* MAINTENANCE, 21 P.R. 1873 Cr., 5 P.R. 1873 Cr., 2 P.R. 1878 Cr., 2 P.R. 1876, 1 P.R. 1876 Cr., 12 P.R. 1877 Cr., 15 P.R. 1880 Cr., 31 P.R. 1880 Cr., 11 P.R. 1881 Cr., 30 P.R. 1881 Cr., 1 P.R. 1882 Cr., 31 P.R. 1882 Cr., 50 P.R. 1866 Cr., 20 P.R. 1868 Cr., 22 P.R. 1869 Cr., 55 P.R. 1866 Cr., 30 P.R. 1867 Cr., 5 P.R. 1870 Cr., 10 P.R. 1871 Cr.

(3301)—Ss. 488, 489, 490—*See* MAINTENANCE, 25 A. 165=A.W.N. 1902, 224, 19 A. 50 =A.W.N. 1896, 173, 21 P.R. 1894 Cr.

(3302)—Ss. 488 and 490—*See* MAINTENANCE, 9 O.C. 49 (*B*)=3 Cr. L.J. 229. 15 A. 143, Rat. Un. Cr. C. 288=Cr. Rg. 25 of 1886.

(3303)—S. 488—*See* MAHOMEDAN LAW, L.B.R. (1872—1892), 596.

(3304)—S. 488—*See* REVISION, 16 B. 269.

(3305)—S. 488—*See* SENTENCE, 9 A. 240= A.W.N. 1887, 54.

(3305-*a*)—S. 488—*See* Nos. 41, 84, 702, 1169, 1171, 1511, 2034, 2898, 3098, *supra.*

——S. 489 (=1882, s. 489; 1872, s. 587; 1861, s. 317).

(3306)—*S. 489 (=Crim. Pro. Code, Act X of 1882, s. 489)—Change in circumstances—Meaning.*—The expression "change in the circumstances" in s. 489 of the Crim. Pro. Code means not merely a temporary and accidental change in one of such circumstances (such as salary), but a change in all circumstances connected with the condition of the person. **A.W.N. 1891, 32.**

(3307)—S. 489—*See* MAINTENANCE, 19 A. 50=16 A.W.N. 173.

(3307-*a*)—S. 489—*See* No. 3301, *supra.*

——S. 490 (=1882, s 490; 1872, s. 538).

(3308)—*S. 490—Enforcement of order of maintenance.*—When an application is made for the enforcement of an order for maintenance, the general rule laid down in 15 A. 143 should be followed, unless it is shown that the order is no longer in force. **U. B. R. (1897—1901). Vol. I, 112.** (15 A. 143, *R.*)

(3308-*a*)—S. 490—*See* Nos. 3293, 3294, 3301, 3302, *supra.*

——S. 491 (=1882, s. 491; 1872, s. 82).

(3309)—*S. 491*—Habeas Corpus—*Mahomedan law—Custody of an infant—Mother entitled to custody as against executor.*—On the death of a Shiah Mahomedan father, the mother becomes entitled to the custody of the person of her minor son as against the executor of the father, unless there is in the will a *specific* appointment of the executor as guardian. *Quære.*—Whether a Mahomedan could by his will deprive his widow of the custody of her infant children by appointing by his will some one else as their guardian without any just cause, and whether an arbitrary and capricious direction in the will depriving the mother of the custody of her infant children would be enforced by Courts. **11 Bom. L.R. 75=9 Cr. L.J. 214.**

(3310)—S. 491—*See* LETTERS PATENT, (BOM.), 1865, cl. 15, 14 B. 555.

(3310-*a*)—S. 491—*See* No. 2221, *supra.*

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——S. 492 (=1882, s. 492; 1872, ss. 57, 58, 202).

(3311)—*Ss. 492, 494 (=Crim. Pro. Code, 1872, ss. 57, 202 (2) and s. 61)—Power of withdrawing prosecutions.*—S. 61 applies only to Public Prosecutors appointed by Government, and not to a person specially appointed to conduct a case under s. 202, cl. 2 of the Code of 1872. A person so appointed cannot, therefore, withdraw a prosecution. **2 Weir 653.**

(3312)—Ss. 492, 494 and 240—*See* CHARGE, 2 Weir 258=2 Weir 652.

(3313)—S. 492—*See* PUBLIC PROSECUTOR, 29 P.R. 1886 Cr.

(3313-*a*)—S. 492—*See* No. 2810, *supra*.

——S. 493 (=1882, s. 493; 1872, s. 60).

(3313-*b*)—S. 493—*See* No. 3326, *infra*.

——S. 494 (=1882, s. 494; 1872, s. 61).

(3314)—*S. 494 (b)—Charge of robbery—Withdrawal.*—Where during the pendency of a prosecution for robbery against more persons than five, an application was presented to the High Court by the complainant praying that the Magistrate may be directed to charge the accused with dacoity and commit them for trial by the Sessions Court, and before the application was disposed of, the Magistrate permitted the prosecution to be withdrawn, *held* that no order was required on the application and that the only order the Magistrate could pass was one of acquittal under cl. (*b*) of s. 494 of the Crim. Pro. Code. **A.W.N. 1904, 277=2 A.L.J. 30=2 Cr. L.J. 21.**

(3315)—*S. 494 (=Crim. Pro. Code, 1882, s. 494)—Withdrawal from prosecution, power of.*—A person appointed by the Magistrate of a District, under the second paragraph of s. 492, Crim. Pro. Code, to be Public Prosecutor merely for the purpose of a particular case, has not the powers of the Public Prosecutor, with regard to withdrawal from a prosecution under s. 494. **8 A. 291, F.B.**

(3316)—*S. 494—Co-accused—Evidence, when admissible--Conditional pardon—Power of Local Government to tender—Withdrawal of prosecution--Discharge, effect of—Accomplice's evidence, value of.*—A Local Government in India has no power to tender conditional pardon to an accomplice for the purpose of his being examined as a competent witness against others accused with him. An accomplice, if he is not an accused under trial in the same case, is a competent witness and may be examined on oath. So, if the prosecution be withdrawn and the accused discharged under s. 494 of the Code, he would be a competent witness. Where, however, the Court purporting to act under s. 494 of the Code sanctioned the withdrawal of the prosecution, but omitted to record an order of discharge, and, moreover, the accused continued to be kept in custody. *Held* that his position was in no way changed from that of an accused.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

Quære:—Whether the fact that the accused, who was examined on oath, was not actually tried along with the other accused made his evidence admissible? The utmost caution is necessary in admitting or using the evidence of an approver. It not only requires corroboration in material particulars for its use but its evidentiary value depends considerably upon the circumstances under which his evidence is tendered. **33 C. 1353=10 C.W.N. 962=4 Cr. L.J. 145.** [*R.*, U.B.R. 1906, Evidence, 3=5 Cr. L.J. 300].

(3317)—*S. 494 (=Crim. Pro. Code, 1882, s. 494)—Permission to withdraw from a case—Failure of complainant to appear—Procedure.*—Where the Sessions Judge allowed the Public Prosecutor to withdraw a case of forgery, on the ground that the complainant was keeping out of the way and could not be served with summons, *held*, that the procedure adopted by the Judge was not proper, but that he should have taken steps to enforce her attendance and avoided a procedure, having the effect of according a recognition to the compounding of a non-compoundable offence. **2 Weir 655.**

(3318)—*S. 494 (b)—Withdrawal of charge—Proper procedure.*—Where a certain number of persons have been, as a matter of fact, charged with robbery before a Magistrate, who consents to the withdrawal of the charge, the only course left to him is to make the order directed by cl. (*b*), s. 494, Crim. Pro. Code. **2 A.L.J. 30=2 Cr. L.J. 21.**

(3319)—*Ss. 494, 495, cls. 1 and 2—"Any such officer," meaning of—Withdrawal of prosecution by an Advocate engaged by the complainant, effect of.*—The words "any such officer" in s. 495, cl. 2, of Crim. Pro. Code, refer only to the "Advocate-General, Standing Counsel, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the local Government in this behalf" mentioned in sub-s. (1). If an Advocate, privately engaged by the complainant and permitted by the Magistrate to appear for the prosecution, withdraws from the prosecution, the effect provided in s. 494 does not follow; in other words, the trial proceeds. **U.B.R. 1908, 4th Qr., Cr. Pro. Code, 15.**

(3320)—S. 494—*See* DISCHARGE OF ACCUSED, 12 M. 35.

(3321)—Ss. 494, 537—*See* WITHDRAWAL OF CHARGE, 5 Ind. Cas. 21.

(3321-*a*)—S. 494—*See* Nos. 1839, 2076, 2237, 2275, 3311, 3312, *supra*.

——S. 495, paras 1, 3 and 4 (=1882, s. 495; 1872, s. 59); para 2, new.

(3322)—*S. 495—Order of Magistrate allowing counsel to appear for prosecution—Revisional powers of the High Court.*—When a Magistrate has, after due consideration, exercised the discretion allowed by him by s. 495, and allowed counsel to appear on behalf of the prosecution,

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

the High Court cannot, as a Court of revision, overrule the order of the Magistrate and direct him to refuse to allow counsel to appear. *Per* White, C.J., and Moore, J. The High Court has, in certain circumstances, power to revise an order of a Magistrate passed under s. 495.—*Per* Benson, J. **2 Weir 655.**

(3323)—*S. 495 · Officer appointed to conduct prosecution-- Withdrawal of case by Police Inspector not specifically permitted to conduct prosecution —Acquittal of accused—Illegality.*—Criminal Courts have no jurisdiction to acquit accused persons, on a motion for a withdrawal of the case by the Police Inspector, who is not specifically permitted to conduct the prosecution under s. 495, Crim. Pro. Code. **4 Ind. Cas. 132.**

(3324)—*S. 495 (4)—Police making investigation—Prosecution, conduct of.*—An Inspector of Police, on information received by him, applied for a warrant and arrested the accused, seized the property found, and named the witnesses to be summoned before the Magistrate; but he did not examine any of the witnesses and his investigation was confined to an inspection of the books and papers which had been seized. *Held* that the Inspector fell within the provisions of s. 495 (4) and was not competent to conduct the prosecution of the person charged. **26 B. 533=4 Bom. L.R. 271.**

(3325)—S. 495 (1,3,4)—*See* BOM. ACT VII OF 1867, s. 23, 8 B. 534.

(3326)—Ss. 495, 493, 270, 289, 290, 292—*See* COUNSEL, 11 B.H.C. 107.

(3327)—S. 495—*See* DISTRICT MAGISTRATE, 6 P.R. 1905 Cr.

(3327-*a*)—S. 495—*See* Nos. 40, 2799, 3319, *supra*.

——S. 496 (=1882, s. 496; 1872, ss. 128, para 2, 194, para 2, 204, para 1, 388, 393; 1861, ss. 258, 216).

(3328)—*S. 496 (=Crim. Pro. Code, 1872, s. 204)—Appearance of accused, how to be secured* —S. 204 confers on a Magistrate, when an accused person has appeared, a discretion to admit him to bail, or to allow him to go at large on his personal recognizance, and empowers the Magistrate to detain the person in custody only, if, being required to furnish bail, he fails to do so. **6 N.W.P. 366.**

(3329)—*S. 496—Proceedings under the section —Re-arrest of persons appearing before Magistrate and released on bail, whether proper.*—After the enlargement on bail of the petitioners against whom proceedings under s. 107 were instituted, the Magistrate, pending the proceedings, directed the re-arrest of the petitioners and remanded them to custody, until the termination of the proceedings. *Held*, that the remand was illegal. *Held*, also, that the Magistrate was bound, under s. 496, which is imperative in its items, to release the petitioners on bail. **32 C. 80=8 C.W.N. 779.**

(3329-*a*)—S. 496—*See* Nos. 598, 1607, *supra*.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

——S. 497 (=1882, s. 497; 1872, ss. 128, para 1, 194, para 2, 389; 1861, ss. 156, 212).

(3330)—*S. 497 (=Crim. Pro. Code, 1872, s. 389)—Scope of the section.*—S. 389 does not warrant the proposition that, unless there is evidence to raise a strong presumption of the guilt of the accused, he must be admitted to bail and cannot be remanded. That section assumes that the evidence has been taken and provides for the release of the accused on bail, if the evidence so taken is not such as to raise a strong presumption of the guilt of the accused person but it does not import that the taking of the evidence may not be deferred. **6 M. 63 =2 Weir 409.** [*R.*, 1 L.R.R. 60].

(3331)—*Ss. 497, 498 (=Crim. Pro. Code, 1882, ss. 497, 498)—Bail in non-bailable offences.*—S. 498 is not controlled by s. 497, and it is open to the High Court to admit a person charged with a non-bailable offence to bail, for good and sufficient cause; the rule, however, is that in respect of a non-bailable offence, bail is not to be taken, except in special circumstances. **2 Weir 657 F.B.**

(3332)—S. 497—*See* TRANSFER OF CRIMINAL CASES, Cr. Rg. 34 of 1896.

(3332-*a*)—S. 497—*See* Nos. 1263, 3080, *supra*, and Nos. 3336, 3503, *infra*.

——S. 498 (=1882, s. 498; 1872, ss. 390, 508; 1861, s. 436).

(3333)—*S. 498 (=Crim. Pro. Code, Act X of 1872, s. 390)—Powers of Sessions Court—Bail —Non-bailable offence.*—A Court of Session has power under s. 390 of the Crim. Pro. Code, to admit to bail, before conviction, a person committed for trial for a non-bailable offence, whether the offence be triable by itself or by any Magistrate. **A.W.N. 1882, 234, F.B.**

(3334)—*S. 498 (=Crim. Pro. Code, 1872, s. 508).*—The order of a Sessions Court fixing a period of detention under the above section for an accused party refusing to furnish security was held not to be appealable. **24 W.R. Cr. 12.**

(3335)—S. 498—*See* ACT XIV OF 1908, s. 14 (1), 14 C.W.N. 516.

(3336)—Ss. 498, 497—*See* ACT XIV OF 1908, ss. 12, 14 (1), 14 C.W.N. 512.

(3337)—S. 498—*See* BAIL, A.W.N. 1882, 234, F.B.

(3338)—S. 498—*See* Nos. 580, 1653, 3331, *supra*.

——S. 499 (=1882, s. 499; 1872, s. 391; 1861, s. 274).

(3339)—*S. 499—Failure to attend Court in pursuance of a verbal order—Forfeiture of bail-bond.*—By the terms of a bail-bond, the defendant bound himself to appear "on the first inquiry or at other times required." He appeared on the first day of the inquiry and was verbally directed to appear on a subsequent

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date, but failed to do so. *Held*, that the amount secured by the bond could be legally forfeited by reason of such non-attendance. **2 Weir 658.**

(3339-*a*)—S. 499—*See* No. 3338, *supra*.

——S. 502 (=1882, s. 502 ; 1872, s. 395 ; 1861, s. 218).

(3340)—S. 502—*See* SURETY, 9 Bom. L.R. 1285=6 Cr. L.J. 385.

——S. 503, paras 1 to 3 (=1882, s. 503 ; 1872, s. 330, paras 1 and 2) and para 4, new.

(3341)—*S. 503 (=Crim. Pro. Code, Act X of 1882, s. 503)—Resident of Gwalior—Applicability.*—The British Resident at Gwalior is a person to whom the provisions of s. 503 of the Crim. Pro. Code, applies, and he should personally execute the commission without delegating the work to some other person. **A.W.N. 1896, 106.**

(3342)—*S. 503 (=Crim. Pro. Code, 1882, s. 503)—Examination of* ghosha *woman.*—S. 503 allows the examination of a *ghosha* woman, who appears as a witness in a case, on commission. **2 Weir 659.**

(3343 and 3344)—*S. 503 (=Crim. Pro. Code, 1882, s. 503)*—Pardahnashin *women—Application for examination by commission, grounds for granting.*—An application under s. 503, by a *pardahnashin* woman summoned as a witness in a Presidency Magistrate's Court, to be examined by commission on the ground that her appearance in the Court would cause degradation to her was allowed on the grounds that she lived near the Court-house, that she had volunteered to pay the expenses of the commission, and that the opposite party did not require her personal attendance. But the Court objected to the word "degradation" used in the petition. [*Expl.*, 24 C. 551 ; *R.*, 9 A. W.N. 202=12 A. 69, 2 Weir 659, 169 P.L.R. 1903=19 P.R. 1903 Cr.] Applications for examination by commission have been granted under s. 503, on the principle that, in matters of procedure, the customs and habits of the people should be taken into consideration. **15 C. 775.**

(3345)—*Ss. 503, 505 (=Crim. Pro. Code, 1872, s. 330)—Examination of witnesses by commission.*—Although *pardahnashin* woman are not of right exempted from personal attendance at Court, the word "inconvenience" in s. 330, Crim. Pro. Code, empowers the Courts to allow examination by commission in criminal cases, where a witness, according to the customs and manners of the country, ought not to be compelled to appear in public. Where the *pardahnashin* woman concerned was not merely a witness, but was the complainant in a case of defamation, *held*, that fact materially altered her position as regards the question whether she should be exempted from personal appearance, and as she, avoiding her civil remedy, set the criminal law in motion, the accused had a right and privilege to have her evidence taken in his presence in such Court. The Magistrate was, however, directed to make such arrangements as may enable her to remain in the Court house and strictly preserve her privacy and subject her to the least inconvenience or annoyance, for the purpose of recording her evidence according to law, in the presence of the accused after identification, by some approved female witnesses. **5 A. 92.** [*F.*, 12 A. 69=9 A.W.N. 202 ; *R.*, 24 C. 551, 168 P.L.R. 1903=19 P.R. 1903 Cr.]

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(3346)—Ss. 503 to 507—*See* COMMISSION, 24 C. 551=1 C.W.N. 333.

(3347)—Ss. 503 (1, 2, 3), 507 (1)—*See* COMMISSION, 19 C. 113.

(3348)—S. 503—*See* EVIDENCE, 7 C.W.N. 635.

(3349)—S. 503 (1,2, 3)—*See* EVIDENCE ACT, s. 33, 6 A. 224.

(3350)—S. 503—*See* WITNESS, 4 Ind. Cas. 400.

(3351)—Ss. 503, 506—*See* WITNESS, 2 S.L.R. 8 Cr.=10 Cr. L.J. 211.

(3351-*a*)—S. 503—*See* Nos. 1440, 1482, *supra*.

——S. 504 (=1882, s. 504).

(3351-*b*)—S. 504—*See* No. 3346, *supra*.

——S. 505 (=1882, s. 505; 1872, s. 330, para 4).

(3351-*c*)—S. 505—*See* Nos. 3345, 3346, *supra*.

——S. 506 (=1882, s. 506 ; 1872, s. 330, para 5).

(3352)—S. 506—*See* PARDANASHIN WOMAN, 9 Cr. L.J. 249=1 S.L.R. 5 Cr.

(3352-*a*)—S. 506—*See* Nos. 3346, 3351, *supra*.

——S. 507, para 1 (=1882, s. 507).

(3352-*b*)—S. 507—*See* Nos. 3346, 3347, *supra*.

——S. 509 (=1882, s. 509 ; 1872, s. 323 ; 1861, s. 368).

(3353)—*S. 509—Deposition of medical witness.*—S. 509 does not require that to render the evidence of a medical witness admissible at the trial before the Court of Sessions it should be recorded by the Magistrate who is making the inquiry into the case, but permits expressly the deposition of a medical witness taken and attested by any Magistrate in the presence of the accused to be given in evidence in any inquiry trial or other proceeding. **A.W.N. 1893, 180.**

(3354)—S. 509—*See* EVIDENCE, 8 C. 739=12 C.L.R. 233, 9 C. 455=11 C.L.R. 569.

(3355)—S. 509—*See* EVIDENCE ACT, s. 80, 10 A. 174.

(3356)—S. 509—*See* EVIDENCE ACT, ss. 80 and 114, ill. (*e*), 18 C. 129.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(3357)—S. 509—*See* EVIDENCE ACT, s. 114, ill. (*e*), 9 A. 720.

(3358)—Ss. 509, 512 (1)—*See* WITNESS, Rat. Un. Cr. C. 81.

——S. 510 (=1882, s. 510 ; 1872, s. 325 ; 1861, s. 370).

(3359)—*S. 510 (=Crim. Pro. Code, 1861, s. 370)—Chemical Examiner's report.*—The report of a Chemical Examiner is evidence in a criminal trial, if it bear the signature of the Examiner. The original should be produced. **6 B.L.R. App. 122 ; 15 W.R. Cr. 49.**

(3360)—*S. 510 (=Crim. Pro. Code, 1882, s. 510)—Report of Chemical Examiner, when admissible in evidence.*—In order that the report of the Chemical Examiner or of the Assistant Chemical Examiner may be used as evidence under s. 510, it must purport to be signed by the officer or officers who detected the poison and who, from personal knowledge, could certify to the correctness of the results embodied in it. **2 Weir 661.**

——S. 511 (=1882, s. 511 ; 1872, ss. 326, 515, last clause).

(3361)—*S. 511 [=Crim. Pro. Code, 1882, s. 511 (a)]*—Certified extracts from the punishment register are not sufficient to prove previous convictions. They are not admissible under s. 511 of the Code, nor is there any express provision of law outside that section making them admissible. The certified extract contemplated by cl. (*a*) of s. 511 is "a copy of the sentence or order." **11 C.P.L.R. Cr. 5.**

(3362)—S. 511—*See* FINGER IMPRESSIONS, 3 N.L.R. 1=5 Cr.L.J. 220.

(3363)—S. 511—*See* PREVIOUS CONVICTION, 2 L.B.R. 53.

(3363-*a*)—S. 511—*See* Nos. 1691, 2241, 2355, *supra*.

——S. 512, para 1 (=1882, s. 512 ; 1872, s. 327).

(3364)—*S. 512—Absconding of accused—Duty of Magistrate to record evidence.*—It is not open to a Magistrate to decline to call for the documents desired by the complainant or to record any evidence on his behalf, on the ground that the accused had absconded and no enquiry was being then conducted ; he is bound in such a case by the provisions of s. 512, Crim. Pro. Code. **2 Bom. L.R. 707.**

(3365)—*S. 512—Preliminary conditions for admissibility of deposition purporting to have been recorded under above section.*—Before a deposition recorded under s. 512, Crim. Pro. Code, can be admitted in evidence, it must be proved that the deponent is dead, or incapable of giving evidence, or that his attendance cannot be procured without an amount of delay, expense or inconvenience, which, under the circumstances of the case, would be unreasonable. **U.B.R. (1897—1901), Vol. I, 114.**

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(3366)—*S. 512 (=Crim. Pro. Code, 1882, s. 512)—Recording evidence in the absence of accused.*—In a case where it is proved that an accused person has absconded, evidence can be recorded against him, under s. 512, in his absence, only if the fact of absconding is alleged, tried and established, before the deposition is recorded. **10 C. 1097.** [*Commented upon.* 10 M. 232=2 Weir 181, F.B.]

(3367)—*S. 512 (=Crim. Pro. Code, 1882, s. 512)—Applicability of section—Evidence Act, s. 33—Punjab Laws Act, s. 39.*—An accused person was tried for murder, which took place in 1861 ; the statement of certain persons, since dead, recorded in 1861 by a Magistrate, as well as the evidence now given by two witnesses, which statements were also recorded in 1861, were tendered in evidence. *Held*, that the charge should be under the Penal Code, and not under the Punjab Penal Code, as s. 39, Punjab Laws Act, make the provisions of the Penal Code, excepting Chap. VI, applicable to offences committed before the 1st January, 1862. *Held*, further, that the statements recorded in 1861, were inadmissible under s. 512, Crim. Pro. Code, as the provisions of the section are not to be found in the Punjab Penal Code. The statement could not be used as evidence, under s. 33, Evidence Act, as all the defendants were not examined on oath or affirmation, and as the accused had not the opportunity of cross-examining the witnesses. **26 P.R. 1885 Cr.**

(3368)—S. 512—*See* ABSCONDING OFFENDER, 21 P.R. 1883 Cr.

(3368-*a*)—S. 512—*See* Nos. 365, 3358, *supra*.

—— S. 513 (=1882, s. 513 ; 1872, s. 399 ; 1861, s. 437).

(3369)—S. 513—*See* CONTRACT ACT, ss. 23 and 24, 10 Bom. L.R. 553.

(3369-*a*)—S. 513—*See* No. 523, *supra*.

——S. 514, paras 1 to 5 (=1882, s. 514 ; 1872, ss. 396, 397, 398, paras 1 and 2, 502, paras 1 to 5 and 7, 503, 514 ; 1861, ss. 219, 220, 221, 293, 294, 305).

(3370)—*S. 514—Procedure to be followed for forfeiture of bail bond—Practice.*—This section requires that an order escheating the bail bond shall be made upon evidence duly recorded in the case and not upon evidence taken in other cases. In this case, the applicant was surety for an accused and executed a bail bond in a preliminary enquiry before a police officer for the attendance of the accused at the Magistrate's Court on a certain date. On the date fixed, the accused attended the Court, but found it closed. The next day the case was called, but the accused was not present; whereupon the Magistrate summoned the applicant, and, without hearing any evidence, referred to a statement made by the Superintendent of Police in a former case and summarily ordered the applicant to pay the penalty entered in the bond. *Held* that the Magistrate's procedure

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was wrong. Also in this case, the Chief Court, considering the loss of time and the expense that the applicant had been put to in these proceedings, and also the fact that the accused person, for whom he was surety, was produced in Court and duly tried, *held* that it was unnecessary to return the case for further enquiry. Consequently, the Magistrate's order was set aside and the sum forfeited was directed to be refunded to the applicant. **U.B.R. (1897—1901), Vol. I, 116.**

(3371)—*S. 514 (=Crim. Pro. Code, 1882, s. 514)—Construction of security bond.*—Where the security bond of a surety for the appearance of an accused person before a Magistrate does not expressly provide for the appearance of the accused on any day subsequent to a certain fixed date of hearing, *held* that the bond must be construed strictly and did not impose on the surety the duty of causing the attendance of the accused on any day other than the one fixed. **Rat. Un. Cr. C. 547 = Cr. Rg. 22 of 1891.**

(3372)—*S. 514—Bail bond—Guarantee by surety for appearance of accused—Non-appearance of accused before different Magistrate—Forfeiture of bond.*—Where a person stood as a surety for an accused person and executed a bond guaranteeing the appearance of the accused before the Deputy Magistrate before whom the case was pending, and the accused did not appear before the District Magistrate to whom the case was subsequently transferred, *held*, that there was no breach of the condition of the surety bond so as to make the surety liable to pay the penalty. **30 C. 107 = 6 C.W.N. 885.**

(3373)—*S. 514 (=Crim. Pro. Code, 1861, s. 294)—Imprisonment of sureties.*—S. 294 makes no provision for the sureties being imprisoned. **4 M.H.C. App. 68.**

(3374)—*S. 514 (=s. 502, Code of 1872)—Liability of surety for a default made on a date other than that specified in bail-bond.*—A surety is not liable for the default made by the accused on a date subsequent to that for which he had rendered himself liable. If the accused attends on the date specified in the bail-bond, the liability of the surety ceases. **2 Weir 663.**

(3375)—*S. 514.—Enforcement of the penalty of a bond to keep peace—Evidence Act, s. 43.*—A Magistrate proceeding to enforce the penalty of a bond entered into to keep the peace is bound to take evidence himself, and come to a conclusion on that evidence whether or not there had been a breach of the conditions of the bond, before he could take proceedings for the enforcement of the penalty. A judgment of conviction under s. 323, I.P.C., cannot be said to be legal evidence in order to prove, for the purposes of s. 514, Crim. Pro. Code, that a bond to keep the peace has been forfeited. **9 C.P.L. R. Cr. 8.** (3 B.L.R. App. 155, 12 W.R. Cr. 54, 4 C. 865, 11 B.H.C.R. 170, 11 C. 77, *R.*).

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(3376)—*S. 514—Forfeiture of recognizance to keep the peace on conviction for an offence involving breach of the peace.*—When a Magistrate deciding a case of an offence attended with violence is cognizant of the fact that the person convicted is under a recognizance to keep the peace, it is not necessary that he should proceed at once to take steps to forfeit the recognizance. A Magistrate who passes an appealable sentence on a conviction for a breach of the peace, may very well wait until the period of the appeal has expired, or, if an appeal is filed, till it is decided, before he proceeds to take action under s. 514. **26 A. 202.**

(3377)—*S. 514—Security bond, forfeiture of.*—One W.S. was ordered to show cause why he should not be required to give security for good behaviour under s. 110 of the Crim. Pro. Code, and the order was made absolute. N.S. and J.S., offered themselves as sureties who, along with W.S., executed a bond by which they bound themselves to pay a certain sum as penalty, if W.S. should commit a breach of the peace or do any act likely to cause a breach of the peace. A form of a bond under s. 107 was by mistake substituted for the form under s. 110. W.S. having been convicted of an offence under s. 430 of the Indian Penal Code for having cut the bank of a canal distributary, which watered a village below his village, the Magistrate passed an order forfeiting the bond executed by W.S., and the sureties.

It was contended on revision, (1) that the bond was void, the proceedings having been under s. 110 of the Crim. Pro. Code and W. S., not having been called to show cause under s. 107; (2) that no breach of the peace or act likely to cause a breach of the peace was established; (3) that inasmuch as the Magistrate who convicted W.S., under s. 430 of the Indian Penal Code did not order forfeiture as part of the procedings in that case, the subsequent proceedings were bad, and (4) that, as against the sureties, the judgment was not conclusive and that evidence should have been adduced in the forfeiture proceedings that the security had been forfeited. *Held*, (1) that the bond executed by W.S. was bad in law, for, the order was that he should be bound over under s. 110, and that the order forfeiting the security furnished by him must be set aside. As the sureties had agreed to comply with the terms of the bond, which was bad in law, the order passed against them was also bad; (2) that, in cutting the bank of the canal distributary, W.S. did an act likely to cause a breach of the peace; (3) that the convicting Magistrate anticipated the forfeiture of the security as a result of the conviction, and no great delay had taken place after the conviction before the order of forfeiture was passed, and (4) that the production of the judgment of conviction, and, if necessary, proof of identity, were sufficient in such cases for the issue of a notice under s. 514 of the Crim. Pro. Code and that it was

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for the surety to show cause against the forfeiture. **15 P.L.R. 1904.** (25 C. 440, *Not F*).

(3378)—*S. 514—Recognizance to keep the peace, liability of, to forfeiture.*—A certain person was bound over to keep the peace or not to do any act which would cause a breach of the peace. He, however, committed an offence of abduction within the period covered by his bond. The question for decision was whether the bond was liable to forfeiture. *Held*, that the bond was not liable to forfeiture, the possible consequence of the offence committed being too remote to render the offender liable to forfeit his bond. **7 P.R. 1906 Cr=4 Cr. L.J. 278.**

(3379)—*S. 514—Imprisonment, when accused is already under recognizance—Forfeiture of recognizance.*— Where a Magistrate has inflicted a sentence of imprisonment with the knowledge that the accused is under a recognizance to keep the peace and has abstained from making any order for the forfeiture of the bond, *held*, that he could not, at a subsequent period, order the forfeiture of the bond. **26 P.R. 1904 Cr.** (3 C. 406, *F.*).

(3380)—*S.514—Past enforcement of penalty—Effect.*—When the penalty of a bond is only partly enforced under this section, part of the penalty being remitted, neither the principal nor the sureties are subject to further liability on the bond. **U.B.R. (1897—1901), Vol. I, 117.** (U.B.R. 1897—1901, Vol. I, 26, *R.*)

(3381)—*S. 514—Only one penalty of a bond —Accused and sureties not to be bound in several sums.*—There cannot be more than one penalty of a bond. The accused and his sureties are not to be bound in several sums. **U.B.R. (1897-1901), Vol. I, 119.** (U.B.R. 1897—1901, Vol. I, 26, *F.*).

(3382)—*Ss. 514, 106 (=Crim. Pro. Code, 1882, ss. 514 and 106)—Surety—Liability of representative of deceased surety.*—The words "persons bound" in s. 514, Crim. Pro. Code, 1882, do not include the representative of a deceased surety who had bound himself under s. 106. **22 P.R. 1894 Cr.**

(3383)—*Ss. 514, 107—Failure to take action under s. 514 against person forfeiting recognizance to keep the peace, whether bar to fresh proceedings against him subsequently.*—The fact that no immediate action under s. 514, Crim. Pro. Code, is taken against a person under a recognizance to keep the peace or against his surety, on the conviction of the former of an offence involving a breach of the peace, does not bar the taking of such proceedings at a subsequent time, as for example, after the appeal time has expired, or, after an appeal by the principal has been dismissed. **A.W.N. 1903, 237.** (1 C.L.R. 134, 3 C L.R. 406, *Diss.*)

(3384)—*Ss. 514 and 516—Surety bond to produce accused before Sessions Court—Proceeding for forfeiture if may be taken by a Magistrate—Delegation of power—Validity.*—Where a surety bond has been executed for the appearance of an accused person before a particular Court under s. 514 of the Crim. Pro. Code, proceedings to have the bond forfeited can be initiated only by that Court. S. 516 of the Code does not authorise the delegation of power to initiate forfeiture proceeding. It is only concerned with the power to direct levy of the amount due on a forfeited bond. **14 C.W. N. 259=2 Ind. Cas. 113=10 C.L.J. 248.**

(3385)—*Ss. 514, 545 (=Crim. Pro. Code, 1882, ss. 514, 545)—Provisions of s. 545, applicability of, to sums realized under s 514.*—The provisions for the payment of expenses or compensation under the above section (545) do not apply to sums realized by forfeiture of the bonds under s. 514, Crim. Pro. Code. **L.B.R. (1872—1892), 412.**

(3386)—Ss. 514 (1 to 5), 515—*See* APPEAL, Rat. Un. Cr. C. 384=Cr. Rg. 35 of 1888.

(3387)—S. 514—*See* BAIL BOND, 36 C. 749 =10 Cr. L.J. 251=3 Ind. Cas. 188.

(3388)—S. 514—*See* FORFEITURE, A.W.N. 1891, 183.

(3389)—S. 514 (1 to 5)—*See* MAGISTRATE, JURISDICTION OF, Rat. Un. Cr. C. 20.

(3390)—S.514(1 to 5)—*See* SECURITY BOND, 11 C. 77.

(3391)—Ss. 514 and 516—*See* SECURITY BOND, 10 Cr. L.J. 248=3 Ind. Cas. 113.

(3392)—Ss. 514, 515—*See* SECURITY FOR GOOD BEHAVIOUR, 15 P.R. 1905 Cr.

(3393)—S. 514 (1 to 5)—*See* SECURITY TO KEEP THE PEACE, 25 C. 440, 12 P.R. 1871 Cr., 2 P.R. 1883 Cr.

(3394)—S. 514—*See* SURETY, 10 Cr. L.J. 294=3 Ind. Cas. 470.

(3394-*a*)—S. 514—*See* Nos. 489, 494, 574, 581, 596, 1944, 2837, 2888, *supra*.

——S. 515 (=1882, s. 515; 1872, s. 398, penult. para).

(3395)—*S. 515—Powers of District Magistrate revision.*—The above section says that all orders passed under the section by any Magistrate, other than a Presidency Magistrate or District Magistrate, may be revised by the District Magistrate. Therefore, the District Magistrate has the widest powers of revision and can deal with any order passed by another Magistrate under s. 514, whatever it may be. But, in revising an order, the District Magistrate should give notice to the person likely to be affected prejudicially before altering it against him. **U.B.R. (1892—1896), Vol. I, 85.**

(3395-*a*)—S. 515—*See* Nos. 494, 3386, 3392, *supra*.

——S. 516 (=1882, s. 516; 1872, s. 398, last para.)

(3395-*b*)—S. 516—*See* Nos. 3384, 3391, *supra*.

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——S. 517 (=1882, s. 517 ; 1872, s. 418 ; 1861, s. 132-A).

See CONFISCATION.

(3396)—*S. 517 (=Crim. Pro. Code, 1872, s. 418)—Scope of.*—S. 418 merely authorises a Magistrate to declare the ownership of property which is the object of an offence. **2 Weir 665.**

(3397)—S. 418 does not place the property at the disposal of the Magistrate in the sense of enabling him to bestow it in charity. He is to make such legal disposition thereof as seems right, *i. e.*, to direct its restoration to some one to whom it seems to belong, or permit it to continue in the possession in which it is found or otherwise. **2 Weir 666.**

(3398)—*Ss. 517, 523 (=Crim. Pro. Code, 1882, ss. 517, 523)—Scope of sections—Duty of Magistrate to make enquiry regarding possession.*—S. 523 must be confined to property seized by the Police of their own motion, in the exercise of powers conferred on them by law, which seizure requires to be reported to a Magistrate, for instance, seizure under ss. 51, 54 (4), 165 and 166. S. 523 cannot be held to apply to property which is produced before a Court in the course of an enquiry under a search warrant issued by it. To such property s. 517 alone would apply, and if no offence is found in respect thereof, the Court can make no order ; the property must be given back into the possession from which it came. [*Doubted*, 26 B. 552 ; *F.*, Rat. Un. Cr. C. 981; *R.*, L.B.R. (1893—1900), 324, 22 B. 844, 14 C.P.L.R. 60, 28 B. 314, 29 M. 375=4 Cr. L.J. 233]. As the basis of an order under the section, the Magistrate should make a specific investigation touching the rights, not property, but of possession, claimed by the applicants. **17 B. 874.**

(3399)—*S. 517—Object of.*—The object of the section is to enable a Magistrate to direct property to be given to some person to whom it appears to belong, or to allow it to continue in the possession of the person in whose possession it was found, or to make some order of that character. **9 C.W.N. 597=2 Cr. L.J. 273.**

(3400)—*S. 517 (=s. 517, Code of 1882)—Essentials for an order under the section.*—An order under s. 517 may be passed, even though there has been no conviction or offence proved, in which the property produced has been used. A Court before which an offence is tried has the power to make orders respecting properties produced before it, if it appears that any offence has been committed, irrespective of the charge or the result of it. **2 Weir 666.**

(3401)—*S.517—Order restraining the honouring of a Hundi.*—A Magistrate has no power to direct that a particular firm should not honour a hundi drawn on it, on suspicion that the parties to the hundi had been guilty of some offence. **1 A.L.J. 607.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(3402)—*S. 517—Order of confiscation of boats.*—A boat cannot be regarded as an instrument for the commission of an offence such as is contemplated in s. 517. **8 C.W.N. 887.** [*F.*, 6 Cr. L.J. 411 ; *R.*, 11 C.W.N. 1046=34 C. 986].

(3403)—*S. 517—Order regarding custody of minor children.*—A Magistrate cannot, under s. 517, Crim. Pro. Code, make an order regarding the custody of minor children, inasmuch as children are not "property." **1 Weir 348.**

(3404)—*Ss. 517, 520 (=Crim. Pro. Code, 1861, ss. 132-A, 132-B)—Order under s. 132-A—Power of revision under s. 132-B.*—Where no orders are passed under s. 132-A, the appellate Magistrate has no powers of revision under s. 132-B. Where there is no proof of the commission of an offence, orders under s. 132, directing that certain produce should be delivered over to the parties entitled thereto, cannot be passed. **5 M.H.C.R. App. 21.**

(3405)—*S. 517—Order regarding property, the subject of theft—Discharge of accused.*—An order of a Magistrate directing that the money obtained by the Police from the persons to whom the same had been lent by the thief, should be paid over to the complainant, is authorized by the terms of s. 517. **2 Weir 440.**

(3406)—Where a person accused of theft has been discharged, the proper order for a Magistrate to pass with regard to the property produced before him in connection with the case, is to direct its return to the person from whose custody it was taken. **2 Weir 673.**

(3407)—On the discharge of an accused, an order for the disposal of the property produced before the Court must only give it back to the person from whose possession it came. **14 C.P. L.R. Cr. 60.** (17 B. 748, 22 B. 844, 1 C.W.N. 561, *R.*)

(3408)—*Ss. 517, 520 (=Crim. Pro. Code, 1872, ss. 418, 419)—Stolen Government currency note, proper order regarding—Disposal by Magistrate.*—Where a stolen Government currency note has been delivered to a *bona fide* holder for value, an order directing its return to the person from whom it was stolen, after the conviction of the thief, is not a proper order. **1 C.L.R. 339=3 C. 379.** [*R.*, 73 P.R. 1878, 83 P.R. 1890, 19 C. 52].

(3409)—*Ss. 517 and 523 (=Crim. Pro. Code, 1882, ss. 517, 523)—Property regarding which no offence has been committed, disposal of.*—On general principles, Courts are bound to restore property to the possession of those from whom it is taken for purposes of justice, unless the Court is of opinion that an offence has been committed in respect of that property, or that it has been used for the commission of the offence. **9 M. 448=2 Weir 672.**

(3410)—*Ss. 517, 523 (=Crim. Pro. Code, 1882, ss. 517, 523)—Property in regard to which no offence is proved—Proper order.*—Where

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property is produced from the possession of a person, who is charged with dacoity, but the accused is found not guilty of the offence charged, the proper order regarding it is one to return it to the party from whose possession it has been produced. **1 C.W.N. 561.** [*R.*, 14 C.P.L.R. 60].

(3411)—*S. 517 (=Crim. Pro. Code, 1882, s.517).*—A Criminal Court has no power to make an order respecting the disposal of property, unless it finds that an offence appears to have been committed regarding it or that it has been used for the commission of an offence. When the Court arrives at neither of these findings, the property should ordinarily be delivered to the person by whom it has been produced and, if it is produced by the police, it should ordinarily be returned by the police to the person out of whose possession they have taken it. If, however, there exists a *bona fide* doubt as to the ownership and a person other than the person from whose possession the property is taken makes a claim for it, a Magistrate may impose conditions on the person to whom it is delivered in order that it or its value may be forthcoming, in case the rival claimant establishes a title. **2 Weir 667.** [*F.*, 2 Weir 668].

(3412)—When no offence has been committed regarding property produced before a Court, it should be returned to the person from whom it has been taken, after taking security from him for its production, when required. **2 Weir 668.**

(3413)—*S. 517—Suit to recover money made over wrongly by Magistrate—Provincial Small Cause Courts Act, Sch. II—Civ. Pro. Code, 1882, s. 586—Appeal.*—A suit brought to recover money said to have been taken by the police as stolen property from a person suspected of having committed an offence and not returned to him after he had been acquitted of the charge brought against him, but made over wrongly to another person, by order of the Magistrate, presumably under the provisions of s. 517, Crim. Pro. Code, is a suit of the nature cognizable by the Court of Small Causes, and, where the amount claimed does not exceed Rs. 500, no second appeal would lie. **9 C.W.N. 495=1 C.L.J. 355.**

(3414)—*S. 517 (=s 517 of the Code of 1882) —Counterfeit coin in possession of a person convicted under s. 241, I.P.C.—Disposal.*—A coin which is beyond doubt counterfeit, ought not to be restored to the possession of a person convicted of having passed another like counterfeit coin, merely because it has not been proved that he has attempted to deliver it. The only proper course is to destroy it. **2 Weir 669.**

(3415)—*S. 517 (=Crim. Pro. Code, 1872, s. 418)—Production of sample, effect of.*—When a portion of an article in bulk is produced and received in evidence as a sample of the bulk, the whole bulk is to be taken to have been produced before the Court within the meaning of s. 418. **2 Weir 670.**

(3416)—*S. 517—Exhibits in Criminal cases.* —Property exhibited in criminal case (excepting live-stock and property subject to speedy and natural decay) should not be delivered to the person entitled to it, until the period allowed for the presenting an appeal has passed, or, when such appeal is presented within such period, until such appeal has been disposed of. **L.B.R. (1893—1900), 55.**

(3417)—*Ss. 517 and 144—Whether disposal of property includes destruction of property.*—An accused person, charged with negligence with regard to his dog, was, on conviction, sentenced to pay a fine and the dog was ordered to be shot under s. 517. *Held*, that the Magistrate's order directing the destruction was covered by s. 517, Crim. Pro. Code. In the case of valuable animals which are dangerous, the order should be to direct the owner to take such order with them as will prevent risk of danger to the public. A breach of such order would be punishable under s. 188, Penal Code. Under s. 144, Crim. Pro. Code, the Magistrate can issue orders before mischief occurs. **L.B.R. (1893—1900), 579.**

(3418)—*Ss. 517, 520(=Crim.Pro.Code, 1872, ss. 418, 419)—Order by Magistrate for disposal of property produced before him—Appeal—"Court of appeal," scope of the expression.*—An appeal lies merely against an order passed by a Magistrate, under s. 418 of the Crim. Pro. Code, X of 1872, for the disposal of any property produced before him, independently of whether there has been an appeal or not against the conviction or acquittal in the case, relating to the property. The words, "Court of Appeal" in s. 419, are not necessarily limited to a Court before which an appeal is at the moment pending. Where a stolen Government currency note was cashed with B and on conviction of the thief, the Magistrate ordered the return of the note to B, *held*, that, the Sessions Judge was, under s. 419, the proper person to deal with an application made by the owner for the reversal of that order. **1 C.L.R. 339=3 C. 379.** [*F.*, 9 M. 448=1 Weir 672; *R.*, 2 A. 276, 14 C.P.L.R. 61, 17 C.P.L.R. 107, 1 A.W.N. 150].

(3419)—*Ss.517 and 520—Finding as to possession—High Court's powers of revision.*—The High Court cannot, in revision, interfere with the finding of fact by the District Magistrate, as to the person from whose custody the property was taken. **2 Weir 673.**

(3420)—*Ss. 517 and 523, inapplicability of, in case of death of accused before trial—General rule.*—The accused, in this case, was charged with Criminal Breach of Trust in respect of certain jewels. The jewels were recovered by the Police from the persons, with whom the accused had pledged them and sent to the Court

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869)—continued.

of the Magistrate. The accused died before the date fixed for his trial and the owners of the jewels, alleging that the deceased had borrowed the same from them, applied for an order for the restoration of the jewels to them; while the persons, with whom the accused had pledged the jewels, prayed that they should be returned to them. *Held*, that, of the two ss. 517 and 523, containing the rules as to disposal of property, an order under s. 517 can be made only on the conclusion of an enquiry or trial and that section, therefore, could not be applied to the present case, in which the trial was not only not concluded but was even not begun. Also, on the facts of the case, s. 523 had no application, because there was nothing on the record to show to whom the jewels belonged and there was no obligation on the Magistrate to hold an enquiry, simply for the purpose of deciding whether the property claimed was the property of the petitioner. The present case, therefore, not coming under the classes contemplated by ss. 523 and 517, there is nothing to authorise the Magistrate to depart from the general rule that property taken under the authority of the law for a particular purpose should, on the fulfilment of that purpose, go back to the custody whence it was taken. **29 M. 375=4 Cr. L.J. 233.**

(3421)—S. 517—*See* BOM. ACT II OF 1868, s. 14, Rat. Un. Cr. C. 688.

(3422)—S. 517—*See* APPEAL, 14 C.P.L.R. Cr. 60.

(3423)—Ss. 517 and 520—*See* APPEAL, 30 C. 690=7 C.W.N. 634, 9 M. 448=2 Weir 672.

(3424)—Ss. 517, 523—*See* CONFESSION, 9 B. 131.

(3425)—S. 517—*See* CONFISCATION OF PROPERTY, 34 C. 986=11 C.W.N. 1046=6 C.L.J. 754=6 Cr. L.J. 293, 20 P.R. 1873 Cr., 20 P.R. 1878 Cr., 21 P.R. 1878 Cr., 9 P.R. 1873 Cr.

(3426 and 3427)—Ss. 517, 520—*See* DISPOSAL OF PROPERTY, 9 C.W.N. 549=2 Cr. L.J. 269.

(3428)—Ss. 517, 520, &c.—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 3 C.L.J. 573=3 Cr. L.J. 466.

(3429)—S. 517—*See* OBSCENE PUBLICATION, 3 A. 837.

(3430)—S. 517—*See* PENAL CODE, ss. 124-A., 131, 37 P.W.R. 1907 Cr.

(3431)—Ss. 517, 520—*See* RESTORATION OF PROPERTY, A.W.N. 1893, 61.

(3432)—Ss. 517 and 522—*See* RESTORATION OF PROPERTY, 13 C.W.N. 77.

(3433)—Ss. 517, 523—*See* RESTORATION OF PROPERTY, 22 B. 844, Rat. Un. Cr. C. 536=Cr. Rg. 7 of 1891.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869)—continued.

(3434)—S. 517—*See* STOLEN PROPERTY, 2 A. 276, 2 Weir 664=7 M.H.C. 233.

(3434-*a*)—S. 517—*See* Nos. 365, 373, 1957, 2656, 2800, 2872, *supra*.

——S. 518 (=1882, s. 518; 1872, s. 420; 1861, s. 132-C).

(3435)—*S. 518—Order to be passed under emergent circumstances.*—In a case under Chap. 39, the Magistrate is bound to base his order upon the finding of the jury. An order under s. 518 should be passed only under special and urgent circumstances calling for immediate action. **1 J.G. 11.**

(3435-*a*)—S. 518—*See* No. 2653, *supra*.

——S. 519 (=1882, s. 519).

(3436)—*S. 519 (=Crim. Pro. Code, 1882, s. 519)—Scope.*—The only power conferred by the section, by which a *bona fide* purchaser of stolen property can obtain compensation, is when money has been found in the possession of the thief at the time of his arrest, in which case the whole, or a portion of such money, may be directed by the Court holding the trial to be handed over to the innocent purchaser, at the time of his restoring the stolen property to the true owner. **A.W.N. 1886, 291.**

(3437)—*Ss. 519, 545 (=Crim. Pro. Code, 1882, ss. 519, 545)—Stolen property—Payment of compensation ordered to mortgagee.*—Where, in a conviction under s. 380 of the Penal Code, the Magistrate ordered a portion of the fine imposed to be paid to mortgagee who had in good faith advanced money to the accused on the security of the stolen property, *held* that ss. 519 and 545 did not apply to the case since no injury was caused to the mortgagee by the offence, and since payment could be ordered only out of the proceeds of the property found in the possession of the accused. **Rat. Un. Cr. C. 631=Cr. Rg. 55 of 1892.**

(3438)—*Ss. 519, 545 (=Crim. Pro. Code, 1882, ss. 519, 545)—Compensation to innocent purchaser of stolen property.*—S. 519 only authorises payment, to a purchaser of stolen property, who buys in ignorance of theft, of compensation out of any money found in possession of the party guilty of theft. Where no money is found in possession of the party convicted, the purchaser cannot be compensated out of the fine imposed upon the accused. **2 Weir 671.**

(3439)—*Ss. 519 and 545—Compensation for pledgee of stolen property.*—An order for compensation cannot be made in favour of the pledgee of a stolen property, as the theft does not cause any injury to the pledgee or give him a right of action. **2 Weir 672.**

(3440)—Ss. 519, 545—*See* STOLEN PROPERTY, 3 Bom. L.R. 764.

(3440-*a*)—S. 519—*See* No. 2653, *supra*.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

——S. 520 (=1882, s. 520; 1872, s. 419; 1861, s. 132-B).

(3441)—*S. 520—Revisional powers of a District Magistrate.*—A District Magistrate is a Court of Revision as regards all Magistrates in his District, and, as such, has full powers to act under s. 520 regarding orders of subordinate Magistrates under s. 517. **2 Weir 673.**

(3442)—*S. 520—Power of appellate Court to pass orders regarding property brought before a Court.*—Where a Sub-Magistrate, who convicts a person of theft, passes no order regarding the property produced before him, the appellate Court, on appeal from the conviction, has no power to make an order under s. 520. **2 Weir 674.**

(3443)—S. 520—*See* ACT IX OF 1872, ss. 76, 108, 3 C. 379.

(3444)—S. 520—*See* Nos. 2653, 2656, 3099, 3404, 3408, 3418, 3419, 3427, 3428, 3431, *supra*.

——S. 521 (=1882, s. 521).

(3445)—*S. 521 (=Crim. Pro. Code, 1882, s.521)—Want of sufficient grounds for proceeding under the section.*—Where a Magistrate satisfies himself that there is no sufficient reason for proceeding under s. 521, he is at liberty to let the matter drop. **11 C.L.R. 235.**

(3446)—*Ss. 521, 526 (=Crim. Pro. Code, 1882, ss. 521, 526)—Substitution of member by foreman—Verdict—Disobedience—Penal Code, s. 188.*—Where a member of the jury appointed under s. 521, Crim. Pro. Code, fell ill, and the foreman, unknown to the Court, substituted another man in his place, and the Magistrate, accepting the opinion of the majority, made an order under s. 526, Crim. Pro. Code, *held*, that, as the order was not based on the report of a properly constituted jury, disobedience to such an order would not be punishable under s. 188, I.P.C. **10 C.L.R. 193.**

——S. 522 (=1882, s. 522; 1872, s. 534).

(3447)—*S. 522—Scope and object of.*—The object of the provisions of s. 522 is to enable the Criminal Court, by a summary order, to restore the state of things which existed at the time of the dispossession by the convicted person or persons. It cannot go behind the state of affairs at the time of the forcible ejectment leading to the criminal prosecution. Where an auction purchaser of a mortgaged property was put in possession of the property, the tenant being ejected, and the auction purchaser was forcibly ejected by certain persons, *held*, that, upon the conviction of the latter, the auction purchaser was entitled to be restored to the actual possession which he held of the house at the time of his ejectment, that the tenant had no right to any possession and that he should seek his remedy in the Civil Court. **5 C.W.N. 374.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(3448)—What s. 522 (2) evidently contemplates is the case of a person in possession (the complainant) being dispossessed by force by another person (the accused) and the latter being in possession at the date of the conviction. In such a case, it gives the Magistrate power to order the complainant to be restored to possession. In the case of a proper order, third persons could not be affected; if they are, then they are given a remedy by a civil suit, and the order would not on that account be bad. The section evidently contemplates (1) that the offence of which the accused is convicted must be an offence attended by criminal force, and (2) that the Court must be satisfied that the dispossession was due to the use of such force. Mere show of criminal force will not suffice to satisfy the requirements of the section. There must be actual use of force, and of criminal force resulting in the dispossession. **23 B. 494.**

(3449)—*S. 522—Order under the section, when could be made.*—In order to justify an order under s. 522, Crim. Pro Code, the Court must find, *first*, that the offence of which the accused is convicted was attended with criminal force; and, *secondly*, that a person has been dispossessed of immoveable property by the use of such force. **25 A. 341=A.W.N. 1903, 59.** [*R.*, 12 P.R. 1906 Cr.=4 Cr. L.J. 293=54 P.L.R. 1907].

(3450)—The words "an offence attended by criminal force" means an offence in which criminal force forms an ingredient. To support an order under s. 522, Crim. Pro. Code, 1882, it must be found that the dispossession was by the use of "criminal force" as defined in s. 350, Penal Code, and not merely by the show of such force. The offence of being members of an unlawful assembly is one in the composition of which the use of criminal force does not enter, though the show of criminal force may exist. Therefore an order under s.522 cannot be passed on conviction for being members of an unlawful assembly. **25 C. 434=2 C.W.N. 305.** [*F.*, 27 C. 174=4 C.W.N. 307, 5 C.W.N. 250, 23 A.W.N. 59=25 A. 341; *R.*, 23 B. 494, 4 C.W.N. 308, 12 P.R. 1906 Cr.=4 Cr. L.J. 293=54 P.L.R. 1907; *Commented upon*, 11 C.W.N. 467=5 Cr. L.J. 278; *Diss.*, 12 M.L.J. 447=2 Weir 676=26 M. 49].

(3451)—The rulings of the Calcutta High Court go so far as to say that actual force is necessary and that a show of force is not sufficient under the law to authorise an order under s. 522. *Held*, that, although the High Court is bound by the rulings, it is an anomaly that a person who avoids a breach of the peace by yielding to threats and a show of force should be in a worse position with reference to his land than another who offers forcible resistance, and to whom, in consequence, criminal force is used. **11 C.W.N. 467=5 Cr. L.J. 278.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(3452)—*S. 522—Criminal force, meaning of.*—The term "criminal force" used in s. 522, Crim. Pro. Code, must be understood as defined in s. 350, Penal Code, and to justify an order for the restoration of possession of immoveable property under s. 522, Crim. Pro. Code, the dispossession must have been by the actual use of criminal force and not merely by the show of such force. **5 C.W.N. 250.**

(3453)—*Ss. 522 and 423—Order for removal of obstruction on conviction under s. 341, Penal Code—Power of appellate Court.*—Where a person is convicted of wrongful restraint in having blocked a private way, along which the complainant has the right of way, the Magistrate is competent to order, although not under s. 522, the removal of the obstruction and non-interference with the complainant's right of way. [*Overruled*, 31 C. 691=8 C.W.N. 538, F.B.] Although an appellate Court has, under s. 423, the power of making any amendment or any consequential or incidental order that may be just and proper, the appellate Court could not set aside the order mentioned above, as it would make the entire proceedings infructuous and absurd. **5 C.W.N. 432.** [*Overruled*, 31 C. 691=8 C.W.N. 538].

(3454)—*S. 522 (=Crim. Pro. Code, 1882, s. 522)—Order giving possession—Reversal—Power of Magistrate to order restoration.*—A criminal Court is empowered to restore possession to a party who has been dispossessed under s. 522, Crim. Pro. Code, when such order has been set aside as illegal by superior authority. **5 P.R. 1895 Cr. F.B**

(3455)—*S. 522—Dispossession of immoveable property—Criminal trespass—No finding of use of criminal force—Order restoring possession of immoveable property, legality of.*—In this case, the applicants were convicted of criminal trespass. There was no finding or allegation that criminal force had been used in the commission of criminal trespass. Subsequently, the complainant made an application to the Magistrate for restoration of possession of the land in respect of which the trespass was committed. The Magistrate, purporting to act under s. 522 of the Code and without calling on the accused to show cause, ordered possession of the land to be restored to the complainant. *Held*, that, where there is no finding or allegation that criminal force has been used in the commission of criminal trespass, an order under s. 522 restoring possession of immoveable property to the complainant, cannot legally be passed. Although there is no explicit provision of law requiring that a Magistrate, who passes an order under s. 522 of the Code, should give the party, against whom it is proposed to make the order, an opportunity of showing cause against it, he should do so as a matter of due exercise of judicial discretion. **3 L.B.R. 20=2 Cr. L.J. 377.**

(3456)—*Ss. 522 and 145 (=Crim. Pro. Code, 1882, ss. 522, 145)—Proper order, when possession is with neither party.*—Where it is found that neither party is in actual possession, an order under s. 522 cannot be made. It is open to the Magistrate, in the event of a probable breach of the peace, to deal with the question of possession under s. 145. **2 Weir 675.**

(3457)—S. 522—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 27 C. 174=4 C.W.N. 307, 4 C.W.N. 308.

(3458)—S. 522—*See* RESTORATION OF PROPERTY, 23 B. 494, 7 C.L.J. 175=12 C.W.N. 269, 26 M. 49=2 Weir 675=12 M.L.J. 447.

(3458-*a*)—S. 522—*See* Nos. 404, 851, 933, 2654, 2801, 2818, 3095, 3432, *supra*.

——S. 523 (=1882, s. 523; 1872, ss. 387, para 2, 415, 416; 1861, ss. 130, 131).

(3459)—*S. 523 (=Crim. Pro. Code, 1882, s. 523)—Scope*—The provisions of s. 523 of the Code of 1882, are wider than those of ss. 415, 416 of the Code of 1872 and allow a Magistrate to order delivery of the property to the person entitled to it, after enquiry, instead of to the person from whom it was taken. **8 B. 338.** [*R.*, 9 B. 100, Rat. Un. Cr. C. 365; *D.*, 22 B. 844].

(3460)—*S. 523—Search warrant for attachment of property belonging to third person—Disposal.*—Where a third party appears before a Magistrate and alleges that the things seized by the police under a search warrant are his property and are not the subject of the alleged offence, the Magistrate is bound to hear him and, if necessary, to restore the property to him. There is a power inherent, apart from s. 523, in every Court, to satisfy itself that the things produced before it under a search warrant are the things which it is necessary or desirable should be kept in its custody. **26 B. 552=4 Bom. L.R. 276.**

(3461)—*S. 523—Order under section—Subsequent variation.*—When a Magistrate once passes an order under s. 523, Crim. Pro. Code, it is not open to him subsequently to vary it. **4 Bom. L.R. 12.**

(3462)—*S. 523 (=Crim. Pro. Code, 1882, s. 523)—Person entitled to possession—Procedure when he is not known.*—Where the person entitled to the possession of property regarding which the offence of theft has been committed is not known, the Magistrate should, under s. 523, detain the sum and issue the proclamation required by the section. The property should be handed over after the lapse of six months to the person who establishes a claim to it. **2 Weir 676.**

(3463)—*S. 523—Disposal of property seized by police.*—In disposing of property seized by the police, if the Magistrate finds that the person entitled to possession is known, he can lawfully adjudicate on the claim of that person, without issuing any proclamation. If he has issued a proclamation, that will not invalidate his order for immediate delivery of the property to such a known person. When the Magistrate

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finds that a claim, which has been made, is proved, provided no other claimants appear, he should, before passing final orders, wait until the expiry of the six months specified in the proclamation. **4 Cr. L.J. 203 = 3 L.B.R. 197.**

(3464 and 3465)—*Ss. 523, 524 (= Crim. Pro. Code, 1882, ss. 523, 524)—Seizure of property by Police on suspicion—Duty of Magistrate.*—The duty of a Magistrate, to whom a seizure of property by the Police has been reported, under s. 523, as property which they suspect to have been stolen, is to deliver the property to the person entitled to the possession of it, if there is no doubt about such property belonging to him; but if there is any doubt about it, he is to detain it and issue a proclamation to ascertain whether or not there are any claimants to the property. It is not intended by the provisions of s. 523 that any final step should be taken by the Magistrate, or that he is bound to take any final step, until after the expiry of six months; but when the proclamation has been issued and the six months have expired, then the provisions of s. 524 come in and the person in whose possession it was found can come forward and show that it is his own. **22 C. 761.** [*Cited*, 3 L.B.R. 197].

(3466)—S. 523—*See* RESTORATION OF PROPERTY, 4 L.B.R. 14 = 6 Cr. L.J. 126.

(3466-*a*)—S. 523—*See* Nos. 365, 373, 2836, 3398, 3409, 3410, 3420, 3423, 3424, 3433, *supra*.

——S. 524 (= 1882, s. 524; 1872, s. 417; 1861, s. 132).

(3467)—*S. 524 (= Crim. Pro. Code, 1872, s. 417)—Appeal.*—The appeal allowed by s. 417 is an appeal in the full sense of Chap. XX and must be governed by its provisions. **A.W.N. 1881, 150.**

(3467-*a*)—S. 524—*See* No. 3464, *supra*.

——S. 526, paras 1, 2, 4 to 7 (= 1882, s. 526; 1872, s. 64; 1861, s. 35); para 8 (= 1882, s. 526-A), and para 3, new.

(3468)—*S. 526—Grounds for transfer of criminal cases—"Criminal case," meaning of expression.*—Where incidents have occurred giving rise to a reasonable apprehension in the mind of the accused person that he would not receive a fair and unprejudiced trial at the hands of the Magistrate, although there may not be any real bias in the latter, the accused is entitled to have a transfer. The mere fact that the District Magistrate is, in his capacity as Collector, concerned in the management of an estate under the Court of Wards, is no ground for the transfer of a case brought against the tenants of the estate, to another District from the file of a Subordinate Magistrate before whom the case was pending. **28 C. 297.**

(3469)—*Per* Taylor, J.—Next to the importance of deciding a case fairly and impartially, is the importance of conducting oneself in such a manner as to inspire in the mind of parties a confidence that nothing but absolute justice would be done to them; if by reason of the words or conduct of a Magistrate, before whom a case is pending, any party reasonably apprehends that there is a bias against him in the mind of the officer concerned, it would be expedient for the ends of justice to transfer the case from his file to that of some other officer competent to try it, though there may not be any actual bias. *Per* Ghose, J.—The expression "Criminal case" in s. 526 may be understood as simply distinguished from a civil case, or, in other words a criminal case is one over which a Criminal Court exercises jurisdiction. *Per* Taylor, J.—The phrase "Criminal case" is intended to be used in a limited sense and not to apply to every case cognisable by a Criminal Court. **28 C. 709 = 5 C.W.N. 749.**

(3470)—*Ss. 526, 527.*—In an application for the transfer of a case from the Court of a particular Magistrate, the following reasons were set out:—(1) that the applicants who were butchers, had for sometime past had, with other butchers, difficulties with the Municipal Board, of which the Magistrate was a member, (2) that the evidence of the Magistrate would be required in the case. *Held*, that the first ground was not a valid one, but that the transfer ought to be granted on the second ground, inasmuch as the accused had the right to have the Magistrate summoned, unless it was considered that the application should be refused on the ground that it was made for the purpose of vexation or delay, or for defeating the ends of justice, and as it was not proper to leave the decision of such a question to the Magistrate whose evidence was required. **26 A. 536 = A.W.N. 1904, 94.**

(3471)—*S. 526—Construction.*—(*a*) The words "commencement of the hearing" in s. 526, Crim. Pro. Code, must mean the commencement of the hearing in the Court objected to, or, in other words, in the Court to which the notification subsequently referred to in the section applies or is made. (*b*) An application to a District Magistrate, on his taking up a case for trial, for the adjournment of it, the trial of which an Assistant Magistrate was prevented from completing owing to his transfer, must be held to have been made at the earliest possible time. **8 C.W.N. 77.**

(3472)—*S. 526—High Court, powers of, under—"Criminal case," scope of expression.*—Under the above section, the High Court has power to transfer proceedings taken under ss. 110, 112 of the Code from the Court of one District Magistrate to the Court of another District Magistrate. The expression "Criminal case" in cl. *e* (ii) of the above section includes proceedings of a criminal nature under the Code other than enquiries into, or trials of, offences. **3 O.C. 247.** (16 A. 9, *Diss.*; 19 A. 291, *Dist.*)

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(3473)—*S. 526—Application for transfer under—What should Magistrate consider—Practice.*—A District Magistrate entertaining an application for the transfer of a case must understand that the impressions produced in his own mind as to the impartiality of the Magistrate, require less consideration than the effect likely to be produced in the minds of the parties and their witnesses, by the selection of a Magistrate whose personal antecedents or circumstances have however unavoidably connected him with either the one party or the other. Such considerations could not altogether be overlooked even by the High Court, if it had to determine whether a transfer should be directed. **25 B. 179.** (25 C. 727, 19 A. 64, 23 C. 495, 25 C. 727, *R.*)

(3474)—Ordinarily, the High Court does not transfer a case pending before a Magistrate, unless the party applying for transfer has moved the District Magistrate before coming to the High Court. **6 Bom. L.R. 480.** (25 B. 179=2 Bom. L.R. 755, *R.*)

(3475)—*S. 526 (=Crim. Pro. Code, 1882, s. 526)—Powers of Judicial Commissioner in respect of transfer of cases under—Lower Burma.*—The Judicial Commissioner has no power to transfer a case from one Sessions Court to another on the reference of the Sessions Judge, who should proceed by motion under s. 526, Crim. Pro. Code, 1882. **L.B.R.(1872—1892), 256.**

(3476)—*S. 526, sub-s. 8—Application for adjournment before commencement of hearing—Duty of Court--Refusal to grant adjournment, effect of.*—The law does not require that an application for postponement, under s. 526, sub-s. 8, or an application to the High Court for transfer, should be made within any particular period before the date fixed for hearing. It requires only that the party should notify to the Court before which the case is pending, before the commencement of the hearing, his intention to make an application for transfer of the case. If such an intention is notified at however short a time before the commencement of the hearing, the Court before which the case is pending is bound to exercise its power of postponement or adjournment without reference to any opportunity that the party might have had of making an application at some earlier time. The refusal to grant such application is illegal and the whole of the proceedings that follow it cannot be supported. **29 C. 211=6 C.W.N. 251.** [*F.*, 8 C.W.N. 77, 1 S.L.R. 35 Cr.. 10 C.W.N. 793=3 C.L.J. 637 =33 C. 1183; *D.*, 8 C.W.N. 910=31 C. 715].

(3477)—*S. 526 (8) (=Crim. Pro. Code, s. 526-A)—Application for adjournment for moving the High Courtto transfer the case—Refusal of the application—Effect.*—Under s. 526-A, added by Act III of 1884, the public prosecutor, or the complainant or the accused, has the right to notify to the Court, before which a case or appeal is pending, before the commencement of the hearing of the case, that he intends to make an application to the High Court to transfer the case; and if he does so, the Court should grant a postponement or an adjournment. The words of the section make the granting of the adjournment obligatory. A refusal to grant the application is illegal, and the whole proceedings that follow such refusal cannot be supported. **15 C. 455.** [*F.*, 29 C. 211=6 C.W.N. 251, 24 P.L.R. 1904, 33 C. 1183=10 C.W.N. 793=3 C L.J. 637; *Expl.*, 2 Weir 682=19 M. 375; *R.*, 6 C.W.N. 717; *D.*, 31 C. 715].

(3478)—*Ss. 526 (8), 344 (=Crim. Pro. Code, 1882, ss. 526-A and 344).*—Although the word "shall exercise" in s. 526-A of the Crim. Pro. Code, is obligatory, yet the obligation is not, necessarily and under all circumstances, to grant a postponement, but only to give the party a reasonable time for obtaining the orders of the High Court. The postponement is no part of the essence of the obligation. By itself a postponement might be either useless. if it were for too short a time, or superfluous, if there was sufficient time without any postponement. The essence of the obligation is that the party should have a reasonable time to move the High Court and obtain its orders. If he has such reasonable time when the application is made, there is no obligation to grant any further time. When there is sufficient time between the date of the application for postponement and the date fixed for the conduct of the trial to move the High Court for a transfer and to obtain its orders thereon, the refusal to grant an adjournment is not illegal. **19 M. 375=2 Weir 680=6 M.L.J. 195.** [*D.*, 29 C. 211=6 C.W.N. 251; *R.*, 31 C. 715=8 C.W.N. 910].

(3479)—*S. 526 (=Crim. Pro. Code, 1882, s. 526)—Jurisdiction of Santhal Pergunnahs Courts--European British subject--High Court's jurisdiction to transfer—Bengal Act XXXVII of 1855—Grounds for transfer.*—A Court of Magistrate in the Santhal Pergunnahs is, as regards the trial of a European British subject, subordinate to the High Court, and the High Court can, under s. 526 of Crim. Pro. Code, direct the transfer of a case in which such subject is concerned. Where there are circumstances which might reasonably lead the petitioner applying for a transfer to believe that the Magistrate has to some extent prejudged the case against him, and that he will in consequence be prejudiced in the trial, the transfer of case should be ordered. **18 C. 247.** [*R.*, 28 C. 297, 33 C. 1183=10 C.W.N. 793=3 C.L.J 637].

(3480)—*Ss. 526, 531—Commitment to Court having no territorial jurisdiction—When High Court could order trial to be held by such Court.*—The Sessions Judge of Ratnagiri referred a case committed to his Court to the High Court on the ground that the offences with

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which the accused was charged were committed, if at all, in Bombay, beyond his jurisdiction. *Held* that, as the order of commitment had been made, the case fell under s. 531, Crim. Pro. Code, and that, as the complainant chose to go to Ratnagiri District and the accused wished to be tried there, the High Court could order that the trial might proceed before the Sessions Judge of Ratnagiri. **2 Bom. L.R. 394.** [*R.*, 96 P.L.R. 1901=24 P.R. 1901, Cr.]

(3481)—*Ss. 526, 548 (=Crim. Pro. Code, 1882, ss. 526, 548)—Right of accused to get copies of pending proceedings of Magistrate.*—In an application under s. 526, Crim. Pro. Code, for the transfer of a case under trial to another Court on the ground *inter alia* that the Magistrate refused to grant the accused copies of the depositions and proceedings as the case proceeded, *held* that, though the applicant had not yet been "affected by judgment or order," or the case had not been decided, a Magistrate might give copies even of pending proceedings as far and as speedily as possible, to accused persons, though they may not have a legal right to them then and there. **S.C. 141, Oudh.**

(3482)—*Ss. 526, 556, 190—Proceedings instituted by Magistrate in another capacity.*—Where a Magistrate initiated the proceedings in his capacity as Collector or Chairman of the Municipal Board, it is a disqualification for his trying the case, under s. 556 of the Crim. Pro. Code. But, if he initiated the proceedings only under s. 190, it is not a disqualification under s. 556. Nor is it a proper ground for transfer under s. 526. **A.W.N. 1899, 74.**

(3483)—*S. 526 (=Crim. Pro. Code, 1882, s. 526)—Disqualification of Magistrate.*—The mere fact that a Magistrate, in whose Court a criminal case is pending, may be summoned as a witness for the defence, is not of itself a reason for the transfer of the case from the Court of such Magistrate; but it may be a reason for such Magistrate committing the case to the Court of Sessions instead of, in the event of a conviction, passing sentence himself. **A.W.N. 1897, 17.**

(3483-*a*)—S. 526—Jurisdiction of High Court to transfer cases from Agent to Governor in Agency Tracts of Ganjam and Vizagapatam—*See* ACT XIV OF 1874, 14 M. 121=2 Weir 7.

(3484)—S. 526—*See* ACT XIV OF 1874, ss. 3, 5, 6, 10 B. 274.

(3485)—S. 526—*See* ACT XXI OF 1879, 9 B. 333.

(3486 and 3487)—S. 526 (1, 2, 4 to 7)—Special Court of Burma, appeal to—*See* BUR. ACT XVII OF 1875, s. 35, 4 C. 667.

(3488)—S. 526 (8)—Adjournment of trial by public proclamation—*See* ADJOURNMENT, 6 M.H.C. App. 29, 31 C. 715=8 C.W.N. 910, 6 C.W.N. 717.

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(3489)—S. 526—*See* PENAL CODE, ss. 193 and 199, 1 Weir 176.

(3490)—S. 526 (8)—*See* MAGISTRATE, JURISDICTION OF, 19 A. 302.

(3490-*a*)—S. 526—*See* Nos. 53, 135, 573, 582, 929, 930, 945, 1198, 1486, 1543, 1665, 1989, 2377, 2397, 3194, 3446, *supra*.

——S. 527 (=1882, s. 527; 1872, s. 64-A).

(3490-*b*)—S. 527—*See* Nos. 1457, 3470, *supra*.

——S. 528 (=1882, s. 528; 1872, ss. 44, last para, 47, para 1, 48; 1861, s. 36).

(3491)—*S. 528—Order of Sub-Divisional Magistrate transferring case from one Sub-Magistrate to another—Power of District Magistrate to retransfer.*—Under s. 528, the District Magistrate and Sub-Divisional Magistrate have co-ordinate authority over Magistrates subordinate to the Sub-Divisional Magistrate, and the order for a transfer of a case made by the Sub-Divisional Magistrate cannot be appealed against to the District Magistrate. It may be that, under s. 528 a case once transferred from one Magistrate to another may be withdrawn from the latter by the District Magistrate or even by the Sub-Divisional Magistrate and he may inquire into or try such case himself or refer it for inquiry or trial to some other competent Magistrate on a substantive application made that it is expedient that the Magistrate to whom it has been transferred or his successor in office should inquire into or try the case. Where a Sub-Divisional Magistrate had directed the transfer of a case from the file of one Sub-Magistrate to another, it would not be competent to the District Magistrate to direct its retransfer to the file of the Magistrate from whom it was transferred. **26 M. 130=2 Weir 689.**

(3492)—*S. 528 (1).*—Ordinarily an order under s. 528 (1) ought not to be made on the application of either party, without giving the opposite party, whether he be complainant or accused, an opportunity of showing cause against it. But an *ex parte* order under the section is not illegal simply because it is made *ex parte*. **U.B.R. 1904, 1st Qr., Crim. Pro. Code, 15.** (3 A. 749, 22 B. 549, 8 C. 393, L.B.R. 1893—1900, 392, *R.*)

(3493)—*S. 528 (=Crim. Pro. Code, 1872, s. 47)—Power to withdraw cases—Notice.*—(1) The powers given by s. 47 should be most carefully exercised. Magistrates of Districts should use the extensive discretion given to them to divert the course of procedure from its ordinary channel, only when it is absolutely necessary for the interests of justice that they should do so. (2) When an application is made to the Magistrate of the District, for the withdrawal or the removal of a case from the Court of a subordinate Magistrate, by one of the parties to such case, notice of such application should be given to the opposite party, and an opportunity should

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be afforded, if he is desirous of so doing, to show cause against its being granted. **3 A. 749.** [*F.*, 14 C.P.L.R. 190, 10 P.L.R. 1903=28 P.R. 1902 Cr. ; *R.*, 8 C. 393 ; 1 L.B.R. 139. U.B.R. 1904, 1st Qr., Crim. Pro. Code, 15].

(3494)—*S. 528 (=Crim. Pro. Code, 1861, s. 36)—District Magistrate—Reference.*—A District Magistrate cannot refer any case for trial to a Full Power Magistrate unless he has withdrawn it from some Court subordinate to him under s. 36 of the Crim. Pro. Code, 1861. **Rat. Un. Cr. C. 34.**

(3495)—*S. 528 (=Crim. Pro. Code, 1882, s. 528)—Magistrate subordinate to Sub-Division Magistrate—Power of District Magistrate.*—A Magistrate, who is subordinate to a Sub-Division Magistrate, is also subordinate to the District Magistrate, within the meaning of s. 528, Crim. Pro. Code. **14 M. 399=2 Weir 688.**

(3496)—*S. 528 (=Crim. Pro. Code, 1882, s. 528)—Power to transfer cases from the file of Village Magistrates.*—Village Magistrates are not Magistrates under the Code of Criminal Procedure. A joint Magistrate has not, therefore, the power to withdraw a case from the file of a Village Magistrate and transfer it for disposal to a second-class Magistrate. **15 M. 94=2 Weir 692.** [*R.*, 1 Weir 788 (*b*), 2 Weir 693=26 M. 394].

(3497)—*Ss. 528 and 537—Withdrawal by District Magistrate of partly tried case to himself—Commencement of trial apart—Irregularity.*—A Magistrate, who, acting under s. 528, Crim. Pro. Code, withdraws a case from his subordinate Magistrate after the latter has heard the case partly, should commence his trial afresh. It is not enough to ask the prisoner whether he wished to examine any of the prosecution witnesses again, though the prisoner might consent to such a procedure. The defect consequent on the failure to commence the trial *de novo*, would be an irregularity, curable neither by the prisoner's consent nor by s. 537, Crim. Pro. Code, which was intended to apply to formal defects or irregularities and not to illegal trials. **6 O.C. 192.**

(3498)—S. 528—*See* ACT XI OF 1874, s. 6, 8 C. 851.

(3499)—S. 528—*See* ACT XIII OF 1889, s. 7, Rat. Un. Cr. C. 849.

(3500)—Ss. 528, 556—*See* DISQUALIFICATION, 2 L.B.R. 220.

(3501)—Ss. 528 (1 to 3), 107—*See* MAGISTRATE, JURISDICTION OF, 8 C. 851.

(3502)—S. 528—*See* PENAL CODE, s. 84, 94 P.L.R. 1909=6 M.L.T. 101.

(3503)—Ss. 528 and 497—*See* TRANSFER OF CRIMINAL CASE, 22 B. 549.

(3503-*a*)—S. 528—*See* Nos. 103, 166, 313, 942, 955, 1244, 1245, 1301, 1322, 1389, 1958, 2453, 2454, 3297, *supra*.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

——S. 529 (=1882, s. 529 : 1872, ss. 32, 34, cl. 9).

(3504)—*S. 529(=Crim. Pro. Code, 1872, s. 34 (4))—Summary jurisdiction.*—No Magistrate is entitled to cut down an offence from that which is established by the evidence in order to give himself summary jurisdiction. Such proceedings are void under s. 34 (4), Crim. Pro. Code. **1 C.L.R. 434.** [*D.*, 10 A. 55].

(3505)—*S. 529 (f) of the Code of 1898 (=s. 32, para 1, Code of 1872)—Power of subordinate Magistrates to transfer cases.*—A Taluq second class Magistrate has no power to transfer a case to a Sheristadar second class Magistrate. But such a transfer does not vitiate the subsequent proceedings. **2 Weir 152.**

(3506)—Ss. 529, 537—*See* ACT I OF 1871, ss. 8, 20, 21, 23 C. 442.

(3507)—S. 529—*See* BEN. ACT XXXVII OF 1855, s. 4 (1), 12 C. 536.

(3508)—S. 529—*See* IRREGULARITY, 20 A. 40.

(3509)—Ss. 529, 530, 537—*See* PENAL CODE, ss. 406, 409, 1 Bom. L.R. 27.

(3510)—Ss. 529, 530—*See* SESSIONS JUDGE, JURISDICTION OF, 4 L.B.R. 49=6 Cr. L.J. 287.

(3511)—Ss. 529, 530—*See* SUMMARY TRIAL, 2 J.G. 8.

(3511-*a*)—S. 529—*See* Nos. 788, 916, 955, 956, 1009, 1257, 1325, 2289, *supra*.

——S. 530 (=1882, s. 530 ; 1872, s. 34, except. cl. 9).

(3512)—*S. 530 (p) (=Crim. Pro. Code, 1882, s. 530)—Cognizance of aggravated offence, by a second class Magistrate.*—Where, on an appeal from a conviction by a Magistrate of the second class for an offence under s. 325, the appellate Court *held* that the offence disclosed by the evidence was that of grievous hurt with a dangerous weapon punishable under s. 326, and beyond the jurisdiction of the Magistrate, and the Sessions Judge referred the case and the appeals to the High Court on the ground that the proceedings were void *ab initio* under s. 530 (*p*), *held* that the Magistrate of the second class was not wholly without jurisdiction, and that the High Court would not interfere, if the accused had not been prejudiced or if the sentence was not unduly lenient. **13 B. 502.** [*F.*, 4 Bom. L.R. 267; *Expl.*, 1 Bom. L.R. 27; *R.*, 1 Bom. L.R. 683, 25 B. 90, 24 M. 675=2 Weir 699, 19 B. 340].

(3513)—*S. 530—Trial of non-summary case summarily, validity of.*—If, on the examination of the complainant, there is no reason to believe that the complaint is exaggerated or false and process is issued for the attendance of the accused, the Magistrate is bound to proceed

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and regulate his proceedings at the trial as for the offence made up of the facts complained of. Where a Magistrate deliberately disregards the offence actually complained of, *viz.*, an offence not triable summarily, and tries it summarily, his proceedings are absolutely void under s. 530, Crim. Pro. Code. **5 C.W.N. 252.**

(3514)—*S. 530 (=Crim. Pro. Code, 1872, s. 34).*—The proceedings of the summary trial, under Ch. XVIII, Crim. Pro. Code, 1872, of a case not so triable are void under s. 34, Crim. Pro. Code. **Colm. Dig. Cr. 43 of 1876.**

(3515)—*S. 530 (q)—Summary proceedings by Magistrates not so empowered.*—A Cantonment Magistrate does not in virtue of his office, possess summary powers of trial with respect to breaches of Cantonment rules. unless he is specially empowered by the Local Government in that behalf. **U.B.R. (1892—1896), Vol. 1, 76.**

(3516)—*Ss. 530, 195 (=Crim. Pro. Code, 1872, ss. 34 and 467).*—Certain proceedings taken, under s. 188, I.P.C., charging several persons with disobedience to an order forbidding them to catch fish at a certain 'ghat,' were held to be bad, because there was no complaint or police report and nothing showed how the case began, and no sanction for the prosecution was obtained as required by s. 467. **Colm. Dig. Cr. 40 of 1876.**

(3517)—S. 530—*See* MAGISTRATE, JURISDICTION OF, 24 M. 675=2 Weir 699.

(3518)—S. 530—*See* SENTENCE, 4 Bom. L.R. 267.

(3518-*a*) —S. 530—*See* Nos. 569, 934, 1257, 1670, 2419, 2421, 2636, 3509, 3510, 3511, *supra*.

——S. 531 (=1882, s. 531; 1872, s. 33).

(3519)—*S. 531 (=Crim. Pro. Code, 1882, s. 531)—Hearing an appeal presented within jurisdiction of a Sessions Court at a place outside the jurisdiction.*—All judicial acts exercised by persons whose judicial authority is limited as to locality should be done within the locality to which such authority is limited. Where a criminal appeal was presented to a Sessions Judge at a place within his jurisdiction, but was heard and disposed of at a place outside the local limits of his criminal jurisdiction ; but within the limits of his civil jurisdiction, *held*, that the procedure adopted was an irregularity, but was covered by the provisions of s. 531, and that the finding would not be set aside, unless a failure of justice had been occasioned by it. **17 A. 36.** [*R.*, 1 Weir 190 =26 M. 640].

(3520)—*S. 531—Committal by a Magistrate having no territorial jurisdiction.*—S. 531 applies to a case where the Magistrate has authority to commit, but has not territorial jurisdiction in the place where the offence is alleged to have been committed. **26 M. 640= 1 Weir 190.** [*R.*, 1 M.L.T. 345=30 M. 94=4 Cr. L.J. 500].

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(3521)—*S. 531—Want of local jurisdiction—Defect whether curable.*—Trying a case in a district which has not local jurisdiction is not a defect of jurisdiction, but only of venue, and is curable under s. 531, Crim. Pro. Code, 1898. **2 P.R. 1902 Cr.**

(3522)—*S. 531.*—The above section covers cases which the Magistrate has power to try, the only defect in the jurisdiction being one of locality. **U.B.R. 1904, 1st Qr., Crim. Pro. Code, 10.**

(3523)—*Ss. 531, 177, 179, 180, 181, 183—Offence committed in one district—Trial by a Magistrate in another district, not a material irregularity.*—Where an offence is committed within the jurisdiction of a Sub-divisional Magistrate in one district, but is tried by a Magistrate in another district, the irregularity of the trial is cured by s. 531 of the Code. This section is not limited to cases, where the offence committed, within the jurisdiction of a Court, is tried by that Court, outside the limits of the local area of its jurisdiction. Ss. 177, 179, 180, 181, 183 must be read together with s. 531. The intention of s. 531 is to provide against the contingency of a finding, sentence or order regularly passed by a Court, in the case of an offence committed outside its local area, being set aside, when no failure of justice has taken place. **1 M.L.T. 345=4 Cr. L.J. 500=30 M. 94.** [*R.*, 18 P.W.R. 1908 Cr.].

(3524)—*Ss. 531, 532 and 537 (=ss. 531, 532, 537, Code of 1882)—Commitment to Sessions by a Magistrate having no territorial jurisdiction over the place—Validity of the commitment.*—Where a Magistrate, being empowered to commit to Sessions, but having no territorial jurisdiction over the place in which the offence is alleged to have been committed, commits a case to a Sessions Court, which has jurisdiction over the place, the commitment is valid and cannot be quashed under s. 532, Crim. Pro. Code, although the objection to such commitment is taken before the commitment. **17 M. 402=2 Weir 704=4 M.L.J. 196.** [*Appr.*, 16 A.W.N. 96=18 A. 350 ; *R.*, 1 Weir 190=26 M. 640, 1 M.L.T. 345=4 Cr. L.J. 500=30 M. 94].

(3525)—Ss. 531, 532—*See* COMMITMENT TO SESSIONS COURT, 16 B. 200.

(3526)—S. 531—*See* JURISDICTION OF CRIMINAL COURTS, 8 C. 985=10 C.L.R 241, F.B.

(3526-*a*)—S. 531—*See* Nos. 1167, 1168, 1180, 1188, 1191, 1194, 1199, 2735, 3480, *supra*, and Nos. 3610, 3612, *infra*.

——S. 532 (=1882, s. 532; 1872, s. 33).

(3527)—*Ss. 532, 5, 177, 178 (=Crim. Pro. Code, 1872, ss. 33, 63)—Commitment—Scope of s. 33.*—S. 33 contemplates the contingency of a case, which has been enquired into at the proper place, as indicated by s. 63, being committed to the proper Court of Sessions by a

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particular Magistrate, not duly empowered by law to make such a commitment. Where a Magistrate inquires into and commits the case of an offence, which has taken place and has been completed in another district, to the Court of Sessions to which commitments from his district are made, the Sessions Judge of that district should not accept the commitment, on the ground, that the accused has not been prejudiced thereby. The proceedings in such a case are illegal *ab initio*. **3 A. 258.** [*R.*, 10 B. 274, *Disappr.*; 17 A. 36].

(3528)—Ss. 532, 537—*See* ACT XI OF 1878, ss. 19 (*f*) and 29, 5 M.L.T. 162.

(3528-*a*)—S. 532—*See* Nos. 1215, 1451, 1460, 1464, 2405, 2891, 3524, 3525, *supra*.

——S. 533, para 1 (=1882, s. 533; 1872, s. 346, last para).

See CONFESSION.

(3529)—*S. 533—Defective record of confession—Parol evidence—Evidence Act, s. 91.*—S. 533, Crim. Pro. Code, is intended to apply to all cases in which the directions of the law have not been complied with, without any distinction between omissions to comply with the law and infractions of it. Under that section, if the record of a confession is inadmissible owing to failure to comply with the law, such an omission to obtain the signature or mark of the person confessing to the document, parol evidence, notwithstanding anything contained in s. 91, Evidence Act, may be given of the terms of the confession, and those terms, if and when proved, may be admitted and used as evidence in the case, if the defect is such that it has not affected the merits of the defence. **23 B. 221.** [*F.*, 4 Bom. L.R. 785; *R.*, U.B.R. (1903), 1st Qr., Cr. Pro. Code, 13].

(3530)—*S. 533 (=Crim. Pro. Code, 1882, s. 533)—Construction of.*—S. 533 is to be interpreted liberally, and though a confession recorded by a Magistrate was in the first instance and by itself inadmissible as not being in the form of question and answer, not being recorded in the vernacular of the accused, and not bearing the signature or mark of the accused, it will become admissible by the taking of the evidence of the Magistrate that the accused duly made the statement recorded. **8 C.P.L.R. Cr. 21.** (15 C. 595, 17 C. 862, *Disappr*; 18 C. 549, *approved*).

(3531)—S. 533—*See* CONFESSION, 52 P.R. 1887 Cr.

(3532)—Ss. 533, 164—*See* CONFESSION, 8 O.C. 395-B.

(3533)—S. 533—*See* EVIDENCE ACT, ss. 21, 24 to 27, 8 O.C. 395.

(3533-*a*)—S. 533—*See* Nos. 1110, 1112, 1113, 1115, 1116, 1117, 1118, 1124, 1126, 1129, 1512, 1980, 2361, *supra*, and No. 3563, *infra*.

——S. 534 (=1882, s. 534; 1872, s. 85).

(3533-*b*)—S. 534—*See* No. 1305, *supra*.

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——S. 535 (=1882, s. 535; 1872, s. 216, Expls. I and II).

(3534)—*Ss. 535, 258 (=Crim. Pro. Code, 1872, ss. 216, 220)—Omission to prepare charge.*—The explanation to s. 220 is, by its terms, governed by those of Explanation 1 to s. 216, and by the terms of that Explanation, the omission to prepare a charge does not invalidate a trial, unless, in the opinion of the Court of appeal or revision, a failure of justice has been thereby occasioned. **A.W.N. 1881, 142.**

(3534-*a*)—S. 535—*See* Nos. 308, 1267, 1298, 2822, *supra*.

——S. 536 (=1882, s. 536; 1872, s. 233, Expl. 4).

(3535)—*S. 536, cl. 2—Trial with assessors of offences triable by jury.*—Where a case was triable by jury, but was tried with the aid of assessors and no objection was taken at the trial, *held*, that the mere fact that the assessors found the accused not guilty, but the Judge differing from their opinion had convicted them would not make the trial invalid, inasmuch as no objection was taken at the trial. **23 M. 632=2 Weir 331.**

(3536)—*Ss. 536, 537 (=Crim. Pro. Code, 1882, ss. 536 and 537)—Offences triable by assessors tried by jury—Procedure—Penal Code, ss. 380, 457—Criminal misappropriation.*—Where a temple trustee was convicted of theft of temple property under ss. 457 and 380, but, on appeal, the High Court held that a temple trustee could not be convicted of theft but could be convicted only of criminal misappropriation by an agent, which was triable only with the aid of assessors, *held*, that the proper procedure would be to allow a retrial and if such retrial was not desired, the Court may treat the verdict of the jury as the opinion of assessors and convict the accused for criminal misappropriation. **26 M. 243 note.**

(3536-*a*)—S. 536—*See* Nos. 1818, 2058, 2062, 2711, *supra*.

——S. 537 (=1882, s. 537; 1872, ss. 203, 283, 300, 464; 1861, ss. 426, 439), Explanation, new.

See JOINDER OF CHARGES.

See JOINT TRIAL.

(3537)—*S. 537—Irregularity in issuing search warrant under s. 537, Gambling Act, ss. 5 and 6.*—The mere fact that a warrant issued under the Gambling Act was defectively worded and was rather a warrant of arrest than a search warrant had not the effect either (1) of making the particular provisions of ss. 5 and 6 of the Act inapplicable, or (2) of vitiating the trial. The irregularity would be covered by s. 537 of the Crim. Pro. Code. *Per* Mahmood, J., concurred with dictum (2) but not with dictum (1); Duthoit, J. **A.W.N. 1884, 291.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(3538)—*S. 537 (=Crim. Pro. Code, 1882, s. 537)—"Court of competent jurisdiction."*—The words "a Court of competent jurisdiction" in s. 537 must be taken to mean "a Court of competent jurisdiction in respect of the particular offence charged." **10 B. 319.**

(3539)—*S. 537—Contravention of terms of s. 495.*—The contravention of cl. 4 of s. 495, Crim. Pro. Code, does by itself invalidate a trial altogether when no failure of justice has occurred within the meaning of s. 537. **26 B. 533=4 Bom. L.R. 271.**

(3540)—*Scope of s. 537.*—There is a distinction between a case in which the trial itself is contrary to law, in which event it is no trial at all under the Code, and a case in which the trial is one within the jurisdiction of the Magistrate and irregularities occur in the method of conducting it. In the latter case the provisions of s. 537 are applicable, and the finding can only be reversed if the irregularity has in fact occasioned a failure of justice. **26 B. 533=4 Bom. L.R. 271.**

(3541)—A Magistrate who has himself committed an irregularity cannot utilize the provisions of s. 537 to cure such irregularity. But it is competent to the Sessions Judge on the appeal, or to the High Court on revision to consider whether the provisions of that section should be applied. **5 M.L.J. 215.**

(3542)—S. 537 of the Code, which cures errors, omissions, or irregularities, is not intended to cure an absolute illegality such as the above. **14 C. 395.** [*F.*, P.L.R. 1900, 61; *R.*, 10 M.L.J. 147, 25 M. 61=2 Weir 271, P.C., 83 P.L.R. 1901; *Overruled*, 27 C. 839].

(3543)—*S. 537 (=Crim. Pro. Code, 1882, s. 537)—Misdirection to jury—Powers of High Court.*—S. 537 of the Code does not authorise the High Court, in cases where it finds that the lower Court has misdirected the jury, to go into the evidence and to decide upon the fact whether or not the accused have been rightly convicted. The only course it can adopt is to direct a retrial. **21 C. 955.** [*F.*, 25 C. 230; *D.*, 10 M.L.J. 147, F.B., 25 M. 61=2 Weir 271 P.C.; *Diss.*, 19 B. 749, 25 C. 711, 2 Weir 521=26 M. 1].

(3544)—*S. 537 (=Crim. Pro. Code, 1882, s. 537)—Omission to set out the guilty intention in a charge.*—An objection as to the omission to set out the guilty intention of an accused in the charge is subject to the provisions of s. 537 of the Code; and before effect can be given to any such objection, it must be shown that the omission complained of has occasioned a failure of justice. **22 C. 391.**

(3545)—*S. 537 (=Crim. Pro. Code, 1882, s. 537)—Omission to call upon the accused to enter upon his defence whether cured by s. 537,*—The formality of calling upon an accused person to enter on his defence is not a mere formality, but is an essential part of a criminal trial. Omission to do so cannot be cured by s. 537 of the Code, as it cannot be said that the omission has not occasioned a failure of justice. **23 C. 252.** [*Applied*, 2 L.B.R. 115].

(3546)—*S. 537 (=Crim. Pro. Code, 1882, s. 537)—Applicability to pending proceedings.*—S. 537 of the Code is not intended to apply to a case which has not been finally disposed of. The test prescribed for determining when an error, omission or irregularity should be a ground for setting aside an order is one which can be properly applied only after the final result of the case is known. **23 C. 983=1 C.W.N. 57.** [*R.*, 10 M.L.J. 146].

(3547)—*S. 537—Hearsay evidence received as to guilt of accused—Confessions made by accused when in police custody recorded—Misdirection of jury in important particulars—Re-trial.*—Where the Sessions Judge allowed a prosecution witness to give hearsay evidence as to the guilt of some of the accused, recorded alleged confessions made by them when they were in the custody of the police, misdirected the jury in telling them that confessions to the police, if followed by the production of stolen property, were admissible and did not warn them to take the case of each accused separately and that a confession by one accused involving himself alone could not be used against the other accused, their conviction was set aside and their retrial ordered. Confessions of accused persons made by them when they were in police custody are only admissible in so far as they relate distinctly to the fact thereby discovered, and evidence of such confessions should not be allowed to be given or recorded to any great extent, nor, when such evidence as is properly admissible has been recorded, should the jury afterwards be told generally that the prisoners had confessed. **3 M.L.T. 263=7 Cr. L.J. 358=18 M.L.J. 250.**

(3548)—*S. 537 (=Crim. Pro. Code, 1872, ss. 283, 300)—Omission to take the opinion of the jury.*—The omission to take the opinion of the assessors, in a sessions case tried with their aid, is, although a serious irregularity, not a ground for the revisional interference of the High Court, if it has not affected the conduct of the prosecution or prejudiced the prisoner in his defence. **1 A. 610.** [*R.*, 10 A. 414, 24 M. 523 =2 Weir 346].

(3549)—*S. 537 of the Code of 1898 (=Crim. Pro. Code, 1872, s. 283)—Revisional and appellate powers of an appellate Court.*—An appellate Court has no power to reverse a judgment or sentence on the ground that the Magistrate has not reduced a complaint to writing as required by s. 144 (s. 200); nor does its revisional power extend to such a case, as revision is restricted to cases specifically mentioned in s. 297 (s. 439). **2 Weir 709=7 M.H.C. App. 25.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(3550)—*S. 537—Omission to pronounce portion of judgment.*—The omission to pronounce a portion of the judgment imposing fine which the Magistrate has written, and his omission to date and sign the judgment at the time of pronouncing it are omissions covered by s. 537. **2 Weir 711.**

(3551)—*S. 537—Regulation V of 1892 (U. B. Criminal Justice Regulation), s. 15.*—S. 15, Upper Burma Criminal Justice Regulation, and s. 537, Crim. Pro. Code, do not cover a radical defect such as a want of jurisdiction to try an offender. Their intention is to prevent unimportant irregularities from being set up as a ground for interfering with orders, etc., passed by a Court of competent jurisdiction. **U.B.R. (1897—1901), Vol. I, 91.** (9 A. 134, 8 B. 307, 8 C. 895, 14 M. 363, *R.*).

(3552)—*Ss. 537, 197 (=Crim. Pro. Code, 1882, ss. 537, 197)—Previous sanction required by s. 197—Omission, effect of.*—The saving provisions of s. 537 will not avail, where the previous sanction required by s. 197 is wanting. A conviction for an offence committed by a Village Magistrate, in his capacity as such, is not legal, unless previous sanction for his prosecution has been obtained. **2 Weir 710.**

(3553)—*Ss. 537 and 250 (=Crim. Pro. Code, 1882, ss. 537, 250)—Omission to make the record required by s. 250, proviso (a).*—The omission to make the record required by proviso of s. 250, in passing an order for compensation, cannot be held to amount to more than "an omission in the judgment or other proceedings during trial" (s. 537). **2 Weir 711.**

(3554)—*Ss. 537, 348, 221 (=Crim. Pro. Code, 1872, ss. 283, 315, 439)—Previous conviction.*—*Held* that the provisions of s. 439, Crim. Pro. Code, could not be said to have been properly complied with, when the particulars of the previous conviction were not distinctly set out in the charge. But where the charge gave the accused person to understand that it was intended to prove the previous conviction against him, for the purpose of affecting the punishment, and where the accused was at the time lying under sentence of the previous conviction referred to, *held* that the omission to mention the particulars of the previous conviction in the charge had in no way prejudiced the accused, and would not afford a ground for interfering in appeal with the sentence, regard being had to s. 283, Crim. Pro. Code, 1872. **A.W.N. 1881, 32.**

(3555)—S. 537—*See* ACT III OF 1867, 4 A. W.N. 286, 4 A.W.N. 59, 4 A.W.N. 291.

(3556)—S. 537—*See* ACT XXI OF 1883, ss. 6, 107, 111, 9 Bom. L.R. 967=6 Cr. L.J. 240.

(3557)—S. 537—*See* BOM. ACT III OF 1901, s. 142, 3 S.L.R. 13.

(3558)—S. 537—*See* APPEAL, 22 C. 241.

(3559)—S. 537—*See* APPELLATE COURT, 24 M. 523.

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(3560)—S. 537—*See* CHARGE TO JURY, 4 C. W.N. 576, 5 M.L.T. 134. 25 C. 561.

(3561)—S. 537—*See* COMMITMENT TO SESSIONS COURT, Rat. Un. Cr. C. 899.

(3562)—Ss. 537 and 33—*See* COMPENSATION, 6 M. 316.

(3563)—Ss. 537, 364, 533 (1)—*See* CONFESSION, 11 B.H.C. 237.

(3564)—S. 537—*See* CRIMINAL PROCEEDINGS, 14 C. 358.

(3565)—S. 537—*See* ILLEGALITY, Rat. Un. Cr. C. 466.

(3566)—S. 537—*See* JOINDER OF CHARGES, U.B.R. 1904, 1st Qr., Crim. Pro., 2.

(3567)—S. 537—*See* PENAL CODE, s. 201, 8 Bom. L.R. 538=4 Cr. L.J. 89.

(3568)—S. 537—*See* RETRIAL, Rat. Un. Cr. C. 530=Cr. Rg. 1—12—1890.

(3569)—S. 537—*See* RIOTING, 2 C.L.J. 516 =3 Cr. L.J. 153=33 C. 295.

(3570)—S. 537—*See* SUMMARY TRIAL, U.B.R. 1906, Crim. Pro., 51=5 Cr. L.J. 298.

(3571)—Ss. 537, 208 (1, 3, 4)—*See* WITNESS, 3 A. 392.

(3571-*a*)—S. 537—*See* Nos. 39, 40, 76, 80, 81, 308, 331, 349, 354, 372, 468, 549, 571, 605, 935, 946, 970, 1049, 1084, 1180, 1212, 1216, 1242, 1246, 1267, 1279, 1282, 1298, 1304, 1335, 1374, 1375, 1376, 1391, 1421, 1439, 1441, 1451, 1453, 1482, 1513, 1537, 1589, 1690, 1695, 1712, 1724, 1725, 1732, 1742, 1745, 1746, 1747, 1753, 1758, 1759, 1761, 1768, 1777, 1798, 1829, 1830, 1843, 2003, 2047, 2050, 2057, 2061, 2089, 2093, 2097, 2099, 2176, 2186, 2191, 2198, 2233, 2242, 2366, 2404, 2457, 2463, 2470, 2479, 2482, 2483, 2484, 2508, 2509, 2522, 2523, 2531, 2532, 2542, 2712, 2717, 2789, 2802, 2813, 2958, 3188, 3195, 3231, 3321, 3497, 3506, 3509, 3524, 3528, 3536, *supra*, and No. 3648, *infra*.

——S. 538 (=1882, s. 538).

(3571-*b*)—S. 538—*See* No. 1125, *supra*.

——S. 539 (=1882, s. 539).

(3571-*c*)—S. 539—*See* Nos. 1690, 2286, 2352, *supra*.

——S. 540 (=1882, s. 540; 1872, ss. 192, 351; 1861, ss. 201, 249, 262, 367).

(3572)—*S. 540 (=Crim. Pro. Code, 1882, s. 540)—Procedure in sessions trial.*—It is not competent for a judge to reverse the order of a criminal trial and to place the accused at a disadvantage by having their witnesses called and all that they could say disclosed, before the case for the prosecution is closed. **14 A. 242.**

(3573)—*S. 540—Examination of witnesses.*—Under s. 540, the Court is bound to summon and examine any witnesses whose evidence seems to be essential to a just decision of the case. **6 C.W.N. 98.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(3574)—*S. 540—Cross-examination by parties of Court-witness—Evidence Act, ss. 137, 138.*—Neither the prosecutor nor the accused can, as of right, cross-examine a witness summoned and examined by the Court under s. 540, Crim. Pro. Code, but, should either of the parties or both desire to do so, the Court should generally permit them to do so. **S.C. 275, Oudh.** (12 W.R. Cr. 75 and 3 B.L.R. A.C. 145, *R.*).

(3575)—*Ss. 540 and 244 of the Code of 1898 (=ss. 262, 263, 266 of 1882)—Summons cases—Duty of Magistrate to hear defence witnesses not produced.*—S. 262, para 2, and s. 263 (s. 540) provide for the summoning of witnesses in certain cases and the power given by s. 263 is entirely at the discretion of the Magistrate. In summons cases, the Magistrate is required to hear such witnesses as the accused shall produce in his defence. But he is not bound to examine the witnesses whom the accused does not produce. **2 Weir 304=4 M.H.C. App. XXIX.**

(3576)—*Ss. 540 and 253 of the Code of 1898 (=ss. 351, 215, Code of 1872)—Discharge of accused after examining Court witnesses.*—Where a Magistrate, after the examination of the prosecution witnesses, examined certain persons as Court witnesses, and relying on their evidence, discredited the complainant's witnesses and discharged the accused, *held*, that the procedure was not illegal. **2 Weir 714.**

(3577)—Ss. 540, 110—*See* COMPENSATION, 15 A. 365.

(3578)—S. 540—*See* LUNACY, Rat. Un. Cr. C. 279=Cr. Rg. 18 of 1886.

(3579)—S. 540—*See* MAGISTRATE, 1 W.R. Cr. Letters, 12.

(3579-*a*)—S. 540—*See* WITNESS, 11 P.R. 1886 Cr., 4 P.R. 1892 Cr.

(3579-*b*)—S. 540—*See* Nos. 1678, 1999, 2483, *supra*.

——S. 541, para (1) (=1882, s. 541; 1872, s. 88 modified); paras 2 and 3 (=1882, s. 541-A).

(3580)—S. 541 (1)—*See* LOCAL GOVERNMENT, Rat. Un. Cr. C. 827.

——S. 543 (=1882, s. 543; 1872, s. 422; 1861, s. 431).

——S. 544 (=1882, s. 544; 1872, s. 421; 1861, s. 438).

(3581 and 3582)—*S. 544—High Court Criminal Circulars, Rule 11—Magistrate—Discretion—Expenses of witnesses cited by defence.*—S. 544 of the Crim. Pro. Code and Rule No. 11, made by the Government of Bombay under that section, regulating the payment, on the part of Government, of the expenses of complainants and witnesses in cases coming before the Criminal Courts, invest the Magistrate trying a warrant-case with a discretionary power exerciseable by him within the limits specified in the rule itself. Such discretion, however, must be exercised according to sound judicial principles and reasonably. **9 Bom. L.R. 353 =5 Cr. L.J. 329.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

——S. 545 (=1882, s. 545; 1872, s. 308; 1861, s. 44).

See COMPENSATION.

(3583)—*S. 545 (=Crim. Pro. Code, 1872, s. 308)—Compensation, when can be awarded—Compensation to purchaser.*—Compensation, when awardable under s. 308, must be awarded out of the amount of the substantive fine imposed. S. 308 does not in any case authorise the award of compensation to a purchaser. **2 Weir 715.**

(3584)—S. 545 of the Code of 1882 has not altered the law, as it existed under s. 308 of the Code of 1872. Under s. 545, compensation cannot be awarded to an innocent purchaser of stolen property, as the injury to the purchaser is not the consequence of the theft, but of the sale without title to pass the property. **2 Weir 716.**

(3585)—A Magistrate found that an accused had sold a stolen horse to a certain person, and sentenced him to one month's imprisonment and a fine of Rs. 10. He also directed that the fine, if levied, should be applied under s. 545, Crim. Pro. Code, to compensate the purchaser of the animal for his loss. *Held*, that such an order was illegal. **6 M.L.T. 241.**

(3586)—It is no doubt undesirable to encourage frivolous complaints by the grant of compensation under s. 545, Crim. Pro. Code, 1882, but the law intends that compensation should be awarded when there is a substantial cause for it. **2 Weir 717.**

(3587)—Under s. 545, Crim. Pro. Code, 1898, if an injury is caused by the offence committed, then, some compensation can be awarded to the injured party. But, if the injury is other than one caused by the offence committed, the order of compensation is unwarranted. **U.B.R. (1892—1896), Vol. I, 79.**

(3588)—S. 545, Crim. Pro. Code, 1898, lays down that an order for compensation shall be made by a criminal Court, if at all, *when passing judgment*, and, in the absence of any special provision on the subject, the analogy of this rule might properly be followed. Hence, it is only when passing judgment that the Court can order the payment of a reward out of a fine, and when once the judgment has been pronounced, the Court is *functus officio*, and has no power to make further orders in the case. **U.B.R. (1892—1896), Vol. I, 80.**

(3589)—*S. 545 (=Crim. Pro. Code, 1872, s. 308)—Order for forfeiture of property—Compensation to complainant.*—Where a person was, under s. 62 of the Penal Code, sentenced to undergo a term of transportation and adjudged

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

to forfeit to Government the rents and profits of his property during that term : *held*, that it was not competent to the Court, before he was tried and convicted, to award any portion of the said rents and profits as compensation to the complainant, s. 308, Crim. Pro. Code, having no application to orders for forfeiture of property. **Rat. Un. Cr. C. 146 = Cr. Rg. 10—6—1880.**

(3590)—The prescribed course, under s. 308, is to impose a fine, and, out of the fine realised, to direct payment to the complainant of such amount as the Court thinks fit, having regard to the provisions of the section. **3 C.L.R. 404.**

(3591)—*S. 545 (=Crim. Pro. Code, 1882, s. 545)—Separate order for payment of expenses incurred by complainant.*—When expenses properly incurred in the prosecution of a criminal charge are ordered to be paid by the accused under s. 545 of the Crim. Pro. Code, such expenses should be paid out of the fine imposed ; a separate order for such expenses is improper. **Rat. Un. Cr. C. 341 = Cr. Rg. 32 of 1887.**

(3592)—Under s. 545, Crim. Pro. Code, 1898, it is not competent to a Magistrate to award the complainant the expenses incurred in the prosecution, independently of the fine imposed upon the accused ; the expenses may be made payable out of the fine imposed under s. 545 (2). **4 Bom. L.R. 877.**

(3593)—*S. 545 (=Crim. Pro. Code, 1882, s. 545)—Expenses of bringing accused before Magistrate.*—S. 545 of the Crim. Pro. Code, does not apply to such expenses as are incurred in bringing the offender before the Magistrate. **Rat. Un. Cr. C. 608 = Cr. Rg. 25 of 1892.**

(3594)—*S. 545—U. Burma Laws Act, 1886—Payment of fine to cover loss.*—A Court cannot arbitrarily award payment of a fine to cover a supposed loss, but only for one or other of the objects specified in the alove section. **U.B.R. (1897—1901), Vol. I, 121.**

(3595)—*S. 545 (=Crim. Pro. Code, 1872, s. 308)—Setting aside of conviction by appellate Court—Refund of money paid as compensation.*—Where a conviction is set aside on appeal, and a refund of the fines levied is ordered, the only remedy, if the person who has received a portion of the money as compensation refuses to refund it, lies in a Civil Court. **2 Weir 717.**

(3596)—*S. 545—Compensation for injuries to one other than the person injured.*—Where an accused person is fined for injuries caused to one, compensation out of the fines cannot be awarded to another. The latter can receive compensation, only if the fine is inflicted on the accused for an injury caused to himself. **2 Weir 718.**

(3597)—*S. 545 of the Code of 1898 (=s. 144 of the Code, 1861)—Order to pay fees under s. 31, Court Fees Act—Payment to complainant, when to be made.*—A fee which a Court may order to be re-paid to a complainant under s. 31, Court Fees Act, (Act VII of 1870), is an integral part of the sentence and must be treated as a fine imposed by the Court under s. 144 ; and such fines must be in deposit pending an appeal, where an appeal lies. **2 Weir 723 = 5 M.H.C. App. 28.** [*F.*, 1 Weir 724 = 22 M. 153 ; *D.*, 2 Weir 488 = 26 M. 421].

(3598)—*S. 545 (=Crim. Pro. Code, 1882, s. 545)—Compensation—Necessity of attention to the directions contained in the last paragraph of s. 545. Crim. Pro. Code.*—There being no provision in the Code for the refund of money paid away as compensation under s. 545, Crim. Pro. Code, the directions contained in the last para of the section should be strictly observed. **L.B.R. (1872—1892), 353.**

(3599)—*S. 545 (=Crim. Pro. Code, 1882, s. 545)—Court Fees Act, s. 31—Costs and process fees awardable under s. 545.*—When the accused is convicted in a non-cognizable case, the Court is bound to order the re-payment of process fees under s. 31 of the Court Fees Act. A Court imposing a fine in any case, cognizable or non-cognizable, should apply s. 545, Crim. Pro. Code. 1882. All legitimate costs as the pleader's fees and the stamp and the power-of-attorney, etc., and not merely process-fees, may be awarded under s. 545, Crim. Pro. Code, as well as compensation for the injury caused. **L.B.R. (1872—1892), 409.**

(3600)—S. 545—*See* ACT XIII OF 1859, Rat. Un. Cr. C. 625.

(3601 and 3602)—S. 545—*See* ACT VII OF 1870, s. 31, Rat. Un. Cr. C. 397, 24 M. 305 = 2 Weir 722, 7 M.H.C. App. 28, 1 Weir 722, 1 L.B.R. 209, U.B.R. (1892-1896), Vol. I, 7.

(3603)—S. 545.—*See* FORFEITURE OF PROPERTY, 4 M.H.C. App. 28.

(3604)—S. 545—*See* LETTERS PATENT, (MAD.), 1865, s. 15, 1 Weir 788-B.

(3605)—S. 545—*See* MAGISTRATE, JURISDICTION OF, Rat. Un. Cr. C. 958.

(3606)—S. 545—*See* NEGLIGENCE, 5 C.P.L. R. Cr. 45.

(3607)—S. 545—*See* OBSTRUCTION, 1 L. B.R. 48.

(3607-*a*)—S. 545—*See* Nos. 94, 793, 3385, 3437, 3438, 3439, 3440, *supra*.

——S. 546 (=1882, s. 546 ; 1872, s. 308, last para).

(3607-*b*)—S. 546—*See* No. 793, *supra*.

——S. 547 (=1882, s. 547).

(3608)—*S. 547 (=Crim. Pro. Code, 1882, s. 547)—Compensation to complainant out of fine—Re-trial and order for refund of portion of fine—Recovery of compensation.*—The accused were tried by a first class Magistrate and fined Rs. 25 each and it was ordered that half the fine, if recovered, was to be given to the complainant. The conviction and sentence

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were quashed by the High Court who ordered a retrial. The second class Magistrate, on retrial, fined each of the accused Rs. 10 and said that "as they had already paid a fine of Rs. 25 each, the result of the sentence will be that Rs. 15 will have to be returned to each of them." The complainant, who had been, previously, given half the fine, on being called upon by the District Magistrate, stated that he had spent the money and was unable to repay. A reference was then made by the District Magistrate as to how the compensation could legally be recovered. *Held*, that the decision of the second class Magistrate amounted to an order to the complainant to refund the sum of Rs. 15, and was, therefore, enforceable under s. 547, Crim. Pro. Code. **Rat. Un. Cr. C. 213 = Cr. Rg. 10—3—1885.**

(3608-*a*)—S. 547—*See* No. 3602, *supra*.

——S. 548 (=1882, s. 548; 1872, ss. 201, 276; 1861, s. 230, modified; Presidency Magistrate's Act, 1877, s. 170).

(3609)—*S. 548 (= Crim. Pro. Code, Act X of 1882, s. 548)—Charge—Copies to accused.*—A "charge" is not an order of a Criminal Court by which an accused person could be said to be affected within the meaning of s. 548 of the Crim. Pro. Code, so as to entitle him to copies of depositions where the trial has not advanced beyond the examination of the prosecution witnesses. **A.W.N. 1892, 140.**

(3610)—*Ss. 548, 367, 531 (= Crim. Pro. Code, 1872, ss. 276, 464)—Copy of judgment.*—Ss. 276 and 464 of the Crim, Pro. Code, are wholly distinct. An accused person is, therefore, entitled to a copy of the judgment in his own language unconditionally under s. 464, and also to one in the language in which it is written, under s. 276, under the conditions specified therein. **Rat. Un. Cr. C. 73.**

(3611)—S. 548—Copies of order by, and depositions before, Presidency Magistrates, right to—*See* ACT IV OF 1877, s. 170, 8 C. 166 = 10 C.L.R. 190.

(3612)—Ss. 548, 426, 439, 440, 531—*See* REVISION, 31 P.R. 1881 Cr.

(3612-*a*)—S. 548—*See* Nos. 2717, 3481, *supra*.

——S. 550 (New).

(3613)—*S. 550—Appeal—Acquittal—Enhancement of sentence—First report—High Court's power to acquit innocent person without appeal.* *Held* that the initial report of an offence to the Police is always of great importance in every criminal case. Where it has been made a considerable time after the occurrence and by a person who is in a position to know all the facts and persons concerned, no person should be convicted whose name is not mentioned therein as one of the offenders, particularly when there is no likelihood of his name being omitted. A severe sentence is not called for where an offence has been committed on a considerable provocation caused by an unjustifiable act. Enhancing a sentence is not permissible when the convicted person has duly served the sentence before the application for enhancement is preferred. S. 550 of Act V of 1898, no doubt, gives the Police very wide powers with regard to the seizure of cattle alleged or suspected to have been stolen, but it does not extend to the taking away other cattle, simply because they are mixed up with the stolen ones. The High Courts, when dealing with cases in appeal or revision, are competent to acquit an innocent person, although he has failed to exercise the right of appeal. It is no doubt the duty of the Courts to uphold the acts of the executive and ministerial officers, but it is equally their duty to keep a jealous eye upon these acts and to see that nothing is done contrary to law under the cloak of authority. **14 P.W.R. 1909 Cr.**

(3614)—*S. 550—Seizure of property by police officer—Claim of person in possession.*—The police seized property on suspicion of its being stolen property under s. 550, Crim. Pro. Code, and the Magistrate issued a proclamation before satisfying himself as to the claim of the person in possession. *Held*, that it was not incumbent on the Magistrate to decide the claim before issuing the proclamation, as the person in whose possession the property was found has an opportunity of making good his claim to the Magistrate even after the issue of the proclamation. **2 S.L.R. Cr. 32 = 10 Cr. L.J. 198.**

——S. 552 (=1882, s. 551).

(3615)—*S. 552—Scope.*—The purpose contemplated by s. 552, must not be construed so as to make it include purposes which, although not unlawful in themselves, might only become so when entertained towards a child in opposition to the wishes of its guardian. **4 Bom. L.R. 609.**

(3616)—*S. 552 (= Crim. Pro. Code, 1882, s. 551)—Scope of—Detention of children for purposes of conversion—Unlawful detention for an unlawful purpose—Illegal order of restoration by Magistrate—High Court's power of interference.*—S. 551 of the Code applies to women and female children only. This combination and the exclusion of male children go to show not only that some definite purpose, unlawful in itself, was contemplated, but that the purpose has some special reference to the sex of the person against whom it was entertained. Therefore, it should not be so construed as to make it include purposes which, although not unlawful in themselves, might only become so when entertained towards a child in opposition to the wishes of its guardian, *e.g.*, detention of a female child, against the will of her parents or guardians, for the purpose of being brought up in a religion of which such parent or guardian dissapproved. [*F.*, 4 Bom. L.R. 609.] Although the detention of a child,

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

against the will of her parent or guardian with a view that she should be brought up in a religion which such parent or guardian disapproved of, and the adoption of which would not only involve a total change in the child's mode of life, but would also deprive the parent or guardian of any control in the education or bringing up of the child, would amount to an unlawful detention, notwithstanding the consent of the girl to such detention, yet, it could not amount to "an unlawful detention for an unlawful purpose. Where, in the above case, the Magistrate makes an order for the restoration of the girl to the parent or guardian, which order he has no power to make, it is very questionable whether the High Court would have the power to take away the child from the parent or guardian and to restore it to the person, who was detaining her against the wishes of the parent or guardian. Even assuming that the High Court has such power, it could only with propriety, be exercised, if the proper guardian is shown to be in some way disqualified, or if, at the least, the guardian's character is so bad and mode of life so immoral, that it would not be proper to place the child in his or her charge. **16 C. 487.**

——S. 554 (=1882, s. 553; 1872, ss. 442, 493, 509).

(3616-*a*)—S. 554—*See* No. 495, *supra*.

——S. 555 (=1882, s. 554).

(3616-*b*)—*S. 555—Act I of 1878, s. 9.*—Jurisdiction of the officer in charge of the excise and opium administration of a district to try cases under the Opium Act—Meaning of the term "personally interested." **15 A. 192.**

(3616-*c*)—S. 555—*See* Nos. 1219, 1754, 1847, *supra*.

——S. 556 (=1882, s. 555).

(3617)—*S. 556—"Personally interested," meaning of.*—A Magistrate does not, by reason only of his being a member of the sub-committee of a Municipality, which recommended the prosecution of the accused for an offence against the Municipal Board, become a person "personally interested" within the meaning of s. 556, so as to disentitle him to try the case. **27 A. 25=A.W.N. 1904, 154.**

(3618)—*S. 556 (=Crim. Pro. Code, 1882, s. 555).*—In s. 555, Crim. Pro. Code, 1882, the words "personally interested" cannot mean that a public officer whose duty it is to see that the law is obeyed is merely, by reason of that duty, a person personally interested in the prosecution and trial of an offender against the statute law. They cannot refer to any very remote interest in the matter, and must refer to some particular and immediate personal interest in the case and its results. A Magistrate cannot be said to be "personally interested," within the meaning of s. 555 merely by reason of its being his duty as an officer under the Government to see the law relating to the sale of opium enforced and maintained in that part of the District of which he has charge. He is, therefore, not precluded from trying an offence under the Opium Act, I of 1879. **15 A. 192, F.B.** [*F.*, 27 A. 33=A.W.N. 1904, 157; *R.*, U.B.R. (1897—1901), 127, 24 M. 238=2 Weir 730, 22 A. 340; *D.*, A.W.N. 1908, 95=7 Cr. L.J. 396=5 A.L.J. 357].

(3619)—*Held*, that s. 556 of the Code of Criminal Procedure does not debar an Excise Officer from trying a case under the Excise Act, 1896, in which he himself is responsible for the prosecution. **A.W.N. 1908, 95=5 A.L.J. 357 =7 Cr. L.J. 393.**

(3620)—The phrase 'interested,' as used in s. 556 of the Code, does not imply mere intellectual 'interest,' but something of the nature of an expectation of advantage to be gained, or of a loss, or of some disadvantage to be avoided, by the person who is said to be interested in the case. The mere fact that the enquiry was made by the Magistrate is not to be regarded as a disqualifying ground under the section. **8 Bom. L.R. 947= 5 Cr. L.J. 2.** (2 Bom. L.R. 664, *F.*).

(3621)—It is essential not only that there should be no personal interest or prejudice on the part of the Judicial Officer, which would disqualify him from trying a particular case, but also that the mere appearance of prejudice should be avoided for the sake of protecting the administration of justice from the possibility of an imputation of partiality or unfairness. **U. B.R. (1897—1901), Vol. I, 123.**

(3622)—*S. 556—"Personally interested"—Magistrate examined as a witness in the case without any protest from either of the parties.*—An oral complaint was made before a Magistrate, during a vacation, at his private residence. After the re-opening of the Court, the case was put up before the same Magistrate on the written complaint of the complainant. During the course of the trial, the Magistrate found it necessary to record his own evidence, as to the circumstances attending the oral complaint to himself regarding the commission of the offence. He, therefore, examined himself as a witness, recording the statement himself and permitting himself to be cross-examined and re-examined and recording those statements also. During all this time and till after the judgment, neither party took any objection to the trial being held by the Magistrate, and the accused was convicted. On appeal by the accused on the ground that the Magistrate was not competent to try the case, *held*, that the Magistrate should not be considered to be personally interested in the matter, and that the plea was only an afterthought in order to escape from the conviction, inasmuch as the objection was put forward for the first time in the appeal, the accused having, at the time of the trial, no suspicion that they would not have a fair and impartial trial at his hands. **27 A. 33=A.W.N. 1904, 157.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(3623)—*S. 556—Disqualification of Magistrate.*—A Magistrate is not disqualified under s. 556 from trying a case, merely because of the fact that, in the departmental enquiry in the case, he forwarded the papers to the Collector with his opinion that there was apparently sufficient evidence to justify criminal prosecution. **5 Bom.L.R. 542.** [*R.*, 1 Sind L.R. 98, 101, Cr.]

(3624)—*S. 556 (=Crim. Pro. Code, 1882, s. 555)—Explanation to section—Scope of—Ben. Act V of 1876, s. 256—Order under—Conviction by District Magistrate as Chairman of Municipal Commissioners—Legality.*—The explanation to the section does not apply to a case, in which a Magistrate may have been personally concerned as a Municipal Commissioner which forms the subject of trial before him. It was rather intended to prevent an objection being raised that, from the mere fact that the Magistrate might happen to be a Municipal Commissioner, he was necessarily disqualified from holding a trial in which some Municipal matter was involved. But in a case in which the Magistrate is one of the prosecutors, in his capacity as the Chairman, he will not be competent to try the case. An accused person was tried and convicted, under s. 188 of the Penal Code, of having disobeyed an order of the Municipal Commissioners, under s. 256, Bengal Act V of 1876. The District Magistrate, who tried and convicted the accused, was present, as Chairman of the Municipal Commissioners, at that meeting when that order was passed. Held that the conviction was illegal and should be set aside. **10 C. 1030.** [*R.*, 15 A. 192 F.B., 23 C. 44, 9 C.P.L.R. 26 Cr.].

(3625)—*S. 556—Magistrate who issued process but did not proceed under s 190 (1) (c) or s. 202—Competency to hear appeal against conviction.—Held*, that a Magistrate who did not take action under s. 190, sub-s. (1), cl. (*c*) or order a local investigation, was not incompetent to hear an appeal from a judgment ultimately convicting the accused, merely because, he, without expressing any opinion hostile to them, summoned them to answer a charge in his capacity as Magistrate in charge of the criminal business of the *Sudder* sub-division. **36 C. 869.**

(3626)—*S. 556 (=Crim. Pro. Code, 1882, s. 555)—Competency of Magistrate, being also Municipal Chairman, to try Municipal cases.*—The Chairman of a Municipality being an executive officer, who would be the proper person to institute a prosecution for offences against the health and comfort of the town, is disqualified from trying Municipal offences, in his capacity as Magistrate. **15 M. 83=2 Weir 326.** [*R.*, 23 C. 44].

(3627)—*S. 556 (=Crim. Pro. Code, 1882, s. 555)—Magistrate making local inspection of the scene of alleged occurrence—Competency to try the case.*—Where a Magistrate, trying a case of riot, made a local inspection of the scene of the alleged offence and was influenced by such inspection in arriving at a conclusion in the case, *held*, that, by so doing, the Magistrate had made himself a witness in the case and was incompetent to try the case. **19 M. 263=2 Weir 725.** [*R.*, 19 A. 302, A.W.N. 1904, 157=27 A. 33; *D.*, 2 Weir 727, 89 P.L.R. 1901=13 P.R. 1901, 2 Weir 728].

(3628)—Where a Magistrate inspected the *locus in quo* and stated in his judgment what he saw when he inspected it, *held*, that, having regard to the amendment of the law by the addition to the explanation to s. 556 of the Code, the Magistrate was not incompetent to try the case, and the judgment was not rendered void. **2 Weir 728.**

(3629)—*S. 556—Disqualification of a Magistrate to try a case—Question of fact—Magistrate directing prosecution—Subsequent trial by him—Legality.*—The question whether a given case falls within the provisions of s. 556 is a question of fact to be determined by the circumstances of each case. Illustration to s. 556 of the Code prohibits a Magistrate from trying a case, which he himself institutes or gives order for the institution thereof. An authorisation by a Sub-Divisional to a Subordinate Magistrate to prosecute a person on such charges as may be capable of being proved in a criminal Court does not amount to a "direction within the meaning of the illustration, but merely amounts to an authorisation. The Magistrate, therefore, is not disqualified from trying the case. **24 M. 238=2 Weir 730.**

(3630)—Where a Magistrate, in his capacity of Collector, takes an active part in initiating a prosecution, he is disqualified from trying the case under s. 556, Crim. Pro. Code, 1898. **U.B.R. (1897—1901), Vol. I, 133.** (18 B. 442, *R.*)

(3631)—*S. 556—Investigation by Magistrate—Trial by same Magistrate—Validity.*—Where a District Magistrate took an active part in the investigation of a case, he was held not to be competent to have it tried himself. **14 Bur. L.R. 335=9 Cr. L.J. 66.**

(3632)—*S. 556 (=Crim. Pro. Code, 1882, s. 555)—Act I of 1878 (Opium), s. 9, offence under—Competency of District Magistrate to try.*—A District Magistrate, who is also a District Collector, is not debarred, by the circumstances of his dual appointment, from trying an offence under s. 9 of the Opium Act, the prosecution of which has not been instituted by himself, as Collector. **L.B.R. (1872—1892), 400.**

(3633)—*S. 556—Competency of Sessions Judge to hear appeal from a judgment passed by himself.*—Under s. 556, a Sessions Judge cannot hear an appeal from a judgment passed by himself. He can, however, under Regulation V of 1895 (amendment to the Upper Burma Criminal Justice Regulation), s. XIV-A (1), after adopting the procedure of that section, direct that the appeal be transferred for trial to any other Sessions Judge. **U.B.R. (1897—1901), Vol. I, 8.**

(3634)—*S. 556—"Personally interested"—Want of jurisdiction—Irregularities vitiating*

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proceedings.—Where, in a prosecution under s. 3 of the Gambling Act, III of 1867 (=s. 12, Gambling Act, 1899), the Magistrate, who tried the case because of information or knowledge possessed by himself, applied for process against the accused, *held*, that he was at the same time prosecutor and Judge, and that it was impossible, therefore, to say that the accused were not, or were not liable to be, prejudiced by such a position of affairs. The conviction and sentence were consequently quashed. **U. B.R. (1897—1901), Vol. I, 125.**

(3635)—*S. 556—Same man must not at the same time be accuser and judge.*—The same person must not at the same time be accuser and judge; he must not be a party or be personally interested, and he must not have prejudged the case before him; but where a Magistrate acts executively throughout without necessarily forming any opinion on the merits, and where the accused has not been substantially prejudiced, it would be unnecessary to interfere in revision. It is manifestly desirable that, when it could be avoided without inconvenience, the trial of an offence should not be had before a Judge or Magistrate who, in another capacity, has had to do with the institution of the prosecution, and it is the general practice to make arrangements accordingly. **U.B.R. (1897-1901), Vol. I, 127.** (14 A. 354, 15 A. 192, 6 B. 479, 3 C. 622, 16 C. 766, *R.*).

(3636)—*S. 556*—Circumstances under which a Magistrate is debarred under the above section from trying an offence. **U.B.R. (1897—1901), Vol. I, 135; U.B.R. (1897—1901), 133.**

(3637)—*S. 556 (=Crim. Pro. Code, Act X of 1882, s. 555)—Municipality—Magistrate authorised to institute proceedings.*—Where a Magistrate who had been authorised by a Municipal Council to institute prosecutions for breaches of its bye-laws, directed the prosecution of a person in respect of the infringement of one of the rules of the said bye-laws and himself tried and convicted him, *held* that the Magistrate was debarred by s. 555 of the Crim. Pro. Code, from trying the case. **A.W.N. 1891, 81.** (6 A.W.N. 29, *R.*).

(3638)—*S. 556—Disqualification of Magistrate.*—Where a District Magistrate, who was a member of a Municipal Board, issued orders to the police to prosecute the accused for driving in a carriage drawn by horses which were galled, and the Police Superintendent, a few days after, saw the carriage being drawn by a different pair, but still more galled, *held* that the District Magistrate was disqualified from trying the case himself, as he was a party interested in these proceedings and came to the trial with pre-conceived views as to the guilt of the accused. **A. W. N. 1886, 291.** [*R.*, A.W.N. 1891, 81; *D.*, 15 A. 192].

(3639)—*S. 556—Applicability to appeals.*—S. 556 of the Crim. Pro. Code applies to the hearing of an appeal. **A.W.N. 1899, 74.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(3640)—S. 556—*See* ACT V OF 1861, s. 29, 22 A. 340.

(3641)—S. 556—*See* ACT III OF 1877, s. 82, 8 B.L.R. 422=17 W.R. Cr. 39.

(3642)—S. 556—*See* ACT I OF 1879, A.W.N. 1884, 37.

(3643)—S. 556—*See* BOM. ACT VII OF 1867, Rat. Un, Cr. C. 433.

(3643-*a*)—S. 556—*See* PUN. ACT XX OF 1891, s. 188, 3 P.R. 1895 Cr., 5 P.R. 1896 Cr.

(3644)—S. 556—*See* APPEAL, 2 L.B.R. 302, 39 P.R. 1884 Cr.

(3645)—S. 556—*See* BENCH OF MAGISTRATES, 10 C. 194.

(3646)—S. 556—*See* COMMITMENT TO SESSIONS COURT, 2 L.B.R. 209.

(3647)—S. 556—*See* MAGISTRATE, JURISDICTION OF, 18 B. 442, Rat. Un. Cr. C. 321=Cr. Rg. 7 of 1887, Rat. Un. Cr. C. 339=Cr. Rg. 30 of 1887, 23 C. 44, 3 C.W.N. 607, 14 B. 572, 20 B. 502, 20 C. 857.

(3648)—Ss. 556, 537—*See* MAGISTRATE, JURISDICTION OF, 23 C. 328.

(3649)—S. 556—*See* BUR. REG. XI OF 1887 (VILLAGES), U.B.R. (1892—1896), Vol. I, 321.

(3650)—S. 556—*See* SESSIONS JUDGE, JURISDICTION OF, 20 A. 181.

(3650-*a*)—S. 556—*See* Nos. 704, 706, 998, 1247, 1295, 1558, 3482, 3500, *supra*.

——S. 558 (=1882, s. 556; 1872, ss. 3, 539; 1861, s. 444).

(3651)—*S. 558 (=Crim. Pro. Code, 1882, s. 556)—Personal interest of Magistrate.*—It is generally expedient that a Magistrate who, as an Assistant Collector, had supervised a departmental inquiry against a subordinate, should not try the criminal case against the same person. **Rat. Un. Cr. C. 631=Cr. Rg. 57 of 1882.**

(3652)—*S. 558 (=Crim. Pro. Code, 1882, s. 556)—Inquiry into a matter by an officer as Revenue Officer—His competency to try the case.*—*Held*, that the conduct of a Deputy Magistrate in directing the Deputy Tahsildar, who had inquired into the matter as a Revenue Officer, to try it as a Magistrate was highly improper, and that his hearing and disposing of the appeal, when the correctness of his own order was in question, was also improper. **2 Weir 729.**

(3653)—*S. 558 (=Crim. Pro. Code, 1882, s. 556)—Municipal Councillor reporting a case for prosecution—His competency to be one of the Bench of Magistrates to try the case.*—A Municipal Councillor who reports a case of breach of Municipal law for prosecution is not interested in the matter, within the principle "*nemo potest esse simul actor et judet.*" Where, in such a case, the Council directs the prosecution, the Municipal Councillor is not debarred from trying the case as one of the Bench of Magistrates. **2 Weir 728.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

——S. 559 (=1882, s. 557).

(3654)—S. 559—*See* PRESIDENCY MAGISTRATE, 23 B. 490.

——S. 560 (=1882, s. 559).

(3654-*a*)—*S. 560*—An order for compensation under s. 560 of the Crim. Pro. Code (X of 1882) is not a fine and if passed by a Magistrate of the first class is not appealable, whatever be the amount awarded. Sub-section (3) gives a right of appeal only in respect of orders for compensation passed by a Magistrate of the second or third class, and such an order would be appealable irrespective of the amount awarded. **8 C.P.L.R. 13 Cr.**

(3654-*b*)—S. 560—*See* No. 472, *supra*.

——S. 561 (=1882, s. 561).

(3655)—*S. 561 (a) (=Crim. Pro. Code, Act X of 1882, s. 561 (a))—Penal Code, s. 376—Investigation by inferior police officer—Regularity.*—Where an offence to which the provisions of s. 561 (*a*) of the Crim. Pro. Code, applies has been taken cognizance of by a District Magistrate, the fact that it has been investigated by a police officer below the rank of an Inspector is not a material irregularity which would vitiate the subsequent proceedings. **A.W.N. 1895, 9.**

——S. 562 (New).

(3656)—*S. 562— When applicable.*—Where no previous conviction is proved against an offender, and the offence is one under the Indian Penal Code pu ishable with not more than two years' imprisonment, the section is applicable, having regard to the youth, character and antecedents of the offender. **24 A. 306.**

(3657)—S. 562 of the Crim. Pro. Code should be used freely in suitable cases. It should not be applied indiscriminately and without due consideration to the cases of all first offenders. The Court must have regard to the incidents specified. Among the most important points for consideration are the character and antecedents of the accused. **2 L.B.R. 314.** (2 L.B.R. 65, *R.*).

(3658)—An order under this section is bad if the accused is 35 years of age, *i.e.*, if he is not a person whose youth can be taken into consideration ; and if the offence disclosed is one punishable under s. 456, I.P.C., *i.e.*, punishable with more than two years' imprisonment. **U.B.R. (1897—1901), Vol. I, 139.**

(3659)—*S. 562, Limited application of.*—S. 562, Crim. Pro. Code, is carefully limited in its application, and the Courts should not go beyond the plain meaning of its provisions. In cases coming under the section, it is not open to a Court, on proof of youth, to omit regard to the character, antecedents, or to the trivial nature of the offence, or to consider the trivial nature of the offence alone and disregard the age of the offender. **1 L.B.R. 41, F.B.,** [*Overruled*, 1 L.B.R. 41].

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(3660)—*S. 562—Scope and applicability of section.*—Where the charge was in the alternative either of theft or of retaining stolen property, and the Magistrate, while convicting the accused, did not say of which of these offences he convicted them, *held* that, in the absence of a conviction for theft, the Magistrate was not competent to pass an order under s. 562. **1 Bom. L.R. 856.**

(3661)—In dealing with an accused under s. 562, Crim. Pro. Code, it is not competent to a Magistrate to ask him to appear in Court on a day fixed to receive sentence ; all he can do is to release the accused on probation of good conduct for a certain period and to direct him to appear and receive sentence when called upon during such period. **2 Bom. L.R. 702.**

(3662)—The point for decision by a Full Bench, was whether s. 562 of the Code applies to the aggravated form of cheating, under s. 420 of the Penal Code. On the reasoning that the word, 'theft,' as used in s. 562 can only mean simple theft, for, otherwise, it would not have been followed by the words "theft in a building" as well, it was *held* that the word 'cheating' in the same section can mean only simple cheating, as under s. 417 of the Penal Code, and not include the aggravated form of it, under s. 420 of the Penal Code. The words 'theft,' 'dishonest misappropriation' and 'cheating' in s. 562, refer to theft, etc., in their simple form punishable respectively under ss. 379, 403 and 417 of the Penal Code. **3 L.B.R. 95=3 Cr. L.J. 21, F.B.**

(3663)—The said section does not give a general power to release first offenders in trivial cases. Regard must be had to the youth, character and antecedents of the offender, to the trivial nature of the offence and to any extenuating circumstances under which it was committed. Apparently only comparatively youthful offenders can be dealt with under this section, though it is not restricted to those who are technically juvenile offenders. **U.B.R. (1897—1901), Vol. I, 137.**

(3664)—*S. 562—First offender mentioned in section need not necessarily be a youth—Discretion of Magistrates.*—Under s. 562, the first offender, with a past good character and antecedents, need not necessarily be also a youth. The first essential is that the accused must be a first offender, and if he is one, the extenuating considerations which entitle him to the indulgence are his youth, character and antecedents. **2 Bom. L.R. 817.** [*F.*, 24 A. 306].

(3665)—In order to enable a Court to exercise the power conferred by the above section, it is not necessary that the offender should be young, that the offence should be trivial, and that there should be extenuating circumstances. The mention of those conditions and of the character and antecedents of the offender merely indicates generally considerations with regard to which the discretion of the Court

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

should be exercised in dealing with first offenders who are convicted of any of the offences specified in the section. **U.B.R. (1904), 1st Qr., Penal Code, 7.**

(3666)—In order to give a Court power under s. 562, Crim. Pro. Code, to release an offender on probation of good conduct, it is not necessary that the offender should be young, that the offence should be trivial and that there should be extenuating circumstances. They merely indicate the lines on which the discretion of the Court should be exercised in dealing with first offenders who are convicted of the offences specified in the section. Regard must also be had to the character and antecedents of the accused. **2 L.B.R. 65.** (1 L.B.R. 41, *overruled*; U.B.R. 1897—1901, 137, *Diss.*).

(3667)—*S. 562—"Court before whom he is convicted"—Construction.*—By the use of the words "Court before whom he is convicted" in s. 562, it is not the intention of the Legislature to limit the power of making orders under that section to the Court of first instance. The proviso to the section is inconsistent with the view that this was the intention of the Legislature. **29 M. 567=5 Cr. L.J. 136.**

(3668)—*S. 562—Joint trial of a boy of 11 years and an aged man—Reference to first class Magistrate of both accused—Validity.*—Where the first accused, aged nearly 50, and the second accused, a boy of 11 years, were charged before a second class Magistrate under s. 379, I.P.C., and the Magistrate sent the case of both the accused to a first class Magistrate so that the second accused might be dealt with under s. 562, Crim. Pro. Code. *Held*, (1) that the second class Magistrate should have disposed of the case of the first accused according to law, without sending his case to the first class Magistrate, that he should have submitted the case of the second accused only, and that the first class Magistrate should take from the second accused a bond fulfilling the requirements of s. 562. **2 Bom. L.R. 112.**

(3669)—*S. 562—Second class Magistrate not specially empowered under s. 562—His power—Conviction under ss. 454, 308, I.P.C.—Order under s. 562.*—A second class Magistrate, who had not been specially empowered by the local Government to exercise jurisdiction under s.562, cannot act under the first part of the section, although he has been invested under the former Code with all the powers specified in the fourth schedule of that Code which contained no provision corresponding to s. 562 of the new Code. **2 Weir 731.**

(3670)—*S. 562—First offenders.*—Where a person is convicted both under ss. 454 and 308, I.P.C., no order can be made under s. 562, Crim. Pro. Code, as a person convicted under s. 454, I.P.C., not coming under s. 562, Crim. Pro. Code, cannot be released on executing a bond, although the other offence is referred to in the section. **2 Weir 731.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —continued.

(3671)—*S. 562—Power of Court to release first offenders in trivial cases—Procedure.*—In this case the accused was of 40 years of age. The Magistrate gave him the benefit of the above section, because the value of the stolen property was insignificant and this was his first offence. He passed an order requiring the accused to execute a bond to be of good behaviour for six months, or, in default, to suffer twenty stripes. *Held*, that the Court should not pass an order for release on probation and at the same time pass a specific sentence in default. The proper procedure is for the Court to pass the order for release on probation; if the offender does not accept the terms, then sentence should be passed. **U.B.R. (1897—1901), Vol. I, 137.**

(3672)—*S. 562—Penal Code, s. 457, offence under.*—House-breaking by night under s. 457, Penal Code, not being one of the offences mentioned in s. 562, Crim. Pro. Code, an accused, 16 or 17 years of age, convicted under s. 457, cannot, instead of being sentenced to imprisonment, be released upon probation of good conduct. **15 C.P.L.R. Cr. 11.**

(3673)—*S. 562—Indian Penal Code (Act XIV of 1860), s. 420, offence under—"Cheating", scope of the word, as used in s. 562.*—*Held*, that s. 562, Crim. Pro. Code, is not applicable to convictions under s. 420, I.P.C. The word "cheating" used in s. 562, Crim. Pro. Code, covers only simple cheating, and not the more aggravated forms of cheating for which higher punishments are provided in the I.P.C. **23 P.W.R. 1908 Cr.**

(3674)—*S. 562—Criminal breach of trust—Release of accused on security for good conduct.*—A person convicted of criminal breach of trust, which is not one of the offences specified in this section, and which is punishable with more than two years' imprisonment, cannot be released on security for good conduct. **U.B.R. (1897—1901), Vol I, 138.**

(3675)—*S. 562—Scope and extent of—Servant stealing master's property, whether can be released on probation of good conduct—Statutes, construction of.*—A servant found guilty, and convicted, under s. 381, I.P.C., of theft of his master's property was held not to be entitled to be released, under s. 562, Crim. Pro. Code, upon probation of good conduct, as theft by a servant is not one of the offences mentioned therein. When an Act gives a special power, that power must be limited to the purpose for which it is conferred; and jurisdiction must be exercised strictly in accordance with the provisions of the statute which creates it. It is an evasion of the law to treat an aggravated, as an ordinary offence, and thus introduce a different jurisdiction or a lower scale of punishment. **4 N.L.R. 18=7 Cr. L.J. 319.**

(3676)—*S. 562—Conviction—Sentence.*—If the accused is convicted, some sentence must be passed. **L.B.R. (1872—1892), 409.**

Crim. Pro. Code (Acts V of 1898, X of 1882, X of 1872, XXV of 1861 and VIII of 1869) —concluded.

(3677)—*S. 562—Inability to furnish security for good behaviour—Procedure to be adopted—Sentence to be nominal.*—The view that, if an accused person is ordered to give security under s. 562 of the Code and fails to do so, he should be detained in prison till the expiration of the period for which security is to be furnished, is not in accordance with any provision of law. The proper course is for the Magistrate to ascertain, before passing an order under s. 562, whether the accused is likely to be able to give security immediately or within a reasonable time. If he fails to give security within a reasonable time, the Magistrate should pass a sentence which should be nominal. **3 L.B.R. 2=2 Cr.L.J. 374.**

(3678)—*S. 562—Attempt to commit offences—Applicability of section to.*—A boy, aged 18 years, was convicted of an attempt to cause hurt with a dangerous weapon. The Magistrate ordered him to execute a bond with a surety under s. 562 of the Code. *Held*, the object of s. 562 was to provide a lesser and alternative remedy for a certain class of cases. Though the maximum sentence, under s. 324, I.P.C., is 3 years, an attempt to commit that offence is only punishable with one and a half years. The "term of imprisonment" and not the "nature of the offence" being the test as to the applicability of s. 562 in cases like the present, the order of the Magistrate was legal. **3 L.B.R. 30.**

(3679)—S. 562—*See* APPEAL, 24 P.R. 1904 Cr.

(3680)—S. 562—*See* PENAL CODE, s. 95, 1 N.L.R. 139.

(3681)—S. 562—Procedure to be adopted—*See* PRACTICE AND PROCEDURE, 2 L.B.R. 216.

(3682)—S. 562—*See* SECURITY TO KEEP THE PEACE, 4 L.B.R. 277.

(3682-*a*)—S. 562—*See* Nos. 617, 622, 2555, 2556, 2561, 2670, 2671, 2803, *supra*.

——S. 563 (New).

(3682-*b*)—S. 563—*See* No. 2556, *supra*.

——S. 565 (New),

(3683)—*S. 565—Penal Code, ss. 457 and 511.—Held*, that, where either the previous or subsequent conviction of an accused person is under s. 511, I.P.C., for an attempt to commit an offence punishable for a term of three years or upwards, under any of the sections specified in Ch. XII or Ch. XVII of the I.P.C., the Court trying the case has no power to proceed and pass an order against him under s. 565, Crim. Pro. Code. **35 P.W.R. 1907 Cr.=17 P.R. 1907 Cr.=6 Cr. L.J. 378.**

(3684)—*S. 565 (4)—Penal Code, s. 176—Omission to inform when punishable.*—Cases under s. 565 (4) of Crim. Pro. Code should be dealt with under the first part of s. 176, Penal Code. **4 M.L.T. 325=19 M.L.J. 274=31 M. 548=8 Cr. L.J. 425.**

(3685)—S. 565, sub-s. 3—*See* PENAL CODE, s. 176, 1 N.L.R. 133.

Criminal Procedure Supreme Courts Act.

See ACT XVIII OF 1862.

Criminal Proceedings.

(1)—*Criminal proceedings taken on Sunday.*—A Magistrate is not debarred in this country from taking criminal proceedings on Sundays. **6 N.W.P. 177.**

(2)—*Crim. Pro. Code, s. 195—Sanction to prosecute—Prosecution not to be conducted during pendency of appeal.*—Criminal proceedings for perjury or forgery arising out of a civil litigation should not go on during the pendency of such litigation. Where a sanction has been granted for the prosecution for perjury of a party to a civil suit, no prosecution could be instituted on such sanction until the appeal from the suit pending in a higher Court has been disposed of. **16 B. 729.** [*Not F.*, 23 C. 610; *R.*, 2 Weir 415, 26 B. 785, 31 C. 858, 34 C. 848=11 C.W.N. 712=5 Cr. L.J. 480=6 C.L.J. 531].

(3)—*Stay of criminal proceedings during pendency of civil suit.*—Although the High Court has often acted on the principle that criminal proceedings should not go on during the pendency of civil litigation regarding the same subject-matter, it is not an invariable rule. Where, after making enquiries under Chap. XXXV of the Crim. Pro. Code, regarding the genuineness of the transaction put forward by the party who applied to raise an attachment, the Subordinate Judge committed the case to the Sessions on a charge of forgery and perjury, but meanwhile a regular suit had been filed to establish the genuineness of the transaction, *held* that the fact of the institution of the suit would not be sufficient for the High Court to quash the commitment regularly made by the Subordinate Judge to the Sessions Court, or to direct the trial to be adjourned pending the hearing of the civil suit, and possibly of an appeal and second appeal. **18 B. 581.** [*R.*, 23 C. 610, 26 B. 785, 31 C. 858, 34 C. 848=5 Cr. L.J. 480=6 C.L.J. 531=11 C.W.N. 712; *D.*, 30 M. 226=6 Cr. L.J. 131].

(4)—*Criminal proceedings—Procedure.*—In a criminal proceeding, an accused person ought to be distinctly made to understand from the beginning what the Court is about, and no laxity ought to be allowed in the procedure prescribed by the Code. **6 Bom. L.R. 573.**

(5)—*Magistrate's power to split up an offence—Summary jurisdiction—Right of appeal, deprivation of—Penal Code, ss. 143, 144.*—No Magistrate is entitled to split up an offence into its component parts, for the purpose of giving himself summary jurisdiction, thereby depriving the prisoner of his right of appeal. If a charge of an offence, not triable summarily (*e.g.*, under s. 144, Penal Code), is laid and sworn to, the Magistrate must proceed with the case, accordingly, unless he is, at the outset, in a position to show, from the deposition of the complainant, that the circumstances of aggravation are not to be believed. The proceedings of a Magistrate, acting contrary to the

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above principle, are void. **4 C. 18=3 C.L.R. 44.** [*Exp.*, 13 B. 502 ; *Dist.*, 10 A. 55, 22 M. 459=2 Weir 254 ; *R.*, 16 C. 715, 1 Bom. L.R. 683, 25 B. 90=2 Bom. L.R. 653].

(6)—*Institution of Criminal prosecution, pending appeal in Civil suit.*—As a matter of discretion and propriety, a Judge in a Civil suit may wait, before directing a prosecution for perjury of parties or witnesses upon their own uncontradicted statements, till the disposal of a pending appeal against the suit. **6 C. 308.**

(7)—*Crim. Pro. Code, s. 537—Counter-charge of rioting—Irregularity.*—Where a Magistrate, in two cases of counter-charges of rioting and assault tried, first of all, one party, and having taken evidence for that party, he had, without giving his decision in that enquiry, proceeded to take evidence for the other party, and in this second enquiry he called as witnesses some of those very persons whose conduct was inquired into at the first enquiry, and as to whose guilt or innocence he had suspended his judgment, *held*, that such procedure constituted a grave irregularity, but that, under circumstances of this case, the irregularity was cured by s. 537 of the Code. **14 C. 358.** [*R.*, Rat. Un. Cr. C. 331, 1 C.W.N. 426, 8 C.W.N. 180, 8 C.W.N. 344, 5 C.L.J. 231, 11 C.W.N. 472=5 Cr. L.J. 197, *Disappr.*, 20 C. 537].

(8)—*Trial by jury—Duty of Court to examine all the witnesses for the prosecution—Acquittal of the accused without examining some of the prosecution witnesses, validity of.*—No final opinion as to the falsehood or insufficiency of the prosecution evidence is to be arrived at by the Judge or jury until the whole of the evidence is before them, and has been considered, and the jury ought, if need be, to be cautioned by the Judge to this effect. If, however, at the end of the prosecution evidence, the public prosecutor waives to sum up the evidence, where he has such right, and the jury then express an opinion that the evidence is incredible, and the Judge agrees with them, in such a case, it is not necessary for the Judge to go through the formality of summing up the case to jury. Where, in a trial of a person for the offence of dacoity, the Sessions Judge after examining five out of seven witnesses for the prosecution asked the jury whether they wished to hear any more evidence, and, on their stating that they did not believe the evidence and wished to stop the case, he recorded a verdict of acquittal, *held*, that the procedure adopted was illegal and that the Magistrate should have examined all the prosecution witnesses before recording the verdict. **20 M. 445=2 Weir 384.**

(9)—*Felonious Act—Civil suit without criminal prosecution.*—Even if it be an established principle of the law of England, that the policy of law will not allow a person injured by a felonious act to seek civil redress, if he has failed in his duty of bringing or endeavouring to bring the felon to justice, as to which there seems to be some doubt, the principle does not apply to a case, where the defendant is not

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criminally liable for the offence committed by the agent and the suit is not brought against the party, who is alleged to have been guilty of an offence under s. 165 of Madras Local Boards Act (V of 1884). **17 M.L.J. 537=2 M.L.T. 261.**

(10)—*Crim. Pro. Code, 1898 s. 161—Answers to questions by a police officer under s. 161, whether amounts to institution of criminal proceedings—S. 211, Penal Code.*—A person, who answers questions put to him by a police officer making an investigation under s. 161, Crim. Pro. Code, does not institute or cause to be instituted criminal proceedings within the meaning of s. 211, Penal Code, nor does he thereby charge any person within the meaning of that section. **6 M.L.T. 133.**

(11)—*Magistrate actively employed in prosecution—Judge on appeal.*—A Magistrate took an active part in the prosecution of the prisoners, and recorded the evidence of the witnesses before deciding whether the case should go to trial or not, and by whom it should be tried. *Held* that he could not hear the appeal from the conviction come to in the case. **22 W.R. Cr. 75.**

(12)—*Trial by Magistrate instituted by him as Collector.*—The District Magistrate is not competent to try a case in which he instituted the prosecut on as Collector. **24 W.R. Cr. 1.**

(13)—*Crim. Pro. Code, 1861, s. 439.*—Where a Deputy Magistrate did not draw up a charge in a formal manner, but gave the accused clearly to understand the nature of the charge made against them, the irregularity was held to fall within s. 439 of that Code of 1861. **10 W.R. Cr 7.**

(14)—*Preliminary enquiry—Perjury.*—It is necessary to a proper preliminary enquiry that the accused (or, under certain circumstances, his agent) should be present, that the witnesses whose evidence is to be the foundation of the commitment should be examined before him ; and that he should have the opportunity of cross-examining them. It is essential, too, in a case of perjury, that he should know at what period he ceased to be a witness and his position was changed to that of an accused. **9 W. R. Cr. 54.**

(15)—*Omission to comply with formalities before service of summons.*—The omission to comply with the prescribed formalities before issuing the summons will not vitiate the proceedings after summons, so as to enable a complainant to re-open the case. **23 W.R. Cr. 63.**

(16)—*Power of High Court—Joint charge—Parties in riot on opposite sides.*—A Magistrate should not send up joint charges to the Sessions Court against persons who take part in a riot on opposite sides, as they have not a common object. But where a person had been so jointly charged and rightly convicted by the Sessions Court, *held* (Macpherson, J., *dissenting*) that, as the prisoner had not been prejudiced by the

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mistake of the Magistrate, there was no sufficient ground for setting aside his conviction or ordering a new trial. **B.L.R., Sup. Vol., 750=8 W.R. Cr. 47.**

(17)—*Crim. Pro. Code, 1872, s. 537 (1872, s. 283; 1861-1869, ss. 426, 439)—Irregularity prejudicing prisoner in his defence.*—An omission by a Magistrate to hold a preliminary inquiry on a charge under s. 307 of the Penal Code of attempting to murder was, on appeal by the prisoner to the High Court, held to be an irregularity which prejudiced the prisoner in her defence and the proceedings were ordered to be quashed, and a new trial held. **14 B.L.R. 54=22 W.R. Cr. 14.**

(18)—*Irregular appointment of jurors.*—The appointment, by Magistrates, as jurors of persons who had been appointed by the opposite party, is an error affecting the merits of the case. **21 W.R. Cr. 43.**

(19)—*Crim. Pro. Code, 1872, s. 283—Irregularity in trial before Magistrate—See* **22 W.R. Cr. 81.**

(20)—*Crim. Pro. Code, 1872, s. 283 and s. 278—Error in omission to fix time for hearing —See* **24 W.R. Cr. 60.**

(21)—*Crim. Pro. Code, 1872, s. 283—Irregularity in trial—Conviction on wrong charge under Act XXI of 1856, s. 44 —See* **24 W.R. Cr. 3.**

(22)—*Irregularities in reception of evidence—See* **24 W.R. Cr. 42.**

(23)—*Crim. Pro. Code, 1872, s. 34—Trying summarily case which ought not to have been so tried.*—Where a Magistrate adopted the summary procedure prescribed by Ch. XVIII, Crim. Pro. Code, in the case of an offence which he had no power to try summarily, *held*, his proceedings were void and should be set aside. **22 W.R. Cr. 43**; 23 W.R. Cr. 33, 1 C.L.R. 434.

(24)—*Trial without complaint.*—Where there was an irregularity in the preliminary proceedings, there having been no complaint as provided by the Criminal Procedure Code, the Court set aside the proceedings, though the amount of punishment would not be affected by the defect. **5 B.L.R. A. Cr. 67.**

(25)—*Right to institute prosecution—Convicted person.*—There is no rule that a convicted person cannot institute criminal proceedings. **21 W.R. Cr. 13.**

(26)—*Suit in Civil Court.*—Civil proceedings do not constitute a bar to a prosecution in a Criminal Court. **9 W.R. Cr. 22.**

—Applicability of ss. 8 to 11 of the Oaths Act to criminal proceedings—*See* ACT X OF 1873, ss. 8 to 11, 13 B. 389.

See ACT XIV OF 1874, 13 M. 353=2 Weir 1.

—Institution of—*See* ACT III OF 1877, s. 83, 10 W.R. Cr. 21=6 B.L.R. 693 note.

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—False statement of legal practitioner made after being solemnly affirmed—*See* ACT XVIII OF 1879, 6 M. 252=1 Weir 116.

—Thorough explanation of charge to accused, necessity for—*See* CHARGE, 5 C. 826.

See COMMITMENT TO SESSIONS COURT, 8 B. 312, 16 B. 200.

See CRIM. PRO. CODE (1898), ss. 133, 138 (1), 435 (1, 2, 3), Rat. Un. Cr. C. 336.

—Institution of, before police—*See* CRIM. PRO. CODE (1898), s. 203, 33 C. 1=10 C.W.N. 158=2 C.L.J. 228.

See CRIM. PRO. CODE (1898), ss. 233, 239 and 537, 28 C. 10.

See CRIM. PRO. CODE (1898), s. 282, 19 M. 375=2 Weir 680=6 M.L.J. 195.

See CRIM. PRO. CODE (1898), s. 344, 2 Weir 415.

See CRIM. PRO. CODE (1898), ss. 350, 357, 25 C. 863=2 C.W.N. 465.

See CRIM. PRO. CODE (1898), ss. 355, 356, 357, 537, 19 M. 269=2 Weir 433=6 M.L.J. 134.

See CRIM. PRO. CODE (1898), ss. 439 (1 to 5), 476, 23 C. 610.

See CRIM. PRO. CODE (1898), s. 531, 17 A. 36.

See CRIM. PRO. CODE (1898), ss. 531, 532 and 537, 17 M. 402=2 Weir 704=4 M.L.J. 196.

See CRIM. PRO. CODE (1898), ss. 532, 5, 3 A. 258.

See CRIM. PRO. CODE (1898), s. 537, 14 C. 395, 23 C. 983=1 C.W.N. 57.

See ESCAPE FROM LAWFUL CUSTODY, 11 M. 441=1 Weir 210.

See FALSE CHARGE, 5 M.L.T. 269, F.B.=32 M. 258.

See JOINDER OF CHARGES, 14 C. 128.

See JOINDER OF CHARGES, 1 C.W.N. 35.

See JOINT TRIAL, 5 M. 20=2 Weir 303.

See PENAL CODE, ss. 372 and 373, 12 M. 273=1 Weir 375.

See TRANSFER OF CRIMINAL CASES, 2 C. W.N. 498, 639.

See WAIVER, 2 C. 23.

Criminal Prosecution.

(1)—In a civil suit it might be necessary to ascertain whether the action of a caste meeting assembled for the purpose of excommunicating a person was actually legally justifiable or not; but in a criminal prosecution of this nature for defamation, if the community or meeting had authority to exclude the complainant from the society and used that authority in good faith, then, although they may possibly have erred in law, they are not liable to a criminal prosecution and conviction. **1 L.B.R. 4.** (23 B. 122, *F.*)

See BOM. ACT III OF 1852, Rat. Un. Cr. C. 59.

Criminal Statements.

—*Blank criminal statements.*—Blank criminal statements should not be sent up with quarterly returns. Whenever a statement is blank, a note to that effect must be entered at the back of the statements Nos. 1 to 5 in the column of remarks. **9 W.R. Cr. Cir. 5.**

Criminal Trespass.

See HOUSE BREAKING.

See HOUSE TRESPASS.

See PENAL CODE, ss. 441—462.

(1)—*Penal Code, s. 447—Trespass upon land used as a pathway—Question of title to the land.*—In a case brought against the accused for trespass upon land used by the complainant as a pathway, when a question of title to the land is raised between the parties, the accused cannot be convicted under s. 447, Crim. Pro. Code, merely on the finding that the complainant has been using the pathway for more than six months, the question of title being left undecided. **11 C.W.N. 171=5 Cr. L.J. 14.**

(2)—*Penal Code, s. 447—Criminal trespass—Possession given to actual purchaser under s. 318, Civ. Pro. Code.*—When a land has been sold in execution of a money-decree, and actual possession of it given to the purchaser under s. 318, Civil Procedure Code, without resistance or opposition, and the purchaser has thereafter exercised acts of possession over it, a forcible entry on such land by sub-tenants claiming under a lease of an antecedent date from the judgment-debtor, constitutes criminal trespass. **1 C.L.J. 104.**

(3)—*Penal Code, s. 447—Claim of right—Explanation of Magistrate—Judgment, supplement to.*—Where the accused acts on a belief of his own right, he cannot be held guilty of Criminal trespass. A Magistrate cannot supplement his judgment by his explanation to the superior Court. If there are no material findings in the judgment, the defect cannot be cured by the Magistrate's explanation. **7 C.L.J. 238=7 Cr. L.J. 312.**

(4)—*Penal Code, ss. 379, 447 - Theft—Criminal trespass.*—Where a person charged with theft of rice plants from a certain land was acquitted on the ground that it did not appear that they were not sown by him and were not his property, he could not be convicted of criminal trespass, inasmuch as if the plants had been sown by him and were his property, he would have been entitled to remove them, and could not be treated as a trespasser for so doing. **Rat. Un. Cr. C. 4.**

(5)—*Penal Code, ss. 415, 441—Entry into Exhibition building without ticket.*—A secret entry into an Exhibition building without a ticket does not amount to the offence of cheating or of criminal trespass, though the person so entering may be liable for damages for trespass in a civil suit. **6 B.H.C. Cr. 6.**

(6)—*Penal Code, s. 440—Entering the compound of a house—Criminal trespass.*—When a person unauthorizedly enters the compound of a house, he commits the offence of criminal trespass and not of house-trespass. **Rat. Un. Cr. C. 122.**

Criminal Trespass—continued.

(7)—*Penal Code, ss. 188, 441—Plying boat for hire three miles from a public ferry—Disobedience to order duly promulgated by a public servant.*—The plying of a boat for hire, three miles from a public ferry leased to the complainant, would not constitute the offence of criminal trespass. But if, in spite of a prohibition from plying a boat for hire at or in the immediate vicinity of public ferries, a person continues to do so, he renders himself liable to punishment under s. 188, Penal Code, for disobedience of such order. **1 A. 527.**

(8)—*Penal Code, s. 441—Criminal trespass—Encroachment on public road—Bom. Act V of 1879 (Land Revenue Code), s. 37.*—Under s. 37 of Bom. Act V of 1879, all public roads being the property of Government, it must be taken that the public road encroached upon by the accused is in the possession of the Local Government officers on behalf of the Government. Hence, a person who encroaches on such a road is guilty of criminal trespass, if the encroachment is made with such intent as is contemplated in s. 441, I.P.C. **Rat. Un. Cr. C. 393=Cr. Rg. 49 of 1888.** [*R.*, U.B.R. 1909, 2nd Qr., Penal Code, s. 25].

(9)—*Penal Code, ss. 441, 442 and 448—Criminal trespass—House-trespass—Burden of proof of possession—Crim. Pro. Code, s. 345.*—The accused, a rate-payer in a certain Municipality, whose petition for revision against an assessment, was summarily rejected during his absence, entered a room where a committee of the Municipal Commissioners was dealing with appeals and assessment cases. His ostensible object in entering the room was to present a petition of revision of assessment. The Chairman of the Committee ordered him to leave the room, and on his not taking notice of the order, the Chairman turned him out. The accused after having been turned out addressed a crowd in the verandah stating that no justice could be obtained. The accused was charged and convicted of house-trespass under s. 488 of the Penal Code. *Held*, that the conviction was wrong. Whether the charge was made under s. 441 or s. 442, the prosecution must prove that the property trespassed upon was at the time in the possession of a complainant who could compound the offence under s. 345, Crim. Pro. Code, and, as in this case, the complainant was merely sitting in the room with other persons, at the invitation and with the consent of the person, whoever he might be, who had the immediate right to such possession. *Held*, further, that, as it was not shown that the accused entered the room, or remained in it for any of the purposes mentioned in s 441 or s. 442, the accused was not guilty of an offence under s. 448. Although it might be extremely annoying to be compelled, or even persistently entreated, to reconsider a matter which had been already disposed of, to the best of the ability of the person disposing to, it could not

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be held a crime or an insult to present a petition of review, even if it was pressed in such a way as to worry and distress the person to whom it was presented, and if the useless consideration of it would prevent him from attending to his other business. **22 C. 123.** [*R.*, U.B.R. (1892-1896), 264, 21 B. 536, U.B.R. (1897-1901), 352, 12 P.R. 1906, 45 Cr.]

(10)—*Criminal trespass—Distraint—Act VIII of 1869 (B.C.), ss. 72, 74, 76.*—Where, upon a landlord's servant preventing the tenant from cutting the crops, the servant was charged with criminal trespass, and the master with abetment thereof, *held* that, to enable them to plead the exercise of the legal right of distraint, it must be shown that a written demand under s. 72 of Act VIII of 1869 (B.C) had been made for arrears, and that a written authority under s.76 of the same Act had been given to the servant. In the above case, it was also held that, even if the servant had acted *bona fide*, he could not prevent the tenant from cutting the crops, as the latter could, as cultivator, under s. 74 of the Act, gather the crops, notwithstanding distraint. **7 C. 26.**

(11)—*By co-owners—Penal Code, s. 297—Trespass on burial places.*—Co-owners cannot be held to have committed trespass, unless they have ousted the other co-owners from possession, or have committed some destruction or waste of the common property, as by pulling down a common wall, or by carrying away a portion of the common property, as by digging and carrying away turf, etc. The complainant and the accused were co-owners of a plot of land, and in a portion of that plot they were accustomed to bury their dead. The accused, in defiance of remonstrances on the part of the complainant, opened a sawpit on that portion of the plot, within a few yards of the spot at which some relatives of the complainant had been buried. But the accused did not disturb any of the graves. *Held*, that the accused could not be convicted for an offence under s. 297, Penal Code. **3 M. 178=1 Weir 286.** [*D.*, 18 A. 395].

(12)—*Excommunicated Hindu wife—Right to joint enjoyment of husband's property.*—The law does not recognise the loss of social status arising from excommunication from caste as of itself depriving a wife of the right to joint enjoyment of her husband's property. Where a wife, who had been excommunicated and was living separately from her husband, but was not expelled from the house by her husband for any misconduct legally established, *held*, that she had a right as a wife to go to her husband's house and that, as she had never been deprived of joint enjoyment, she could not be regarded as a trespasser, civil or criminal, for entering her husband's house to claim maintenance. **4 M. 243.** [*R.*, 23 M. 171].

(13)—*Penal Code, s. 441—Entry into market with intent to evade payment of tolls.*—Evasion of tolls may be a wrong, but it is of itself no offence. Where the accused was found passing through the bamboo fence of the market for the

Criminal Trespass—continued.

purpose of evading payment of the toll, which he would have to pay if he had entered by the gate where the contractor was waiting to levy it, *held*, that no offence under s. 441 had been committed, as it was not proved that the entry was made with any of the intents mentioned in s. 441. **5 M. 382=1 Weir 518.** [*R.*, 12 P.R. 1906 Cr.=4 Cr. L.J. 293=54 P.L.R. 1907, F.B.]

(14)—*Penal Code, s. 441—Knowledge of likelihood of annoyance to the owner, whether sufficient to convict a person.*—S. 441, defining criminal trespass, is so worded as to show that the act must be done with intent and does not, as other sections do (*e. g.*, s. 425), embrace the case of an act done with the knowledge of the likelihood of a given consequence. A trespasser, though he may have known that, if discovered, his act would be likely to cause annoyance to the owner of the house, cannot be said to have intended, either actually or constructively, to cause such annoyance. **19 M. 240=1 Weir 537.** [*F.*, 1 L.B.R. 355, 16 C.P.L.R. 182; *R.*, U.B.R. (1897—1901), 352 Cr.; *R.*, 13 P.R. 1905 Cr.=81 P.L.R. 1905=2 Cr. L.J. 83, 12 P.R. 1906, F.B. Cr.=54 P.L.R. 1907=4 Cr. L.J. 293; *Expl.*, 26 B. 558].

(15)—*Penal Code, ss. 104, 353 and 442—Right of police constable to enter houses of suspected persons—Assault on the constable.*—A police officer is not authorised to enter the house of a person at midnight and knock at his door to ascertain whether he is present in his house or not, merely because that the person is of a suspicious character. The constable in entering the house and knocking at his door at midnight is technically guilty of house trespass under s. 442, Penal Code, inasmuch as the act of the constable is certainly one which is calculated to cause annoyance to the inmates of the house and also to the suspected person. The latter is therefore justified under s. 104, in voluntarily causing slight harm to the constable. **27 M. 52=1 Weir 529 and 346=13 M. L.J. 285.**

(16)—*Penal Code, s. 443—Illegal order of Municipal Commissioners.*—The general powers of Municipal Commissioners, as public conservators, will not give them authority to issue an order the breach of which will be criminally punishable. A person driving a cart in violation of an order of Municipal Commissioners prohibiting the driving of carts across an open space, cannot be convicted of criminal trespass. **5 M.H.C. App. 38.**

(17)—*Penal Code, s. 447—Intention specified in section must be found*—Where the Magistrate found that the intention of the accused was to take possession unlawfully of the land, and convicted the accused on the ground that his act necessarily involved annoyance to the complainant. *Held*, that, to bring the case under s. 447, I.P.C., it must be found that the accused *intended* to commit an offence, or to intimidate, insult or annoy the complainant, —(Conviction set aside). **6 M.L.T. 262.**

Criminal Trespass—continued.

(18)—*Penal Code, s.441—Criminal trespass—Cultivating Government land without permission.*—Cultivating Government land without permission is not an offence under s. 441, unless there is evidence to show that entry upon the land was with any of the intents specified in s. 441. **1 Weir 512.**

(19)—*Penal Code, ss. 441 and 447—Cultivation of waste lands.*—Where a person cultivated a waste land, the property of Government, devoted to the public use of the village community, after an order by the Sub-Collector prohibiting the cultivation of such land, *held*, that the accused was guilty of criminal trespass because the entry upon the land was with the intention of committing an offence under s. 188, Penal Code. **1 Weir 513=5 M.H.C. App. 17.** [*R.*, 12 P.R. 1906 Cr.=54 P.L.R. 1907=4 Cr. L.J. 293; *D.*, 15 C. 383].

(20)—*Penal Code, ss. 441 and 447—Cultivation of a burial ground.*—Where the accused enclosed and commenced to cultivate a portion of a burial ground, *held*, that the accused was guilty of an offence under s. 441. **1 Weir 513=6 M.H.C. App. 25.** [*R.*, U.B.R. (1892-1896), 264; *D.*, 1 Weir 514=6 M.H.C. App. 26].

(21)—*Penal Code, ss. 441 and 447—Entry under a legal right.*—The accused, the Ejman of the complainant's family, made an alienation of the family property. The complainant brought a suit, obtained a decree setting aside the alienation, and, in execution of that decree, obtained possession from the alienee. The accused entered on the land. *Held*, that the accused could not be convicted of criminal trespass, inasmuch as the accused was legally entitled to the possession as the Ejman, and had been wrongfully put out of possession. **1 Weir 514=6 M.H.C. App. 19.** [*F.*, 81 P.L.R. 1905=13 P.R. 1905 Cr.=2 Cr. L.J. 83; *R.*, U.B.R. (1892—1896), 264, 12 P.R. 1906 Cr.=54 P.L.R. 1907=4 Cr. L.J. 293; *D.*, 1 Weir 515].

(22)—The accused entered on possession of certain lands of which the plaintiff was in possession under an order by the Magistrate. The accused claimed a right of entry under a person against whom the complainant got a decree for possession under which decree the complainant obtained possession. *Held*, that, in the absence of evidence that the accused had a legal right to the possession, the accused was guilty of an offence under s. 441. **1 Weir 515.**

(23)—*Penal Code, s. 441—Criminal trespass—Claim of right.*—The accused entered on the land in the complainant's possession under s. 263, Civ. Pro. Code, and removed the crop standing upon it. *Held*, that, in the absence of a distinct finding as to the intention with which the accused entered on the land and removed the crop, whether they did so in good faith believing that they had a right to cut and carry the standing crop or whether they did so in such manner and with such intent as to intimidate, insult or annoy the persons in possession, the acquittal of the accused was wrong. **1 Weir 516.**

Criminal Trespass—continued.

(24)—Where a person, entertaining a belief in good faith that he is entitled to the possession of a land, enters and continues on the land, he is not guilty of criminal trespass but, if he fails to prove his title, he is answerable in a civil suit. If, on the other hand, the circumstances are such that he cannot have entertained such a belief in good faith, it will be a fair inference that he intends the annoyance which his action must cause, and he is guilty under s. 441. **1 Weir 516.**

(25)—The existence of a *bona fide* claim of right very often excludes the presumption of any criminal intent, but it does not follow that it always does so. Where on the accused's failure to pay a certain amount within a specified time, a land belonging to the defendant became the absolute property of the complainant and the defendant, alleging that the default was owing to a refusal by the complainant to account, entered on the land with intent to stop the complainant and his father from ploughing, *held*, that the accused was guilty of an offence under s. 441, as his entry on the land was with intent to commit the offence of causing unlawful restraint. **1 Weir 520.**

(26)—*Criminal trespass*—Bona fide *assertion of a claim of title—Crim. Pro. Code (1861), s. 318—Question of possession.*—Where a trespass is not committed with the intent to commit an offence, or intimidate, insult or annoy the persons in possession, but in the *bona fide* assertion of a claim of title, the trespasser is not liable to be convicted of the offence of criminal trespass, although he may be accountable in a civil suit. [*R.*, 12 P.R. 1906 Cr.=54 P.L.R. 1907=4 Cr. L.J. 293.] Where a complainant applies to be restored to possession under s. 318, Crim. Pro. Code, the question of possession will require determination. But on the trial of a person on a charge of criminal trespass, the question of intent is to be determined irrespectively of the question as to the right of pessession. **2 N.W.P. 82.** [*R.*, 12 P.R. 1906, Cr.=54 P.L.R. 1907=4 Cr. L.J. 293].

(27)—*Penal Code, ss. 441, 141—Criminal trespass—Claim of right—Unlawful assembly.*—Where a lessor forcibly re-entered upon the land on the expiry of the lease, *held*, that taking possession of land to which the taker had admittedly a claim of right is not criminal trespass, though unlawful assembly or rioting may be committed by people seeking to enforce a right. **5 N.L.R. 69=9 Cr. L.J. 561=2 Ind. Cas. 240.**

(28)—*Penal Code, ss. 425, 441—Mischief and criminal trespass*—Bona fide *claim of right.*—If a person enters on land in the possession of another in the exercise of a *bona fide* claim of right, but without any intention to intimidate, insult, or annoy the person in possession, or to commit an offence, then, although he may have no right to the land, he cannot be convicted of criminal trespass, because the entry is not made with any of such intent as constitutes the offence. So, also, if a person

Criminal Trespass—continued.

deals injuriously with property in the *bona fide* belief that it is his own, he cannot be convicted of the offence of mischief, because his act is not committed with intent to cause wrongful loss or damage to any person. But the mere assertion of a claim of right is not in itself a sufficient answer to such charge. It is the duty of the Criminal Court to determine what was the intention of the alleged offender, and if it arrives at the conclusion that he was not acting in the exercise of the *bona fide* claim of right, then it cannot refuse to convict the offender, assuming that the other facts are established which constitute the offence. **2 A. 101.** [*R.*, 2 A.W.N. 236, U.B.R. (1892-1896), 264, 13 P.R. 1905 Cr. = 81 P.L.R. 1905 = 2 Cr. L.J. 83, 12 P.R. 1906 Cr. = 54 P.L.R. 1907 = 4 Cr. L.J. 293].

(29)—*Penal Code, ss. 441, 447—Criminal trespass—Entry on land of the lessor in possession of the lessee.*—The complainants were in possession of certain land as agents of a certain temple, and leased out the land for the purpose of making bricks from it. The accused trespassed on the land, and the reason given for the trespass was that the pits made by the lessees were likely to drain water from a channel which irrigated the accused's land. The trespass consisted in the accused's entering the land and obstructing the coolies engaged thereon from carrying on the work. *Held*, that the complainant had such possession as would justify him in prosecuting the accused, and that the accused were properly convicted of criminal trespass, inasmuch as the defendants' entry was found to have been not *bona fide*, but simply to annoy the complainant. **1 Weir 517.**

(30)—*Penal Code, ss. 441 and 447—Entry into the compound of an unoccupied house.*—Where a person enters into the compound of a house which is locked up, the owner being absent therefrom, without any intention of committing an offence as defined in the Penal Code, he is not guilty of criminal trespass, for his entry cannot be supposed to have been made with the object of "intimidating, insulting or annoying" the owner or any other person in possession. **1 Weir 518.**

(31)—*Penal Code, ss. 283, 441 and 447—Enclosing a foot-path.*—Where the public generally are entitled to the use of a public foot-path, a person enclosing the foot-path is not guilty of an offence under s. 441, but may be guilty of an offence under s. 283. **1 Weir 514 = 6 M.H.C. App. 26.**

(32)—*Penal Code, s. 447—Infringement of fishery right.*—Where a river is a public one, nobody has an exclusive right of fishery therein; a right of fishery is not property of such a nature as that a man who unlawfully infringes that right can be said to enter upon property in the possession of another, within the meaning of s. 447 of the Penal Code. **2 C. 354.** [*Appr.*, 15 C. 388; *Dist.*, 15 C. 402; *D.*, 27 M. 551 = 14 M.L.J. 248].

Criminal Trespass—continued.

(33)—*Penal Code, ss. 441 and 447—Attempting to fish in a tank over which the owner has no right of fishery.*—Where the accused attempted to fish in a tank belonging to a certain temple, the fish in the tank not being in the possession of the owner of the tank, *held*, that the accused cannot be convicted of theft, nor of criminal trespass, inasmuch as the object of the accused in entering on the property was not to commit an offence, *viz.*, theft, and as, in the circumstances of the case, his object was not to intimidate, insult or annoy. **1 Weir 519.**

(34)—*Penal Code, ss. 441 and 447—Fishing in a public tank.*—Fishing in a public tank, to which the general community have access, is not by itself an offence under s. 441. **1 Weir 520.**

(35)—*Penal Code, ss. 441 and 477—Encroachment upon Government land.*—An encroachment upon Government land, adjoining one's house, by building a pyal thereon, will not amount to criminal trespass, if there is no intention to commit an offence or intimidate, insult or annoy. **1 Weir 521.**

(36)—*Penal Code, ss. 441 and 447—Permissive possession of lands.*—Where a person is occupying a land, being so permitted by the owner thereof, then the possession of the land lies with the owner, and a servant of the owner does not commit the offence of criminal trespass by entering upon the land. **1 Weir 521.**

(37)—*Penal Code, ss. 441 and 442—Possession under an inferior title—Ejectment by a person having superior title.*—Superior title in the accused would not by itself convert the complainant into a mere trespasser, so as to justify him in ejecting the complainant, if he was in possession otherwise than as a mere trespasser. **1 Weir 522.**

(38)—*Penal Code, s. 442—Lawful entry and unlawful remaining.*—Where the accused entered a house and remained there and committed an assault, and there was no express finding of any of the intents required by s. 441, *held*, that, although the original entry may not be unlawful, the remaining in the house was unlawful, and that, as the accused unlawfully remained in the house and then committed an offence, *viz.*, an assault, he must be held, while unlawfully remaining, to have remained with an intent necessary to constitute the offence under s. 441. **1 Weir 528.**

(39)—*Penal Code, s. 451—House-trespass with intent to commit adultery.*—A person making an entry into another's house with the object of having sexual intercourse with the latter's wife is guilty of the offence of criminal trespass. **1 Weir 532 = 8 M.H.C. App. 6.** [*R.*, 2 Weir 308].

(40)—*Penal Code, s. 447—Criminal trespass—Intention.*—A person re-entering land from which he has been ejected in due course of law by order of Court is not guilty of criminal trespass when there is no evidence to prove that his intention was to commit an offence, or to intimidate, insult or annoy the person in possession of the land. **128 P.L.R. 1905.**

Criminal Trespass—continued.

(41)—*Penal Code, s. 441—Unauthorised entry upon another's property—Criminal trespass, intent to annoy necessary to constitute the offence of—Primary desire to annoy not essential for such intent.*—The question for decision, in this case, was whether the intent to annoy or intimidate or insult any person in possession of the property entered upon must, under s. 441 of the Code, in order to constitute criminal trespass, be the primary intent, or whether an act, intended to assert a *bona fide* right to the property entered upon, might constitute criminal trespass by reason of annoyance, intimidation or insult to the person in possession, being a natural consequence of the act; *held* (by the Full Bench, Rattigan, J. *dissenting*) that the fact, that the primary intention of the accused was to assert a *bona fide* claim to property, does not necessarily justify his entry on the property which he knows, or must be assumed to know, to be likely to annoy the person in possession. So, where a person, without any legal justification, enters upon property in the established possession of another, claiming a title to the property and with the sole object of obtaining possession of it for himself, an intent to annoy is to be presumed, even in the absence of any primary desire so to annoy. *Per* RATTIGAN, J,—Where the circumstances attending entry of the accused upon another person's property are such as to render it incumbent upon the accused to explain and justify his act, the Court will be justified in inferring that he entered upon the property with one or other of the intents specified in s. 441. But the Court, unless it is satisfied, cannot properly convict the accused, merely on the ground that, though his intent may have been non-criminal, he knew or must have known that the natural and probable consequence of his entry would be annoyance to the person in possession of the property, since the fact, that the mere presence of a particular person may be annoying will not make him a criminal trespasser, unless he be present with the intent to so annoy. **12 P. R. 1906 Cr.=4 Cr. L.J. 293=54 P.L.R. 1907 Cr. F.B.**

(42)—*Penal Code, ss. 447,457 and 511— Entry on the roof of a house with house-breaking implements—Attempt to commit house-breaking.*-The accused was found in the roof of the complainant's house, armed with an implement used for the purpose of committing burglary. It was not shown that he had either commenced to dig a hole on the roof, for the purpose of effecting his entrance inside the room, or, had otherwise commenced any act of jumping or getting into any portion of the premises. *Held*, that the mere presence of the accused on the roof of the house could not be construed into an attempt to commit house-breaking, under ss. 457 and 511 of the Code, but that he was merely guilty of criminal trespass, under s. 447 of the Code. In order to apply s. 511 of the Code, it is necessary not merely that there should be an attempt to commit an offence, but likewise that an act was done, as such attempt

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towards the commission of the offence. **15 P.R. 1907 Cr.=44 P.W.R. 1907=6 Cr. L J. 444=56 P.L.R. 1908.**

(43)—*S. 441—Entry into house for having illicit intercourse—Intent to annoy.*—The accused's entry into the complainant's house with the object of having illicit intercourse with the complainant's sister, amounts to criminal trespass, as the house was not the sister's, but her brother's, and such intercourse was bound to cause great annoyance to the brother. **17 P.R. 1908 Cr.**

(44)—*Presumption of specific intent*—Bona fide *belief of one's right, the real test of intent.*—The real test whether a person charged with criminal trespass entered with the particular intention specified in s. 441, Penal Code, is whether the accused has a *bona fide* belief that he has a right to enter. If he has not that belief, the Courts will presume that he entered with intent to annoy the person in possession. **2 L.B.R. 319.**

(45)—*Penal Code, ss. 441 and 447—Criminal trespass--Presumption of intent to annoy—No suggestion of any other criminal intention—No criminal trespass.*—In a civil suit, on a registered conveyance, which the complainant won, the defence was that, when the defendants signed the conveyance, they believed it to be a mortgage. This issue of fact never was tried; the suit came to an abrupt conclusion, through a Full Bench ruling that no evidence could be given to support the defence. On the decree thus given, the accused were evicted from a house and the land on which it stood, and after the eviction, the complainant did not leave any care-taker in charge of the house. Two days after the eviction, the accused re-entered the house and lived in it from that time for some 19 months. There was no suggestion that, during that time, the complainant made any attempt to turn them out or to occupy either house or land himself. *Held*, that, considering all the facts, an intent to annoy could not be safely presumed on the part of the accused and that, there being no suggestion of any other criminal intent, the offence of criminal trespass was not committed. There can be no criminal trespass, unless the accused's intent was to commit an offence, or to intimidate, insult, or annoy any person in possession of the property. In cases of this kind, the question of intention is a difficult one. A consideration which would be irrelevant in a Civil Court cannot be ignored in trying a criminal charge, which depends on the intention of the accused, when the criminal intention, if it exists at all, is a secondary one; for example, as when the main intention of the accused is to recover possession of the property. **4 L.B.R. 242=8 Cr. L.J. 60.**

(46)—*Penal Code, s. 441—Criminal trespass—Ingredients of offence—Remaining on another's property after conviction for trespass, whether constitutes offence.*—Although s. 441 of the Penal Code contains two clauses, the first

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relating to an entry with criminal intent, and the second relating to a lawful entry, followed up by remaining with unlawful intent, the intention of the legislature is that only one offence can be committed on each entry. Under the first clause the offence is committed by unlawful entry with certain intent. Under the second clause one offence and one only is committed by remaining for any length of time with unlawful intent after a lawful entry. Thus where an accused, after having been convicted of criminal trespass committed by entering on certain land, was again prosecuted, in spite of the previous conviction, for a further trespass committed by remaining on the same land, it was *held* that a conviction cannot be maintained for such alleged further trespass. **4 L.B.R. 276.**

(47)—*Penal Code, ss. 447, 426—Driving loaded cart across Government land—Whether amounts to criminal trespass—Applicability of s. 426, I.P.C.*—Driving a loaded cart, over ground said to be Government waste land, in respect of which the Municipality had put up notices prohibiting cart traffic, does not amount to criminal trespass punishable under s. 447, I.P.C. If such driving had caused damage to the ground, the accused might have been charged, and presumably might have been convicted under s. 426, I.P.C., of mischief. **U.B.R. 1909, 2nd Qr., Penal Code, 25.**

(48)—*Penal Code, s. 441—Criminal trespass—Requisites necessary to constitute the offence.*—S. 441 seems to contemplate the entry into property in the possession of another as a means to another act, and to regard the intention with which it is made in relation to that Act. There may be cases in which the ultimate object may be legal, while the means employed to attain it may be criminal. An offence may be committed in the prosecution of that object, and the entry upon property with intent to commit such an offence in prosecution of a lawful ultimate object would constitute the offence of criminal trespass; similarly, into the methods used in pursuance of the ultimate intent, there may enter a subordinate intent to intimidate, insult or annoy. **2 M. 30.**

(49)—In order to constitute the offence of criminal trespass, it is necessary to establish that the entry into another person's property must have been made with one or other of the intents specified in s. 441. Where there is no finding as to any such intent, a conviction is bad and must be set aside. **6 C. 579.** [*F.*, 13 P.R. 1905=81 P.L.R. 1905=2 Cr. L.J. 83, 16 C.P.L.R. 182, 12 P.R. 1906, F.B.; *Dist.*, 22 C. 391].

(50)—Every trespass upon the property of another is not a criminal trespass. To constitute criminal trespass, the person trespassing must be found to have either entered on the property or remained there with one or more of the intentions specified in s. 441 of the Penal Code. Intent is to be gathered from circumstances; there must be circumstances

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in the case which afford ground for a reasonable deduction that the accused had at least one of such intents. Previous warning to the person not to enter the property does not necessarily lead to a conclusion that a subsequent entry was made with one of such intents. **1 L.B.R. 95.** (4 C. 837, *R.*).

(51)—In order to sustain a conviction for criminal trespass, it must be shown that the property was in the possession of some person other than the alleged trespasser. **28 P.R. 1878 Cr.**

(52)—Where there is no proof of the intention specified in s. 440 of the Penal Code, a conviction for criminal trespass is illegal. **Rat. Un. Cr. C. 10.**

(53)—In order to constitute the offence of criminal trespass with the intention of committing an offence, it is not necessary that the offence should be directed against the person in possession. It is sufficient that the property entered upon is in the possession of another. **U.B.R. (1897—1901), Vol. I, 352.**

(54)—The person, who is in possession, is generally in peaceful possession under some claim of his own, and is not liable to be ousted save in due course of law, and the person, who attempts under colour of a superior title to take the law into his own hands and to deprive the holder of the land of possession, must run the risk of being convicted under s. 447 of the Penal Code of criminal trespass. To escape criminal liability, it is not enough to show that the claim of the accused was *bona fide*, but it must be shown that there were reasonable grounds for believing that there was a legal right to immediate possession. **1 L.B.R. 358.** (1 U.B.R.. 1892—1896, 264, *F.*).

(55)—Where persons are prohibited from going on a certain land, a person trespassing on such land for none of the purposes mentioned in s. 441, *viz.*, to commit an offence, or to intimidate or annoy any person in possession of property would not be guilty of the offence of criminal trespass. **15 C. 390 note.**

(56)—A person entering into or upon another's property, for the purpose of killing a deer, the pursuit of which was commenced before such entry, is not guilty of criminal trespass under the Penal Code. **4 C. 837.** [*F.*, 1 L.B.R. 95].

(57)—Where, during the pendency of a civil suit, the plaintiff's party went armed to the property of which the defendant was in possession for the purpose of getting materials for an hostile application against the defendant, without his permission, and in his absence, persisted in the trespass even when the defendant's servants objected to their action, *held*, that their action amounted to criminal trespass. **16 C. 715.** [*R.*, 4 Cr. L.J. 293=12 P.R. 1906, 48 Cr. F.B.]

(58)—*Penal Code, s. 441—Criminal trespass—Term "annoy" explained—Possession—Bona fide assertion of right.*—The word

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"annoy" in s. 441 must be taken to mean annoyance that would generally and reasonably affect an ordinary person, and not that which would specially and exclusively affect a particular individual. The possession contemplated and intended by s. 441, I. P. C., must be actual in the sense and meaning of s. 530, Crim. Pro. Code, 1872. Re-entry into or remaining upon land from which a person has been ejected by civil process, or of which possession has been given to another, for the purpose of asserting rights he may have solely or jointly with the other persons, is not a criminal trespass, unless the intent to commit an offence, or to intimidate, insult or annoy is conclusively proved. **2 A. 465.** [*R.*, 2 A.W.N. 236, 22 C. 391, U.B.R. (1892—1896), 259, U.B.R. (1897—1901), 352, 13 P.R. 1905 Cr.=81 P.L.R. 1905 =2 Cr. L.J. 81, 12 P.R. 1906 Cr., F.B.=54 P.L.R. 1907].

(59)—*Penal Code, s. 441—Trespass with intention to do an unlawful act.*—An unlawful act is not necessarily an offence, and an intention to commit an unlawful act, not being one of the acts mentioned in s. 441 does not render the accompanying trespass criminal trespass. Where a Zemindar took possession of certain land in the occupancy of a tenant in his temporary absence, on the pretext that the tenant has abandoned his holding, *held*, that his act, although unlawful, will not make him liable for criminal trespass. **26 A. 194.** [*R.*, 27 A. 298=A.W.N. 1902, 235, 12 P.R. 1906 Cr.=54 P.L.R. 1907=4 Cr. L.J. 293].

(60)—*Penal Code, ss. 441, 448—Trespass—Presumption of intention.*—Mere knowledge of the possibility of annoyance resulting from an act of trespass is not sufficient to bring the case within the definition, but, at the same time, the word "intent" cannot be read as if it were identical with "wish" or "desire." There may be a wish to annoy, but if annoyance is the natural consequence of the act and if it is known to the person who does the act that such is the natural consequence, then there is an intent to annoy. A decree-holder, when proceeding to execute his decree, found the house of the judgment-debtor shut. He, therefore, effected an entry into the latter's compound by passing through the complainant's house without his consent and notwithstanding his protest. *Held* that the accused was guilty of trespass, because when he trespassed on the complainant's house notwithstanding his protest, he must, as a reasonable man, have known that he would annoy the complainant. **26 B. 558=4 Bom. L. R. 280.** [*R.*, 12 P.R. 1906 Cr.=54 P.L.R. 1907=4 Cr. L.J. 293, F.B.].

(61)—*Penal Code, s. 441—House-breaking by night—Presumption of intention.*—When a stranger, who uninvited and without any right whatever to be there, effects an entry, in the middle of the night, into the sleeping apartments of two women, members of a respectable household, and who, when the attempt is made to capture him, uses great violence in the effort to make good his escape, a Court

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should, under such circumstances, presume that the entry was effected with an intent such as is provided by s. 441 of the Code. **16 C. 657.** [*F.*, 22 C. 391].

(62)—*Penal Code, ss. 441, 456 and 457—Specification of intention in the charge—Proof of intention.*—A conviction under s. 456, Penal Code, would not be bad for want of specification of the intention in the charge, though one under s. 457 could not be sustained without such specification. In a charge under the former section, though the guilty intention should be proved, it is not necessary to prove specifically which of the several guilty intentions the accused had; it will be enough, if it is shown that the intention must have been one or other of those specified in s. 441, though it may not be certain which it was. The proof of such intention need not be direct, that is, by the confession of the accused, showing that his intention was one of those mentioned in s. 441, or by the evidence of witnesses proving that he admitted to them that such was his intention. It will be enough if it is proved like any other fact by the evidence of conduct and of surrounding circumstances. In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. Where an accused person was found in the middle of night in the complainant's room, and when detected he meekly submitted to the severe treatment inflicted by the complainant and begged to be excused for the fault he had committed, *held*, that, although it was not quite certain what the precise intention of the accused in committing the trespass was, it should have been one or the other of those specified in s. 441. Perhaps the intention was to insult the modesty of the complainant's wife. **22 C. 391.** [*F.*, 22 C. 994, 127 P.R. 1905=2 Cr. L.J. 279=18 P.R. 1905 Cr.; *R.*, A.W.N. 1906, 279=4 Cr. L.J. 291 =29 A. 46=3 A.L.J. 652, 21 A.W.N. 16=23 A. 124, 54 P.L.R. 1907=4 Cr. L.J. 293=12 P.R. 1906 Cr. 56; *D.*, 4 C.L.J. 169].

(63)—*Penal Code, s. 441—Criminal trespass—Joint owner—Possession.*—A joint-owner of property is entitled to have the joint possession restored to him in a Civil Court, but he is not justified to take the law into his own hands to recover the possession, and, if he does so, he becomes liable for criminal trespass. **10 Bom. L.R. 285=7 Cr. L.J. 309.**

(64)—*Penal Code, ss. 441 and 509—Intrusion upon privacy of women—Criminal trespass.*—Where the accused, a stranger though a neighbour, effected an entry into a room occupied by four women, and where the position of the accused and the facts of the case precluded any suggestion that he went there to steal or for any other purpose save his own pleasure, *held*, that there was sufficient evidence of an intent and of an intrusion of privacy within the meaning of s. 509 of the Code and that, therefore, the intent to commit an offence within

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the meaning of s. 441 was made out. **22 C. 994.** [*F.*, 127 P.R. 1905=2 Cr. L.J. 279=18 P.R. 1905 Cr.; *R.*, 54 P.L.R. 1907=4 Cr. L.J. 293, 12 P.R. 1906 Cr.].

(65)—*Penal Code, ss 341, 352, 448—Entry into premises purchased at a Sheriff's sale, whether lawful.*—The entry by a person into premises purchased by him at a Sheriff's sale, for the purpose of acquiring possession, is not an unlawful entry within the meaning of s. 441, Penal Code. **4 C.W.N. 47.**

(66)—*Penal Code, s. 447—Trespass upon agricultural land after being ejected by due process of law.*—A person who after having been ejected by due process of law from certain agricultural lands, wilfully persists in trespassing upon such lands is liable to be convicted under s. 447, I.P.C. **A.W.N. 1902, 6.** [*R.*, 12 P.R. 1906 Cr.=54 P.L.R. 1907=4 Cr. L.J. 293].

(67)—*Penal Code, s. 447—Criminal trespass—Ouster of mortgagee in possession by third person.*—Where the complainant, the purchaser of the rights of a mortgagee in possession, and his predecessor in title, had been lawfully in possession of certain agricultural lands for some years, and a relation of the mortgagor forcibly ousted the complainant on the plea that he was entitled, under the Hindu Láw, to a share in the land, and the mortgagor had no title to make a mortgage thereof with possession, *held* that the action of the dispossessor amounted to a criminal trespass, and of a somewhat aggravated kind likely to lead to a breach of the peace and rioting. **A.W.N. 1902, 24.** [*R.*, 26 A. 194, 12 P.R. 1906 Cr.=54 P.L.R. 1907=4 Cr. L.J. 293].

(68)—*Penal Code, ss. 441, 448—Intention of accused.*—Where the intention of the accused in entering the complainant's house was to recover possession of a child whom he had left there, *held*, that this was no criminal trepass though some annoyance might have been incidentally caused to the complainant. **A.W.N. 1885, 50.**

(69)—*Penal Code, s. 441*—Bona fide *claim of right.*—Where the accused, a tenant who had some indigo vats on land in his possession, went on the land to repair such vats, on the ground that in the partition proceedings in which the land fell to the share of the complainant no reference was made to the vats, *held* that he did not commit criminal trespass. **A.W.N. 1882, 236.** (2 A. 101 and 2 A. 465, *R.*).

(70)—*Penal Code, s. 441—Criminal offence.*—Where the complainant purchased land at an execution sale, which the accused held as an ex-proprietary tenant, and it was not shown that the complainant took actual possession, *held* that the accused did not commit criminal trespass in obstructing the complainant's attempt to plough the land. **A.W.N. 1882, 228.**

(71)—*Penal Code, s. 447—Criminal trespass.*—In trying offences under s. 447, I.P.C., it is necessary that the criminal Courts should do

Criminal Trespass—continued.

their duty in protecting against trespass, persons who are in peaceful possession of property, whether they be rightful owners or not. **U.B.R. (1892—1896), Vol. I, 261.**

(72)—*Penal Code, s. 441—Intention to annoy.*—To bring an act of trespass within the meaning of the Penal Code, s. 441, the entry on the land must be with the intent to annoy, that is with the object of annoying the person in possession. **24 W.R. Cr. 58.**

(73)—*Intention to annoy—Forcible entry.*—A person forcibly entering upon property in the possession of another, and constructs a building thereon, or does any other act with intent to annoy the person so in possession, commits the offence of criminal trespass within the meaning of s. 441 of the Penal Code, irrespectively of the question in whom the title to the land may ultimately be found. **7 W.R. Cr. 28.**

(74)—*Land dispute—Title to land, failure to prove.*—*Held* by Jackson, J., (setting aside the order of the Magistrate; Markby, J., *dissenting*), that a Magistrate ought to enquire into a case of criminal trespass under s. 441 of the Penal Code, though the complainant might fail to make out his title to the land; for the offence may be committed in respect of property in a person's possession, even though such possession may not have originated in right. **11 W.R. Cr. 11.**

(75)—*Entry in property and cutting trees.*—The entry by one person on the property of another person, accompanied by the felling of the trees on that property, is criminal trespass. **1 W.R. Cr. 46.**

(76)—*Continuing exercise of right of fishery after prohibition.*—An act does not amount to criminal trespass under s. 441 of the Penal Code, unless it was committed with the intention of committing some offence, or of intimidating, insulting, or annoying some one. Where a party had been exercising a right of fishery for a considerable time, alleging a prescriptive right, the mere fact of continuing to do so after a notice of prohibition is not criminal trespass. **9 B.L.R. Ap. 19**; 18 W. R. Cr. 25. [*Not. F.*, 7 C. 401].

(77)—*Entry into family dwelling-house.*—The entry of the member of a Hindu joint family into the family dwelling-house is not criminal trespass; nor is the entry of a stranger into a family dwelling-house, with the permission and license of one of the members, criminal trespass. **6 B.L.R. Ap. 80.** 15 W.R. Cr. 6.

(78)—*Intention to annoy—Person not in actual possession of house.*—For a legal conviction, under s. 441 of the Penal Code, of criminal trespass, there must be an intention to intimidate, insult, or annoy a person in actual possession. To enter a house where the owner is only in constructive possession is not sufficient. **8 B.L.R. Ap. 62.** 17 W.R. Cr. 47; 9 W.R. Cr. 1; 14 W.R. Cr. 25. [*R.*, 21 B. 536].

Criminal Trespass—concluded.

(79)—*Penal Code, s. 447—Criminal trespass.*—A person who is in possession of any property is generally in peaceful possession under some claim of his own and is not liable to be ousted save in due course of law, and the person who attempts to take the law into his own hands and to deprive the holder of the land of his possession must run the risk of being convicted under s. 447 of the Penal Code. The natural inference from such conduct must generally be, that there was an intent to commit an offence or to intimidate, insult or annoy the person in possession of the property, unless the contrary can be proved, which, under such circumstances, it must be a difficult thing to do. **U.B.R. (1892—1896), Vol. I, 268.** (U.B.R., 1892—1896, Vol. I, 264, *R.*).

(80)—*Penal Code, ss. 447 and 457—Criminal trespass and lurking house-trespass by night.*—An accused who did not enter the complainant's house, but was found lurking under it for the purpose of stealing or committing some other offence, was held to have committed only ordinary trespass and nothing more. **U.B.R. (1892—1896), Vol. I, 272.**

(81)—*Penal Code, s. 447—Criminal trespass.*—No complaint ought to be dismissed by Magistrates under s. 203, Crim. Pro. Code, without a careful examination of the same. **U.B.R. (1892—1896), Vol. I, 270.**

(82)—*Penal Code, s. 447—Criminal trespass.*—Whether one person or another is in possession is a question of fact to be determined by evidence in the usual way. It does not follow that, because the Civil Courts have determined the rights of parties, the possession of property is thereby affected; until the orders of the Civil Courts are carried out in due course of law, the party against whom a decree has been given may still be in possession of the property in dispute. If the parties consented to the arbitration after the decree of the Civil Courts was passed and the award was subsequent to the decree, the award, if binding, would probably supersede the decree, and alter the position of the parties accordingly. **U.B.R. (1892—1896), Vol. I, 262.**

See AUTREFOIS ACQUIT, PLEA OF, 6 W. R. Cr. 51.

See MISCHIEF, 15 C. 388, 7 Bom. L.R. 86=2 Cr. L.J. 55.

See RESTORATION OF PROPERTY, 7 C.L.J. 175=12 C.W.N. 269.

See REVISION, A.W.N. 1899, 212.

See RIOTING, 6 M. 245=1 Weir 68.

See SECURITY TO KEEP THE PEACE, 127 P.L.R. 1901.

See THEFT, 15 C. 402.

Criminal Trial.

See CRIM. PRO. CODE (1898), ss. 205, 438 and 439, 5 P.W.R. 1909 Cr.=9 Cr. L.J. 158 =1 Ind. Cas. 101.

See SANCTION TO PROSECUTE, 9 Bom. L. R. 212=5 Cr. L.J. 202.

Criminal Tribes Act.

See ACT XXVII OF 1871.

Crops.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 15 A. 394.

Cross-complaints, trial of.

—*Magistrate to hear them both before passing judgment in either of them.*—When cross-complaints arising from the same occurrence are made and both the complaints are entertained and a day fixed for their trial, the Magistrate is bound to hear them both out, before passing judgment on either of them. **2 J.G. 35.**

Cross-examination.

See CRIM. PRO. CODE (1898), ss. 256, 257.

See WITNESS.

(1)—*Witness for prosecution withheld in Sessions Court—Right of accused to cross-examine.*—When the Judge did not comply with the request of the counsel for the accused to be allowed to cross-examine the witnesses for the prosecution who had been examined by the Magistrate but whom the Public Prosecutor thought it unnecessary to call before the Sessions Court, *held*, that the omission had not prejudiced the accused. **5 B.H.C. Cr. 85.**

(2)—*Crim Pro. Code, 1882, ss. 256, 257—Refusal by Magistrate to allow the accused to further cross-examine prosecution witnesses.*—After a refusal of an application by the accused for re-summoning the prosecution witnesses for further cross-examination, the accused applied for summoning some of those witnesses, as witnesses on his behalf. On their appearing, the Magistrate refused to allow the accused to cross-examine them, and the accused thereupon declined to examine them as his witnesses. *Held*, that the refusal of the Court to allow the accused to cross-examine the witnesses, who were in attendance in Court, had resulted in a mis-trial of the case. **1 C.W.N. 19.**

(3)—*Right of accused to re-call for cross-examination prosecution witnesses.*—A conviction for offences under ss. 224, 353, Penal Code, was set aside and the case was ordered to be re-tried, on the ground that the Magistrate refused the application of the accused to re-call the witnesses for the prosecution for cross-examination. **5 C.W.N. 447.**

(4)—*Prosecution witnesses, cross-examination of, before the framing of charge—Further cross-examination.*—A Magistrate is not entitled to refuse the application of the accused, made after the framing of the charge, to re-call the witnesses for the prosecution, on the ground that they have already been cross-examined before the framing of the charge on the understanding that they would not be required for further cross-examination after the charge. The accused should pay the expenses incidental to such re-call. **6 C.W.N. 424.**

Cross-examination—concluded.

—Right of police officer to examine witnesses—*See* BOM. ACT VII OF 1867, s. 23, Rat. Un. Cr. C. 28.

See APPEAL, 19 W.R. Cr. 53.

See CRIM. PRO. CODE (1898), ss. 255, 256, 8 C.L.R. 325.

See CRIM. PRO. CODE (1898), ss. 256 and 257, 4 C.W.N. 351.

—Cross-examination of prosecution witnesses, postponing of—*See* CRIM. PRO. CODE (1898), ss. 288 and 289, 2 Weir 381.

—Defence producing documents for cross-examination of prosecution witnesses—Right of Crown to reply—*See* CRIM. PRO. CODE (1898), s. 292, 16 A. 88.

See CRIM. PRO. CODE (1898), ss. 340, 341, 288, 6 C.L.R. 53.

See CRIM. PRO. CODE (1898), s. 342, 6 C. L.R. 431.

—Of accused in commencing proceedings—*See* CRIM. PRO. CODE (1898), s. 364, 7 O.C. 191.

See DEFAMATION, 6 A. 220.

See EVIDENCE ACT, s. 135, 5 C.W.N. xv.

See SANCTION TO PROSECUTE, 11 Bom. L. R. 1164.

Crown.

—*Prerogatives of the Crown in India.*—Rights, which, according to the common law of England, are comprised in the royal prerogatives, may not either be applicable to or have not been introduced into India. On the other hand, it is probably true that the Crown has, according to the common law of India certain prerogatives, which it may exercise in India though not in England, notably the prerogative of imposing by an executive act assessment on lands and varying the same from time to time. The prerogatives of the Crown in India a country in which the title of the British Crown is of a very mixed character, may vary in different provinces, as also in the Presidency towns as distinguished from the mofussil. The determination, with anything like legal precision, of all the prerogatives of the British Crown in India is by no means an easy task. **25 M. 457=12 M.L.J. 208=1 Weir 800.** [*R.*, 6 Bom. L. R. 131, 14 M.L.J. 37, 10 C.W.N. 857=33 C. 1040].

—not bound by Statute—*See* STATUTES, CONSTRUCTION OF, 25 M. 457.

Crown Grants.

—*Crown grants, construction of.*—In respect to Crown grants, upon a question of the meaning of words, the same rule of common sense and justice must apply, whether the subject-matter of construction be a grant from the Crown or from a subject. It is always a question of intention to be collected from the language used with reference to the surrounding

Crown Grants—concluded.

circumstances. If these guides to a satisfactory construction fail, but not otherwise, the ancient rule is that "If the King's grant can endure to two intents, it shall be taken to the intent that makes most for the King's benefit." **18 B. 670.** [*R.*, 3 Bom. L.R. 603=25 B. 714].

Cruelty.

See MAINTENANCE, 11 A. 480, 16 B. 269.

Cruelty to Animals.

(1)—*Grave and sudden provocation—Murder.*—When a man kills another on being deprived of self-control by reason of grave and sudden provocation, the offence committed by him is only culpable homicide not amounting to murder. But when the act is done after the first excitement had passed away, and there was time to cool, it is murder. **4 B.L.R. A. Cr. 6=12 W.R. Cr. 68.**

(2)—*Penal Code, s. 300*—Culpable homicide, though committed under provocation, will amount to murder, unless it is proved not only that the act was done under the influence of some feeling which took away from the person doing it all control over his actions, but that that feeling had an adequate cause. **1 B.L.R. A. Cr. 11=10 W.R. Cr. 26.**

—Society for the prevention of cruelty to animals, officers of—Public servant—*See* ACT V OF 1861, 3 C.L.J. 475=10 C.W.N. 727=3 Cr. L.J. 420.

See ACT XI of 1890, s. 3 (*a*) (*c*), 2 C.L.J. 624 =3 Cr. L.J. 116.

Cruelty to Animals (Prevention of) Act.

See ACT XI OF 1890.

Culpable Homicide.

See CULPABLE HOMICIDE NOT AMOUNTING TO MURDER.

See MURDER.

See PENAL CODE, ss. 299-304.

(1)—*Penal Code, ss. 304, 304-A, 323—Voluntarily causing hurt, resulting in death.*—Where, in the deceased's omission to immediately drive his pigs, that were grazing upon the accused's land, the latter took up a piece of a brick and threw it at the deceased from a distance of five paces, and it struck him over the spleen, which, being in diseased state, was ruptured, and death ensued, *held*, that the accused was guilty only of hurt, and not of causing death by a rash and negligent act. **3 A. 597.** [*F.*, 2 Bom. L.R. 613; *R.*, 3 Bom. L. R. 394].

(2)—*Penal Code, ss. 302, 304—Grave and sudden provocation.*—Where the accused found his sister having illicit connection with another man and in a sudden passion, killed them both on the spot, *held*, that the accused received very grave and sudden provocation, sufficient to reduce the case to one of culpable homicide not amounting to murder. **18 A. 497.**

Culpable Homicide—continued.

(3)—*Penal Code, ss. 304, 323—Branding and beating for the purpose of freeing from bewitchment.*—The accused believing that a woman had bewitched another gave the former a severe beating and branded her in several places. She finally took to her bed and died on the sixth day after the beating. The accused were, on these facts, tried by a second class Magistrate who convicted them of offences under s. 323, I.P.C., and sentenced them each to rigorous imprisonment for six months. *Held*, reversing the conviction and sentence, that the accused should be committed for trial on a charge of culpable homicide. **4 Bom. L.R. 879.**

(4)—*Penal Code, s. 300, except. 5—Scope—Death resulting in fight between contending factions each armed with deadly weapons.*—The exception extends to all cases of death occasioned by, or resulting from, premeditated acts, where the party killed takes the risk of the death with his own consent; the fourth exception, being an independent one and applying to all cases of death occurring in the course of sudden and unpremeditated fight, does not in any way bind the natural operation of the fifth exception. [*Diss.*, 18 C. 485, F.B.; *R.*, 18 C. 485 F.B.]. Where the death of an adult occurred in the course of a fight between two bodies of men who were deliberately fighting together, a greater portion of the men on both sides being armed with deadly weapons, and no unfair advantage appearing to have been taken by the one side or the other in the course of the fight, the offence committed is culpable homicide and not murder. **6 C. 154.**

(5)—*Penal Code, ss. 53, 88 and 340-A—Surgical operation by unskilled medical practitioner—Rash and negligent act causing death.*—The accused, an ignorant Kobiraj, operated upon the deceased, an old feeble man, for external piles, by cutting them out with a common clasp knife after pulling them down with a hook. The man bled to death. It was proved that the operation, which he performed, was so imminently dangerous that educated surgeons scarcely ever attempt to do it. It was also proved, by the defence, that he had twice before performed similar operations. with success. *Held*, that the accused was guilty of an offence under s. 304-A. *Held*, also, that he could not claim the benefit of s. 88, as a patient could not be held to accept a risk of which he was not aware, and as the accused could not be considered to have acted in good faith inasmuch as he had not acted with due care and attention. **14 C. 566.** [*R.*, Rat. Un. Cr. C. 603].

(6)—*Penal Code, s. 300, except. 5—Scope of exception—Rioting armed with deadly weapon—Attempt to commit murder—Premeditated and pre-arranged fight—Applicability of the exception.*—All the accused persons were guilty of rioting armed with deadly weapons and one of the accused, in the course of the riot, and in prosecution of the common object of the assembly killed or attempted to kill a man belonging to the other party, under such circumstances that

Culpable Homicide—continued.

his act amounted to attempt to murder, unless that act bore a less grave offence under exception 5 to s. 300 of the Code, by reason of the fact that the fight was premeditated and pre-arranged, a regular pitched battle or trial of strength between the two parties concerned in the riot. *Held*, that, upon such finding, the case did not fall within that exception. The 5th exception to s. 300 should receive a strict and not a liberal construction. In applying it, it should be considered first, with reference to the act consented to or authorised, and next with reference to the person or persons authorised. As to each of them, some degree of particularity at least should appear upon the facts proved, before the exception can be said to apply. It cannot be taken as referring to anything short of suffering the infliction of death, or running the risk of having death inflicted, under some definite circumstances not merely of time, but mode of inflicting it, specifically consented to. It does not contemplate a consent to the acts of person not known or ascertained at the time the consent was given. The consent may be inferred from circumstances, and does not absolutely need to be established by actual proof of express consent. *Per* O'Kinealy, J.—Before exception 5 can be applied, it must be found that the person killed, with a full knowledge of the facts, determined to suffer death or to take the risk of death, and this determination continued up to, and existed at, the moment of death. It is difficult to assert that, when two parties armed with lathis and spears go out to fight, the members of each party consent to suffer death, nor can it be predicated, as a general rule, that they consent to take the risk of death. *Per Ghose, J.*—In cases like the one mentioned in 1, *supra*, no general rule of law can be laid down whether the person killed or wounded suffered death or took the risk of death with his own consent; for it is a question of fact, and not of law to be decided upon the circumstances of each case. There is nothing in the exception to indicate that it would not be applied to a case where the fight is between two or more persons on either side. In such cases, the question of the applicability of the exception must be determined upon evidence whether the deceased took the risk of death with his own consent. **18 C. 484.**

(7)—*Death resulting from a violent attack—Offence, nature of.*—Where death results from a violent attack, the accused should be committed to the Court of Sessions on a charge of culpable homicide not amounting to murder. His conviction for grievous hurt is bad in law. **1 C.L.R. 141.**

(8)—*Penal Code, ss. 299, 300 and 304-A—Causing death by negligent act—Death by tetanus brought on by the fracture of the big toe, the fracture being caused by the accused pushing the deceased.*—In the course of a dispute, the accused gave the deceased a severe push on the back which caused him to fall from the top of the accused's steps to the roads below, a distance of two and a half cubits. In falling the deceased fractured his big toe, and on the fifth day after

Culpable Homicide—continued.

the fall the deceased died from tetanus brought on by the fracture. *Held*, that the conviction of the accused under s. 304-A was bad; and that the case was not one of culpable homicide not amounting to murder, because there was no likelihood of the result following, and *a fortiori*, no design of causing it. *Held*, also, that, as there was a positive act which directly caused the death, and as the act was not culpable homicide because no proper circumspection would have shown the accused that his act would cause death, the case was simply one of using criminal force as defined in the Penal Code. **1 M. 224=1 Weir 325.**

(9)—*Penal Code, s. 300—Provocation required by the section—Evidence as to the condition of mind of the offender—Admissibility.*—The provocation contemplated by s. 300 should be of a character to deprive the offender of his self-control. In determining whether it was so, it is admissible to take into account the condition of mind in which the offender was at the time of the provocation. **2 M. 122=1 Weir 302.** [*F.*, L.B.R. (1893—1900), 251].

(10)—*Penal Code, s. 304-A—Death caused by rash and negligent act—Causing death by a criminal Act.*—Where the act causing the death of the accused is in its nature criminal, s. 304-A of the Penal Code has no application. **12 M. 56=1 Weir 326.** [*R.*, Rat. Un. Cr. C. 458].

(11)—*Penal Code, ss. 323 and 304—Act done with the knowledge that death will probably result.*—Where a woman of strong physique sitting upon the chest of her husband, a man in an extremely weak state of health, twisted and squeezed his testicles in such a manner as to reduce them to a pulpy condition and the accused died from the injury caused to the testicles, *held*, (by Subramania Ayyar and Benson, JJ.,) that the accused was guilty of culpable homicide not amounting to murder inasmuch as the accused should be held to have known that the death would at all events be a probable, if not the most probable, consequence of her act. *Held*, (by Davis, J.,) that the death was an unforeseen result of the act, and the accused was guilty only of an offence under s. 323, Penal Code. **19 M. 356=1 Weir 313.**

(12)—*Penal Code, s. 300, except. 4—"Grave and sudden" provocation—Deceased striking accused first.*—Where there was a fight between the deceased and the accused, but the deceased struck the first blow, and no motive sufficient to induce the accused to deliberately murder the deceased was proved, *held*, that the accused were guilty of culpable homicide only, though the deceased died as a result of the injuries inflicted by the accused. **5 M.L.T. 207.**

(13)—*Penal Code, s. 300—Whether every case of homicide* prima facie *murder.*—The Law of British India, differing from the Law of England, does not regard every case of homicide as *prima facie* murder; it throws on the prosecution the burden of proving a certain intent or knowledge constituting an act a murder. **1 Weir 288.**

Culpable Homicide—continued.

(14)—*Penal Code, s. 304—Killing of adulterer taken in Act by husband of woman.*—The punishment to be inflicted for an offence under s. 304, for the murder of the adulterer caused by sudden provocation by the husband of the woman is discretionary. The principal object in view by which the Courts should be guided is a sufficiently deterrent punishment. **U. B. R. (1892—1896), Vol. I, 213.**

(15)—*Taking persons in old boat—Negligence—Penal Code, s. 299.*—Certain persons whom the accused, a ferryman, was rowing across a river were drowned by the sinking of the boat which was an old one with holes in it over which planks had been nailed. *Held* that the prisoner could not be convicted of culpable homicide not amounting to murder, unless it could be shown that he acted with the knowledge that he was likely, by taking them in the boat, to cause death within the meaning of s. 299 of the Penal Code. **11 W.R. Cr. 3.**

(16)—*Unpremeditated assault—Penal Code, s. 300, except. 4.*—An unpremeditated assault, ending in an affray in which death is caused, committed in the heat of passion upon a sudden quarrel, comes within except. 4 of s. 300 of the Penal Code. It does not matter which party offered the provocation or committed the first assault. **1 W.R. Cr. 33.**

(17)—*Right of private defence—Penal Code, ss. 97, 99 and 104.*—An accused, whose property had frequently been stolen, went out with a *lathee* to watch his property, and with the *lathee* struck a thief, who died in consequence of the blows. *Held* (having regard to the nature of the injuries inflicted and to the subsequent conduct of the accused) that the case did not fall within the 4th exception to s. 99, Penal Code, and that the prisoner was not guilty of culpable homicide not amounting to murder, but was protected by ss. 97 and 104 of the Penal Code, and had not transcended the limits of the right of private defence of property. **12 W.R. Cr. 15.**

(18)—*Grave provocation—Interval between provocation and attack.*—A person suddenly cut his wife's throat; *held* that, in order to prove that the act was not done under grave provocation so as to bring the case under except. 1 of s. 300 of the Penal Code, it must be shown not merely that the deceased ceased abusing the prisoner then, but also what interval elapsed between the time when the deceased ceased speaking and the time when the prisoner attacked her. The offence in this case was held to be culpable homicide not amounting to murder. **7 W.R. Cr. 27.**

(19)—*Sudden provocation—Penal Code, s. 300, except. 1.*—For a person to avail himself of the extenuating circumstances provided for in s. 300, Penal Code, except. 1, the provocation and its effects must be proved to have been sudden as well as grave; and also the deprivation of the power of self-control must be shown to continue. **19 W.R. Cr. 35.**

Culpable Homicide—concluded.

(20)—*Provocation—Beating—Deliberation.*—A person who beats another brutally and continuously, so that death results, is guilty of murder, or culpable homicide not amounting to murder, according as there may or may not have been grave provocation. **5 W.R. Cr. 78.**

(21)—*Penal Code, ss. 302, 304—Culpable homicide and murder—Difference.*—A person who causes death by acts done with the knowledge that they were likely to cause such bodily injury as was dangerous to life, is guilty of only culpable homicide (s. 304) and not of murder (s. 302). If the act is done with the intention of causing such bodily injury as the offender knows to be likely to cause death or with the intention of causing such bodily injury as is sufficient in the ordinary course of nature to cause death, the offence is murder. **A.W.N. 1884, 289.** (3 A. 777, B.L.R. Sup. Vol. 451, *R.*).

See CONVICTION, Rat. Un. Cr. C. 413=Cr. Rg. 79 of 1888.

See CRIMINAL FORCE, 21 P.R. 1876 Cr.

See CRIM. PRO. CODE (1898), s. 403 4), 5 Bom. L.R. 125.

See MURDER, 4 P.R. 1900 Cr.

See PENAL CODE, s. 304-A, 4 C. 815, 4 C. 764, 1 Weir 324=7 M.H.C. 119.

See PENAL CODE, ss. 304, 325, 328, 18 C. 49.

See RIOTING, 3 N.W.P. 174, A.W.N. 1883, 32.

See UNLAWFUL ASSEMBLY, A.W.N. 1885, 96.

Culpable Homicide Not Amounting to Murder.

See CULPABLE HOMICIDE.

See MURDER.

See PENAL CODE, ss. 299—304.

(1)—*Penal Code, ss. 299, 304, 321, 323—Murder—Intention.*—Where a person, irritated by the lazy and inefficient manner in which the punkha cooly was managing the punkha, gave him some blows, and the cooly died of the injuries he had received, *held*, that as the evidence in the case showed that the blows were not heavy or severe, and that the spleen of the deceased was in a very deceased condition, the accused could not have had in view the cooly's death as a probable or even possible consequence of his acts, and that he was guilty only of hurt under s. 323. **2 A. 522.** [*F.*, 1 A.W.N. 112, 1 A.W.N. 132=3 A. 776, L.B.R. (1872—1892), Cr. 179.

(2)—The intention which should be found in order to constitute the offence of murder and that of culpable homicide not amounting to murder discussed and explained. **27 P.R. 1883 Cr.**

(3)—*Penal Code, ss. 299, 304, 304-A, 322, 325—Voluntarily causing hurt resulting in death.*—Where the accused struck the deceased on the ribs with a stick and inflicted a hurt which not only endangered his life, but actually

Culpable Homicide Not Amounting to Murder—continued.

caused his death, and which he must have known was likely to break a rib, if not worse injury, *held*, that the offence committed was grievous hurt, but not the offence mentioned in s. 304-A. *Held*, also, that the offence did not amount to culpable homicide, as the act was not done with any of the intentions mentioned in s. 299, I.P.C. **2 A. 766.** [*R.*, 1 A.W.N. 112, 3 A. 776=1 A.W.N. 132, 1 A.W.N. 103].

(4)—*Scope of s. 300, clauses (2) and (3).*—Clauses 2 and 3 of s. 300, I.P.C., are mere amplifications of that part of s. 299, I.P.C., which speaks of an act done "with the intention of causing such bodily injury as is likely to cause death." **18 P.R. 1893 Cr.**

(5)—*Penal Code, s. 304-A—Scope.*—Where the accused beat and kicked the deceased, a thief, to such a degree that 141 marks of separate blows were found on his body and several of his ribs had been broken, *held*, that the accused was not guilty under s. 304-A. But as none of the accused intended to kill the deceased, but only to cause such bodily injury as was likely to cause death, *held* that they were guilty of culpable homicide not amounting to murder. **5 N.W.P. 235.** [*F.*, 3 A. 776].

(6)—*Penal Code, s. 299—Culpable homicide—Death accidental—Criminal Act.*—Where the accused pushed the deceased into the water accidentally in the course of a struggle consequent on a dispute about a jewel, which resulted in the latter's death, *held* that the offence of culpable homicide was not committed. **Rat. Un. Cr. C. 6.**

(7)—*Ss. 304 and 304-A, Penal Code—Culpable homicide and death by negligence.*—Where a snake-charmer, exhibiting a cobra with unextracted fangs in public, placed it on the head of one in the crowd to display his own skill and with no intention of causing harm, whereupon the cobra, in being pushed off by the spectator, bit him and caused his death, held that the snake-charmer was guilty of an offence under s. 304 and not merely under s. 304-A of the Penal Code. 12 W.R. Cr., 7 distinguished on the ground that, in that case, the prisoner actually caused the snake to bite the person, who was killed, and thus had clear knowledge of the imminent danger that must, in all probability, cause death. **5 C. 351=4 C.L.R. 580.** [*R.*, Rat. Un. Cr. C. 603, U.B.R. (1897-1901), 298].

(8)—*Penal Code, ss. 300 and 304—Absence of intention to cause death or grievous hurt.*—Where, except the fact of death, there was nothing to show that the accused intended to cause death or grievous hurt, the death being caused by kicking the deceased, and no weapon having been used, *held* that, under these circumstances, it would be safer to convict him of culpable homicide not amounting to murder. **1 Weir 299.**

(9)—*Penal Code, s. 300—Causing death by an act done while in a state of intoxication.*—Where the accused, when in a state of intoxication,

Culpable Homicide Not Amounting to Murder —continued.

produced by his own act, struck the deceased with a bamboo, thereby causing fracture of the skull, which resulted in death, *held* that the accused should be charged with culpable homicide not amounting to murder, and not with grievous hurt. **1 Weir 301.**

(10)—*Penal Code (Act XLV of 1860), ss. 302 and 304—Murder—Culpable homicide not amounting to murder.*—The accused, aged forty years, quarrelled with his wife, who was dilatory in the performance of her household duties, and abused her, and gave her a blow on the side of the head with the first weapon which came to hand, *i.e.*, a heavy hammer. The wife died in consequence of the blow, and the accused was convicted under s. 302, Penal Code. *Held*, that the accused's offence fell under the second part of s. 304, Penal Code, and not under s. 302, as he did not intend to cause death, or such bodily injury as was likely to cause death, although he must have known that he was likely to cause death. **6 P.L.R. 1903.**

(11)—*Penal Code, ss. 299, 300 and 304—Culpable homicide not amounting to murder—Grave and sudden provocation.*—Where a person charged with murder of another person, saw, on the evening preceding the commission of the act charged, the deceased having connection with his wife, and on the following morning he saw his wife eating with the deceased and giving him food, while she left him without it, and thereupon the accused killed the deceased on the spot with a bill-hook, *held*, that, if having witnessed the act of adultery, the accused connected the subsequent conduct, as he could not fail to connect it, with that act, the conduct amounted to provocation grave enough and sudden enough to deprive him of self-control and reduced the offence from murder to culpable homicide not amounting to murder, inasmuch as the conduct of the deceased and his wife was of a character highly exasperating to him, implying that all concealment of their criminal relations, and all regard for his feelings were abandoned and that they purposed continuing their course of misconduct in his house. **3 M. 33=1 Weir 302.**

(12)—*Penal Code, s. 304 (2)—Murder—Grave and sudden provocation.*—The finding by a man of his wife in actual intercourse with another is a provocation grave and sudden enough to reduce the offence of murder to culpable homicide not amounting to murder, and such an offence must be visited with a light sentence. **Rat. Un. Cr. C. 932=Cr. Rg. 42 of 1897.**

(13)—The accused, who heard that his wife gave betel-nut or chunam to a certain person, subsequently saw her and that person weeding in a field side by side and their bodies frequently coming in contact. He upbraided his wife for it, but she told him that she would do just as she liked, and that there were thousands of men as good as he. Upon this he killed her in a passion with a *mamoti* which he had with

Culpable Homicide Not Amounting to Murder —continued.

him. *Held*, that the conduct of his wife amounted to grave and sudden provocation of such a character as to reduce the killing to culpable homicide not amounting to murder. **1 Weir 307.**

(14)—Where the accused caught the deceased in the act of adultery with his married sister and caused his death by fracturing his skull, *held*, that the sentence should be reduced to one year's imprisonment, as the accused acted under grave and sudden provocation and on an uncontrollable impulse. **4 P.R. 1904 Cr.**

(15)—Where the accused killed his wife having caught her in the act of having sexual intercourse with another, *held* that except. 1 to s. 300, I.P.C., applied, and that the conviction of the accused should be altered to one under s. 304. **8 P.R. 1899 Cr.**

(16)—Where the accused, who caught his wife in the act of adultery with her paramour and killed them both, was awarded the sentence of transportation for life, on the ground that having felled them with a single blow, he followed that up with further blows, *held*, that the sentence should be reduced further, as the act was done on grave and sudden provocation, which deprived him of his power of self-control. **8 P.R. 1890 Cr.**

(17)—Where the accused caught the deceased in the act of adultery with his wife and caused his death by strangulation, *held*, that the accused acted under grave and sudden provocation. The sentence of ten years' rigorous imprisonment passed on him was reduced to three years under the first part of s. 304. **27 P.R. 1900 Cr.**

(18)—*Held*, that the accused, who struck his wife a violent blow with an axe, which killed her, being so provoked on account of her refusal to cook his food to eat or cohabit with him on being taken back after an elopement, was guilty of culpable homicide not amounting to murder. **87 P.R. 1866 Cr.**

(19)—*Sudden fight—Provocation.*—The Chief Court reduced the sentence to one of two or three years' imprisonment, in a case where death was caused on provocation in a sudden fight, the accused not taking any unfair advantage over the deceased. **12 P.R. 1866 Cr.; 13 P.R. 1866 Cr.**

(20)—*Death caused under provocation—Intoxication—Penal Code, s. 304.*—If the act by which death was caused was done with the intention of causing such bodily injury as the accused knew to be likely to cause death, the case falls within the second, if not within the first clause of s. 300, Penal Code. The fact that the accused was more or less under the influence of intoxicating liquor does not affect the presumption as to his intention and cannot relieve him of responsibility for his action. The fact that a man is intoxicated may rightly be taken into consideration in estimating the probable effect on his mind of the words or acts of others.

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An act, which might not seriously provoke a sober man, might provoke a drunken man to an extremity of frenzy. Death caused by a drunken person deprived of the power of self-control by grave and sudden provocation amounts to culpable homicide not amounting to murder and is, therefore, punishable with transportation for life. **2 L.B.R. 204.** (1 L.B.R. 216, *R.*)

(21)—*Act done with knowledge that it was likely to cause death.*—The deceased having enticed away a married woman, the father and the husband of the woman, armed with sticks, waited for him on the road by which he was expected to pass, and gave him blows on the chest and back, but refrained from hitting him about the head; *held*, that the accused was only liable to be convicted under s. 304 (2), I.P.C. **10 P.R. 1890 Cr.**

(22)—*Right of private defence.*—Where the accused, on being attacked by the deceased armed with a large club, fired at him, without any particular aim, but lowering the muzzle of his gun, so as to hit a vital part, and death ultimately resulted from the wound inflicted, *held*, that the accused had not exercised a legal right of private defence, as he could have escaped by standing back, and that he was, therefore, guilty of culpable homicide not amounting to murder. **13 P.R. 1868 Cr.**

(23)—*Death caused by a single blow.*—The question for solution in cases where death is caused by a single blow, given in anger, on the impulse of the moment, with a weapon not deadly in its nature, is always one of fact, not of law, as to the intention or knowledge with which the striker acted. *Held*, that in the present case, the accused had nothing more than knowledge that death was likely to result from the blow given by him. **5 P.R. 1893 Cr.**

(24)—In a quarrel between himself and the deceased, the accused gave her a blow on the side of the head with a heavy hammer, which he picked upon the spur of the moment, and caused thereby her death; *held*, that the accused was merely guilty of culpable homicide not amounting to murder. **30 P.R. 1902 Cr.**

(25)—*Absence of premeditation or personal enmity.*—The fact of a murder being committed without premeditation or personal enmity was held not to warrant the Sessions Judge in abstaining from passing the sentence of death. **31 P.R. 1869 Cr.**

(26)—Want of premeditation, absence of a deadly weapon, and a violent altercation between the accused and the deceased, his wife, whose death was caused, were held to be good grounds for commuting a sentence of death into one of transportation for life. **105 P.R. 1866 Cr.**

(27)—*Penal Code, s. 304-A—Reduction of sentence—Unpremeditated blow.*—Where the accused took up a wooden pestle and gave a blow with it to the deceased, killing him, and the circumstances indicated that the blow was the unpremeditated outcome of a sudden quarrel, and that, though a reasonable man must have known that it was likely to cause death, the probability of a fatal result was not present to the consciousness of the accused at the moment, *held*, that the offence amounted to culpable homicide not amounting to murder under the latter half of s. 304, I.P.C.—and the sentence of seven years' rigorous imprisonment was reduced to that of three years. **9 Cr. L.J. 245=1 S.L.R. 1 Cr.**

(28)—*Death caused by violent beating—Absence of knowledge that act was likely to cause death.*—Where the accused, a police constable, caused the deceased's death by violently beating him, in the course of a police enquiry into a theft case, *held* that the accused was not liable to be convicted for culpable homicide, but was guilty of an offence under s. 380, Penal Code. **86 P.R. 1866 Cr.**

(29)—*Arrest—Causing death by excessive violence.*—Where, in arresting the deceased, who, with others, was attempting to commit theft, the accused struck a blow on the deceased with a stick, *held*, that the accused had not used excessive violence and were not, therefore, guilty of culpable homicide. **26 P.R. 1872 Cr.**

(30)—*Penal Code, ss. 299, 300 (2), 304—Murder—Culpable homicide not amounting to murder—Criminal intention or knowledge necessary—Injury, nature of.*—The accused rushed wildly into a house and, without considering the consequences, attacked his mother-in-law, a woman of fifty-five with a *da* and by mistake cut another woman of sixty-one on the arm, who died of the shock caused by the cut. The wound was not such as would ordinarily cause the death of a woman of that age. Nor did the accused know of any weakness or defect in the person to whom the harm was caused, which would render her likely to be killed by such an act. *Held*, as the accused did not act with the intention specified in the second clause of s. 300 or with the intention in s. 299, but only with a knowledge that he was likely by his act to cause death, he committed only culpable homicide not amounting to murder. **4 L.B.R. 367 =9 Cr. L. J. 364.**

(31)—*Penal Code, ss. 299, 300, 304—Murder—Culpable homicide—Intention to cause injury sufficient in the ordinary course of nature to cause death—Intention to cause injury likely to cause death—Distinction.*—The distinction between the intention to cause injury sufficient in the ordinary course of nature to cause death, and the intention to cause injury likely to cause death, depends upon the degree of probability of death resulting from the act committed. Apart from cases falling within the second clause of s. 300, if, from the intentional act of injury committed, the probability of death resulting is high, the finding should be that the accused intended to cause death or injury sufficient in the ordinary course of nature

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to cause death, and the conviction should be of murder unless one of the exceptions applies; if there was probability in a less degree of death ensuing from the act committed, the finding should be that the accused intended to cause injury likely to cause death, and the conviction should be of culpable homicide not amounting to murder. **5 L.B.R. 80.**

(32)—The accused, eight in number, beat three persons, one of whom died of injuries resulting therefrom. The accused was convicted by a first class Magistrate, one of them sentenced to one year's rigorous imprisonment and a fine of Rs. 20 under ss. 148/352, I.P.C., and the rest to four months' imprisonment and to a fine of Rs. 10 under s. 148, I.P.C. *Held*, that the former should be convicted on charges under ss. 304 and 325, I.P.C., and all the rest under ss. 149/304 and 149/325, in respect of the injury to and the death of one of them, and that all the accused on charges under ss. 148 and 149/325, as regards the injury to the other two persons. **8 P.R. 1892 Cr.**

(33)—*Grave provocation—Husband seeing wife seduced to adultery.*—The wife of the prisoner had been forcibly taken to the house of the deceased, a native physician, who alleged that her presence was necessary to the due performance of certain incantations. The prisoner, armed with a sword, and watching from the roof of the house, saw his wife being actually violated by the deceased. He jumped down from the roof, and struck deceased with his sword in several places, from the effects of which he died. *Held* that the prisoner's conviction for murder could not be sustained. The offence committed was culpable homicide not amounting to murder. **3 B.L.R. A. Cr. 33.**

(34)—*Form of conviction—Penal Code, s. 300 —Exceptions.*—When a Judge convicts on a charge of culpable homicide not amounting to murder, he should state under which of the exceptions in s. 300 of the Penal Code the case falls. **1 Agra Cr. 3.**

(35)—*Subjecting person of full age to emasculation.*—When a man of full age (*i.e.*, above 18 years) submits himself to an emasculation, performed neither by a skilful hand, nor in the least dangerous way, and death ensues in consequence, the persons concerned in the act are guilty of culpable homicide not amounting to murder. **5 W.R. Cr. 7.**

(36)—*Knowledge of likelihood to cause death —Pre-meditation.*—Where a person snatches up a log of heavy wood, and strikes another with it on a vital part, with so much force and vindictiveness as to cause that other person's death almost on the spot, that act must be held to have been done with the knowledge that it was likely to cause death; but if the act is done without forethought, in the heat of passion and on a sudden quarrel, the offence committed is culpable homicide not amounting to murder. **7 W.R. Cr. 106.**

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(37)—*Causing death by branding a thief— Dangerous Act.*—Causing death by branding a thief without the knowledge that the act was so imminently dangerous that it would in all probability cause his death, or such bodily injury as was likely to cause death, is culpable homicide not amounting to murder under s. 304, Penal Code. **7 W.R. Cr. 54.**

(38)—*Grave provocation—Husband finding wife in adultery.*—Where a prisoner stated that he did not suspect his wife's fidelity; that he left home on business; that on returning home he saw what convinced him of his wife's infidelity; and that, provoked at the sight, he killed both her and her paramour. *Held*, that he was guilty of culpable homicide not amounting to murder, and that the case was one deserving lenient treatment. **8 W.R. Cr. 38.**

(39)—*Grave provocation—Husband finding wife in adultery.*—Two persons stated that having caught the deceased in the act of having sexual intercourse with the wife of one of them, they killed him on the spot. *Held* that the grave provocation given reduced the crime from murder to culpable homicide not amounting to murder. **1 W.R. Cr. 17.**

(40)—*Grave provocation.*—The prisoners found the deceased lying in the same bed with their sister and ill-treated him, from the effects of which ill-treatment he died. *Held* that the provocation was sufficiently grave to justify a conviction of culpable homicide not amounting to murder. **4 W.R. Cr. 38**; 6 W. R. Cr. 42.

(41)—*Hasty and fatal blow.*—A prisoner, who struck the deceased a hasty but fatal blow with a stick in his hand at the time for abusing his mother, was held guilty of culpable homicide not amounting to murder. **1 W.R. Cr. 23.**

(42)—*Sudden fight.*—A person charged with murder, while smarting under a severe blow from a stick in the midst of a sudden fight, and possibly apprehensive of future violence, finding a knife at hand, took it up, and in the *melee* inflicted the wound which caused the death of the deceased. *Held* that, under the circumstances, the accused was guilty, under the Penal Code, s 304 of culpable homicide not amounting to murder. **24 W.R. Cr. 48.**

(43)—*Penal Code, ss. 302 and 304—Murder and culpable homicide not amounting to murder.*—An intention to kill in a case of murder cannot be inferred when that is not proved. That the accused knew he was likely to cause the death may be inferred and, if the accused knew that he was likely to cause the death, then, his act comes within the definition of s. 300, I.P.C., and not within that of s. 302 and, therefore, s. 304 is the only section applicable. **U.B.R. (1892—1896), Vol. I, 211.**

(44)—*Penal Code, s. 304—Culpable homicide not amounting to murder.*—The Judge in this case did not find that the accused intended to

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cause death, nor was it found that the act was done with the intention of causing any particular bodily injury such as the offender knew to be likely to cause death, nor that the offender knew that his act was so imminently dangerous that it must in all probability cause death or such bodily injury as was likely to cause death. In view of the facts above stated, the offence was held to fall under s. 304, I.P.C. **U.B.R. (1892—1896), Vol. I, 215.** (3 A. 776, *R.*)

(45)—*Penal Code, ss. 302, 304—Murder—Culpable homicide not amounting to murder.*—Where a person struck with a *lathee* and killed a man being at the time under the *bona fide* belief that the object at which he struck was not a human being but something supernatural, but, through terror, having taken no steps to satisfy himself that it was not a human being, *held* that he was guilty of the offence of culpable homicide not amounting to murder. **A.W.N. 1898, 163.**

(46)—*Murder—Culpable homicide—Right of private defence.*—The verdict of the jury in a trial for murder was, that the accused fired the gun at the deceased under the reasonable apprehension that his own life was in danger or that grievous hurt would be caused to him, but that, though he honestly acted in self-defence, his act was in excess of what a prudent and reasonable man would have done under the circumstances. *Held*, that the accused was guilty of culpable homicide not amounting to murder. **A.W.N. 1882, 172.**

(47)—*Penal Code, s. 300, except. 4—Sudden fight.*—Where the accused, seven in number, entered a field in which deceased and his friends were working, with staves, some of them being iron-bound, in order by force to make them desist from cultivating the field, and a fight ensued in which the deceased received a *lathee* wound on the head at the hands of one of the accused, of which he died in a few days, *held* that as it was not in evidence that the accused desired or premeditated the death of the deceased, and as there was a fight in which the parties became heated with sudden passion, and the weapons used were not unusual and were not applied with unfair advantage or peculiar cruelty, the offence came within except. 4, s. 300, I.P.C. **A.W.N. 1881, 156.**

(48)—*Penal Code, ss. 302, 304—Culpable homicide and murder—Provocation—Adultery.*—Every killing is *prima facie* murder until the contrary is shown, and it is on the accused to show that his act amounted to a lesser degree of crime. The fact that the accused found his wife whom he killed at midnight in his own house sleeping in the same room with a man whom he had all along suspected and whose company he had forbidden, is a circumstance that raises an irresistible inference of grave and sudden provocation that reduces the offence to man-slaughter. **A.W.N. 1885, 197.** [*D.*, 8 A. 222, 635].

See PENAL CODE, s. 38, A.W.N. 1882, 23.

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See PLEA OF GUILTY, 3 S.L.R. 58 Cr. = 2 Ind. Cas. 372.

See SENTENCE, Rat. Un. Cr. C. 735.

See VERDICT OF JURY, Rat. Un. Cr. C. 982.

Cumulative Sentence.

See SENTENCE.

See PENAL CODE, s. 71, L.B.R. (1872—1892), 168.

Currency Note.

See STOLEN PROPERTY, 2 Weir 664 = 7 M. H.C. 233.

Custody.

See ESCAPE FROM LAWFUL CUSTODY.

—Of minor—*See* ACT VIII OF 1890, 16 B. 307.

—Right of persons in custody to be protected —*See* BOM. ACT IV OF 1890, ss. 51, 52, 20 B. 394.

—And possession—*See* MASTER AND SERVANT, U.B.R. (1897—1901), Vol. I, 232.

Custody of Children.

—*Right to custody of children—Custody of mother.*—A mother cannot have a right to the custody of her legitimate children adversely to the father; and the custody of the mother is, ordinarily, the custody of the father and any removal of the children from place to place by the mother ought to be taken to be consistent with the right of the father as guardian, and not as a taking out of his keeping. **8 C. 969 = 11 C.L.R. 6.**

—*Custody of illegitimate child.*—The mother of an illegitimate child has a natural right to its custody which will be regarded by the Court. **16 B. 307.**

—*Father's right to custody—Legitimate children—English Law previous to statute 2 and 3 Vic., c. 39.*—A father, if a proper person, cannot be deprived of his legal right to the custody of his legitimate children of whatever age, 2 and 3 Vic., c. 39, which gives a discretionary power to a Judge in England, has not been extended to this country; therefore, the law applicable to cases which occurred in England previous to the passing of that statute is applicable here. **1 Hyde 99.**

—*Order by Criminal Court—Question by Civil Court.*—A father applied to a Criminal Court for the custody of his child, who was eleven years old and had always lived with the mother, and the Court ordered it to be delivered to the father. *Held* that the Court was wrong, the question being one that ought to be decided in a Civil Court. **25 W.R. Cr. 35.**

—Orders regarding custody and guardianship of children—*See* CRIM. PRO. CODE (1898), ss. 144, 133, 2 Weir 66.

Custody of Children—concluded.

See CRIM. PRO. CODE (1898), s. 491, 11 Bom. L.R. 75=9 Cr. L.J. 214.

See MAINTENANCE, 4 C. 374, 19 M. 461=2 Weir 621.

Custody of Minor.

See LETTERS PATENT (BOM.), 1865, cl. 15, 14 B. 555.

Custody of Wife.

See MAINTENANCE, 4 P.R. 1906 Cr.=4 Cr. L.J. 73.

Custom.

(1)—*Elements of valid custom.*—*Per* Innes, J.—To constitute a valid custom it must be reasonable as well as certain and ancient, and it is not probable that any Court would hold that to be a reasonable custom, which requires the members of one section of the community to restrict themselves in their ordinary rights in recognition of the reverence due to a religion to which they do not belong and in which they do not believe. **6 M. 203 F.B.; 2 Weir 77.**

(2)—*Penal Code, s. 494—Proof of custom of divorce.*—A custom to the effect that a marriage becomes void, if the husband says that he does not want his wife and she gives him back her *tali*, cannot be considered immoral. Where such a custom is alleged as a defence to a charge under s. 494, the accused should be allowed to tender evidence of such a custom. **1 Weir 568.**

See BIGAMY, 2 B.H.C. 117.

Customs (Inland) Act, N.W.P.

See U.P. ACT, XIV OF 1843.

Dacoity.

See PENAL CODE, ss. 395, 396.

(1)—*Penal Code, ss. 24, 147, 391—Intention—Dacoity.*—Where the accused forcibly removed an ox and two cows, the property of the complainant (a Muhammadan), in order to prevent the butchery of the cattle, which the Hindu religion held to be a grossly outrageous act, *held*, that the accused was not guilty of the offence of dacoity, as there was no element of dishonesty in his conduct. **15 A. 22.** [*D.*, 15 A. 299; *Diss.*, 5 N.L.R. 17].

(2)—*Penal Code, s. 395—Dacoity—Hindus taking forcible possession of cows from Muhammadans.*—When Hindus acting under a religious motive attack a party of Muhammadans driving cattle in a public road, and take forcible possession of the cattle, they are guilty of dacoity under s. 395, I.P.C. **15 A. 299.** (15 A. 22, *D.*)

(3) *Penal Code, s. 396—Scope.*—S. 396 is not a section creating a separate and distinct offence. It merely provides a particular punishment for those who conjointly commit dacoity in the course of which murder is committed. To establish a liability to the punishment provided by the section, it is necessary to prove that the person said to be liable was one of those who

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were conjointly committing dacoity and was present when the act of murder in the dacoity was committed. **16 A. 437.** [*F.*, 15 P.R. 1901 Cr.; *D.*, 17 A. 86=15 A.W.N. 12; *Not F.*, P.L.R. 1900, 44 Cr.].

(4)—*Penal Code, s. 396—Dacoity with murder.*—In order to convict a dacoit under s. 396, I.P.C, it matters not when in the commission of dacoity a murder is committed, whether the particular dacoit was inside, or outside the house, where the dacoity was committed, or whether the murder was committed inside or outside the house, so long only as the murder was committed in the commission of that dacoity. **17 A. 86.** [*F.*, P.L.R. 1900, 44 Cr.; *R.*, 6 Bom. L.R. 248].

(5)—*Penal Code, ss. 34, 397—Causing grievous hurt in course of dacoity—Liability of dacoits who have not caused the grievous hurt.*—The words "such offender" in s. 397 include any person taking part in the dacoity, who, though he may not have himself struck the blow causing the grievous hurt, is nevertheless liable for the act by reason of s. 34, Penal Code. **21 A. 263.** [*R.*, 1 L.B.R. 233; *D.*, 3 L.B.R. 121; *Overruled*, A.W.N. 1899, 186, 23 A. 404=A.W.N. 1906, 61=3 Cr. L.J. 322].

(6)—*Penal Code, s. 396—Definition—Dacoity with murder—Murder committed while dacoits were escaping.*—Where, after the commission of a dacoity, in which, however, the dacoits, being interrupted by the villagers, did not get any plunder, and were attempting to escape, and one or more of them, in order to facilitate the escape, attacked and killed one of the pursuing party, it was *held* that s. 396 did not apply, but only the person or persons actually taking part in the killing were liable therefor. **A.W.N. 1906, 47=3 Cr. L.J. 294.**

(7)—*Penal Code, s. 397—Dacoity with use of deadly weapons—Applicability of section.*—*Held*, that s. 397 applies only to the actual person or persons, who, at the time of committing robbery, or dacoity, may use any deadly weapon, or may cause grievous hurt to any person, or may attempt to cause death or grievous hurt to any person. **A.W.N. 1906, 61=3 Cr. L.J. 322=28 A. 404.**

(8)—*Penal Code, s. 400—Wives and mistresses of dacoits—Liability.*—The mere fact that some women are the wives or mistresses of dacoits does not render them liable also as dacoits. **Rat. Un. Cr. C. 863=Cr. Rg. 26 of 1896.**

(9)—*Penal Code, s. 400—Offence under section, what constitutes.*—In order to sustain a conviction under s. 400, I.P.C., evidence must be given of a gang of persons, of their association, and association for the purpose of habitually committing dacoity and robbery. **1 C.W.N. 146.** *See*, also, 27 C. 139.

(10)—*The words "conjointly with five or more persons" redundant in a charge of.*—The words "conjointly with five or more persons" were observed to be redundant in a charge,

Dacoity—continued.

inasmuch as the fact of five or more persons being concerned is implied in the term "dacoity," as defined in s. 391 of the Penal Code. **2 W.R. Cr. Letters, 1.**

(11)—*Penal Code, s. 400—What constitutes "habitually committing dacoity"—Crim. Pro. Code, s. 423, cl. (2)—Evidence Act, I of 1872, s. 54—Evidence of other crimes is evidence of bad character and inadmissible.*—In a case under s. 400, Indian Penal Code, it must be proved that the accused belong to a gang which is consciously associated for the specific purpose of habitually committing dacoity. The associating and purpose of association may be proved by direct evidence, *viz.*, that the accused met and determined to join together for the purpose of habitually committing dacoity. In the absence of direct evidence, the associating and purpose of associating may be established by proof of facts from which they may reasonably be inferred. Before the verdict of the jury can be interfered with, the High Court must, under s. 423, cl. (2), Crim. Pro. Code, be satisfied that the verdict is erroneous owing to the misdirection by the Judge or to a misunderstanding on the part of the jury of the law as laid down by the Judge. *Quære* :—Whether evidence to show that the accused had committed crimes other than dacoities would be relevant to a charge under s. 400, I.P.C. Such evidence is really evidence of bad character and is excluded by s. 54, Evidence Act, and the bad character of the accused is not a fact in issue. If the accused or groups of them had been concerned in a large number of dacoities in a comparatively short space of time, it might be inferred that they were members of a gang associated for the purpose of habitually committing dacoity. **5 M.L.T. 100=32 M. 179=9 Cr. L.J. 567=2 Ind. Cas. 307.**

(12)—*Penal Code, s. 390—Robbery—Claim of right.*—However erroneous a claim of right may be, if in fact the conduct of the accused was solely induced by a *bona fide* belief in such claim, a charge of robbery cannot be maintained. If a person has violated the orders of a Civil Court, or, acting under an erroneous notion of his right, has used force, or otherwise committed a breach of the peace, there are sufficient ways in which the authority of the Civil Court may be vindicated, and the breach of the public peace or the use of force to private persons adequately punished ; but to go further than this, would be to distort every instance of trespass or assault in assertion of the rights of property into a case of robbery or dacoity. **1 Weir 443=3 M.H.C. 254.**

(13)—*Penal Code, s. 395—Dacoity—Duty of Judge in cases of dacoity.*—In cases of dacoity, the Judge should explain to the jury with sufficient clearness that, unless they are satisfied that there were five or more persons committing the robbery or that the persons present and aiding in the commission of the robbery numbered five or more persons, there could be no dacoity. Where six persons were charged

Dacoity—continued.

with dacoity, and the jury acquitted two of them, and they were not distinctly instructed by the Judge that, if they found that the robbery was committed by less than five persons, the conviction should not be for dacoity but for robbery, *held*, that the Judge has misdirected the jury and the conviction on the charge of dacoity should be set aside. **1 Weir 446.**

(14)—*Penal Code, s. 396—Dacoity with murder—Form of charge.*—Where, in the commission of dacoity, one of the dacoits commits murder, every one of the persons committing the dacoity should be charged under s. 396 and should not be charged with dacoity and murder. The proper course is to charge the prisoners as follows:—"that you . . . committed dacoity and that, in the commission of such dacoity, murder was committed by one of the number, and that you have thereby committed an offence punishable under s. 396 of the Penal Code." **1 Weir 447.**

(15)—*Grievous hurt no evidence whether accused actually caused—Conviction, amendment of—Penal Code, ss. 34, 392, 394, 395, 397.*—The prisoner and another attacked a man and beat him with *lathis*. There was no evidence as to which of them it was who struck the blow which broke his finger. The question was whether the prisoner could be properly convicted under s. 397, Indian Penal Code. *Held*, that the punishment provided by s. 397 can be inflicted only on the person actually causing grievous hurt, and not on a person who might be liable for grievous hurt committed by another only in virtue of s. 34 of the Indian Penal Code. *Held*, therefore, that the prisoner was not liable to enhanced punishment under s. 397. S. 397 does not create a substantive offence, and a Court, therefore, should not frame a charge under that section but under s. 392 read with s. 397, or s. 395 read with s. 397, as the case may be. **3 O.C. 263.**

(16)—*Penal Code, s. 396—Dacoity in the course of which murder is committed.*—If a dacoit in the progress, and in pursuance, of the commission of a dacoity, commits a murder, all of his companions who are participating in the commission of the same dacoity may be convicted under s. 396, Indian Penal Code, although they may have no participation in the murder beyond the fact of participation in the dacoity. **P.L.R. 1900, 44 Cr.**

(17)—*Robbery with murder, when—Penal Code, ss. 37, 111, 149, 396.*—Robbery with murder, when committed conjointly by five or more persons, is more than robbery, and amounts to dacoity with murder and is punishable with death. **L.B.R. (1893—1900), 194.**

(18)—*Penal Code, s. 397—Only some dacoits armed with deadly weapons.*—The punishment provided in s. 397 of the Penal Code applies only to those persons taking part in a dacoity, who themselves use deadly weapons or cause grievous hurt. The other dacoits who may be liable only by virtue of s. 34 of the Code are

Dacoity—continued.

not liable under s. 397, but only under s. 392 or 395. **A.W.N. 1899, 186=28 A. 404 (N.)** (21 A. 263, *Diss*). [*F.*, 3 O.C. 263, 28 A. 404= A.W.N. 1906, 61=3 Cr. L.J. 322].

(19)—*Assembly with object of committing dacoity—Admission.*—The members of an unlawful assembly were held to be guilty of an offence under s. 402 of the Penal Code, on their own admission that they not only knew that the assembly was an assembly for committing dacoity, but also that all the members (including themselves) composing it lived on the proceeds of dacoity, and had no other means of living. **7 W.R. Cr. 97.**

(20)—*Robbery with violence—Penal Code, s. 395—Creating fear of hurt.*—A body of men who attack and plunder a house by the mere fact of the proprietor's family having been able to make their escape a few minutes before the robbers forced an entrance are not taken out of the purview of s. 395, Penal Code. If the robbers cause or attempt to cause the fear of instant hurt or of instant wrongful restraint, the section will apply. **7 W.R. Cr. 35.**

(21)—*Participation in dacoity—Persons found in possession of property.*—The presumption where persons are found within six hours of the commission of a dacoity with some of the plundered property in their possession is that they are participators in the dacoity, and not merely receivers. **3 W.R. Cr. 10**; 5 W. R. Cr. 66.

(22)—*House-breaking by night.*—Five armed men were discovered committing an act of house-breaking by night. One of the party was engaged in cutting a hole through the wall, while the others stood on guard. When the alarm was given, the neighbours ran up, and one of the robbers cut down one of the villagers. *Held* that the crime of which they were guilty was house-breaking by night, and not dacoity. **W.R. 1864 Cr. 39.**

(23)—*Elements of offence.*—In a case of dacoity, the Judge should direct the jury to convict only if they find that all the prisoners had the intention of causing wrongful loss to the prosecutor or wrongful gain to themselves. **W.R. 1864 Cr. 8.**

(24)—*Definition of—Plunder.*—The definition of dacoity in the Penal Code is so wide as to extend to what would have been treated as cases of plunder under the old law. **3 W.R. Cr. 60.**

(25)—*Deadly weapon used in dacoity or robbery—Penal Code, s. 397.*—A conviction under s. 397, Penal Code, for using a deadly weapon during the commission of robbery or dacoity is good, irrespective of the number of thieves, be it five or under. **2 W.R. Cr. 49.**

(26)—*Gang of dacoits—Penal Code, s. 400.*—In a charge under s. 400, Penal Code, the prosecution should establish that there existed, at the time specified, a gang of persons associated together for habitually committing dacoity, and that the accused was one of the gang. **23 W.R. Cr. 18.**

Dacoity—concluded.

See ABETMENT, 25 B. 90=1 Bom. L.R. 653, A.W.N. 1903, 2.

—Identification of accused in case of dacoity —*See* ACCUSED PERSON, 3 O.C. 72.

See ACT XXI OF 1879, 37 P.R. 1881 Cr.

See CHARGE, 17 B. 369.

See CRIM. PRO. CODE (1898), s. 56, 11 W. R. Cr. 20.

See CRIM. PRO. CODE (1898), s. 237 (1) Rat. Un. Cr. C. 34.

See CRIM. PRO. CODE (1898), s. 423, cl. 2 2 Weir 517.

See JURISDICTION OF CRIMINAL COURTS, 9 A. 523.

—Murder by one of the dacoits—Liability of other dacoits—*See* MURDER, 6 Bom. L.R. 248.

See PENAL CODE, ss. 391, 392, 7 M.L.T. 340.

See PENAL CODE, s. 397, 16 C.P.L.R. 97.

See PENAL CODE, s. 400, 18 P.L.R. 1910 Cr.

See REFERENCE TO HIGH COURT, 10 Bom. L.R. 632=8 Cr. L.J. 143.

See THEFT, 5 C.W.N. 372.

Daffadar.

See BEN. ACT VI OF 1870, s. 39, cl. (2), 12 C.W.N. 367=7 Cr. L.J. 188=35 C. 361.

Damages.

See COMPENSATION.

See MALICIOUS PROSECUTION.

(1)—*Suit for damages for malicious prosecution—Conviction by a Criminal Court bars such suit.*—A conviction by a Criminal Court, even though afterwards reversed on appeal, is evidence that the complainant had reasonable and probable cause for prosecuting the accused; and, when there has been such a conviction, a suit for damages for malicious prosecution will not lie, save in very exceptional circumstances. **2 L.B.R. 111.** (13 W.R. 276, 3 M.H.C. 238, 21 A. 26, *R.*).

(2)—*Suit after criminal prosecution for cheating, ending in return of money by Criminal Court as compensation—Whether suit after receipt of money would lie for damages.*—A Magistrate convicted a person of cheating, and ordered the money which had been obtained by it to be returned to the plaintiff. The latter then sued the defendant in the Small Cause Court for the value of the boats and for damages for non-delivery of the boats, but it was dismissed. **18 W.R. 247.**

(3)—*Injury to reputation—Malicious prosecution.*—Damages will be given if injury is done to one's reputation by maliciously prosecuting him. **7 W.R. 117.**

(4)—*Injury to personal honour and character.*—When a conviction is reversed on appeal, and the party himself is released from confinement,

Damages—concluded.

a suit against the complainant for damages to the personal honour of the accused will not lie, unless the accused can prove that the complainant had no reasonable and probable cause for the prosecution. **13 W.R. 276.**

(5)—*Remoteness of—Suit for trespass—Expenses of criminal proceedings.*—The plaintiffs, as the agents of the hereditary *durmakurtah* of a pagoda, sued the committee of the District, appointed by virtue of Act XX of 1863, and their servants, for a trespass by the defendants, in forcibly dispossessing them of the pagoda and the property therein, and for the wrongful removal and the retention of the property, alleging that the defendants were punished criminally for the trespass by the Magistrate, who, after enquiry under ss. 318 and 319 of the Criminal Procedure Code, restored the possession of the pagoda to the plaintiffs. The damages claimed were, besides other things, the amount of counsel's and vakil's fees in the criminal proceedings. *Held* that the expenses incurred in the criminal proceedings instituted by the plaintiffs were not recoverable as damages, such damages not being directly traceable to the wrong and not being its natural and necessary consequences. **4 M.H.C. 410.**

(6)—*Loss of profits from non-cultivation—Magistrate's order as to possession—Disputed possession—Non-cultivation—Crim. Pro. Code, 1872, s. 531.*—In a dispute regarding the possession of certain land, an order was passed under s. 531 of the Code of Criminal Procedure, forbidding both the plaintiff and the defendant from interfering with the land until either established his title in a Civil Court, in consequence of which it was not cultivated in the succeeding year. *Held*, that the damages did not result from the defendant's act, being the consequence of the order of the Magistrate. **6 M. 426.**

Dancing Girl.

See PROSTITUTE.

See PROSTITUTION.

See PENAL CODE, ss. 372, 373.

Danger.

See ACT IX OF 1890, s. 101, 13 P.R. 1906 Cr.=5 Cr. L.J. 81=59 P.L.R. 1907.

Deadly Weapon.

See PENAL CODE, s. 148, 15 A. 19.

—Bamboos, if deadly weapons—*See* RIOTING, 1 Weir 70.

Deaf and Dumb Person.

See ACCUSED PERSON.

See CRIM. PRO. CODE (1898), ss. 340, 341.

(1)—*Crim. Pro. Code (1898), s. 341—Deaf and dumb accused person unable to understand proceedings—Commitment to Sessions—Powers of High Court.*—Where a Deputy Magistrate committed the accused, who had been until recently in a lunatic asylum and who was deaf and dumb and could not be made to understand the proceedings, to the Sessions on a charge of murder and forwarded the proceedings under s. 341 to the High Court, *held*, that law does not contemplate that the Sessions trial shall necessarily take place. It is discretionary with the High Court in such cases of commitment to order whether the trial should proceed or not, and it should consider whether any benefit will be likely to result especially to the accused by such trial. **27 C. 368=4 C.W.N. 421.**

Deaf and Dumb Person—concluded.

(2)—*Crim. Pro. Code (1872), s. 186—Deaf and dumb accused.*—Where a deaf and dumb accused is charged with an offence, the Judge should proceed with the trial, and if he considered that the accused had not understood the proceedings and the trial resulted in conviction, the case should be reported. **A.W.N. 1881, 15.**

(3)—*Crim. Pro. Code (1872), s. 186—Deaf and dumb accused.—Held* that the inability of the accused, on account of her being deaf and dumb, was not a ground for refraining from passing sentence on her, if there was no reason to doubt the guilt of the accused or that she was criminally responsible for the act by reason of understanding the nature and consequences of it. **A.W.N. 1881, 54.**

See ACCUSED PERSON, 7 N.W.P. 131, A.W.N. 1881, 15, A.W.N. 1881, 54, 4 Bom. L.R. 296, 2 Weir 402. 2 Weir 403=6 M.H.C. App. 7, 37 P.R. 1889 Cr.

See CRIM. PRO. CODE (1898), s. 340, 8 Bom. L.R. 849=4 Cr. L.J. 444, 22 W.R. 35 Cr., 22 W.R. 72 Cr.

See CRIM. PRO. CODE (1898), ss. 340, 426, 348, 19 W.R. 37 Cr.

See CRIM. PRO. CODE (1898), s. 341, 3 Bom. L.R. 371.

Death.

See CULPABLE HOMICIDE.

See MURDER.

—*Death caused by an act criminal in itself—Subordinate Magistrates not empowered to try without permission case in which death is caused—In case of doubt, Magistrate to commit to Court of Session.*—When death is caused by an act which is criminal in itself irrespective of its consequences, the degree of guilt of the offender depends on the intention or knowledge with which he did the act, and the sections under which he may be convicted are ss. 302, 304, 325, 323 and 352, with variations on account of the weapon or means used, the provocation and so forth, but s. 304-A does not come into the list at all, and ss. 304-A, 338, 337 and 336 apply only to acts done without any criminal intent. As a rule a subordinate Magistrate ought not to try any case in which death is caused, without first obtaining the orders of the District Magistrate to do so. When there is any doubt whether the intention or knowledge of the accused was such that the offence would be culpable homicide, the case should not be tried by any Magistrate, but should be committed to the Court of Session. **1 L.B.R. 259.** (4 C. 764, *F.*)

Death—concluded.

—Death of one of the parties, before the termination of proceedings—*See* CRIM. PRO. CODE (1898), s. 145 (1, 4, 5, 6), 2 C.L.R. 264.

—Death of appellant pending appeal.—*See* CRIM. PRO. CODE (1898), s. 431, Rat. Un. Cr. C. 707.

Death by negligence.

See GRIEVOUS HURT, 3 A. 776.

Debtor.

See DEBTOR AND CREDITOR.

—Forging release to screen himself from liability to pay the debt—*See* FORGERY, 11 M. 411=1 Weir 549.

—Removal of property without consent to satisfy one's own claim—*See* THEFT, 18 A. 88.

—Creditor taking debtor's property to enforce his claim—*See* THEFT, 22 C. 669, 1017, 1 Weir 405.

Debtor and Creditor.

—*Act II of 1899 (Stamp), ss. 62 (1) (b), 64 (c)—Entry in account book made by debtor.* —A money-lender and cloth-seller, being illiterate, kept a register divided into columns, in which his customers used to make or caused to be made entries of the loan taken or purchases made by them. They also noted or caused to be noted in the book the payments made by them. A pleader, who owned him a sum of Rs. 90-2-0, paid this sum, and caused his clerk to enter in the column of remarks in the account book with reference to this payment, a note to the effect that the full amount had been repaid. No receipt for money paid was asked for. *Held* that the money-lender could not be convicted either under s. 62 (1) (*b*), Act II of 1899, as the entry was not made by the accused, or under s. 64 (*c*) of the commission of "any other act calculated to deprive the Government of any duty" under the Act. **A.W.N. 1903, 173.**

See CRIMINAL BREACH OF TRUST, 135 P. L.R. 1901.

See PENAL CODE, ss. 379, 403, 406 and 411, 6 Bom. L.R. 1093.

See PENAL CODE, ss. 422, 511, 28 C. 314=5 C.W.N. 174.

Debutter Estate.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 10 C.W.N. 1088=4 Cr. L.J. 215.

Declaratory decree, Suit for.

—*Orders of Criminal Court—Order as to nuisance—Suit to set aside order of Magistrate under Act XXV of 1861, ss. 308 to 315—Jurisdiction of Civil Court.*—The plaintiff built a bridge over a certain *khal* (canal), which was removed by order of the Magistrate under Ch. XX of the Criminal Procedure Code; the defendant, it was alleged, set the Magistrate in motion. The plaintiff now sued the defendant for a declaration of his right to erect the bridge in question, and to have the order of the Magistrate set aside. *Held* that no such suit would lie. The Judge in the Court below held that a suit would lie to try the plaintiff's right to erect a bridge over the *khal*. Held, on appeal, the suit ought to have been dismissed. **6 B.L.R. 643=15 W.R. 293.**

Declaratory decree, Suit for—concluded.

—Declaratory suit to set aside award—*See* ACT I OF 1877, 15 W.R. 294.

See ACT I OF 1877, s. 42, 17 B. 293, 5 C. 7 =4 C.L.R. 309, F.B., 17 W.R. 281, 22 W.R. 329, 6 M. 176.

Decree.

See CONTEMPT OF COURT, 27 A. 380=2 A.L.J. 18=A.W.N. 1905, 10.

—Order for maintenance—Civil Court's decree for restitution of conjugal rights—*See* MAINTENANCE, 27 A. 483=A.W.N. 1905, 54 =2 A.L.J. 160.

Decree, Construction of.

See CRIM. PRO. CODE (1898), s. 144, 2 Weir 74.

Defamation.

See PENAL CODE, ss. 499, 500.

(1)—*Penal Code, ss. 499 and 500—Defamation, what constitutes.*—The offence of defamation may be committed whether the effect mentioned in s. 499, Penal Code, as intended or probable, is produced or not. **1 Weir 575.**

(2)—*Penal Code, ss. 499 and 500—Defamation, what constitutes.*—To support a charge of defamation, it is not necessary to show that the character of the person defamed as being actually injured. It is sufficient to show that the person making the imputation intended or has reason to believe that the defamatory words would have that effect. **1 Weir 575.**

(3)—*Penal Code, s. 499, Exception 9—Defamation, what amounts to.*—At a meeting of the villagers held to arrange for the performance of the "Pattabhishekam" ceremony of the reading of a "Puranum," the accused said of the complainant, the spiritual head of the Vaishnava sect in the village that the members of the complainant's house should not be invited to assemblies for being shown religious respect as they were unworthy. *Held* that the words were not defamatory and that, even if defamatory, the accused was protected by exception 9. **1 Weir 613.**

(4)—*Civil suit for damages—Law applicable—Penal Code, ss. 499, 500.*—The principles embodied in the Penal Code regarding defamation are well adapted, to supply the tests by which the liability or otherwise of defendants to civil suits should be decided. Defamatory statements contained in a petition preferred in judicial proceedings are not absolutely privileged. The English Law of defamation should not be applied. **3 A. 815.** [*R.*, 6 A. 220=4 A.W.N. 53, 10 M. 28, F.B., 10 A. 425, 14 B. 97, 23 C. 867, 26 C. 653, 22 A. 234, 3 L.B.R. 265, 29 A. 685=4 A.L.J. 605=6 Cr. L.J. 197 =A.W.N. 1907, 235].

Defamation—continued.

(5)—*Defamation—Proof.*—To sustain a charge of defamation, it is not necessary to prove that the complainant actually suffered directly or indirectly from the scandalous imputation made on him by the accused. It is sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the complainant. **6 N.W.P. 86.**

(6)—*Defamation—Failure to prove making and publishing.*—The omission to prove the making and publishing of an alleged libel by the accused is more than an irregularity. It is a defect which vitiates the conviction. **27 M. 238=2 Weir 408.**

(7)—*Penal Code, s. 499—Defamation—Publication, what amounts to.—Held, by the Full Bench (Duthoit, J., dissenting)*:—Where a person sends a notice in closed cover containing defamatory matter about the recipient of the notice, but which is not communicated by the writer to any other person. it is not such a "making" or "publication" as could "harm" the prosecutor in the sense given to that word in Expl. 4. *Per Mahmood, J.*—The words "harm the reputation of such person" in the section mean imputation on a man's character made and expressed to others, so as to lower him in their estimation. Anything which lowers him merely in his own estimation does not constitute defamation. But if it could be proved that the publication to the prosecutor only was intended or calculated to provoke a breach of the peace, the libel would amount to a criminal offence, but not defamation. *Per Oldfield, J.*—The essence of the offence of defamation in the Penal Code is the intention to harm the reputation, and that necessarily requires publicity to be given to the imputation. The offence is not dependent on there being provocation to cause a breach of the public peace, that offence being otherwise provided for in the Code. **7 A. 205, F.B.**

(8)—*Penal Code, ss. 499, 500—Proof of publication.*—Where a charge was amended on the motion of the accused and the charge, as amended was to the effect that the publication of a defamatory matter was by handing over the manuscript to the printer for being printed, *held*, that the prosecution had sufficiently proved the publication by the production of the printed copy and such copy was admissible under s. 66 (2) of the Evidence Act, inasmuch as the accused, who should have known that he would be required to produce the original, had not produced it. **1 Weir 579.**

(9)—*Penal Code, ss. 499, 500—Sending notice to complainant containing defamatory matter.*—The mere sending of a notice to a person, albeit containing matter of a defamatory nature, cannot be held to be equivalent to making or publishing an imputation intending to harm, or knowing or having reason to believe that it will harm the reputation of the person to whom it is addressed. **18 B. 205.**

Defamation—continued.

(10)—*Penal Code, ss. 499 and 500—Publication—Dictating defamatory letter to another.*—The dictating of a defamatory letter to a third person would amount to publication. **1 Weir 579.**

(11)—*Penal Code, ss. 499 and 500—Publication outside British India.*—Where a letter containing defamatory matter was dictated to the writer in Trivandram, *held*, that the offence was committed in Travancore and not in British India. **1 Weir 579.**

(12)—*Penal Code, s. 499—Original intention of accused not to publish, materiality of.*—In order to sustain a charge under s. 499, it is not material, whether the accused originally intended to publish the defamatory matter or not. It is sufficient that he ultimately publishes it. **1 Weir 580.**

(13)—*Penal Code, s. 499—Defamation—Statement by accused in a criminal case in good faith.*—Where, in an application for the transfer of a criminal case, the accused in the present case (being the accused in that case also) stated that the complaint against him was instituted under the instigation of the complainant in the present case, for the purpose of prejudicing him in the defence to a civil suit which the latter had caused to be brought against him, *held*, that the statement did not amount to defamation, as the imputation was made in good faith for the protection of the interest of the person making it. The English Law would not be applicable to such a case. **22 A. 234.** [*R.*, 3 L.B.R. 262, A.W.N. 1907, 235=29 A. 685=6 Cr. L.J. 197 =4 A.L.J. 605].

(14)—*Penal Code, s. 499—Defamation—Express malice—Evidence of previous conduct of the complainant similar to the one alleged.*—The accused who wrote a letter to the Government of India, alleging that the complainant, a Sub-Judge, used abusive language to certain respectable native litigants appearing in his Court, and that there were also other instances of similar treatment, was charged with defamation. The prosecution gave evidence to prove that, in making the charges contained in the alleged libel, the defendant was actuated by express malice towards the complainant. *Held*, that the accused was entitled to let in evidence and to elicit that the complainant had, on other occasions, used abusive language to natives who had to appear before him, as it related to the question of the complainant's reputation, which the accused had harmed, and as the malicious intention or otherwise of the accused should be gathered from the document as a whole. **7 A. 906.**

(15)—*Penal Code, s. 499, excep. 8—Privileged communication—Good faith—Evidence Act, s. 105—Burden of proof—Cross examination of complainant—Practice.*—Two ingredients are essential to the establishing of the protection under excep. 8 of s. 499, I.P.C.: (1) that the accusation must be made to a person in authority over the party accused; and (2) that the accusation must be preferred

Defamation—continued.

in good faith, that is to say, with such reasonable care and attention on the part of the person making it, in first satisfying himself of the truth and justice of the charge, as an ordinary man should be expected to exercise. S. 105 of the Evidence Act throws upon the accused the burden of proving the existence of circumstances bringing the case within Excep. 8, s. 499, I.P.C.; the Court, under that section, should presume *prima facie* the absence of such circumstances. [*R.*, 10 A. 425, 17 B. 573.] The counsel for the accused, in a defamation case, when the accused wants to bring in evidence to prove the truth of the defamatory matter, should distinctly and separately cross-examine the complainant on all the matters upon which evidence is intended to be brought. If he fails to do this, it is a subject for serious consideration whether he should be subsequently allowed to tender proof, as to the material incidents of which he has not cross-examined? **6 A. 220.**

(16)—*Penal Code, s. 500—Defamation—Privileged communication—Express malice.*—Where the accused told a friend of his, and subsequently, at his instance, wrote to the superior officer of the complainant, to the effect that the complainant and his friend's wife had been seen behaving on a certain night in such a manner and under such circumstances as to render unavoidable the conclusion that acts of impropriety took place between them, and it was found that the accused honestly believed in the truth of the statements, *held*, that, in order to convict the accused, express malice should be proved for the prosecution. **11 C.W.N. 390=5 Cr. L.J. 160.**

(17)—*Penal Code, s. 499, exceps. 2 and 9—Privilege—Good faith—Public good.*—The editor of a newspaper in commenting upon the appointment of the complainant, who had not passed the public-service examination, as required, by the rules prescribed by the Collector, made the following remarks "Has his (the complainant's) character been enquired into? Does no one remember that this very man was sent by the Subordinate Judge of Sholapur to be prosecuted? Are not the proceedings instituted by the Subordinate Judge to be found on the record?" Although it was true that the complainant had been charged by the Subordinate Judge before the Magistrate with misconduct in the performance of his duties, yet the District Judge had held that there were no grounds for the prosecution ordered by the Subordinate Judge. The accused was also shown to be aware of the withdrawal of the criminal charge and the reasons for the withdrawal. *Held* that, under these circumstances, the accused was not justified in insinuating that the complainant was a person of doubtful character, because he had been criminally prosecuted, and that he was not entitled to the benefit of the second and ninth exceptions to s. 499. **4 B. 298.**

(18)—*Penal Code, s. 499, excep. 9—Good faith.*—The accused, who was watching a civil case on behalf of his partner, the defendant in the suit, informed the Judge that the complainant was tampering with the witnesses, and prayed, therefore, that the complainant might be ordered to sit in the Court. The accused was charged with defamation for this imputation and was fined Rs. 25. *Held* that the accused was not actuated by malice or bad faith in making the imputation, and that Excep. 9 of s. 499, I.P.C., applied to the case. **9 B. 269.** [*R.*, 15 B. 351].

(19)—*Good faith*—Onus probandi—*Act XVIII of 1862—Penal Code, s. 499, excep. 9.*—Act XVIII of 1862 refers only to the High Court in its original criminal jurisdiction, and does not apply to the Mofussil Courts. S. 27 of the Act requires proof of the existence of the circumstances relied on as a defence, before good faith can be presumed in a case of defamation. The *onus* of proving good faith is on the person making the imputation. Before such a person can claim the benefit of exception 9, s. 499, I.P.C., he must show that he has exercised due care and caution. **4 W.R. Cr. 22.**

(20)—*Penal Code, s. 499, excep. 9—Imputation made in good faith for protection of one's own interest.*—In order to substantiate a defence under the ninth exception to s. 499, I.P.C., it is sufficient for the accused to show that he made the imputation in good faith for the protection of his interest. It is not necessary for him to substantiate his imputation. Any one, in the transaction of business with another, has a right to use language *bona fide*, which is relevant to that business, and which a due regard to his own interest makes necessary, even if it should directly, or by its consequences, be injurious or painful to another; and this is the principle on which privileged communication rests; but defamatory comments on the motives and conduct of a party with whom he is dealing, do not fall within that rule. The complainant and another were the owners of a steamship mortgaged by them to the Bank of Bengal. In March 1890, the complainant desired to send the vessel to Jeddah with pilgrims and freight, and he agreed, with the accused, the Agent of the Bank, that he would have the vessel docked and pay the Bank Rs. 3,000, if the Bank would allow her to go upon this voyage. The complainant was, however, unable to get the vessel docked. Thereupon the accused insisted on payment of Rs. 5,000, instead of Rs. 3,000, before allowing the vessel to go to Jeddah. The complainant and his partner agreed to pay Rs. 5,000 on the 3rd April, 1890. In payment of this sum, the complainant subsequently tendered Rs. 3,000 in cash and a cheque for the balance. The accused refused to accept the cheque, and required the whole amount to be paid in cash on the 9th April, on which the vessel started on her voyage. The sum was to be paid out of freight and passage money collected by the complainant. The payment was, however, not paid as promised, notwithstanding frequent demands for the same. Thereupon, the accused wrote to the complainant's partner to the effect,

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that the complainant had misappropriated Rs. 5,000 and was keeping out of the way, and that he should recover the money and pay it according to his promise. *Held* that, in writing that letter, he acted in good faith and for the protection of the Bank's interest and that the case, therefore, was covered by the provisions of excep. 9 to s. 499, I.P.C. *Held*, also, that it was not necessary for the accused to substantiate his imputation, and that it was sufficient to prove that he had good reason to believe what he stated to be true. **15 B. 351.** [*R.*, 17 B. 573, 19 B. 340].

(21)—*Penal Code, s. 499, exception 9—Defamatory statement for protection of one's own interest.*—The head of the caste to which the complainant and the accused belonged had prohibited the other members of the caste from holding intercourse with the complainant, the violation of which might have subjected the offenders to caste penalties, but the complainant was not declared out of caste. The complainant's niece, in ignorance of the prohibition, invited the complainant who was also ignorant of it, to a family ceremony The accused to whom the sentence of the headmen was known, observing the complainant among the guests, asserted that she had been put out of caste and insisted that she should retire. In making this imputation, they were not influenced by any personal malice towards the complainant. *Held*, that their statement was only inaccurate and not untrue, and that their conduct proceeded from a desire to secure themselves and their fellow-guests from caste inconveniences. **1 Weir 609.**

(22)—*Penal Code, s. 499, excep. 9, ill. (a)—Defamation—Statement made to protect one's own interest—Action for special damage.*—Where a letter, written by a creditor of a firm and circulated amongst other persons who dealt with the same firm, contained a statement that one of the members of the firm had filed a petition for insolvency, with the object of collecting the outstandings and defeating the creditors of the firm, *held*, that the statement came under exception 9, ill. (*a*) of s. 499, the evidence having shown that the letter was written with the intention of protecting the writer's own interest, and in a manner which was honest and *bona fide*. The libel made against the firm can be far more properly dealt with in the Civil Court, than in the Criminal Court, because it is a specific allegation with respect to the complainant's business, which, it is said, has caused special damage by reason of the injury inflicted on that business. A libel of this kind which is analogous to an action on a case for special damage is far more properly dealt with in the Civil Courts than in a criminal prosecution. **9 C.W.N. 195=2 Cr. L.J. 47.**

(23)—*Privilege—Penal Code, s. 499, exceps. 8 and 10—Letter written to protect religious interests of writer.*—A letter written by a Brahmin to the Brahmin community of the neighbourhood, with a view to obtain their

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decision on a matter affecting his own religious interests and that of the Brahmin community, if written in good faith, falls within exceps. 8 and 10 of s. 499 of the Penal Code. **8 B.H. C. Cr. 168.** [*F.*, 22 C. 46; *D.*, Rat. Un. Cr. C. 474].

(24)—*Proof of good faith in a complaint for—Penal Code, s. 499, excep. 1 (b).*—In a complaint for defamation of character, whether the imputation is true or not, it is clearly open to the accused in a criminal trial to prove that the allegation he made was true. If found to be untrue, his persisting in the imputation will be evidence of malice and useful to the Court to decide on the proper penalty. If true, the accused might be protected by excep. 1 (*b*), s. 499, Penal Code, which expressly states that the question whether or not it is for the public good that the imputation shall be published is a question of fact. **1 L.B.R. 139.**

(25)—*Good faith, how determined.*—In an action for defamation, the proper question for the purpose of ascertaining the good faith of the accused is, not whether the allegations made by him are true, but whether he had, after due care and attention, good reason for believing them to be true—*Per* PRINSEP, J. *Quære*:—Whether the state of the law regarding the rule of evidence with respect to general and special exceptions in criminal trials is the same, in the Presidency towns as in the mofussil. **4 C. 124=3 C.L.R. 122.** (14 W. R. Cr. 27, 9 B.H.C. 451, *R.*). [*R.*, 15 B. 351].

(26)—*Defamation — Good faith — Justifying occasion—Onus.*—(*a*) Although the *onus* is not on the accused in every case of alleged defamation to prove good faith, still, in a case where the accused imputed to the complainants particular criminal acts, which injurious charges were capable of proof, the accused would have to show affirmatively as a matter of defence, that he came within those exceptions in s. 499, involving good faith. (*b*) Where the occasion is pleaded by way of justification and excuse, the question whether or not the occasion gives the privilege, is one of law for the Judge, but this is, at best, a qualified protection dependent on the question whether the publication has been made in good faith, which is a question of fact. **9 B.H.C. 451.**

(27)—*Penal Code, s. 499—Defamation—Good faith—Publication to more persons than necessary.*—A woman having left her first husband and contracted a secret *pat* marriage with another, the then *Swami* of the community to which the parties belonged, declared the connection adulterous. Some years after, another *Swami* of the community declared the second marriage valid. Certain members of the community, however, disapproved of this action of the *Swami* and addressed to him several communications which elicited no reply from him. Thereupon, twelve of the villagers of the place published in a newspaper a notice which began by saying that "Jingowda (the second husband) having kept a concubine by name Uma (the complainant) has had offspring by

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her.'' For these statements, the accused were convicted of defamation. *Held* that the conviction was proper, for, conceding that the allegations were made for the benefit of a portion of the public, still, the accused had no privilege to disseminate them to a circle of readers wider than those who could possibly be interested in the allegations. **3 Bom. L.R. 188.**

(28)—*Penal Code, s. 499, excep. 9—Defamatory statements made to accused's solicitor.*—Where a defamatory statement is made by a client to his solicitor, it may be that the same amount of care and attention should not be expected as when the statement is made to a stranger; and in deciding the question of the client's honest belief, the Court should consider whether he made the statement to protect his own interest. Where the charge made, however, is reckless, and the evidence in the case clearly shows that the accused levelled it at the complainant without the slightest ground and without honestly believing that it was true, there is justification to hold that there was no good faith in making the statement. **5 Bom. L.R. 122.**

(29)—*Republication of defamatory matter already published—Penal Code, s. 499.*—The Indian Penal Code makes no exception in favour of a second or third publication of a defamatory statement as compared with the first; such an exception would obviously be made a means of defeating the principal provision of the law of defamation. In England it is not allowed to a defendant to prove that a statement similar to the one for which he is indicted, has been previously published by persons who have not been prosecuted; and the repetition of a common rumour, however prevalent, is not received as an excuse for its further promulgation; nor, according to the English law, is the recovery of damages against one journal accepted even as mitigation in an action against another journal for a repetition of the libel. **12 B. 167.**

(30)—*Penal Code, s. 499, exceps. 3, 6, 9, ss. 500 and 52—Defamation—Right of fair comment—Malice—Good faith.*—The word "malice," in the legal use of that term, is not limited to hostility of feeling, but by virtue of its etymological origin, extends to any state of the mind, which is wrong or faulty (whether evinced in action by excess or defect) such as would be unjustifiable in the circumstances, and incompatible with thoroughly innocent intentions. It is not necessary that such impropriety of feeling should in all cases be established by evidence extrinsic to the comment, which is the subject of the complaint. For, whether fair comment is to be regarded as following under a branch of the law of privilege or not, it cannot excuse an injury, arising not from the mere act of criticism, but from a state of mind in the critic, which is in itself unjustifiable. And the excuse may be so forfeited, either by reason of an evil intent in him or by reason of mere

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recklessness in making an unwarrantable assertion. For, then, the comment would not be fair comment at all. The right of fair comment involves two essentials: first, that the imputation should be comment on the work criticised, and second, that it should be "fair," that is to say, if it professes to be an inference drawn from the contents of that work, it must be an inference, which it is possible to draw therefrom. Good faith requires not logical infallibility, but due care and attention. But how far erroneous actions or statements are to be imputed to want of due care and caution must, in each case, be considered with reference to the general circumstances and the capacity and intelligence of the person, whose conduct is in question. It is only to be expected that the honest conclusions of a calm and philosophical mind may differ very largely from the honest conclusions of a person excited by sectarian zeal and untrained to habits of precise reasoning. At the same time, it must be borne in mind that good faith in the formation or expression of an opinion, can afford no protection to an imputation, which does not purport to be based on that, which is the legitimate subject of public comment. The object of exception 6 to s. 499 of the Penal Code is that the pulic should be aided by comment, in its judgment of the public performance submitted to its judgment. Comment otherwise defamatory is justified on this ground alone. The comment must, therefore, make it clear to the public that decision is invited, only on such evidence as is applied by the public performance. It follows that an imputation on an author made by a critic, without reference, express or implied, to the work under criticism, if in terms so general as to be capable of conveying an unfavourable impression of him, apart from what appears in his work, cannot be justified by the critic, on the ground that his intention was to base his imputation solely on the work reviewed, and that he had in his mind passages therein supporting the imputation. The responsibility of the critic is to be gauged by the effect, which his comment is calculated to produce, and not by what he says was his intention. It is not enough that he should intend to form his opinion on the work before him; he is also bound, in the words of the exception, to express his opinion with due care and caution, and to give the public no ground for supposing that he is speaking of anything but the performance submitted to its judgment. **9 Bom. L.R. 230=5 Cr. L.J. 237=31 B. 293.**

(30-*a*)—*Defamation—Comments on acts of public men—Proof of malice.*—Every subject has a right to comment on those acts of public men which concern him as a subject of the realm, if he does not make his commentary a cloak for malice and slander. A writer in a public paper has the same right as any other person, and it is his privilege, if indeed it is not his duty, to comment on the acts of public men which concern not himself only but which concern the public, and the discussion of which

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is for the public good. And where a person makes a public conduct of a public man the subject of comment, and it is for the public good, he is not liable to an action if the comments are made honestly and he honestly believes the facts to be as he states them, and there is no wilful misrepresentation of fact or any misstatement which he must have known to be a misstatement if he had exercised ordinary care. Where the publication is of such a nature, or made under such circumstances *prima facie* to entitle it to be privileged, the *onus* of proving malice is on the plaintiff, and the evidence should raise a probability of malice, and be more consistent with its existence than with its non-existence. Malice or want of good faith may be shown either by extrinsic evidence or by the language used in the writings complained of. **1 B.H.C. Ap. 85.**

(31)—*Penal Code, ss. 499, 500—Defamation by caste punchayat.*—Where a caste punchayat resolved to put one of its members out of caste, and in order to fully effectuate their decision drew up a letter for communication to the other members, stating that the member excommunicated used to have illicit intercourse with a widow of the same caste, that the woman had become pregnant and that the chowkidar had given information at the police station and he or she or both were accused in the case, *held*, that the *punchayat* would be acting in good faith, if they had contented themselves with announcing their determination and the grounds upon which it was based, and that, as they travelled beyond that and made a false statement about their being prosecuted, the protection to which they would otherwise have been entitled, namely, that they acted in good faith, that is, with due care and caution, had been negatived. The accused were therefore guilty of defamation. **3 A. 664.**

(32)—*Penal Code, s. 499—Defamatory statement made before* punchayat—*Privilege.*—Where, at the instance of the complainant, a *punchayat* was assembled to inquire whether one of the accused persons had any justification for applying an injurious epithet to the complainant and he and the other accused, whom the former alleged to be the person from whom the information was derived, made statements by way of explanation, *held*, that the statements made before the *punchayat* were privileged inasmuch as they were made in good faith for the protection of the persons making them. **7 M. 36=1 Weir 610.** [*R.*, 1 L.B.R. 84].

(33)—*Penal Code, s. 499—Defamation—Excommunication from caste—Publication of the sentence to members of caste—Good faith.*—There is a dividing line between the passing of a resolution at a caste meeting, and its communication by the authorities of the caste to its members in the discharge of their social duty. If any member of a caste publish to all its members a caste resolution in such discharge of duties, the law will hold the occasion of the publication to be privileged. The member who publishes it is bound to publish it, and

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the members of the caste have an interest in hearing it. But, there must be a good faith on the part of the member who publishes, that is, it must be proved that the publication was made with due care and attention. **11 Bom. L.R. 638.**

(34)—*Penal Code, ss. 499 and 500—Spiritual head writing a letter outcasting a member of the caste—Privilege.*—The accused, who was the *guru* or spiritual guide of the caste to which the complainant belonged issued to the complainant's fellow villagers an *agna patra* prohibiting any social intercourse with the complainant's wife, inasmuch as she had been caught with a man of lower caste. In the trial of the accused for defamation, it was contended on his behalf that the statement contained in that letter was privileged, it being true and having been made in good faith for the public good. It was admitted by the complainant that the accused had no enmity towards him or his wife, and that it was the custom for the *guru* to settle matters like those that arose in connection with his wife and that the letter was issued after making an enquiry as to the truth of the accusation. *Held*, that the statement contained in the letter issued by the accused was made in good faith for the protection of the social and spiritual interests of the community of which the accused was the *guru*, and that, so far as it implied a censure on the conduct of the complainant's wife, it was justified by authority which the accused was vested with as the spiritual head of the community and that the case, therefore came within the seventh and ninth exceptions to s. 499 of the Code. The conviction of the accused was therefore set aside. **22 C. 46.** [*D.*, 9 C.W.N. 847=32 C. 1060=2 C.L.J. 396].

(35)—*Penal Code, ss. 499, exceps. 1 and 7, 503, 508—Sentence of excommunication by spiritual superior—Privilege—Malice in law and in fact.*—The denunciation of an act expressly sanctioned by Legislature, as a widow remarriage is, by Act XV of 1856, cannot be said to conduce to public good within the meaning of first exception to s. 499. The act denounced must be some unpermitted act and the good contemplated must be that of a general public as contradistinguished from what is regarded as a spiritual benefit by a particular sect. A spiritual superior, in pronouncing a sentence of excommunication, may be protected by privilege so long as the publication is not more extensive than is required to effectuate the purpose for which the privilege is conceded to him for the censure of a member of the sect in matters appertainmg to religion or for the communication of a sentence he is authorised to pronounce to those who are to guide themselves by it. [*R.*, 22 C. 46]. The complainant was excommunicated by his *Guru* for having attended a Hindu widow re-marriage and the *Guru* issued an *Agna Patra* to his disciples intimating the fact of such excommunication and prohibiting them to associate with the complainant, unless he performed expiatory ceremonies and also communicated, in a post

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card, the same to the complainant. In consequence of this interdict, the complainant was put to serious inconveniences, and he, thereupon, prosecuted the *Guru* on charges under ss. 500, 503 and 508. *Held*, that the accused was not guilty either under s. 503 or under s. 508, Penal Code, but the communication of the sentence of excommunication to the complainant by a card sent through the post was publication in excess of the purpose for which the privilege under excep. 7, was allowed and he was therefore guilty of defamation. [*R.*, 11 A. 194, 13 M. 293, 15 M. 214=1 Weir 617, 17 M. 222, 19 B. 703, 23 B. 122.] There can be defamation, even without personal ill-will. If there is malice in law, the imputation would be defamatory, though there might be no malice in fact. Malice in law consists in the conscious violation of law to another's prejudice, and for the purpose of deciding whether it exists or not, the Court is bound to consider whether a person has exercised his privilege with due care and attention and to see, from the language employed and the mode of publication, whether they are in excess of the privilege as to indicate a conscious disregard of the legal right of the party on whose character the imputation was made. **6 M. 381=1 Weir 595.**

(36)—*Penal Code, s. 499, excep. X—Defamation by a member of caste—Mode of publication—Absence of good faith—Privilege.*—The complainant, who was expelled from caste, was re-admitted by the executive committee of the caste after performing certain expiatory ceremonies. The accused objected to this and they published a statement setting forth the facts of the case, described the complainant as *doshi*, which signified a person unfit to be associated with. This statement was printed and was circulated not only to the members of the caste, but also promiscuously among all classes of people in the bazaar. *Held*, that the accused did not act in good faith in having distributed the statement promiscuously to all classes of people and the mode of publication destroyed the privilege and the accused was therefore guilty of defamation. **15 M. 214 =1 Weir 617=2 M.L.J. 127.** [*R.*, 19 B. 703].

(37)—*Penal Code, ss. 499 and 500—Defamation—Publication of excommunication.*—The defendant, the *gumasta* of a *Guru* or priest, published an order of his master excommunicating the complainant from his caste. The letter containing the excommunication merely stated that the complainant disobeyed some one and treated him with disrespect. *Held*, that the letter publishing the excommunication contained no expressions defamatory *per se*. **1 Weir 574=6 M.H.C. App. 46.**

(38)—*Penal Code, ss. 211, 500—Defamatory statement made in official enquiry—Crim. Pro. Code, ss. 191, 197.*—On receipt of petitions charging the complainant, a Magistrate, with receiving bribes, the Government forwarded them to the Revenue and Police Commissioner. This official sent them to the Collector and

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Magistrate of the District in which the complainant was a Magistrate, for preliminary enquiry and report, with directions to take evidence in support of the charges, if the petitioners persisted in them, and to give the complainant full opportunity of rebutting them. The Collector then enforced the attendance of the accused, against his will, by writing to the Police. The accused denied having sent the petition bearing his name, but he went on to state how he had paid the bribe. The Government gave leave to the complainant to prosecute the accused for defamation. The trying Magistrate framed heads of charges under ss. 211 and 500, I.P.C., and at the end of the trial, struck out the head under s. 500 and convicted and sentenced the accused under s. 211. The Joint Sessions Judge held that s. 211 was inapplicable and that the accused was not liable under s. 500, I.P.C., on the ground that the defamatory statements, though not proved to be true, were made in good faith, so that *Excep. 8* applied in his favour. *Held* by the High Court that the statement by the accused would not make a "false charge" under s. 211, that he was only guilty of defamation, that, in the absence of a sanction from Government as required by s. 197, Crim. Pro. Code, the enquiry by the District Magistrate, who was ordered to make the enquiry and report, was not a taking cognizance of the offence of bribery, that the District Magistrate in such enquiry not being a Court, the accused was not a witness in a judicial proceeding, and could not therefore claim absolute protection from prosecution as such witness, and that he was only entitled to the qualified protection provided for in the *Exceptions* to s. 499 of the I.P.C. **19 B. 51.** [*Expl.*, 25 B. 90 ; *R.*, Rat. Un. Cr. C. 844, 2 L.B.R. 285].

(39)—*Penal Code, s. 499—Defamation in newspaper—Good faith.*—Any exception on the ground of good faith or public good fails if the publication was made in a newspaper. **Rat. Un. Cr. C. 769=Cr. Rg. 34 of 1895.**

(40)—*Penal Code, s. 500—Publication of defamatory matter in a newspaper.*—The accused, the Editor and Proprietor of a newspaper, published in Bombay an issue containing defamatory matter. Copies of the paper used to be sent from the press at which it was published to certain persons in Ahmedabad. *Held* that it should be presumed that the copies had been sent on the accused's account and that he was, therefore, responsible for the circulation in Ahmedabad. In the absence of proof to the contrary, it could not be held that persons connected with the press had acted in the matter otherwise than in pursuance of the instructions received from the accused himself. There was, therefore, a publication in Ahmedabad. **15 B. 286.**

(41)—*Penal Code, ss. 499 and 500—Publication—Privilege—Publisher, liability of.*—The sending of a newspaper, containing defamatory matter, published in Calcutta, by post, addressed to a person in Allahabad, is a publication of the defamatory matter in the latter

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place. The prosecutor advertised in a newspaper published at Allahabad, for subscriptions to an Eye Hospital, of which he was the Surgeon in charge, stating the number of successful operations performed there. The accused, the Editor, and the Publisher of a Medical Journal at Calcutta, published in it a note, regarding the advertisement to the following effect: "The advertiser is certainly entitled to be congratulated on this marvellous success; but it is hardly consistent with the feelings and usages of the medical profession to herald them forth in this fashion. We are not surprised to find, that the line he has elected to adopt, has not met with the approval of his brother officer serving in the same province, and we have no hesitation in pronouncing his proceedings, in this matter, unprofessional." *Held*, that the accused came, in the circumstances of the case, under the exceptions 3, 6 and 9 of s. 499, and were, therefore, not guilty of the offence of defamation. The Publisher of a newspaper must, under all circumstances, answer for the libel imputed to his journal. **3 A. 342.**

(42)—Where the accused published a circular, purporting to say that, at a *panchayat* held at a certain place, it was resolved that the complainant, who had been to England, was not to be taken into caste, and that those of their community, who associated with him, could be taken into the caste only on their undergoing a penance and on consenting to give up all connection with the complainant, and where it was found that no *panchayat* was actually held and the publication was not made in *good faith*, *held*, that the accused were rightly convicted of the offence of defamation. The publication of the circular lowered the character of the complainant in respect of his caste, as it represented the complainant to be one whom to associate with would entail excommunication on the members of his brotherhood associating with him. **6 A.L.J. 472=9 Cr. L.J. 535=2 Ind. Cas. 226.**

(43)—*Penal Code, s. 499, excep. I—Imputation made for public good—Publisher and maker of defamatory statement.*—S. 499 brings under the criminal law, the person who publishes as well as the person who makes the imputation. The first exception exempts any imputation made or published for the public good, and concludes as follows—"whether or not it is for the public good is a question of fact." Although the imputations are true and made for the public good, yet, on considering the manner of the publication, *i.e.*, in a newspaper, the accused may be held not to have published it for the public good. **19 B. 703.** [*R.*, 6 Bom. L.R. 131].

(44)—*Penal Code, s. 500—Defamatory poem contributed to a newspaper.*—Where a defamatory poem was contributed to a newspaper and the accused, the Editor, Printer, and Publisher of the newspaper, refused to give up the name of his correspondent, but contended that the poem was a satire on *ultrapurists* and did not refer to any individual, *held*, that the jury

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must look at the whole poem and must take it as a whole, and that they must read the poem as reasonable men, and should see whether it was capable of the construction put by the prosecution. *Held*, also, that it was not necessary that the whole world should read it as libel, but it is sufficient that those, who knew the accused, would consider it to refer to the complainant by putting a reasonable construction on the poem. **1 C.W.N. 465.**

(45)—*Penal Code, s. 500—Defamation by a pleader in pleadings.*—A pleader or Mooktyar is not liable to a charge of defamation, if, relying on the statements of his client, he introduced into a pleading, in good faith, a defamatory statement. **2 N.W.P. 473.**

(46)—*Penal Code, s. 499—Defamation—Pleader calling the other side "notorious wrongdoer" in course of letter to the Magistrate—Good faith—Malice.*—When a pleader is charged with defamation in respect of words spoken or written while performing his duty as a pleader, the Court ought to presume good faith, and not hold him criminally liable, unless there is satisfactory evidence of actual malice, and unless there is cogent proof that unfair advantage was taken of his position as pleader, for an indirect purpose. A pleader representing a complainant wrote to the trying Magistrate to enquire when the latter would take up the case for trial; and, in the letter, described the accused as a "notorious wrongdoer." A complaint was then filed against the pleader for defamation: and the Magistrate, finding that the pleader was not then acting as a pleader, convicted him of defamation: *Held*, affirming the conviction, that the imputation was not made by the accused as a pleader. **9 Bom. L.R. 1287.**

(47)—*Penal Code, s. 499—Witness, privilege of—Defamatory statement made in witness-box—S. 132, Evidence Act.*—(*Per Knox, A.C.J., and Aikman, J, Richards, J., dissenting*).—The question of criminal liability of a witness for a defamation for statements made in course of his depositions, must be decided by what is laid down in the Indian Penal Code, without regard to the state of law in England or considerations of what would be desirable in the interest of public policy and administration of justice. When a witness makes remarks, which are defamatory of a third party, he can be convicted of defamation unless he can show that the statement comes within any of the exceptions of s. 499, I.P.C. The remarks in *Baboo Ganesh* v. *Mungee Ram*, 11 B.L.R. 328, P.C. treated as *obiter*. If it had been the intention of the Legislature to extend to communications made by witnesses in the witness-box the privilege of freedom from being made the subject of a Civil or Criminal trial, they could or would surely have amplified s. 132 of Act I of 1872. The absence of the enactment is conclusive that it was omitted from the Code of set purpose. *Per Richards, J., contra.*—The principle is, and public policy requires, that witnesses should give their testimony, free

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from any fear of being harassed by an action on allegation, whether true or false, that they acted from malice. It would be simply disastrous to the administration of justice in this country, if a prosecution could be instituted against every witness, who gave evidence in a Court of Justice, for defamation. **4 A.L.J.605. =A.W.N. 1907, 235=6 Cr. L.J. 197.**

(48)—*Penal Code, s. 500—Defamatory statement by a witness.*—A witness cannot be prosecuted for defamation in respect of statements made by him when giving evidence in a judicial proceeding. **17 B. 127.** [*Diss.*, 14 L.B R. 1893 Cr., 32 C. 756=9 C.W.N. 911=2 Cr. L. J. 459=2 C.L.J. 105; *F.*, 17 B. 573; *R.*, 19 B. 51, 19 B. 340, L.B.R. 1893—1900, 247, L.B. R. 1893—1900, 206, 27 C. 262, 1 L.B.R. 84, 3 L.B.R. 265, A.W.N. 1907, 235=29 A. 685 =6 Cr. L.J. 197=4 A.L.J. 605].

(49)—*Penal Code, s. 499—Defamation—Statements made by a witness.*—A witness cannot be prosecuted for defamatory statements made by him when giving evidence in the witness box. But *Telang, J.*, expressed an opinion that according to correct principles of construction, the meaning of the words of the section should not be limited so as to exclude therefrom any evidence given by a witness before a Court of Justice. **17 B 573.** [*Diss.*, 32 C. 756=9 C.W.N. 911=2 Cr. L.J. 459=2 C.L.J. 105: *F.*, 27 C. 262; *R.*, 19 B. 51, 19 B. 340, 22 A. 234, 1 L.B R. 84, 3 L.B.R. 268, A.W.N. 1907, 235=29 A. 685=6 Cr. L.J 197 =4 A.L.J. 605; *D.*, 19 B. 717].

(50)—*Penal Code, s. 500—Defamatory statements made by witnesses in a Court of Justice.*—Witnesses in a Court of Justice cannot be prosecuted for defamation in respect of statements made by them in the course of their evidence as witnesses, if such statements are relevant to the issue in the case under enquiry. **27 C. 262.** [*R.*, 4 A.L.J. 605=6 Cr. L.J. 197=A.W.N. 1907, 235=29 A. 685; *D.*, 32 C. 756=9 C.W. N. 911=2 C.L.J. 105].

(51)—*Penal Code, s. 500—Defamation—Voluntary statement of witness, irrelevant to the matter of enquiry—Witness, if protected—Evidence Act (I of 1872), s. 132.*—A statement made by a witness under examination, wholly irrelevant to the matter of enquiry, uncalled for by any question put to him, and introduced by the witness voluntarily and maliciously for his own purpose, and in order to injure the reputation of another, is not privileged. **32 C. 756=2 C.L.J. 105=2 Cr. L.J. 459=9 C.W.N. 911.**

(52)—*Claim before elders—Defendant's witness making defamatory statements about complainant—Statement, if privileged—Penal Code, s. 499, cls. 8 and 9.*—The claim for damages for breach of promise of marriage which a woman preferred before the elders having been dismissed by them in consequence of the defendant's witness deposing that the woman had committed adultery, the latter prosecuted the witness for defamation. *Held* that, though

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the witness's statement was not made in a judicial proceeding, it was privileged under Penal Code, s. 499, cls. 8 and 9, as having been apparently made in good faith; the complainant had herself taken her case of breach of promise of marriage before the elders and hence they might be held to have had a lawful authority over her for the purposes of her case; but the defamatory statement having been clearly made in the defendant's interests, his witness was not liable to a prosecution for defamation. **1 L.B.R. 84.** (7 M. 36, 17 B. 127, 573, *R.*).

(53)—*Party to a judicial proceeding—Privilege.*—The ninth exception to s. 499, I.P.C., modifies the principle of the English law that parties to a judicial proceeding cannot be held liable, either civilly or criminally, for defamation on account of statements or imputations made in their capacity as litigants which affect the character of third persons. They are protected only if they show that the imputation is made in good faith, *i.e.*, with due care and caution. **34 P.R. 1889 Cr.** [*Appr.*, 14 P.R. 1893 Cr.]

(54)—*Judicial proceeding—Defamatory statement by witnesses.*—No defamatory statement by a witness is protected unless it is made in good faith within the meaning of the exceptions to s. 499, I.P.C. The true test of immunity in the case of witnesses, as of other persons, is whether an exception to that section is established in its entirety. **14 P.R. 1893 Cr.** (17 B. 127, 11 B. 477, *Diss.*; 34 P.R. 1889, *Appr.*; 11 B.L.R. 321, P.C., *R.*).

(55)—*Penal Code, s. 499, excep. 9—Pending judicial proceedings—Privilege.*—Where a complaint regarding the complainant's management of *Devastanam* was pending, *held*, that it would not, necessarily, amount to defamation to say that the District Judge would not have appointed the complainant to the committee, had he been aware of the fact, and that the statement that the complainant being a member of the Marava caste was the reason for the investigation was also privileged. **1 Weir 611.**

(56)—*Penal Code, s. 499, expl.—Defamatory statements in a statement made by the accused under s. 342, Crim. Pro. Code, privileged.*—Statements of a defamatory character made by an accused person in the course of the statement which he is invited to make under s. 342, Crim. Pro. Code, are privileged. **5 M.L.T. 256=9 Cr. L.J. 276=1 Ind. Cas. 248.**

(57)—*Penal Code, ss. 499 and 500—Defamation—Party to a suit, privilege of.*—Where, when the complainant was cross-examined, the accused's vakil, at the instance of the accused asked the complainant whether he had not been prosecuted for a criminal offence, *held*, that "the principle of English law that no action for libel or slander lies, whether against Judges, counsel, witnesses or parties, for words written or spoken in the ordinary course of any proceedings, before any Court or tribunal recognized by law," applies to India, and that

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the action of the accused was privileged, and that he is not liable to be prosecuted for defamation under s. 500 of the Penal Code. **19 M.L.J. 217=9 Cr. L.J. 385=6 M.L.T. 15=1 Ind. Cas. 799.**

(58)—*Penal Code, s. 500—Defamation—Party to a suit—Indian Oaths Act, ss. 5 and 13—Giving defamatory and untrue answer without good faith.*—It is opposed to public policy to prosecute a party to a civil suit, who is under an obligation to speak the truth under ss. 5 and 13 of the Indian Oaths Act, in answer to questions put to him by Court, for defamation in respect of such answers, even although such answers are not true and be not made in good faith. But he may be liable to prosecution for false evidence if he spoke falsely. **30 M. 222=6 Cr. L.J. 130.**

(59)—*Penal Code, s. 500—Statement made by witnesses to police officers in investigation by police.*—A defamatory statement made in answer to the question by a police officer, in the course of an investigation, is a privileged communication, because such a person is bound by s. 161, Crim. Pro. Code, to answer truly all questions put to him, except such as tend to criminate himself, and is, therefore, entitled to the protection which the law gives to witnesses. **16 M. 235=1 Weir 587.** [*F.*, 28 C. 794 =5 C.W.N. 804; *R.*, 3 O.C. 80, 3 L.B.R. 265].

(60)—*Penal Code, s. 499—Accused defended by Counsel making defamatory statements about a witness.*—A person, who was being defended by a Counsel, interfered during the cross-examination of the complainant and made grossly defamatory statements respecting his character. The statements were not true and were not made in his defence to the charge. *Held*, that the occasion on which the accused made the statements was not privileged and that the words were not uttered in good faith but maliciously and that the accused was not protected by any of the exceptions to s. 499, Penal Code. **15 M. 414=1 Weir 588=2 M.L.J. 142.** [*R.*, 17 B. 573, 1 Weir 589, 3 L.B.R. 255].

(61)—*Penal Code, ss. 52 and 499, excep. 9—Defamation—Counsel or pleader—Privilege—Questions in cross-examination if to be limited to instructions—Question based on recollection—Good faith, presumption—"Due care and attention"—Wrong inference—Express malice, proof of, necessary.*—A pleader, specially in the mofussil of this country, where instructions are very commonly inaccurate and misleading, would certainly be at least as much justified in acting on his own recollection as on specific instructions in putting questions to a witness in cross-examination; and because he has merely drawn a wrong inference from a fact recollected, that, of itself, in the absence of express malice, should not take him out of the ninth exception to s. 499 of the Penal Code. When a pleader is charged with defamation in respect of words spoken to or written while

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performing his duty as a pleader, the Court ought to presume good faith and not hold him criminally liable, unless there is satisfactory evidence of actual malice, and unless there is cogent proof that unfair advantage was taken of his position as pleader for an indirect purpose. **13 C.W.N. 340=9 C.L.J. 259=36 C. 375=3 Cr. L.J. 165=1 Ind. Cas. 147.**

(62)—*Penal Code, ss. 499 and 500—Statement made by a person in answer to a query of his pleader shortly after the disposal of the case, whether amounts to an offence under—Legal adviser and client, relationship of, how long lasts.*—Where the accused, shortly after the disposal of a criminal case against him, brought by one B, stated openly, in answer to a query of his pleader in that case, that the origin of the criminal case was due to the fact that some one of the accused's party had said at a social gathering that B's daughter-in-law had eloped, and he was subsequently prosecuted for an offence under s. 500, I.P.C., for making a statement defamatory of B. *Held*, that the statement of the accused did not constitute an offence of defamation under s. 500, I.P.C., as it was not made with the intention of harming the reputation of any body; that the statement was made in answer to a natural question put to him by his legal adviser at a time when the relationship of legal adviser and client cannot be said to have ceased. **13 C.W.N. 1087.**

(63)—*Penal Code, s. 500—Privilege of witness.*—Witnesses are free from any other consequences with respect to statements made by them as such, except that of indictment for perjury. They cannot be prosecuted for defamation. The ground of such exemption is that it concerns the public and the administration of justice that witnesses giving their evidence on oath in a Court of Justice should not have before their eyes the fear of being harassed by suits for damages or of prosecution except the prosecution for perjury. **11 M. 477=1 Weir 586.** [*F.*, 17 B. 127, L.B.R. (1893-1900), 206, 30 M. 222=6 Cr. L.J. 130; *Appl.*, 16 M. 235= 1 Weir 587, *Expl.*, 15 M. 63=2 Weir 794; *R.*, 17 B. 513, 19 B. 340, L.B.R. (1893-1900), 247, 1 Weir 589, 27 C. 262, 3 L.B.R. 265, A.W.N. 1907, 235=29 A. 685=6 Cr. L.J. 197=4 A.L.J. 605; *Diss.*, 14 P.R. 1893 Cr., 32 C. 756=9 C.W.N. 911=2 Cr. L.J. 459=2 C.L.J. 105].

(64)—*Penal Code, s. 499, excep. 9—Privilege of advocate—Privilege of witness—English law.*—Where a pleader, in addressing a Court on behalf of his client, commented on some of the witnesses on the other side and called them loafers, and was charged with defamation, *held* that, in the absence of express malice (and it ought not to be presumed), a Court having regard to public policy would be extremely cautious before it deprived the advocate of the protection of *excep. 9.* In considering whether there was good faith (*i.e.*, due care and attention) the position of the person making the imputation must be taken into consideration. [*F.*, 36 C. 375=13 C.W.N. 340=9 C.L.J. 259; *R.*, 25 B.

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90=2 Bom. L.R. 653, 22 A. 234, 3 L.B.R. 265, 9 Bom. L.R. 1287, A.W.N. 1907, 235=29 *I.* 685=4 A.L.J. 605.] Without importing into this carefully considered statute the rules of the Common Law of England based on public policy, a witness in India is adequately protected by the *Exceps. 1 to 9* in s. 499, where the defamatory statement is not untrue to the knowledge of the person making it. If it is untrue, the real offence committed is that of false evidence ; and the Court will not allow the *onus* of proof to be shifted by the prosecution having recourse to s. 499. **19 B. 340.** [*R.*, 1 Weir 589].

(65)—*Penal Code, ss. 499, 500—Pleader putting defamatory questions.*—Where a pleader, who was defending the accused, put a question to the complainant whether he had been implicated in a case of robbery, *held*, that the pleader was not guilty of defamation. **1 Weir 587.**

(66)—*Penal Code, s. 499—Privilege of litigants making irrelevant and malicious statements in pleadings, evidence, etc.*—It cannot be to the public advantage that litigants should be free to insert any matter they please into their pleadings, applications and affidavits, or to make any statement they like in the witness-box, however irrelevant, scurrilous or insulting they may be, and then claim absolute privilege with success ; and the question of their innocence or guilt must be decided by reference to the provisions of s. 499, I.P.C. **3 L.B.R. 265.**

(67)—*Penal Code, s. 500—Defamation—Statement made in plaint.*—Statements made by the parties to a suit in the pleadings are not privileged and a charge of defamation is maintainable in respect of them. **5 C.W.N. 293.** (23 C. 867, *F.* and 14 B. 97, *Diss.*) [*R.*, 3 L.B.R. 265].

(68)—*Penal Code, s. 499, excep. 9—Statement made in an affidavit.*—A defamatory statement made in an affidavit is not privileged, if it was wholly irrelevant to the inquiry to which the affidavit related. **8 C.W.N. 292.** [*R.*, 3 L.B.R. 265].

(69)—*Penal Code, s. 499—Privilege of accused.*—Witnesses can be prosecuted for giving false evidence, if they make false and defamatory statements while under examination. This course cannot be followed in the case of accused persons. An accused person can claim no special privilege beyond what is provided by the exceptions to s. 499 of the Penal Code. *Per* Moore, J. In principle, there is no solid distinction between the respective cases of counsel, witness and party, and a person accused of crime is protected in regard to statements made by him in meeting the charge brought against him. *Per* Subbramania Aiyar, J. **1 Weir 589.**

(70)—*Defamation—Exhibiting effigy and beating it with shoes.*—The making and publicly exhibiting of the effigy of a person, and beating it with shoes, amounts to defamation. **2 N.W.P. 435.** [*D.*, 10 A. 435].

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(71)—*Penal Code, s. 500—Imputation of adultery to woman—Medical examination of woman.*—An imputation charging a woman of being pregnant by adultery is defamatory. (8 B.H.C. 168, *D.*). There is no law empowering a Court to order the medical examination of the complainant in a case such as the above, with a view to ascertain the truth or otherwise of the imputation. **Rat. Un. Cr. C. 474=Cr. Rg. 33 of 1889.**

(72)—*Penal Code, ss. 499, 500—Defamation—Statement about the ability of a person working under a photographer.*—Where the complainant published that he was able to take photos as good as the accused, because he had under him a person who had been a servant under the accused, and the latter published a notice to the effect that the employee spoken of was employed by him to clean bottles, cups, glasses and do other things, but had no knowledge of photography and that the complainant could not have improved in business, merely because he had engaged such a boy, *held*, that the notice was not defamatory of the complainant. **1 Weir 593.**

(73)—*Penal Code, s. 500—Defamation—Publication of statements that the complainant was convicted of theft and sent to jail.*—Where the trustee of a temple wrote on a post card that the complainant, the *archaka* of the temple, was convicted some years previously and had been sent to jail for theft of idols belonging to the temple, and the card was received by the complainant in the ordinary course of post and the statement was published in order to forestall the complainant from setting up his rights in regard to joint *archakaship*, *held*, that the accused was not guilty of defamation, inasmuch as the statement was true and as it was no more than the publication of the result of proceedings in a Court of Justice, which is specially declared to be no defamation by s. 499, exception 4. **26 M. 464=1 Weir 611.**

(74)—*Penal Code, s. 499, excep. 8—Reporting immoral conduct of medical officer.*—Bringing to the notice of the Deputy Commissioner the fact that the complainant, a Medical officer in charge of a Hospital, was leading an immoral life and to ask for his removal, is no defamation and comes within the 8th exception to s. 499, I.P.C. **7 C.P.L.R. Cr. 20.**

(75)—*Penal Code, ss. 499, 500—Declaration of inferiority of one caste—Defamation.*—An expression of opinion by the members of a caste that their caste is superior to another caste is not such an imputation as would warrant a conviction under s. 500, Penal Code. Where, consequent upon such declaration, the members of the other caste are put to inconvenience by the refusal of the village servants to serve them, the remedy is a suit for damages. **1 Weir 575.**

(76)—*Penal Code, s. 499—Complaint of defamation—Dismissal of the complaint on the ground of accused's privilege—Validity.*—Where an imputation on the complainant's character is

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made and published and it is *prima facie* defamatory, the Magistrate should issue a summons to the accused unless it is distinctly admitted by the complainant that the accused is privileged. Under s. 105, Evidence Act, when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the exceptions contained in the Penal Code is upon that person, and the Court shall presume the absence of such circumstances. **1 Weir 580.**

(77)—*Penal Code, s. 499—Making defamatory statement—Repeating the same subsequently in a judicial proceeding—Merger.*—The doctrine of merger has no place in criminal law. Where a person first makes a defamatory statement and repeats the same as a witness in a judicial proceeding, it cannot be held that the complainant's remedy is limited to prosecuting the accused for perjury. As the offences are distinct and are committed on different dates, the accused is liable to be prosecuted for defamation. **1 Weir 580.**

(78)—*Penal Code, ss. 499, 500—Defamation against a public servant to the effect that he borrowed for his superior.*—To make a statement to a superior officer that a Government servant had borrowed for his immediate superior from persons connected with the Department would amount to defamation. **1 Weir 585.**

(79)—*Penal Code, s. 499, excep. 10—Statement regarding the complainant's caste.*—The accused along with a great number of other persons held a meeting, and passed a resolution to the effect that 'the Nilagiri people' to which the complainant belonged 'do not belong to the caste' to which the accused and Mahrattas belonged, 'but that they seem to belong to the Rangari caste.' This latter caste was conceded to be a division inferior to that to which the complainant claimed to belong. This conclusion was arrived at after inquiry made at a caste meeting of which the complainant had notice. *Held* that the accused did not act with malice, and that they joined in passing the resolution in good faith, as a caution, for the information of the members of that community. **1 Weir 614.**

(80)—*Defendant in civil suit charging Judge with conspiracy with plaintiff.*—The accused, the defendant in a civil suit, in his written petition to the Deputy Commissioner, charged the Munsiff trying the case with conspiracy with the plaintiff to get up a false case, but was not able to prove the charge; held that he was rightly convicted of defamation. **21 P.R. 1887 Cr.** (16 P.R. 1879, *R.*)

(81)—*Intentionally giving false evidence—Perjury.*—A witness cannot be prosecuted for defamation in respect of statements made by him when giving evidence in a judicial proceeding, though a criminal prosecution would lie for perjury if the evidence so given be intentionally false. **L.B.R. (1893—1900), 206.** (17 B. 127, 11 M. 477, *R.*)

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(82)—*Penal Code, s. 499—Merger of defamation in an offence under s. 182.*—A complaint of defamation cannot be dismissed on the technical ground that the offence of defamation charged against the accused merged in an offence punishable under s. 182, Penal Code, for which previous sanction was required under s. 195, Crim. Pro. Code. **1 Weir 585.**

(83)—*Penal Code, s. 500, exception 8—Defamation—Privilege—Proof of malice in fact.*—Where a defamatory statement is made on a privileged occasion, the complainant must show malice in fact. **7 C.W.N. 246.**

(84)—*Penal Code, s. 499—Defamation—Injury resulting therefrom, consideration of.*—Although a person who defames another may so compose himself that little injury results from his offence, yet, he is not excused from the penalties attached to the offence. **1 Weir 594.**

(85)—*Penal Code, s. 499—Conviction for defamation—Charge not setting forth the particular occasion of the commission of defamation.*—Where a person was convicted of defamation on a charge, which set out that the defamation was committed on, or about, the 12th day of April, and afterwards by describing the complainant as a '*Brithial Bania*,' *held* that the charge was not a proper one, as it did not set forth the particular occasion on which the defamation was said to have been committed, so as to give the accused person an opportunity of defending himself with reference to the offence alleged to have been committed by him. **30 C. 402=7 C.W.N. 74.**

(85-a)—*Penal Code, s. 499—Defamation—Publication, what amounts to—Presumption of malicious intention—Omission to apologise, whether proof of malicious intention.*—Where it was alleged that the accused, who was the collecting *punchayat* of his village, had defamed the complainant by giving him a *chowkidari* receipt in which he was described by the designation of '*Brithial Bania*,' *held*, that the delivery of such a receipt to the complainant himself was not a publication such as could make him liable to punishment for defamation. Where, in 2, *supra*, it was found that the people of the complainant's caste has been at first described in the census papers as '*Brithial Bania*,' but that, on the application of his caste fellows, the name was afterwards changed into '*Ghanda Bania*,' *held*, that, in the absence of proof that the accused had any information of the alteration so made in the complainant's caste designation in these papers, it was to be presumed that the accused, in describing him as a '*Brithial Bania*,' used the expression in good faith; nor could the subsequent omission to apologise for his inadvertent use of the expression be taken as an indication that the accused used the expression at the time with a malicious intention. **30 C. 402=7 C.W.N. 74.**

(86)—*Penal Code, s. 499—Defamation—Province of Judge and Jury.*—The question of the physical and moral, as distinguished from

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the legal, character of the act of a person accused of an offence under s. 499, I.P.C., is like those which arise under other sections of the Code, one to be determined by considerations and inferences drawn from common experience rather than from rules of legal construction. What the imputation was which a man intended to convey who did not directly express it, and whether he believed or had reason to believe that the imputation should produce a particular sentiment or opinion on the part of those to whom the communication was made are matters of fact, or inference from fact, belonging, where the judicial functions are divided, to the province of the Jury. Whether the imputation thus found to have been made, and whether the harm thus found to have been the expected and probable result were such as to satisfy the definition of the offence of defamation, would be questions for the Judge. If the words of signs employed could have a legally defamatory sense he would, in England, be bound to submit them to the Jury. The Jury instructed as to the law would find whether the language as they understood it constituted a wrong. **Rat. Un. Cr. C. 140.**

(87)—*Defamation of wife—Husband whether an aggrieved party.—Held* by the Full Bench (*Ranade, J., diss.*) that a husband has a right to lodge a complaint about the defamation of his wife, as he is a person aggrieved by an imputation of unchastity to his wife with whom he is living. **25 B. 151=2 Bom. L.R. 665. F.B.** [*Diss.*, 32 C. 425=8 C.W.N. 515; *F.*, 15 M.L.J. 224=2 Weir 231=2 Cr. L.J. 381; *R.*, 3 C.L.J. 38=3 Cr. L.J. 187, 3 S.L.R. 15 Cr.]

(88)—*Crim. Pro. Code (1882), ss. 198, 345—Defamation of wife—Competency of husband to prefer complaint.*—Where a married woman is defamed by the imputation of unchastity, her husband is a person aggrieved by the defamation, upon whose complaint a Magistrate may take cognisance of the offence under s. 198, Crim. Pro. Code. **14 M. 379=2 Weir 230=1 M.L.J. 242.** [*F.*, 25 B. 151, 15 M.L.J. 224=2 Cr. L.J. 381].

(89)—*Defamation of wife—Husband's right to complain.*—Under s. 499, I.P.C., the reputation to be harmed must be the reputation of the very person concerning whom the imputation is made and not of some other person. A husband cannot be considered to have been harmed in his reputation by a defamatory statement about his wife, nor could a father be considered to have been harmed in his reputation by defamatory statements about his daughter. **22 P.R. 1884 Cr.; 39 P.R. 1887 Cr.**

(90)—*Who may prosecute for—Crim. Pro. Code (1882), ss. 198, 345—"Aggrieved" to be treated as equivalent to "person injured."*—The reputation of a living person who is an adult and *sui juris* is exclusively within his own protection. If he does not take steps to defend it, no one else can. S. 345, Code of Criminal Procedure shows that the only person who can compound a prosecution for defamation is the

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person defamed, and indicates clearly the intention of the law to leave to every one the exclusive right of vindicating his own reputation. The word "aggrieved" in s. 198, Code of Criminal Procedure, in cases of defamation must be treated as equivalent to the expression "person injured," the object of the section apparently being to limit the right of complaint to the person who has suffered the injury. **L. B.R. (1872—1892), 617.**

(91)—*Penal Code, s.500—Defamation—Crim. Pro. Code (1898), s. 198—"Person aggrieved"—Defamation of subordinate officers of the Municipality—Right of President to complain.*—Where a newspaper published statements. which were alleged to be defamatory, of specific acts of negligence on the part of the Health Officer and his subordinates, *held*, that the President of the Municipality was not a person aggrieved within the meaning of s. 198, Crim. Pro. Code, by the statements made against the subordinate officers, merely because he had a control over those officers, and that by the imputation made against his subordinates, his conduct and administration had not been impugned. **26 M. 43=2 Weir 232=12 M.L.J. 413.**

(92)—*Penal Code, s. 499, exceps. 9 and 10—Presumption of malice.*—Conscious violation of law to another's prejudice is sufficient, though there may be no malice in fact. When defamatory words are *prima facie* libellous, legal malice must be presumed until a case of privilege is made out by the accused. **1 Weir 613.**

(93)—*Penal Code, ss. 499, 500—Presumption of malice—Rebuttal.*—Although when defamatory words, *prima facie*, are used, malice may be presumed, still that presumption may be rebutted by other circumstances negativing deliberate intention to harm the reputation of the person defamed. **1 Weir 607.**

(94)—*Penal Code, ss.499, 500—Defamation—Good faith—Absence of reasonable cause.*—The absence of reasonable cause is evidence of the absence of good faith. Where the accused informed the police and other persons that he suspected a respectable shopkeeper and his family of having committed or instigated the commission of a burglary, *held* that the information to the police was privileged, if made in good faith, but that to other people, was not privileged. **1 Weir 607.**

(95)—*Penal Code, s. 499, excep. 8—Accusation preferred in good faith to authorised persons.*—The complainant, who was charged by the accused with having received bribes, prosecuted the latter for defamation. The accused tendered three witnesses to prove that the complainant received bribes, but the Magistrate holding that they stood practically in the position of accomplices, did not give any weight to their evidence. *Held*, that, as it appeared from their evidence that they paid money under some sort of compulsion, they were not accomplices and that the Magistrate should

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have considered whether the allegation made by the accused was privileged and made *bona fide*. **1 Weir 608.**

(96)—*Penal Code, s. 499, excep. 8—Accusation preferred to the head of a caste.*—Where a person makes to the head of the caste an accusation against another, the burden of proving good faith in respect of such accusation lies on the accused, and, in determining whether he so acted, it is material to consider who the accused was and whether he had any concern in the matter which would justify him, in making the allegation. The accused must also show that he had reasonable and probable cause for making the same. **1 Weir 608.**

(97)—*Penal Code, s. 499, excep. 9—Defamatory statement to a Municipal Council.*—The accused charged the complainant with trespass in respect of a certain land before a Magistrate, and in his complaint stated that the complainant was convicted and rigorously imprisoned. He made a similar statement to the Municipal Council. *Held*, that, although it was doubtful whether the statement to the Magistrate was not privileged as privilege of a party in a Court of law, the statement to the Municipal Council was in no way privileged. **1 Weir 612.**

(98)—*Penal Code, s. 499, excep. 9—Defamation made as a defence in a criminal case.*—Where a defamatory statement was made by the accused as an accused in a criminal case for the purpose of his defence, and was relevant as showing the motive of the complainant, and also of some of his witnesses; *held* that such statement being found to be true was privileged. **1 Weir 612.**

(99)—*Bribery charged against a Magistrate—Defamation—Sanction to prosecute—Evidence Act, s. 55—General reputation—Penal Code, s. 211.*—B, an Honorary Magistrate, prosecuted A for defamation. The matter alleged to be defamatory was a statement made by A to the Commissioner of the division that, in a case where A was tried before B, the latter took a bribe. B, complained under ss. 182, 211 and 500, Penal Code, but as no sanction was given for a prosecution under either of the two former sections, the Magistrate tried A under s. 500, only. *Held*, that as the statement made by A to the Commissioner against B did not amount to a criminal prosecution or a charge within the meaning of s. 211, I.P.C., no previous sanction of the Commissioner was necessary in this case under s. 195 of the Criminal Procedure Code. *Held*, further, that evidence that B took bribes from other persons was irrelevant (*vide* s. 55 of the Evidence Act). The evidence as to general reputation was, if admissible at all, not admissible to show that A's statement did not harm B's reputation. **2 C.P.L.R. 198.**

(100)—*Publication—Place of trial.*—When a defamatory petition presented to a superior public officer is sent to a subordinate officer for

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enquiry, there is a publication of the defamation in the place where the latter may receive the petition. **14 P.R. 1889 Cr.**

(101)—*Charge of an offence under s. 501, I.P.C.—Conviction for an offence under s. 500, I.P.C.—Crim. Pro. Code (1882), s. 198.*—A criminal Court is not competent to amend or alter a complaint under s. 501, Penal Code, to one under s. 500. **18 P.R. 1889 Cr.**

(102)—*Privilege—Communication to a superior officer.*—Where a police officer communicated a statement elicited from a third party in a police enquiry to his superior officer, *held*, that the accused could not be convicted of defamation if those statements were defamatory, as the report, having been made in discharge of his duty, was privileged. **23 P.R. 1880 Cr.**

(103)—*Crim. Pro. Code (1898), ss. 198, 439 and 526—Defamation—Proceedings without complaint—Creditor's notice on a post card to demand debt—Irregular proceedings—Power of the High Court to quash proceedings altogether on petition for transfer—Indian Penal Code, ss. 499 and 500.—Held*, that putting forward even a false claim on a post card to the effect that the addressee should pay the addressor a certain sum of money which the former owes the latter, does not *prima facie* amount to defamation as defined in s 499, I.P.C.; that a Magistrate, to whom such a post card is privately handed over without a complaint as is required by s. 198 of Act V of 1898, commits material irregularity and acts without jurisdiction in starting thereon a criminal prosecution under s. 500, I.P.C.; and that the High Court on the revision side can altogether quash proceedings of such a nature at any stage of the case. **3 P.W.R. 1909 Cr. = 9 Cr. L.J. 154 = 1 Ind. Cas. 99.**

(104)—*Defamation—Dismissal of complaint—Malicious report by a Police officer—His liability—Accused to prove exception—Privileged communication—How far Magistrate bound to enquire*—Ultra vires—*Indian Penal Code (Act XLV of 1860), ss. 77, 499 and 500—Criminal Procedure Code (Act V of 1898, ss. 202 and 203—Indian Evidence Act I of) 1872, ss. 105, 123, 124 and 125—Act XVIII of 1850—Act V of 1861, ss. 4, 7, 24 and 42—Chief Court Circular No. 849-G., dated 15th February, 1900—Police Rules.—Held*, that a Police Officer is liable to be prosecuted and convicted under s. 500, Penal Code, if he maliciously makes to his superior a defamatory report against any person, unless he can show that he is protected by some statutory privilege. But there is absolutely no such privilege for a Sub-Inspector of Police. A malicious report intended to result in the entry of a person's name in Police Surveillance Register No. X is in itself defamatory. Such a case is not covered by the maxim—"*Omnia presumuntur rite esse acta.*" *Held*, also, that, where a complaint is based upon some official communication, whether oral or in writing, falling within the scope of either ss. 123, 124 or 125, Evidence

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Act, and there is no likelihood of proving the communication by primary and direct evidence, the Magistrate is fully justified in dismissing the complaint under s. 203, Crim. Pro. Code, 1898. *Held*, further, that, although the general rule in all the criminal proceedings is that the *onus* of proving every thing essential to the establishment of a charge against an accused lies on the prosecution, yet s. 105 of the Evidence Act constitutes, a departure from that rule and makes it obligatory upon the Courts to presume the absence of such circumstances as may bring the accused within some general or special legal exception, unless or until their existence is shown by the accused or is admitted by the prosecution itself. So, in a defamation case, when once the complainant has proved that the accused has made a *prima facie* defamatory imputation, it rests with the accused to show that he is justified in doing so. Per *Johnstone*, *C.J.*--The Punjab Chief Court Circular No. 849-G. of 15th February, 1900, is *ultra vires*. It lays down a principle and test which are inconsistent with the Statute Law, s. 202, Crim. Pro. Code, 1898. Per *Williams*, *J.*—Whether the circular is *ultra vires* or not, the course indicated by it is pre-eminently one which it is desirable and even necessary to adopt in the cases contemplated therein. Per *Johnstone*, *J.*—Where the facts can hardly be known with precision to the complainant, it is the duty of the Magistrate to explain the facts and, in view of that explanation, to call upon him to state precisely what the charge is. Per *Williams*, *J.*—But there is no such duty of the Magistrate, where the complainant has the benefit of legal assistance and the facts stated by him do not constitute an offence for which the accused may be considered responsible. **4 P.W.R. 1910 Cr.**

(105)—*Penal Code, s. 500—Defamation—Abatement of prosecution on the death of complainant—Criminal Procedure Code, s. 198—Act V of 1881, s. 89.—Held*, that the death of the complainant, during the course of criminal proceedings for defamation, necessarily terminates those proceedings. *Obiter.—Held*, also, that s. 89 of the Probate and Administration Act, V of 1881, contains the law on the subject of a cause of action surviving to the representative of a deceased plaintiff, and the principle underlying the rule laid down in the section is applicable to criminal proceedings under s. 500 of the Indian Penal Code, having regard to the narrowness of line between a prosecution and a suit for damages. **8 P.W.R. 1908 Cr.=7 Cr. L.J. 290=112 P.L.R. 1908=10 P.R. Cr. 1908.**

(106)—*Form of defamation—Written or spoken defamation—Penal Code, s. 499.*—No distinction exists between written and spoken defamation. **2 W.R. Cr. 36; 3 W.R. Cr. 45.**

(107)—*Nature of defamation—Penal Code, s. 499—"Publishing" defamatory matter—Filing petition in Court.*—Filing in Court a petition containing imputations against a person calculated to injure his reputation, with the intention that other persons should read it

Defamation—continued.

amounts to making or publishing the imputation within s. 499, Penal Code. The Criminal law of this country as to defamation is contained in s. 499 of the Penal Code, and not in the English Law. **14 W.R. Cr. 27.**

(108)—*Untrue statement—Penal Code, s. 499.*—The accused, an Inspector of Police, was sent to enquire if it was true that one Brojanath was a leader of dacoits. He reported that it was false, and that the *banias* of the village were trying to get him punished from an ill-feeling. He added: "I learnt from private enquiries that there is scarcely a woman in the houses of the *banias* who has not passed a night or two with the defendant Brojanath." *Held* that the imputations were neither reckless nor unjustifiable, and were not defamatory, being covered by the 9th exception to s. 499, I.P.C.; but the commitment of the accused for trial for defamation under s. 499 of the Penal Code was supported under the other circumstances of the case. **6 B.L.R. Ap. 42=14 W.R. Cr. 22.**

(109)—Onus probandi—*Act XVIII of 1862, s. 27—Good faith.*—Under s. 27 of Act XVIII of 1862, proof of the existence of the facts relied on as a defence should be given before good faith could be presumed in a case of defamation, and the *onus* lies on the person making the imputation. Such a person, to claim the benefit of excep. 9, s. 499 of the Penal Code, must prove that he has exercised due care. **4 W.R. Cr. 22.**

(110)—*Suit for defamation—Police officer's report—Words spoken in judicial proceeding.*—In a suit for damages for defamation a police officer's report may be evidence that the words were spoken, but not that there was a malicious intention. **11 W.R. 534.**

(111)—*Penal Code, s. 499—Defamation—Common abuse.*—Where the defamatory statement attributed to the accused consisted of the use of certain abusive terms, *viz.*, "*beti-ki-gali, bahin-ki-gali*" with reference to the complainant's daughter, *held* that the use of such abuse being common, could not be regarded as conveying any such imputation as could in any way harm the reputation of the person towards whom it was used. **A.W.N. 1883, 36.**

(112)—*Penal Code, ss. 95, 499—Defamation—Causing of slight harm.*—The accused, a barrister, and the complainant a pleader, were engaged in a criminal case. The latter made a remark conveying an imputation on the former, upon which the former called the latter a "liar." *Held* that even if the expression made use of by the appellant amounted to defamation in point of law, the case came under the provisions of s. 95, I.P.C. **A.W.N. 1883, 46.**

(113)—*Penal Code, ss. 499, 500—Scope.*—Although the language of s. 499, I.P.C., is open to the most elastic application, yet, Magistrates will act wisely in refusing to adapt it to cases in which no real harm has been done, or where

Defamation—continued.

a civil remedy might more appropriately be sought. **A.W.N. 1883, 167.** [*R.*, 29 A. 685 = 4 A.L.J. 605 = A.W.N. 1907, 235 = 6 Cr. L.J. 197.]

(114)—*Penal Code, ss. 499, 500—Defamation—Letter addressed to a legal practitioner in reply to the notice of a claim on behalf of his client, which contains imputation concerning the client—Publication—Privileged communication—Imputation addressed to the person himself—Defaming husband in wife's presence and* vice versa—*Crim. Pro. Code, s. 439, held* that:—Where a person, to whom a claim is presented by a legal practitioner on behalf of his client, in replying exceeds the privilege by sending to the legal practitioner a letter containing defamatory statements concerning the client, the publication is complete when the latter is received and read by the legal practitioner. Any one in the transaction of business with another has a right to use language *bona fide*, which is relevant to that business and which a due regard to his own interest makes necessary even if it should, directly or by its consequences, be injurious or painful to another; and this is the principle on which privileged communication rests; but defamatory comments on the motives or conduct of the party with whom he is dealing, do not fall within this rule. In the present case it was enough for the respondent to deny the truth of the petitioner's claim on the ground of enmity, but to go the length of attacking his character and writing the letter, the material portions of which are given below, is *prima facie* defamatory and does not fall within any of the exceptions to s. 499, Penal Code." Dear Sir,—In reply to the notice dated the 9th February, 1908, I state as follows:—"I inspected the account of Kalka Municipal Office as Senior Auditor. In the course of the audit, embezzlements to the extent of about Rs. 1,000 were committed by Dr. J., the Sanitary Officer at Kalka....All these statements showed dishonesty on the part of the Doctor. I stated in my report that during the last year he must have embezzled about Rs. 6,000. On my report the doctor was transferred from Kalka.....My report was subsequently printed and sent to the Local officers. I discharged my official duties honestly, and this is the reason why Dr. J. is inimically disposed towards me. I owe him no money nor did I borrow any money from him.....The Local authorities taking pity on the Doctor on account of his old age were content with his transfer only. In fact, I, in my report, and also the Examiner, recommended that he (Doctor) should be criminally prosecuted. *Obiters.* Defaming husband in wife's presence and *vice versa* is sufficient publication within the meaning of s. 499 and is punishable under s. 500, I.P.C. But the uttering of a libel by a husband to his wife is no publication and consequently is not an offence under s. 500, I.P.C. It is settled law that the communication of defamatory matter concerning a particular person to that person only is not publication within the purview of s. 499, Penal Code. **6 P.W.R. 1910 Cr. = 10 P.R. 1910 Cr.**

Defamation—concluded.

(115)—*Penal Code, s. 499--Defamation—Privilege of suitor.*—In a criminal prosecution for defamation in respect of the statements made by the accused as complainant in a criminal case, *held* that a plea of privilege as suitor was bad as the doctrine of absolute privilege of statements made by suitors does not apply to proceedings under the Indian Penal Code. **A.W.N. 1890, 170.**

(116)—*Penal Code, s. 499—Defamation—Privilege—Wife defamed—Complaint by husband.*—Where the father and the brother of the complainant's wife were accused of defamation in that they stated that somebody had taken hold of her with intent to commit adultery, *held* that the statement was not privileged under any of the exception in s. 499 of the Penal Code. *Held* also that the husband could complain as the aggrieved person in the above case and not necessarily the wife. **A.W.N. 1891, 188.**

(117)—*Penal Code, s. 499—Defamation—Charge instituted by son for defamation against mother.*—For the purpose of instituting a criminal proceeding under s. 499, I.P.C., a mother and son are not in the same position as a husband and wife. **A.W.N. 1893, 207.**

(118)—*Crim. Pro. Code (1882), s. 198—Complaint of abetment of defamation by sale of printed matter.*—What a complaint alleging the commission of the above-mentioned offence should contain discussed. **8 P.R. 1891 Cr.**

See ACT XXV OF 1867, 9 M. 387 = 1 Weir 576.

See ADVOCATE, 10 M. 28, F.B.

See COMPLAINT, 10 A. 39, 3 Bom. L.R. 675.

See CONTEMPT OF COURT, 10 C. 109 = 10 I.A. 171, P.C.

See CRIM. PRO. CODE (1898), s. 198, 32 C. 425 = 8 C.W.N. 515.

See CRIM. PRO. CODE (1898), s. 350, 13 C.W.N. 550.

See JOINDER OF CHARGES, 120 P.L.R. 1904.

See PLEADER AND CLIENT, 4 Ind. Cas. 176.

See SANCTION TO PROSECUTE, 9 M. 439 = 2 Weir 213.

Default.

—Dismissal of complaint for complainant's default—*See* COMPLAINT, 8 M.H.C. App. 5.

See CRIM. PRO. CODE (1898), ss. 367, 369, 421, 422, 423, 5 N.L.R. 76 = 9 Cr. L.J. 553 = 2 Ind. Cas. 247.

See DISMISSAL OF COMPLAINT, Rat. Un. Cr. C. 988.

See JOINDER OF CHARGES, 11 C. 91.

See PENAL CODE, s. 174, 3 S.L.R. 155.

Defence.

—Alibi—*Nature of defence.*—An *alibi* is generally an unsatisfactory way of disproving a claim or charge. **11 B.H.C. 90.**

See ACT VII OF 1870, s. 19 (17), U.B.R. (1892—1896), Vol. I, 9.

Defence Witness.

See EVIDENCE, 18 P.R. 1900 Cr.

Defile.

See PENAL CODE, s. 295, 1 Weir 253, 256.

Defraud.

See PENAL CODE, s. 415, 32 C. 775=9 C. W.N. 807=1 C.L.J. 469=2 Cr. L.J. 368.

Dekhan Agriculturists' Relief Act.

See BOM. ACT XVII OF 1879.

Delay.

—Effect of—*See* BEN. ACT III OF 1899, ss. 449, 450, 452 and 579, 11 C.W.N. 30=4 Cr. L.J. 408=34 C. 341.

—In prosecuting accused after receipt of sanction—Refusal to entertain complaint—*See* COMPLAINT, 2 Weir 154=6 M.H.C. App. 15.

See PENAL CODE, ss. 154, 155, 7 C.W.N. 245.

See PENAL CODE, ss. 154 and 155, 7 C.W.N. 301.

—Omission by husband to take steps towards prosecuting for adultery for long time—Effect —*See* PENAL CODE, s. 497, 1 C.W.N. 498.

See SANCTION TO PROSECUTE, 11 C.W.N. 119=4 Cr. L.J. 454.

—Delay in disposal of case—*See* TRANSFER OF CRIMINAL CASES, 2 Weir 679.

Delegating authority.

See ACT I OF 1878, ss. 5 and 9, 1 S.L.R. Cr. 70=8 Cr. L.J. 188.

Delegation.

See ACT XV OF 1881, s. 15 (1) (*c*), rule 19, 11 Bom. L.R. 12=9 Cr. L.J. 160=1 Ind. Cas. 102.

See JOINT TRIAL, 4 N.L.R. 71=8 Cr. L.J. 11.

Delegation of authority, powers or functions.

See ACT XXVII OF 1871, s. 18 (7), rule 13, 23 P.R. 1908 Cr.=9 Cr. L.J. 94.

—District Registrar's power to delegate to Sub-Registrar functions prescribed by s. 74, Registration Act, 1877—*See* ACT III OF 1877, ss. 74 and 82, 24 C. 755.

—Delegation of powers of District Registrar—*See* ACT III OF 1877, s. 82, 20 C. 719.

—Application for allowance for spoiled stamps—Power of Collector to delegate authority—*See* ACT I OF 1879, s. 51, 5 A. 17.

Delegation of authority, powers or functions —concluded.

See BOM. ACT IV OF 1887, s. 6. 3 S.L.R. 56 Cr.=2 Ind. Cas. 371.

See U. P. ACT XV OF 1883, s. 69, 22 A. 123, F.B.

—Delegation of questions as to actual possession to arbitrators, whether legal—*See* CRIM. PRO. CODE (1898), s. 145, 32 C. 522=1 C.L.J. 432=2 Cr. L.J. 347.

See JURY, Rat. Un. Cr. C. 460.

—Indian Legislature whether can delegate its legislative powers—*See* LEGISLATURE, POWERS OF, 3 C. 63=1 C.L.R. 161, F.B.

Delegation of authority of public servant.

See PENAL CODE, ss. 23, 186, 22 C. 759.

Delusion.

See PENAL CODE, s. 84, 34 C. 686=6 Cr. L.J. 233.

Departmental Enquiry.

—False evidence in departmental enquiry—Court—*See* SANCTION TO PROSECUTE, 22 B. 936.

Departmental Punishment.

See AUTREFOIS CONVICT, PLEA OF, Rat. Un. Cr. C. 318.

Deposition.

(1)—*Crim. Pro. Code, Act XXV of 1861, s. 198 —Deposition—Practice.*—Before a deposition is closed, a witness should be given an opportunity of explaining and correcting any contradictions it may contain, and only the statement which the witness finally declares to be the true one must be taken to be the statement he intended to make. **Rat. Un. Cr. C. 54=Cr. Rg. 17—8—1871.** [*F.*, Rat. Un. Cr. C. 502].

(2)—*Recording of—Proof of contents of—Prosecution for false evidence.*—When it is intended to prosecute a person for giving false evidence, he should be carefully examined as to the point on which he is supposed to be speaking falsely and the questions and answers should be recorded. Before a deposition is closed, a witness should be given an opportunity of explaining and correcting any contradiction which it may contain and only that statement which the witness finally declares to be the true one must be taken to be the statement which the witness intended to make. Although the contents of a deposition may be proved by a certified copy thereof, it is proper at a trial for intentionally giving false evidence, to produce and record at the trial the original deposition. **L.B.R. (1893—1900), 21.** (12 W.R. Cr. 69, *F.*).

(3)—S. 369, Crim. Pro. Code, 1861, does not authorise a deposition made by a deceased person in a civil suit being recorded in a criminal trial. **Cr. Rg. 26—8—1869.**

—Of recording Magistrate, admissibility of, before committing Magistrate—*See* CONFESSION, 5 C. 958=6 C.L.R. 353.

Deposition—concluded.

—Arbitrary transfer of—to the Sessions record —*See* CRIM. PRO. CODE (1898), s. 288, 9 C. P.L.R. Cr. 24.

See DYING DECLARATION, 7 C.P.L.R. Cr. 14.

See EVIDENCE ACT, s. 32, 5 M.L.T. 217.

See EVIDENCE ACT, s. 91, 6 C. 762=8 C. L.R. 292.

—Reading former deposition to witness and asking him if it is true—*See* WITNESS, S.C. 86, Oudh.

Deputy Collector, Jurisdiction of.

See CRIM. PRO. CODE (1898), s. 476, 27 C. 820.

Deputy Commissioner.

—*Non-Regulation Province—Crim. Pro. Code (1861), ss. 14, 412—Appeal.*—A Deputy Commissioner in a Non-Regulation Province was, under s. 14 of Criminal Procedure Code, 1861, a District Magistrate and could hear an appeal preferred under s. 412 from the order of a subordinate Magistrate, who had exercised jurisdiction in a case in which he had none. **16 W. R. Cr. 1.**

—Powers of Deputy Commissioner empowered under s. 36, Crim. Pro. Code (1872)—*See* CRIM. PRO. CODE (1898), ss. 30, 34, 5 N.W.P. 219.

Deputy Commissioner of Police.

See BEN. ACT IV OF 1866, 20 C. 670.

Detention.

—Sub-Assistant Conservator of Forests—Seizure and detention of timber—Want of a valid pass—*See* ACT VII OF 1878, ss. 54, 73, 15 B. 229.

—Order of, in Reformatory Schools—*See* ACT VIII OF 1897, ss. 1, 2 and 3 and 8, 25 C. 333=2 C.W.N. 11.

—Power of appellate Court to pass order for, in a Reformatory School—*See* ACT VIII OF 1897, ss. 8, 9 and 11, 4 C.W.N. 225.

—Substitution of imprisonment for an order of detention in Reformatory Schools by appellate Court—*See* ACT VIII OF 1897, s. 16, 3 C.W.N. 576.

See BAIL, 13 C.W.N. 43=36 C. 166=9 Cr. L.J. 375=1 Ind. Cas. 738, 13 C.W.N. 51=4 M.L.T. 432=36 C. 174=9 Cr. L.J. 409=1 Ind. Cas. 910.

See CRIM. PRO. CODE (1898), s. 167 (3), 11 C.W.N. 554=6 Cr. L.J. 86.

Detention of accused by police.

(1)—*Crim. Pro. Code (1882), s. 61 (1872, s. 124, para 1; 1861—1869, s. 152).*—S. 152 of the Code of Criminal Procedure, 1861, does not apply to cases in which there has not been a continuous detention of twenty-four hours. **1 W.R. Cr. 5.**

See CRIM. PRO. CODE (1898), s. 167, 7 C. W.N. 457.

Detention in custody.

—*Proceedings against accused in foreign State—Keeping accused in custody in British India, when allowable.*—A British Magistrate is not warranted in keeping people in custody on a mere allegation that criminal proceedings against them are pending in a foreign State. Unless proper steps be taken against the persons detained under the Extradition Act, they must be released. **Rat. Un. Cr. C. 124.**

Dewan.

—May be an 'agent' during absence of his master; but not a *Dewan* who acts only under the orders of his resident master—*See* CRIM. PRO. CODE (1872), s. 90, 4 C. 603=3 C.L.R. 87.

Dictionary.

—Murray's Dictionary, if can be referred to, to ascertain meaning of words—*See* MAD. ACT IV OF 1884, s. 63 (3), 25 M. 627=1 Weir 727=12 M.L.J. 393.

Disaffection.

See PENAL CODE, s. 124, 22 B. 152, F.B.

See PENAL CODE, s. 124-A, 20 A. 55 F.B. 22 B. 112, 19 C. 35, 5 M.L.T. 393=32 M. 384.

See PENAL CODE, ss. 124-A, 153-A, 10 Bom. L.R. 848=8 Cr. L.J. 281.

See SEDITION, 2 Bom. L.R. 286.

Disapprobation.

See PENAL CODE, s. 124-A, 19 C. 35.

Discharge of accused.

See CRIM. PRO. CODE (1898), s. 253.

(1)—*Crim. Pro Code (1882), s. 548—Order of discharge—Copy of proceedings, right of complainant to.*—Inasmuch as every one complaining of an offence by which he is injured is affected by the disposal of his complaint, whether the case has been sent up by a police officer or not, he is entitled to a copy of the Magistrate's order of discharge under s. 253, Crim. Pro. Code. **Rat. Un. Cr. C. 305=Cr. Rg. 54 of 1886.**

(2)—*Discharge—Subsequent charge for same offence.*—The Police and the Magistracy are not precluded by an order of discharge from reviving a charge, if the discharge appears to have been made on a wrong view of the facts. **Rat. Un. Cr. C. 588=Cr. Rg. 3 of 1892.**

(3)—*Improper discharge--Procedure.*—If there has been an improper discharge, the Magistrate ought to report the matter to the High Court, which can order a re-trial—*Per* MARKBY, J. **2 C. 405.** [*F.*, 10 C. 268].

(4)—*Crim. Pro. Code (1872), s. 215—Discharge of accused without hearing the prosecution witnesses.*—An order of discharge of an accused person without hearing all the prosecution witnesses is irregular. **8 M.H.C. App. 4.**

Discharge of accused—continued.

(5)—*Improper discharge—Penal Code, s. 498.* —*Held* that it was improper to discharge a person accused on a complaint of an offence under s. 498, I.P.C., merely because he said that the woman had been made over to him by a *panchayat*. **Colm. Dig. Cr. 73 of 1877.**

(6)—*Sessions Court if can discharge accused.* —A Sessions Court cannot discharge an accused person ; it must either convict or acquit him. **3 P.R. 1874 Cr.**

(7)—*Revision by Chief Court.*—The Chief Court will not interfere in revision with an order of discharge passed on a full consideration of the evidence in the case. **8 P.R. 1900 Cr.**

(8)—*Crim. Pro. Code (1872), ss. 216, 220, 298 —Omission to prepare a charge, effect of, on an acquittal.*—An omission to prepare a charge in writing will not invalidate, unless a failure of justice is occasioned thereby, an order of acquittal, and render such order equivalent to an order of discharge ; the order of acquittal is, therefore, a bar to the revival of proceedings, against the person acquitted, for the same offence. **3 A. 129.**

(9)—*Crim. Pro. Code—Revival of prosecution after discharge—Jurisdiction.*—A Criminal Court in the Punjab discharged a person accused under s. 498, of enticing away a married woman. Subsequently it was found that the woman was concealed or detained in a place in the N. W. Provinces. The accused was again charged with the offence of enticing away before a criminal Court of the District in that Province. *Held*, that, although his previous discharge by the Punjab Court did not bar a revival of a prosecution for the same offence, it could only be revived by the Court in the Punjab in which alone it could be legally instituted. **3 A. 251.**

(10)—*Crim. Pro. Code (1872), s. 195—Power of Magistrate enquiring into a sessions case to discharge the accused.*—The power given to a Magistrate under s. 195 extends to weighing evidence, and the expression "sufficient grounds" must be understood in a wide sense. But this discretionary power should be exercised by the Magistrate with due care and caution, and he should not take upon himself to discharge the accused in sessions cases on the evidence which might justify a conviction. But when the evidence against the accused is such, that, in the opinion of the Magistrate, it cannot possibly justify a conviction, there is nothing in the law, which prohibits the discharge of the accused, even though the evidence against them consists of statements of persons who claim to be eye witnesses, but whom the Magistrate entirely discredits. **5 A. 161.** [*R.*, Rat. Un. Cr. C. 746].

(11)—*Discharge, whether amounts to acquittal —Crim. Pro. Code (1861), s. 250.*—A discharge under s. 250 of the Code of 1861 does not amount to an acquittal. **4 N.W.P. 23.**

(12)—*Warrant cases—Discharge—Crim. Pro. Code (1872), Ch. XVII.*—In warrant cases, the

Discharge of accused—continued.

Magistrate should not discharge the accused before the trial as prescribed by Ch. XVII (of the Code of 1872) has taken place. **7 N.W.P. 230.**

(13)—*Crim. Pro. Code (1861), ss. 171, 225—Reference to Magistrate for investigation of case triable by Sessions Court—Power to discharge.* —Where a case triable by the Sessions Court has been referred to a Magistrate by the Principal Sadr Amin, it is competent to the Magistrate to discharge the accused under s. 225, Crim. Pro. Code, 1861, if he should be of opinion that there were, no sufficient grounds to warrant the committal. **5 B.H.C. Cr. 41.** [*R.*, 13 B. 109].

(14)—*Crim. Pro. Code (1898), ss. 253 and 367 —Order of discharge—Magistrate—Judgment.* —The legislature does not render the writing of "reasons" necessary, where an accused person is discharged, after the trying Magistrate has heard all the evidence for the prosecution. But it is desirable that the Magistrate should record his reasons for discharge, though it is not compulsory. **9 Bom. L.R. 250=5 Cr. L.J. 255.**

(15)—*Crim. Pro. Code, Act X of 1872, s. 215 —Illegal arrest—Discharge.*—An order of discharge cannot be passed by a Magistrate, under s. 215 of the Crim. Pro. Code, until evidence is taken against the accused. **Rat. Un. Cr. C. 73 =Cr. Rg. 21—5—1873.**

(16)—*Crim. Pro. Code, Act X of 1872, ss. 44, 142, 215, 296—Improper discharge—District Magistrate—Procedure.*—Where a District Magistrate finds that a subordinate Magistrate has improperly discharged an accused person under s. 215 of the Crim. Pro. Code, his proper course is, not to refer the proceedings to the High Court under s. 296, but to take up the case under s. 142 or, if need be, to refer it under s. 44 for trial. **Rat. Un. Cr. C. 76=Cr. Rg. 17—7—1873.**

(17)—*Crim. Pro. Code (1872), s. 215.*— Explanation 3 of s. 215, Crim. Pro. Code, does not prevent the discharge of an accused person, if all the witnesses named for the prosecution, who are forthcoming, have been examined. **Rat. Un. Cr. C. 121.**

(18)—*Crim. Pro. Code, Act X of 1882, s. 437 —Improper discharge—Procedure.*—A Magistrate stopped a case without hearing all the evidence, and discharged the accused, remarking that it was impossible to fix the accused with guilt or to clear up the mystery in which the case was involved. *Held* that, when the Sessions Judge ordered a re-trial of the case, he should not direct the District Magistrate to have the case tried by some Magistrate other than the original one. **Rat. Un. Cr. C. 926= Cr. Rg. 31 of 1897.**

(19)—*Examination of prosecution witness— Crim. Pro. Code (1872), s. 215=s. 253 of the present Code.*—A Magistrate is bound, before discharging an accused person under s. 215 of

Discharge of accused—continued.

the Crim. Pro. Code (X of 1872), to examine all the witnesses tendered by the prosecution. **3 C. 389.** [*F.*, 2 A. 447, A.W.N. 1881, 145, **A.W.N. 1882, 179.**]

(20)—*Crim. Pro. Code (1898), ss. 203, 204 (3), 253, 437—Order of discharge by Presidency Magistrate—Powers of High Court—Charter Act, s. 15.*—The High Court cannot interfere with an order of discharge made by a Presidency Magistrate. S. 15 of the Charter Act, however, gives it a limited jurisdiction. The High Court can exercise that power only in cases of non-exercise or illegal exercise of jurisdiction. It cannot set aside the order of discharge, merely on a consideration of the evidence in the case. **6 C.L.J. 705=6 Cr. L. J. 400.** [*Diss.*, 12 C.W.N. 678.]

(21)—*Referring a case to police investigation—Duty of Magistrate.*—Where a Magistrate refers a case to the police for investigation, and the police officer arrests some persons, the Magistrate is bound to consider the evidence, if any, on which the persons have been arrested, before he summarily discharges them. **2 C.L. R. 374.**

(22)—*Crim. Pro. Code (1872), ss. 216, 220, 460—Order of acquittal by Subordinate Magistrate—Order for re-trial by District Magistrate.*—When a charge is dismissed by a Subordinate Magistrate, the District Magistrate may, under certain circumstances, proceed under s. 142; but it is quite clear that he cannot do so where there has been a formal acquittal. The terms of s. 460 bar any further trial so long as that acquittal remains in force; and that acquittal could not be set aside by the Magistrate unless he could deal with the case as a Court of appeal. **3 C.L.R. 131.**

(23)—*Crim. Pro. Code (1872), ss. 215 and 362—Order of discharge without examining prosecution witnesses.*—An order of discharge under s. 215 without examining all the witnesses summoned by the prosecution is not legal. **4 M. 329.**

(24)—*Crim. Pro. Code (1872), ss. 44, 142, 215 and 297—Improper discharge of accused person—Jurisdiction of District Magistrate to revive prosecution—Proper procedure.*—A District Magistrate is not legally competent to revive the prosecution in a case in which the accused person has been improperly discharged, under s. 215, by a Magistrate having jurisdiction to try the case. The proper course is to apply to the High Court to exercise the powers conferred in s. 297 (2), which are, however, discretionary powers. **6 M. 25.**

(25)—*Crim. Pro. Code (1882), s. 494—Irregular discharge of prisoner by Sessions Judge—Conviction on new trial, validity of*—Where a prisoner, the charge against whom being withdrawn by the Public Prosecutor, by permission of the Sessions Judge was merely discharged instead of being acquitted under s. 494 and was again committed to Sessions on a second charge for the same offence, though on a new sanction, and was convicted, *held*, that the conviction was bad. **12 M. 35.**

Discharge of accused—continued.

(26)—*Crim. Pro. Code (1882), s. 494—Discharge by Sessions Judge, validity of.*—A prisoner once committed to sessions on a charge cannot be discharged, but must be acquitted or convicted. **12 M. 35.**

(27)—*Crim. Pro. Code, ss. 253, 366, 367, 437—Order of discharge not "judgment"—Magistrate's competency to initiate subsequent proceedings after order of discharge—Principle of* autrefois acquit, *how far applicable?—Exhaustiveness of Code presumed.*—When a Magistrate passes an order discharging an accused under s. 253, Crim. Pro. Code, such order of discharge does not preclude him from taking fresh proceedings and issuing process against the person discharged, in respect of the same offence, without such order being set aside by a higher tribunal. Per *Munro and Pinhey, JJ.* An order of discharge is not a "judgment." Although the word "judgment" is not defined in the Crim. Pro. Code, it is sufficiently clear from ss. 366, 367, that the term is intended to apply to the final order in a *trial*, terminating in either the conviction or acquittal of the accused. —Per *Pinhey, JJ.* The principle of *autrefois acquit* can have no application, as it must be assumed that the Code is exhaustive on the subject it deals with, and it is not permissible to add to its provisions. Reading together ss. 253 and 437, it is clear that the Legislature could never have intended that a Magistrate discharging an accused should furnish him with a certificate of immunity from further molestation. The remedy for repeated indiscretions on the part of Magistrates is the provision of better Magistrates by Government, and not the limitation of their powers by judicial interpretation. **31 M. 543.**

(28)—*Acquittal—Discharge from custody.*—A prisoner is entitled to be discharged from custody immediately on the judgment of acquittal being pronounced, when there is no other charge pending against him, and his further detention is illegal. It is for the jail authorities in whose custody a prisoner remains until the trial is concluded to satisfy themselves of the result of the trial; and no formal warrant of release addressed by the Court to the Superintendent of the Jail is necessary. **5 M.H.C. App. 2.**

(29)—*Crim. Pro. Code (1861), s. 435—Dismissal of complaint without enquiry—Fresh enquiry by District Magistrate.*—Where a Sub-Magistrate dismisses without enquiry a complaint of theft, the District Magistrate is not prevented from making a fresh enquiry into the charge. **5 M.H.C. App. 31.**

(30)—*Crim. Pro. Code, ss. 423, 435, 437 and 438—Discharge of accused by second class Magistrate—District Magistrate setting aside order of discharge on the ground of misappreciation of evidence and directing further inquiry by first class Magistrate—Legality—Duty and proper function of District Magistrate when he considers prosecution evidence reliable.*—Where a Court, competent to decide whether the accused is guilty or not, holds that he is not

Discharge of accused—continued.

guilty on a consideration of the evidence adduced by the prosecution, that finding should, if at all, be set aside, only by a Court competent to set aside such finding of fact, *i.e.*, by the High Court, under s. 431 of the Crim. Pro. Code, read with s. 423. Where a District Magistrate set aside an order of discharge, passed by the second class Magistrate who tried the accused, on the ground that the second class Magistrate misappreciated the evidence and arrived at a wrong conclusion upon the facts. *Held* that the order of the District Magistrate was illegal and should be set aside. The District Magistrate, when he has come to the conclusion, as in this case, that *prima facie* the prosecution evidence is reliable, ought to have referred the case to the High Court for orders, instead of setting it aside himself on the grounds formulated by him in his order. The proper function of the District Magistrate is criticism. A power to order what is practically a re-trial, to give a complainant another opportunity of re-examining his witnesses and adducing fresh evidence, ought not to be presumed, as it is unjust to the accused and opens a wide door to perjury and corruption. **3 M.L.T. 230=31 M. 133=18 M.L.J. 57=7 Cr. L.J. 267.**

(31)—*Crim. Pro. Code (1872), ss. 195, 197 (ss. 209 and 215 of the Code of 1898)--Discharge of accused—Subsequent cancellation of order of discharge and commitment to Sessions—Validity.*—Where a Magistrate, after examining certain witnesses for the prosecution, discharged the accused under s. 195, and, subsequently, on becoming aware there was another witness present, cancelled his order of discharge, took further evidence and committed the accused for trial to the Court of Sessions, *held*, that the commitment was good. **2 Weir 258=7 M.H. C. App. 40.**

(32)—*Crim. Pro. Code, ss. 174 and 259.*—A complainant, who files a complaint of a non-compoundable offence which necessitates a procedure under Ch. XXI for the trial of warrant cases and omits to attend on the day fixed, is *prima facie* guilty of contempt under s. 174. Where warrant cases are compoundable, the Magistrate is justified in assuming that the non-appearance of the parties means that the case has been compounded, but he must use his discretion under s. 259, whereas in summons cases, where the complainant does not appear, he is bound to acquit the accused under s. 247, Crim. Pro. Code. **2 L.B.R. 165.**

(33)—*Crim. Pro. Code (1898), ss. 437, 438—Powers of revision by District Magistrates—Misappreciation of evidence--Power of committal.*—The District Magistrates have the power, in revising orders of discharge of accused persons by subordinate Courts, to go into evidence and commit the accused for trial. **9 Cr. L.J. 366=1 Ind. Cas. 686.**

(34)—*Improper discharge without enquiry—Charge of false evidence—Crim. Pro. Code (1872), s. 473.*—Where a Joint Magistrate directed a recusant witness in a trial before him to be put on his trial for giving false

Discharge of accused—continue d.

evidence, and subsequently, on the 19th May, on hearing the statement of the witness confessing that what he had stated was false, and that he had wilfully suppressed what he knew, recorded a proceeding stating that the case would not be proceeded with, and directing the discharge of the accused witness, *held* that, as the Joint Magistrate was incompetent himself to try the case by virtue of s. 473 of the Crim. Pro. Code, his proceeding of the 19th May was either a part of an enquiry into a case triable by a Court of Session, or of some proceeding before a Magistrate other than such enquiry in respect of an offence which the enquiring Magistrate was not competent to try and that in either case the Joint Magistrate could not discharge the accused. **23 W.R. Cr. 83.**

(35)—*Re-trial by Magistrate after discharge and acquittal by Deputy Commissioner—Crim. Pro. Code (1861), ss. 202, 207, 225.*—A Deputy Commissioner, in a proceeding in which the accused was discharged with forgery and using a forged document, after calling on the accused during the enquiry to make a statement, but without requiring him to make any further defence, and after hearing the evidence for the prosecution and for the defence, discharged and acquitted the accused. Held that there was no trial, but a proceeding under Ch. XII of Act XXV of 1861; that, under s. 202 of that Act, the Magistrate had discretion to examine the accused and, under s. 207, to examine witnesses on behalf of the accused and, under s. 225, the Magistrate, finding no sufficient ground for committing the accused to the Sessions, could discharge and acquit him. **19 W.R. Cr. 49.**

(36)—*Omission to draw up charge—Discharge—Acquittal.*—If no charge in writing has been drawn up against a prisoner and he has not been asked to make his defence, the Magistrate, if no offence has been proved, can only discharge, and not acquit the accused. **6 W.R. Cr. 13.**

(37)—*Want of evidence—Discharge—Acquittal.*—An accused against whom there is no *prima facie* case, who has not been put on his defence and against whom no charge has been preferred, should be discharged and not acquitted. **8 W.R. Cr. 45.**

(38)—*Revival of charge after withdrawal.*—A Deputy Magistrate, under s. 210, Crim. Pro. Code, permitted a complainant to withdraw his complaint which was not considered heinous, and discharged the accused, but the District Magistrate revived the case against the accused at the instance of the Commissioner. *Held* that the Magistrate had no jurisdiction to do so. **25 W.R. Cr. 64.**

(39)—*Power to revive case after discharge—Transfer of case part heard.*—In a case before a Joint Magistrate, after the prosecution was closed and the accused discharged under s. 215 of the Crim. Pro. Code, a petition was presented to the Magistrate of the District by

Discharge of accused—continued

the prosecutor, who remanded the case directing the Joint Magistrate to proceed with it at the stage at which he left it. *Held* that, the discharge not being equivalent to an acquittal, the Magistrate might have received a complaint, if sufficient reason existed for doing so, and might have made it over to a subordinate officer for trial, but that he had no power to make the order of remand. **20 W.R. Cr. 47** *and* 25 W.R. **Cr. 31.**

(40)—*Power of Magistrate to revive case after discharge.*--A District Magistrate can order a subordinate Magistrate to revive a case where the accused had been discharged. **20 W.R. Cr. 46.**

(41)—*Committal by Magistrate after discharge —Sessions case.—Per Glover, J.—Held* that, in a Sessions case, a Magistrate had power to commit the accused to the Sessions after discharging him. **20 W.R. Cr. 19.**

(42)—*Crim. Pro. Code (1861), s. 250 —Power of Sessions Court.*—A Magistrate had discharged an accused under s. 250 of the Criminal Procedure Code when the Sessions Judge remanded the case for further enquiry, re-tried it and convicted the accused. The Sessions Judge was held to have no power to make the order of remand, but the conviction was upheld. **9 B.L.R. 339=18 W.R. Cr. 39.**

(43)—*Crim. Pro. Code (1861), s. 250—Power of Sessions Court.*—On an accused person being discharged by a Magistrate under s. 250 of the Criminal Procedure Code after enquiry into the case, the Court of Session could not, under s. 435, remand it for further enquiry. **9 B.L.R. 337=18 W.R. Cr. 39.**

(44)—*Crim. Pro. Code (Act XXV of 1861), ss. 250, 251, 255, 435—Act VIII of 1869, s. 435 —Sessions Judge, Power of.*—No formal charge had been drawn up by a Magistrate under s. 250 of Act XXV of 1861, and the accused had not been called upon under s. 251 to plead thereto, and was not tried thereunder. *Held* that a release by the Magistrate of the accused did not amount to an acquittal under s. 255, but simply to a discharge under s. 250. Under such circumstances, s. 435, Act VIII of 1869, authorizes a Sessions Judge to direct the accused to be committed to take their trial. **4 B.L.R. A. Cr. 1=12 W.R. Cr. 65; 5 W.R. Cr. 58.**

(45)—*Effect of discharge—Crim. Pro. Code (1861), s. 435.*—When a person accused of an offence triable by the Court of Session is discharged, he may be again brought, with a view to commitment, before a Magistrate, who may proceed in such a case without an order from the Judge. S. 435, Code of Criminal Procedure, applies where a Magistrate sees no reason to commit. **8 W.R. Cr. 61.**

(46)—*Use by Magistrate of word "acquittal."* —A Magistrate employed the words "acquittal" and "discharge" when he meant only to discharge a person accused of an offence not triable

Discharge of accused—continued.

by him. *Held* that the Court of Session could, under s. 435, Crim. Pro. Code, 1861, order the commitment of such accused person. **8 W.R. Cr. 41.**

(47)—*Power of Sessions Judge to commit—Crim. Pro. Code (1861), s. 435.*—Where a Deputy Magistrate discharged a person charged with an offence triable only by a Court of Session, the Sessions Judge is not precluded from ordering the committal of such person to the Sessions Court under s. 435, Act VIII of 1869. **15 W.R. Cr. 61.**

(48)—*Discharge without evidence—Crim. Pro. Code (1872), s. 215.*—Where, in a warrant case, although the complainant's witnesses and the accused were present, a Deputy Magistrate discharged the accused on a police report, *held* that it was illegal, as the Magistrate was bound to take the evidence of the complainant before discharging the accused. **24 W.R. Cr. 9.**

(49)—*Complaints sent up by Civil Court and referred by Sessions Judge to Magistrate—Improper discharge.*—A Sessions Judge directed a Magistrate to make an enquiry into some complaints made by a Munsiff against certain persons; the Magistrate being of opinion that there was evidence enough to incriminate one of the accused, dismissed the complaint against him, as the complaint made against him had not been explicit. *Held* that the Magistrate ought not to have discharged the accused, but ought to have drawn up a charge against him. **25 W.R. Cr. 35.**

(50)—When the trying Magistrate has come to the conclusion that no *prima facie* case has been made out against the accused, the High Court cannot command him to arrive at a different conclusion. If the complainant has a good case, he may make a complaint to another Magistrate, who will not be prevented from inquiring and adjudging by a mere discharge of the accused in a warrant-case. **Cr. Rg. 3—12 —1884.**

(51)—*Revival of prosecution—Crim. Pro. Code (1872), ss. 215 and 297.*—If a prisoner has been discharged by a subordinate Magistrate, and the District Magistrate considers that order improper, he cannot, if no further evidence is procurable, revive the proceedings before such Magistrate, but he may refer such proceedings to the High Court. **Cr. Rg. 10—10—1878.**

(52)—*Crim. Pro. Code, 1872, s. 215—Crim. Pro. Code (1882), ss. 252, 253, 437—Discharge under s. 215 of Act X of 1872—Further enquiry under Act X of 1882.*—Where a subordinate Magistrate discharged the accused in a warrant case, under s. 215, Crim. Pro. Code, 1872, and the Magistrate of the District, after Act X of 1882 had come into force, came to the conclusion that the accused had been improperly discharged and that a further enquiry should be ordered, *held* that the order of discharge made by the subordinate Magistrate should be deemed to have been made under ss. 252, 253 of Act X of 1882, and

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that it was therefore competent for the Magistrate of the District himself to have ordered a further enquiry instead of reporting the case as he did, to the High Court, first of all assuring himself that fresh evidence was forthcoming, and also giving the accused an opportunity of being heard before him against such order being made. **A.W.N. 1883, 150.** [*Commented on*, 9 A. 52=A.W.N. 1886, 281].

(53)—*Crim. Pro. Code (1872), s. 215--Discharge in warrant case.*—Where, in a warrant case, the accused person was discharged without taking the evidence of all the witnesses named for the prosecution, *held* that the discharge was improper and a new trial should be ordered. **A.W.N. 1881, 145.**

(54)—*Crim. Pro. Code, Act X of 1882, ss. 252, 253—Penal Code, ss. 147, 295—Evidence taken for defence—Discharge.*—Where a first class Magistrate took evidence in a case under ss. 147, 295 of the Penal Code, examined the accused and also took defence evidence, but without framing a charge, and then discharged the accused, *held*, that the order of discharge did not amount to one of acquittal. **A.W.N. 1891, 80.**

(55)—*Crim. Pro. Code, Act X of 1882, s. 253—Applicability - Warrant case.*—A Magistrate has no jurisdiction to discharge an accused person under s. 253 of the Crim. Pro. Code for the non-appearance of the complainant on the date of hearing where the offence complained of is a warrant case. **A.W.N. 1891, 116.**

(56)—*Crim. Pro. Code, Act X of 1872, s. 215—Discharge without examining all prosecution witnesses.*—In a warrant case, the Magistrate cannot discharge the accused without examining all the witnesses produced for the prosecution. **A.W.N. 1882, 179.** (3 C. 389 and 2 A. 447, *R.*).

—By Presidency Magistrate, effect of—*See* ACT IV OF 1877, s. 87, 6 B. 376.

—By Presidency Magistrate—*See* ACT IV OF 1877, s. 168, 7 C. 447.

—Copies of order, and depositions before Presidency Magistrates, right to—*See* ACT IV OF 1877, s. 170, 8 C. 166=10 C.L.R. 190.

See ACT XII OF 1896, ss. 49—59, 1 L.B.R. 43.

See COMMITMENT TO SESSIONS COURT, Rat. Un. Cr. C. 899.

See COMPENSATION, 9 Cr. L.J. 502=2 Ind. Cas. 159.

See COMPLAINT, 24 C. 528=1 C.W.N. 370, 24 C. 286=1 C.W.N. 185.

See COMPOUNDING OFFENCE, L.B.R. (1893—1900), 240.

—Power of District Magistrate to institute fresh proceedings after discharge of person required to give security—*See* CRIM. PRO. CODE (1898), ss. 110 and 437, 24 A. 148=A.W.N. 1901, 266.

Discharge of accused—continued.

See CRIM. PRO. CODE (1898), ss. 119, 209, 253, 259, 437, 6 M.L.T. 133=33 M. 85=20 M.L.J. 137=4 Ind. Cas. 1057=11 Cr. L.J. 162.

See CRIM. PRO. CODE (1898), s. 192, 7 C.L.J. 249=7 Cr. L.J. 318.

See CRIM. PRO. CODE (1898), ss. 203, 257, 437, 12 C.W.N. 68.

See CRIM. PRO. CODE (1898), s. 204, A.W.N. 1904, 5.

See CRIM. PRO. CODE (1898), s. 206, 6 A. 477.

See CRIM. PRO. CODE (1898), ss. 252, 436 and 437, 28 C. 211=5 C.W.N. 169.

See CRIM. PRO. CODE (1898), s. 253, Rat. Un. Cr. C. 145.

See CRIM. PRO. CODE (1898), ss. 253, 254, 2 P.R. 1906 Cr.=37 P.L.R. 1906=3 Cr. L.J. 345.

See CRIM. PRO. CODE (1898), ss. 253, 366, 367, 437, 31 M. 543=5 M.L.T. 184=9 Cr. L. J. 80.

See CRIM. PRO. CODE (1898), ss. 253, 437 and 439, 8 P.R. 1909 Cr.

—Charged with an offence exclusively triable by Court of Session—Further enquiry—Powers of District Magistrate and Sessions Judge—*See* CRIM. PRO. CODE (1898), ss. 435, 436, 437 and 532, 28 C. 397=5 C.W.N. 574.

See CRIM. PRO. CODE (1898), s. 436, 26 A. 564=A.W.N. 1904, 125=1 A.L.J. 292.

See CRIM. PRO. CODE (1898), ss. 436, 438 (1), 3 C.L.R. 263.

—Setting aside order of discharge, reasons for—*See* CRIM. PRO. CODE (1898), s. 437, 2 O.C. 363.

—By Magistrate and illegality of re-arrest by the police without an order from the District Magistrate—*See* CRIM. PRO. CODE (1898), s. 437, U.B.R. (1892—1896), Vol. I, 48.

See CRIM. PRO. CODE (1898), s. 437, 2 C. P.L.R. 82.

—Discharge after examining Court witnesses—*See* CRIM. PRO. CODE (1898), ss. 540, 253, 2 Weir 714.

—Because of complainant's absence—*See* DISMISSAL OF COMPLAINT, Colm. Dig. Cr. 33 of 1876.

See FRESH COMPLAINT, 4 M.L.T. 140=8 Cr. L.J. 208.

See FURTHER ENQUIRY, 1 L.B.R. 100, 13 C.W.N. 1221.

See HIGH COURT, SUPERINTENDENCE AND POWERS OF, 5 M.L.T. 233, F.B.=9 Cr. L.J. 192=19 M.L.J. 157=32 M. 220=1 Ind. Cas. 228.

—Whether discharge of accused bars institution of fresh proceedings on same facts—*See* MAGISTRATE, 2 L.B.R. 27.

See PENAL CODE, ss. 497, 498, 11 C. 81.

Discharge of accused—concluded.

—Revival of proceedings against accused—*See* REVIVAL OF CRIMINAL PROCEEDINGS, 1 C. 282=25 W.R. Cr. 30.

See SESSIONS JUDGE, JURISDICTION OF, Rat. Un. Cr. C. 837, Rat. Un. Cr. C. 922, 4 L.B.R. 49=6 Cr. L.J. 287.

Discrepancies in evidence.

See EVIDENCE ACT, s. 59, U.B.R. (1897—1901), Vol. I, 162.

Discretion.

(1)—*Security to keep the peace—Crim. Pro. Code (1882), Ch. VIII—Discretionary powers under this chapter, how to be exercised.*—The discretionary powers conferred by the law upon Magistrates, in the interest of preserving the public peace, must not be exercised without care and caution, and never in derogation of the rights of liberty and security to which the people are entitled under British rule. **9 A. 452.**

(2)—*Discretion, how to be exercised?*—When the law throws upon a Magistrate the responsibility of exercising a discretion, he must exercise it to the best of his ability and has no right to pass a decision, simply because it would agree with a decision expressed by the Sessions Judge. **1 A.L.J. 315.**

(3)—*Crim. Pro. Code (1882), s. 476—Order made under the section—High Court's power of revision—Preliminary enquiry.*—The High Court has jurisdiction to interpose in the case of an order made by a Court under s. 476 of the Code. It has, therefore, also the power to determine whether the discretion given by that section has or has not been properly exercised. [*F.*, 23 C. 532, 26 B. 785, 18 P.R. 1902 Cr.=78 P.L.R. 1902; *R.*, 2 Weir 602=5 M.L.J. 226, 23 C. 610, Rat. Un. Cr. C. 895, 26 A. 249 =A.W.N. 1904, 15, F.B., U.B.R. 1907, 1st Qr., Crim. Pro. Code, 1.] The discretion, under s. 476 of the Code, is given by the words "such Court after making any preliminary enquiry that may be necessary send the case for trial." It is, therefore, for the Court acting in the matter to determine, in the exercise of its discretion, whether or not to make such preliminary enquiry. There may be cases in which, at any rate, it is plain that such an enquiry ought to precede the proceedings contemplated by that section. **20 C. 349.**

(4)—*Rights of accused persons—Duty of Magistrates—Proper exercise of discretion vested in them by law.*—Magistrates, in dealing with the law relating to the rights of accused persons should construe it in a less technical spirit than they are sometimes used to do. In the inferior Courts, the right principle is occasionally reversed and a person is presumed to be guilty the moment he is accused, and every attempt on his part to prove his innocence is regarded as vexatious. When the law vests in a Court a certain discretion, it should be exercised, so as not to give rise to any reasonable complaint or prejudice or bias. **28 C. 594.**

Discretion—continued.

(5)—*Previous conviction, charge of.*—In deciding whether, for the purposes of punishment, the accused should be charged or not with a previous conviction, a Magistrate should exercise a careful discretion having regard to all the circumstances of the case. **2 Weir 324.**

See BEN. ACT III OF 1899. s. 449, 3 C.L.J. 90=10 C.W.N. 182=3 Cr. L.J. 211=33 C. 287.

See BEN. ACT III OF 1899, ss. 449, 450, 452, 579, 11 C.W.N. 30=4 Cr. L.J. 408=34 C. 341.

See APPEAL, 5 Bom. L.R. 704.

See COMMITMENT TO SESSIONS COURT, 2 S.L.R. 9 Cr.=10 Cr. L.J. 224.

See CRIM. PRO. CODE (1898), ss. 87, 88, 90, 3 L.B.R. 116.

See CRIM. PRO. CODE (1898), s. 106 and Ch. VIII, 6 Bom. L.R. 34.

—Of Magistrate to proceed either under s. 107 or ss. 144 and 145—*See* CRIM. PRO. CODE (1898), ss. 107, 144 and 145, 32 C. 966= 10 C.W.N. 288=2 Cr. L.J. 769.

—Of Magistrate to proceed either under ss. 144, 145 or 107, Crim. Pro. Code—*See* CRIM. PRO. CODE (1898), ss. 144, 145, 107, 26 M. 471 =2 Weir 56.

—Arbitrary exercise of—*See* CRIM. PRO. CODE (1898), s. 145, 30 C. 508=7 C.W.N. 404.

—Statement before committing Magistrate, admission of, in Sessions Court—*See* CRIM. PRO. CODE (1898), s. 288, 7 C.W.N. 345.

See CRIM. PRO. CODE (1898), s. 345, U.B. R. (1892—1896), Vol. I, 43.

—Discharge of accused person—Dismissal of complaint—*See* CRIM. PRO. CODE (1898), ss. 403, 437, U.B.R. (1904), 2nd Qr., Crim. Pro. Code, 19.

—Non-exercise or improper exercise of powers of discretion vested in a Magistrate—High Court's power to interfere—*See* CRIM. PRO. CODE (1898), s. 435 (1, 2 and 3), 19 C. 52.

—Of Magistrate not always a question of jurisdiction—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 3 C.L.J. 478=3 Cr. L.J. 423.

See FURTHER ENQUIRY, 5 A.L.J. 74=A. W.N. 1908, 45=7 Cr. L.J. 157.

See HIGH COURT, JURISDICTION OF, 10 C. 268.

See MAGISTRATE, JURISDICTION OF, U.B. R. (1892—1896), Vol. I, 31.

See SANCTION TO PROSECUTE, 27 M. 223= 2 Weir 208=14 M.L.J. 74, 6 C. 440=7 C.L.R. 330.

—Magistrate's discretion in taking security for good behaviour, how to be exercised—*See* SECURITY FOR GOOD BEHAVIOUR, 6 O.C. 199.

Discretion —concluded.

See SECURITY FOR GOOD BEHAVIOUR, A.W.N. 1906, 13=3 Cr. L.J. 91.

See SENTENCE, 22 C. 805, L.B.R. (1893—1900), 310.

See SURETY, 8 C.L.J. 243=13 C.W.N. 80, 2 S.L.R. 11 Cr.

Dishonest Intention.

See BOM. ACT II OF 1890, s. 47 (*a*), 6 Bom. L.R. 93=28 B. 346.

Dishonesty.

See PENAL CODE, s. 415, 32 C. 775=9 C.W.N. 807=1 C.L.J. 469=2 Cr. L.J. 368.

See PENAL CODE, ss. 417, 468, 511, 25 M. 726=1 Weir 481=12 M.L.J. 68.

Dismissal of Appeal.

See APPEAL.

See CRIM. PRO. CODE (1898), ss. 367, 369, 421, 422, 423, 5 N.L.R. 76=9 Cr. L.J. 553=2 Ind. Cas. 247.

Dismissal of Complaint.

See COMPLAINT.

See CRIM. PRO. CODE (1898), ss. 203, 247.

(1)—*Crim. Pro. Code, Act XXV of 1861, s. 269—Dismissal of complaint—Application for revival.*—A complaint once dismissed under s. 269 of the Crim. Pro. Code, should not, as a rule, be revived. The complainant can have it revived if he gives satisfactory reasons for his absence, in which case he should make his application to the Magistrate who dismissed the complaint and not to any other Magistrate. **Rat. Un. Cr. C. 56=Cr. Rg. 31—8—1871.**

(2)—*Crim. Pro. Code (1872), ss. 205, 470—Dismissal for non-appearance—Applicability to Ch. XXXV, Crim. Pro. Code, 1872.*—The direction contained in s. 205 of the Crim. Pro. Code, to dismiss a complaint on the non-appearance of the complainant, is not applicable to cases falling under Ch. XXXV of the Code. Where, therefore, a sanction had been given by a Court to prosecute a person for resisting the authority of one of its bailiffs, it was *held* that the non-appearance of the bailiff did not justify a Magistrate in dismissing the complaint. **Rat. Un. Cr. C. 137=Cr. Rg. 31—10—1878.**

(3)—*Crim. Pro. Code (1882), s. 191—Non-payment of process-fees—Dismissal of complaint.*—Where a complainant in a non-cognizable case, being liable under the High Court Rules to pay process-fees, neglects or refuses to pay the same, the complaint should be dismissed unless the Magistrate considers that there should be a prosecution in the public interest to which s. 191 of the Crim. Pro. Code applies. **Rat. Un. Cr. C. 491=Cr. Rg. 60 of 1889.**

(4)—*Crim. Pro. Code (1898), s. 437—Dismissal of complaint for default of complainant—Jurisdiction of District Magistrate to deal with case under s. 437.*—Where a complaint is dismissed by a Magistrate owing to the absence of

Dismissal of Complaint—continued.

the complainant, the District Magistrate is competent to deal with the case under s. 437, Crim. Pro. Code. **Rat. Un. Cr. C. 988=Cr. Rg. 46 of 1898.**

(5)—*Complainant's absence—Crim. Pro. Code (1872), Ch. XVII:—Held* that it was illegal to pass an order dismissing a complaint under Ch. XVII, Crim. Pro. Code, 1872, merely because of the complainant's absence and the discharge of the accused was held to be illegal in consequence. **Colm. Dig. Cr. 33 of 1876.**

(6)—*Preferring false complaint—Dismissal of complaint—Order for compensation validity of—Courses open—Penal Code, s. 211—Crim. Pro. Code, s. 195.*—Where a Magistrate dismisses a complaint on the ground that it is false, it is not proper that he should order the complainant to pay the accused compensation. It is open to the Magistrate either to institute proceedings as regards an offence under s. 211, I.P.C. or to sanction under s. 195, Crim. Pro. Code, an application by the accused to make a complaint of that offence. **28 C. 251.**

(7)—*Crim. Pro. Code (1872), ss. 205, 208—Ground for setting aside dismissal.*—Where the complainant or prosecutor in a case was engaged in another Court as complainant or prosecutor at the same time in another case, such absence was held not to be a sufficient ground for setting aside its dismissal for default under ss. 205, 208, Crim. Pro. Code. **Colm. Dig. Cr. 91 of 1877.**

(8)—*Crim. Pro. Code, ss. 203, 253 and 439—Dismissal of complaint under s. 203, Crim. Pro. Code—Fresh complaint on same facts allowed without revision—Indian Penal Code (Act XLV of 1860), s. 417.—Held*, that a complainant whose complaint has been dismissed under s. 203, Crim. Pro. Code, is competent to make a fresh complaint on the same facts without getting the first order of dismissal set aside by higher Court. **26 P.W.R. 1908 Cr.=8 Cr. L.J. 249.**

(9)—*Dismissal of complaint without examination of complainant—Crim. Pro. Code (1898), s. 203.*—Where a complainant files a complaint before a District Magistrate, the District Magistrate has no power to dismiss the complaint, on receipt of the report of the police enquiry ordered by him, without examining the complainant under s. 203, Crim. Pro. Code. **1 L.B.R. 125.**

—For default after partial hearing by Presidency Magistrate—Institution of fresh proceedings— *See* ACT IV OF 1877, s. 124, 6 C. 523=8 C.L.R. 106.

See CRIM. PRO. CODE (1898), s. 247, 2 Weir 306, 2 Weir 307, 2 Weir 308, 2 Weir 309.

See CRIM. PRO. CODE (1898), ss. 247, 404, 2 Weir 308.

See CRIM. PRO. CODE (1898), ss. 252, 436 and 437, 28 C. 211=5 C.W.N. 169.

Dismissal of Complaint—concluded.

See FURTHER ENQUIRY, 5 A.L.J. 74=A. W.N. 1908, 45=7 Cr. L.J. 157, Rat. Un. Cr. C. 89, 33 C. 1282=5 Cr. L.J. 83, 11 P.W.R. 1908 Cr.=7 Cr. L.J. 347.

See PRELIMINARY ENQUIRY, S.C. 284, Oudh.

Disobedience of Order.

See INSPECTION OF DOCUMENTS, 11 B.H.C. 231.

Disorderly House Act.

See BEN. ACT III OF 1906.

Disposal.

See PENAL CODE, s. 372, 1 Weir 359.

Disposal of dead body.

See PENAL CODE, s. 318, 13 C.P.L.R. Cr. 188.

Disposal of Property.

See RESTORATION OF PROPERTY.

(1)—*Crim. Pro. Code, ss. 517, 523—Discretion to dispose of property produced before Magistrate.*—The discretion granted to the Court by s. 517 for the disposal of property produced before it, is not an arbitrary one, but must be exercised in favour of the person entitled to the possession thereof. So long as there is any one entitled to the possession of the property, Government has no claim. The question whether the property has or has not been used for the commission of an offence seems immaterial, for, in neither case does the section justify confiscation or transfer to Government of the ownership of property originally belonging to some one else. **2 Bom. L.R. 768.**

(2)—*Crim. Pro. Code, s. 523—Disposal of property—Discretion, how to be exercised.*—The discretion given to a Magistrate by the words "such order as he thinks fit respecting the disposal of property" must be judicially exercised, and in the absence of anything to show the title to the property, it should be ordered to be delivered to the person in whose possession it was at the time of the attachment. But when the property has been delivered contrary to the above principle, the High Court has no power to order restitution. **5 Bom. L.R. 25.** [*F.*, 4 L.B.R. 14=6 Cr. L.J. 126].

(3)—*Crim. Pro. Code (1898), ss. 517, 523—Disposal of property taken by police as stolen property, before adjudication of the theft case.*—Where in a charge of rioting and theft, the police seized certain property as stolen, and the case of theft had broken down upon investigation by the police, but the case of rioting was not disposed of, *held*, that the Magistrate was competent to make an order under s. 523 for the disposal of that property on the application of the police, especially when the parties themselves pressed the Magistrate to determine the question forthwith under that section, in order to avoid the risk of serious loss to that property. **5 C.W.N. 415.**

(4)—*Crim. Pro. Code (1898), ss. 517, 520—Acquittal on a charge of criminal misappropriation—Delivery of property.*—Where a person

Disposal of Property—concluded.

charged with the offence of criminal misappropriation of an elephant denied the ownership of the complainant, claimed the animal, and was acquitted, *held*, that the elephant, although found to belong to the complainant, should be delivered to the accused person in whose possession it was found at the time the criminal proceedings were instituted. **9 C.W.N. 549=2 Cr. L.J. 269.**

See ACT VII OF 1878, s. 55, 5 Bom. L.R. 124.

See CRIM. PRO. CODE (1898), s. 517, 2 Weir 666.

Dispute as to possession of immoveable property.

See CRIM. PRO. CODE (1898), ss. 144—147.

See MAGISTRATE, JURISDICTION OF.

(1)—*Crim. Pro. Code (1861), Ch. XXII (Ch. XII of the Code of 1898)—Nature of the enquiry.*—The enquiry contemplated by Ch. XXII (XII) of the Code is a personal enquiry before the Magistrate who makes the order. An order passed upon the report made after enquiry by a subordinate Magistrate under s. 318, Crim. Pro. Code, 1861 (s. 145 of the Code of 1898) is illegal. **2 Weir 97=4 M.H.C. App. 20**; 9 W. R. Cr. 64.

(2)—*S. 144—Order under the section, when to be made.*—Before making an order under s. 144, Crim. Pro. Code, the Magistrate should hold an enquiry and determine which party has the legal right contended for by both the parties and then protect the party he finds entitled in the exercise of that right. **Rat. Un. Cr. C. 967=Cr. Rg. 22 of 1898.**

(2-*a*)—*Cases which Magistrate can decide as to possession—Dispute as to property of which each of two persons claimed the whole without allegation of joint possession.*—It is competent to a Magistrate to enter into the question as to who was in possession and to maintain in possession the person whom he finds to be in possession. **25 W.R. Cr. 16.**

(3)—*Crim. Pro. Code (1882), ss. 145, 146—Scope of s. 146—'Tangible immoveable property,' scope of the expression—When action under s. 145 could be taken.*—S. 146 does not give jurisdiction to pass an order of attachment in a dispute between parties whose rights would have to be determined by a Revenue Court. The term "tangible immoveable property" in s. 145 includes standing crops. A Magistrate must be satisfied of the existence of a dispute likely to cause a breach of the peace, before he can take action under s. 145. The record also must show that he was satisfied of the existence of a dispute likely to cause a breach of the peace. **15 A. 394.**

(4)—Where the subject of dispute is merely the right of fishing in a *julkur*, it is not a dispute concerning any "tangible immoveable property" under s. 145 of the Crim. Pro. Code. **12 C. 539.** (23 W.R. Cr. 45, 11 C. 413, *F.*).

Dispute as to possession of immoveable property—continued.

(4-*a*)—*Decision of Magistrate as to possession—Crim. Pro. Code (1872), s. 530—Real right to possession.*—The possession in regard to which the Magistrate's jurisdiction under s. 530 of the Code of Criminal Procedure should be exercised, must be of a real and tangible character. **23 W.R. Cr. 45.** [*App.*, 12 C. 539].

(5)—A dispute concerning a *julkur* right is not one concerning "tangible immoveable property" so as to give a Magistrate jurisdiction to enquire into under s. 145 of the Crim. Pro. Code. **13 C. 179.**

(6)—*Ss. 144 and 145—Scope of section—High Court's criminal revisional jurisdiction.*—S. 144 has reference to temporary orders in urgent cases of nuisance; it gives jurisdiction where urgency exists independently of dispute. An order under the section has to be directed to particular individuals or to the public generaliy enjoining particular acts or abstentions, and it is in its very nature a temporary order. [*R.*, 4 Bom. L.R. 582]. An order under s. 145 pre-supposes a dispute likely to cause a breach of the peace, and in making it, a Magistrate may take action on the report of the police or on other information. The order must set forth the grounds on which he is satisfied that there is a dispute likely to cause a breach of the peace. Notice should be issued to all parties concerned so that they may have an opportunity to put in their respective claims. The order should not interfere with the rights of the parties concerned as determined by the decision of a Civil Court. A claim to perform a religious ceremony in a public temple, when it is the subject of an apprehended dispute, falls under s. 145. [*R.*, 3 Bom. L.R. 416, 25 A. 537=23 A.W.N. 102, 6 Bom. L.R. 246]. The High Court has, ordinarily, no jurisdiction to interfere with an order under Ch. XII of the Crim. Pro. Code, which is not a proceeding within the meaning of s. 435, *but* where the Magistrate exceeds his jurisdiction under ss. 144, 145, the High Court has power to interfere in its extraordinary jurisdiction to set the order aright. **24 B. 527=2 Bom. L.R. 84.** [*R.*, 25 B. 179, 2 L.B.R. 239, 25 A. 537=23 A.W.N. 102, 17 C.P.L.R. 133, 5 O.C. 1, 33 C. 68=9 C.W.N. 1046=2 C.L.R. 241, 1 S.L.R. 50 Cr.=8 Cr. L.J. 170, 6 A.L.J. 113=31 A. 148].

(7)—The jurisdiction given by s. 320, Crim. Pro. Code, 1861, to decide for a time the right to enjoyment of property, should not be exercised except on clear and satisfactory proof. Where the only evidence offered is that of user, it should be such as to show satisfactory acts of enjoyment exercised as a matter of right and permitted uninterruptedly for some considerable length of time. **4 M.H.C. App. 24.**

(8)—*Crim. Pro. Code (1882), ss. 145 and 146—Possession to be looked at under the section—Enquiry into the nature of possession.*—Where a Joint Magistrate made no inquiry as to the actual possession of the parties at the time the

Dispute as to possession of immoveable property—continued.

question came before him, but relied on an order passed by the Collector six months previously, *held*, that the order was irregular, as the issue before the Magistrate was which of the contending parties was in actual possession at the time of his proceedings. **13 A. 362.** [*R.*, 18 M. 41].

(9)—S. 145 of the Crim. Pro. Code, 1882, requires a Magistrate to decide which of the parties is in possession of the subject of dispute *at the time* when the Magistrate decides the question of possession, and not at any time *previous* thereto. **15 B. 152.** [*F.*, 18 M. 41].

(9-*a*)—*Attachment of property—Crim. Pro. Code (1872), s. 531*—Ijmali *property.*—The possession to be determined is possession at the time the dispute arose, *i.e.*, at the time the police reported that a breach of the peace was likely to take place. **24 W.R. Cr. 73.** [*Dist.*, 5 C.W.N. 710].

(9-*b*)—*Decision of Magistrate as to possession—Nature of required possession—Crim. Pro. Code (1872), s. 530—Possession at time of dispute.*—The possession which parties are required to establish in a case under s. 530, Act X of 1872, relating to a dispute as to the possession of immoveable property is possession at the time of the institution of the proceedings, and not possession at the time the Magistrate comes to his decision. **20 W.R. Cr. 51.** [*R.*, 24 W.R. Cr. 73, 21 C. 404].

(10)—Unless he is satisfied that there is likelihood of a breach of the peace being committed, a Magistrate acting under s. 318 of the Crim. Pro. Code, 1861, has only to see who is in actual possession at the time of the inquiry, and he cannot restore possession to any other person though the latter had been previously illegally dispossessed by the person in possession at the time of the inquiry. **Rat. Un. Cr. C. 27=Cr. Rg. 1—12—1869.**

(11)—Under s. 145 of the Code, the Magistrate has only to determine which of the parties before him is *de facto* in possession of the disputed property, at the time when he is enquiring into the matter, which is, in the contemplation of the law, identical with the time of the institution of the proceedings, and not at any time previous thereto. [*F.*, 12 C. 521; *Appl.*, 21 C. 404; *R.*, 16 C. 281, 22 C. 297, 25 C. 630]. Under s. 145, the Magistrate's simple duty is to maintain the party in possession, although he might be of opinion that such party is in wrcngful possession. He has no power to oust the party, whom he considers, in wrongful possession, and maintain in possession the party, whom be considers, rightfully entitled to possession. **11 C. 365.** [*R.*, 29 C. 187=29 I. A. 24=12 M.L.J. 83, P.C.].

(12)—Under s. 145 of the Code, the Magistrate has only to determine which of the parties before him is *de facto* in possession of the disputed property, at the time when he is enquiring into the matter, which is, in the

Dispute as to possession of immoveable property—continued.

contemplation of the law, identical with the time of the institution of the proceedings, and not at any time previous thereto. **12 C. 521.**

(13)—Enquiries, under s. 145 of the Criminal Procedure Code, should be directed to the question as to which party has been in possession of the subject of dispute before any proceedings in Court have been taken, and anything which occurs subsequently should not be taken into account. **12 C. 539.** [*F.*, 18 M. 41].

(14)—Under s. 145 of the Code, in a dispute regarding forest lands, the right to possession of which was exercised by cutting timber from time to time, and removing that timber upon a certain price being paid for, the Magistrate came to the conclusion that the second party was in possession at the time of the institution of proceedings, on the grounds (1) that the first party had admitted that, just before the time of initial proceedings under the section, they were driven away by the men of second party and (2) that they were unable to enter the forest and to remove the timber cut by them, and that the timber so cut was removed by the second party. *Held*, that, having regard to the nature of the property, these two facts, found in favour of the second party, could not constitute legal possession of the second party at the time the proceedings were instituted. *Held*, also, that it was necessary to enquire who was in the undisturbed possession of the land in dispute by felling timber and removing the same without objection on the occasion immediately preceding the one in which the dispute arose; and whichever party be found to have been in possession on that occasion, should be presumed to have possession at the time when the proceedings commenced. **16 C. 281.**

(15)—The possession to be inquired into, before making an order under s. 145 or 146, is the possession at the time of the institution of the proceedings. It is obvious that the words in s. 145, Crim. Pro. Code, "the fact of actual possession" must have reference to some fixed point of time. It cannot have reference to some date long anterior to the date of proceedings being instituted, nor can it refer to a point of time subsequent to the commencement of the inquiry. The time to be taken is obviously the date of the Magistrate being satisfied that there is ground for his intervention under s. 145, in other words, the date of the institution of the proceedings. In considering the question of possession, there is a general presumption that when a vendor sells part of a property, he retains all that he does not sell. **18 M. 41=2 Weir 100.** [*R.*, 24 B. 527, 23 A.W.N. 101 =25 A. 537].

(16)—A Magistrate, acting under s. 144, Crim. Pro. Code, is to make an order with the object of preventing a breach of the peace, if he considered a breach of the peace was imminent. This would be the only question for him to consider. It is not his business to adjudicate upon any question of title or possession. **11 M.L.J. 122.**

Dispute as to possession of immoveable property—continued.

(17)—*Crim. Pro. Code, (1882), s. 145—Manager or proprietor, if a proper party to proceeding under s. 145.*—A person, having no interest in the land, but merely in possession of the land as manager for the actual proprietor, is not a proper party to proceedings under s. 145. **25 C. 423.** [*D.*, 31 C. 48=7 C.W.N. 825].

(18)—*Crim. Pro. Code (1882), s. 145—Order under the section, nature and effect of.*—Orders under s. 145 are merely police orders made to prevent breaches of the peace. They decide no question of title; but the person maintained in possession by such an order can only be evicted by a suit by a person who can prove a better right to the possession himself. **29 C. 187= 29 I.A. 24=6 C.W.N. 386, P.C.**

(19)—Under s. 145, Crim. Pro. Code, 1882, an order must be made, not upon the merits of the claims put forward on either side, but upon the view of the fact of actual possession of the land in dispute, declaring the proper person to be in actual possession of the lands in dispute and to be entitled to retain possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction. **L.B.R. (1893—1900), 149.**

(20)—An order passed by a Magistrate under s. 145 (4), Crim. Pro. Code, should embody a clear finding as to which of the parties was in possession at the date of his order under s. 145(4). It is not enough to find who was in possession a year before the date of the proceedings under the section. **9 Cr. L.J. 505=2 Ind. Cas. 159.**

(21)—*Crim. Pro. Code (1882), s. 145—Order under s. 145, on whom binding.*—An order passed under s. 145 of the Code is binding only on the actual parties to the case in which it was passed. The fact of a person being examined as a witness in such a case does not make him a "party" bound by the order. Any inconvenience, which might result from restricting the scope of the section in this manner, can be avoided by care being taken to include as parties all persons interested in, or claiming a right to, the property in dispute. **18 M. 51=2 Weir 105.**

(22)—*Crim. Pro. Code (1898), s. 145, cl. (4)—Question of possession—Jurisdiction of Magistrates.*—In considering the question of possession, in proceedings under s. 145 of the Code, the Magistrate has to decide the question of possession without reference to the merits of the claims of any of the parties to a right to possess the subject-matter of dispute. If he goes into the merits, he exceeds his jurisdiction. **6 C.L.J. 182=6 Cr. L.J. 192.**

(22-*a*)—*Decision of Magistrate as to possession—Question for decision—Possession—Title.*—In a case of disputed possession of land, the Magistrate should look to possession, not to right, *i.e.*, maintaining in possession the party in possession, and forbidding disturbance of possession. **W.R. 1864, Cr. 2=6 W.R. Cr. 50=1 Agra, Cr. 33=1 Ind. Jur. N.S. 399=6 W.R. Cr. 61.**

Dispute as to possession of immoveable property—continued.

(22-*b*)—*Order of Criminal Court as to—Nature and effect of decision—Question of title.*—In a simple question of possession, all that a Criminal Court can dispose of is the necessary right, not the proprietary title. **16 W.R. 240 = W.R. 1864 Cr. 2 = 6 W.R. Cr. 50 = 1 Agra Cr. 33 = 17 W.R. Cr. 59 = 1 Ind. Jur. N.S. 399 ; 6 W.R. Cr. 61.**

(22-*c*)—*Nature and effect of decision—Fouzdari Court, jurisdiction of—Possession—Question of title.*—The jurisdiction of the Fouzdari Court was confined to cases of possession, and it was beyond its province to inquire into and ascertain titles to landed property. **3 W.R. P.C. 45 = 7 Moore's I. A. 283.** [*See* 7 M.I.A. 283].

(22-*d*)—*Disputes as to right of way, water, etc.—Obstructing a road.*—Where A merely complained to the Magistrate that "a certain road had been obstructed by B and others," *held* that the Magistrate was not bound to inquire into the matter under s. 320 of Act XXV of 1861. **2 B.L.R. Ap. 9 = 11 W.R. Cr. 3.**

(22-*e*)—*Decision of Magistrate as to possession—Nature of order—Illegal dispossession.*—A Magistrate has no authority to restore to possession a person who has been illegally dispossessed. **W.R. 1864 Cr. 5.** 3 N.W.P. 171 = 7 W.R. Cr. 26.

(23)—*Crim. Pro. Code (1898), s. 145—Title—Possession—Handing over profits to party.*—In a case under s. 145, the Magistrate has no jurisdiction to enquire into the rights of the parties. What he has got to look to is the fact of possession only. A Magistrate in a case under s. 145 passed the following order :—"I further order that, if any fruit has been gathered on any of the said land attached by order of this Court, the proceeds of such fruit, minus expenses, shall be handed over to A." *Held*, there is no authority in s. 145 or any other section to justify such an order. **7 C.L.J. 369 = 7 Cr. L.J. 336.**

(24)—*Crim. Pro. Code (1898), s. 145—Division of crops—Magistrate, jurisdiction of.*—A Magistrate has no jurisdiction to order a division of the crops on the land, the subject matter of proceedings under s. 145, Crim. Pro. Code, between the parties. **8 C.L.J. 242.**

(24-*a*)—*Competency of Magistrate to enquire—Crim. Pro. Code, 1861, s. 318—Land dispute.*—When both the disputing parties are examined, and state that men were collected by their opponents for the purpose of committing a breach of the peace, a Magistrate is justified, without inquiring who was the aggressor or the aggrieved party, to proceed under s. 318 of the Code of Criminal Procedure, and to take whatever steps are in his opinion necessary to prevent a breach of the peace. **15 W.R. Cr. 85.** [*R.*, 17 W.R. Cr. 33].

(24-*b*)—*Cases which Magistrate can decide as to possession—Dispute as to alluvial land—Land left by drying up of river.*—A Magistrate had jurisdiction, under s. 318, Code of Criminal Procedure, 1861, to prevent breaches of the peace in places where the rivers had dried up. The jurisdiction that was once there, under s. 30, was not taken away by reason of the land having appeared, and the water disappeared. **17 W.R. Cr. 53.**

(24-*c*)—*Cases which Magistrate can decide as to possession—Dispute regarding joint property—Crim. Pro. Code (1861), s. 318.*—The decision of a Deputy Magistrate was quashed, because the property in dispute being *ijmali*, he had no jurisdiction to try the dispute under s. 318, Code of Criminal Procedure, 1861, but ought to have proceeded in the manner laid down in Circular Order No. 10, dated 16th April, 1863. **17 W.R. Cr. 33 ; 17** W.R. Cr. 9.

(24-*d*)—*Dispute as to right in burial ground—Possession of manager—Crim. Pro. Code (1872), s. 530.*—A case in which several persons dispute about the proprietary right in a burial ground should be tried in a Civil Court, and does not properly come under s. 530 or s. 532 of the Code of Criminal Procedure. **25 W.R. Cr. 24.**

(25)—*Crim. Pro. Code (1872), s. 530—Scope of.*—The section contemplates disputes between owners as well as occupiers of lands. When a Zemindar has let his lands or a portion of them in farm, he, his farmers, and the occupying ryots are all, in their degree, concerned in any dispute as to possession which may arise, and they may, and ought to be, respectively maintained in possession of the interests which they severally enjoy. **5 C.L.R. 287.** [*R.*, 11 C. 413, 15 C. 527, 4 C.W.N. 753].

(25-*a*)—*Symbolical possession.*—Although symbolical possession is not entitled to weight as against a party proved to be in possession, yet, in the absence of evidence, it in itself deserves to be taken into consideration. **25 W.R. Cr. 74.** [*Appl.*, 4 C.L.R. 483 ; *Dist.*, 7 C. 46 ; *R.*, 7 C. 385, 23 C. 557, Ex. 33 C. 33 = 10 C.W.N. 257 = 2 C.L.J. 271].

(25-*b*)—*Crim. Pro. Code (1872), s. 530—Manager in joint possession—Question for Civil Court.*—A *mooktear* holding and managing a burial ground for several joint proprietors is not in possession for one more than for another. **25 W.R. Cr. 24.**

(25-*c*)—*Crim. Pro. Code (1872), s. 530—Possession by raiyats.*—In a case of dispute regarding land of a considerable area in which both parties contended that they held possession of the area through raiyats, it was held that the Magistrate, instead of making an order under s. 530 of the Criminal Procedure Code that the land should remain in the possession of one of the parties until the decision of a competent Civil Court, should have proceeded to consider the question which party was in possession of the constituent portions of the land, piece by piece, in the hands of his raiyats. **21 W.R. Cr. 55.**

Dispute as to possession of immoveable property—continued.

(25-*d*)—*Crim. Pro. Code (1872), s. 530—Parties in possession through raiyats.* Under Act X of 1872, s. 530, the Criminal Court has jurisdiction to determine questions of contested possession between parties who are not in immediate possession of the subject-matter of dispute, but claim rent from tenants who actually occupy it. **25 W.R. Cr. 18.**

(25-*e*)—*Crim. Pro. Code (1882), s.145—Possession of tenant, when not possession of landlord.*—The rule that the possession of the tenant is the possession of the landlord does not apply in cases in which there is a dispute between the tenant and the landlord as to the fact of possession. **2 Weir 107.**

(25-*f*)—*Breach of the peace—Actual possession—Recognizance to keep peace.*—The possession of a master by his servant, of a landlord by his immediate tenant, the person who pays rent to him, of the person who has the property in the land by the usufructuary, come within the meaning of the words "actual possession" in s. 318 of the Code of Criminal Procedure, 1861. Their meaning is not limited to bodily possession. But a person is not in "actual possession" where the rents are paid by the actual occupier, not to him, but to an intermediate holder. **9 B.L.R. 229=18 W.R. Cr. 11.** [*F.*, 5 C.L.R. 287, 7 C. 385, 15 C. 527; *Dist.*, 14 C. 649; *Exp.* 19 W.R. Cr. 10; *R.*, 25 W.R. Cr. 74, 11 C. 413, 31 C. 48].

(26)—*Crim. Pro. Code (1872), s. 531—Order of attachment, when to be made.*—It is the duty of a Magistrate, before he passes an order attaching the property, to enter into the question as to who has been, or has not been in possession of the land in dispute, to take evidence on the point, and to record a proceeding thereon. It is only when he is unable to determine the fact of actual possession, that he is competent under s. 531, to attach the land. **1 C.L.R. 86.**

(26-*a*)—*Attachment of property—Power to attach land—Crim. Pro. Code (1861), s. 318—Zamindari in possession by raiyats.*—The power of attaching land regarding which there is a dispute, conferred on a Magistrate by s. 318 of the Code of Criminal Procedure, extends to disputes as to possession of land of which rival zamindars are in possession by their raiyats. **15 W.R. Cr. 1.**

(26-*b*)—*Attachment of property—Dispute as to boundaries—Contiguous estates.*—When the dispute is as to a common boundary between two contiguous estates, the Magistrate, instead of attaching the boundary land, should find for one party or the other, with reference to the point of possession. **4 W.R. Cr. 26. 6 W.R. Cr. 61.** [*App.*, 18 W.R. Cr. 11, 7 C. 385, 22 W.R. Cr. 81; *Ref.*, 25 W.R. Cr. 74].

(26-*b1*)—*Attachment of property—Dispute between rival raiyats—Attachment of estate—Crim. Pro. Code (1861), s. 319.*—Where there was a dispute as to the actual possession of land, not between two co-proprietors, but between rival

Dispute as to possession of immoveable property—continued.

raiyats, *held* that, instead of attaching the whole estate, under s. 319 of the Code of Criminal Procedure, 1861, the Magistrate ought to have settled the dispute as between the raiyats. **W.R. 1864 Cr. 28.**

(26-*c*)—*Attachment of property—Power to deal with land under attachment—Power to lease—Crim. Pro. Code (1861), s. 319.*—A Magistrate may lease land attached under s. 319 of the Crim. Pro. Code, 1861. **17 W.R. Cr. 38.**

(26-*d*)—Attachment of property—Withdrawal of order for attachment—Crim. Pro. Code (1872), s. 531—*See* **24 W.R. Cr. 40.**

(26-*e*)—Attachment of property—Second attachment, Power to issue—Crim. Pro. Code (1872), s. 531—Attachment of land in dispute and release—Re-attachment—*See* **25 W.R. Cr. 68.**

(27)—*Crim. Pro. Code (1872), s. 530—Order of Magistrate, nature of—What kind of possession, the Magistrate should maintain.*—It is not the intention of s. 530 to give a Magistrate power to declare a person should have possession up to a certain period not yet arrived. He has simply to see whether or not he is in possession and entitled to retain it; if so, his possession may be terminated in due course of law, but not by the order of a Magistrate. If a person has been turned out of possession and submits to the ouster, and the other party, whether rightfully or wrongfully, is in peaceable possession, a Magistrate will not go behind the period where possession may be found to have become peaceable; but the mere fact of seizure and occupation, while complaints are being made to the Police, and proceedings are being held in the Criminal Court, cannot be said to be such peaceable possession as the Magistrate is bound to look to and maintain. **1 C.L.R. 136.**

(28)—*Crim. Pro. Code (1872), ss. 530, 531—Doubtful possession—Decision of Civil Court, effect of—Enquiry into possession.*—The doubt upon which a Magistrate can act under s. 531 must be the result of his inability to determine upon the evidence offered by both parties, and thereupon he may proceed to attach. The decision of a Civil Court is no ground for the determination of a Magistrate under the section. He is bound to enquire into possession and that alone. **1 C.L.R. 273.**

(29)—*Crim. Pro. Code (1872), s. 530—Dispute among joint owners—Order under section how far valid.*—Where the parties were admittedly in joint possession of certain property, and the only question in dispute was whether one of them, being a joint owner, was at liberty to make use of the land in such a manner as to cause what the joint owner chose to consider an annoyance, and against the will of that joint owner, *held*, that a Magistrate cannot determine the question under s. 530, Crim. Pro.

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Code, 1872. An order under s. 530 is only valid until the person to whom possession is given is ousted by due course of law. **2 C.L.R. 62.**

(30)—*Crim. Pro. Code (1872), ss. 530, 531—Possession of agent.*—In an enquiry under s. 530, the sole point is to determine the fact of actual possession, without reference to the merits of the claims of any party to a right of possession. Where a person is in possession, he is entitled to be declared to be in possession, irrespective of the fact that his possession is only that of an agent. **3 C.L.R. 94.**

(31)—*Crim. Pro. Code (1872), ss. 530, 533—Question of possession—Local enquiry by subordinate Magistrate—Scope of local enquiry.*—In a proceeding under s. 530, the Magistrate must decide the question of possession on the evidence taken before himself. He should not direct a local enquiry by a subordinate Magistrate unless both the parties have assented to such an enquiry. [*R.*, 3 M.L.T. 108=6 Cr. L.J. 384=31 M. 82=17 M.L.J. 535.] The local enquiry to which s. 533 refers should be restricted solely to some question relating to the feature of the property about which the dispute has arisen. It should not be directed to any matter which can be proved before the Magistrate by oral evidence, such as the question of actual possession. **3 C.L.R. 134.**

(31-*a*)—*Local inquiry—Effect of inquiry as evidence—Right to rebut evidence—Crim. Pro. Code (1872), s. 533.*—When a local inquiry under s. 533 of the Crim. Pro. Code is instituted, it becomes part of the proceedings in the case, and the party affected by it is entitled to be acquainted with the results of it, and to have an opportunity of rebutting the deputed Magistrate's report, if he thinks it necessary so to do. **21 W.R. Cr. 25.**

(32)—*Crim. Pro. Code (1872), s. 530—Proceedings under, when to be initiated—Examination of witnesses.*—In order to initiate a proceeding under s. 530, it must be shown that a breach of the peace is imminent. **4 C.L.R. 483.** [*R.*, 23 C. 557, 33 C. 33=10 C.W.N. 257=2 C.L.J. 271].

(32-*a*)—*Likelihood of breach of the peace—Inquiry—Crim. Pro. Code (1861), s. 318.*—Unless a dispute is likely to cause a breach of the peace, no inquiry should be made, nor order passed giving possession to one side or the other, under s. 318 of the Code of Criminal Procedure. **2 W.R. Cr. 44.**

(32-*b*)—*Crim. Pro. Code (1872), s. 530.*—The object of Act X of 1872, s. 530, is to prevent a breach of the peace by retaining in possession the party already there, until such time as the Civil Court can pronounce on the two conflicting claims. **24 W.R. Cr. 17.** [*F.*, 7 C.L.R. 516, 7 C. 385; *R.*, 25 W.R. Cr. 74].

(32-*c*)—*Nature and effect of decision—Prevention of breach of peace—Adjudication of title—Crim. Pro. Code (1861), Ch. XXII, ss. 318—321.*—The object of Ch. XXII of the Crim. Pro. Code, 1861 (ss. 318—321), is to prevent breaches of the peace likely to be occasioned, and not the adjudication of title. **1 Agra Cr. 29; 1 Agra 33.**

(32-*d*)—*Disputes as to right of way, water, etc.—Crim. Pro. Code (1872), s. 532.*—In order to find the jurisdiction of a Magistrate to take action under s. 532 of the Crim. Pro. Code, it is necessary that a dispute should exist between two persons concerning the right to the use of any land or water, or any right of way; the jurisdiction is intended for the purpose of preserving the public peace. **22 W.R. Cr. 48.**

(32-*e*)—*Order for removal of wall—Crim. Pro. Code (1861), s. 62.*—S. 62 of the Code of Criminal Procedure does not authorize a Magistrate summarily to direct a person to remove a wall erected on land alleged to belong to another person in the absence of evidence showing that a riot or affray was likely to occur. **13 W.R. Cr. 19.**

(32-*f*)—*Private dispute as to pathway—Crim. Pro. Code (1861), s. 62.*—S. 62 of the Code of Criminal Procedure does not apply to a private dispute between two parties relative to a path. **19 W.R. Cr. 6.**

(32-*g*)—*Order as to immoveable property—Crim. Pro. Code (1861), s. 62—Likelihood of breach of the peace.*—The power of issuing orders to prevent breaches of the peace, etc., conferred on a Magistrate by s. 62 of the Code of Criminal Procedure, extends only to immoveable property of the description set forth in Ch. XXII of that Code. **12 W.R. Cr. 38.**

(32-*h*)—*Cases which Magistrate can decide as to possession—Dispute as to right to collect rents—Order of Criminal Court as to—Report of police officer.*—Where a dispute between parties was not concerning land or its boundaries, or concerning houses, water, fisheries, or produce of land, but simply as to what collections one of the parties had made and what rents he was entitled to collect under a decree of Court, the case was held not to come under the provisions of Act X of 1872, s. 530, but under the ruling in 18 W.R. Cr. 35, 36. **25 W.R. Cr. 2.** [*Diss.*, 33 C. 33=10 C.W.N. 257=2 C.L.J. 271].

(33)—Before recording proceedings under s. 318, the Magistrate is bound to examine any witnesses tendered in support of the respective claims to actual possession of the land in dispute. **6 M.H.C. App. 4.**

(33-*a*)—*Evidence, Mode of taking, etc.*—It appears not to be absolutely necessary to examine witnesses at all. *Semble*—If examined, the evidence should be on oath. **7 B.L.R. 324 note=11 W.R. Cr. 36.** [*Doubt.*, 16 W.R. Cr. 17].

(34)—In disputes as to immoveable property under s. 145, Crim. Pro. Code, 1882, a Magistrate has no jurisdiction to make an inquiry as

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to possession, still less to pass any final order, unless and until he is satisfied of the likelihood of a breach of the peace ; it is absolutely essential that the fact and the ground of his being so satisfied should appear in his first order directing the issue of notice. The intention of the law is not to provide a rough and ready way of righting a wrong by enabling a Magistrate to exercise in a rude and summary fashion the function of a Civil Court, but to prevent the breaches of the peace likely to arise from disputes concerning tangible immoveable property. **6 C.P.L.R. Cr. 21.**

(34-*a*)—*Likelihood of breach of the peace—Crim. Pro. Code (1861), s. 318—Grounds for belief in likelihood of breach of peace.*—Under the provisions of s. 318 of the Code of Criminal Procedure, the Magistrate should specify the nature of the information received by him, and state the principal facts which, by the exercise of a judicial discretion, he derives therefrom and which, in his judgment, constitute grounds for believing that a dispute concerning certain land exists which is likely to induce a breach of the peace. **19 W.R. Cr. 10.** [*R.*, 21 C. 404].

(34-*b*)—*Judicial determination of—Magistrate, opinions of, regarding.*—An order made by a Magistrate in a case of disputed possession, to maintain one side in possession, and to restrain the other side, without any judicial determination of the fact of possession, is illegal. As to the question of possession, the law contemplates not the opinions of the Magistrates on such questions, but their judicial decisions arrived on proper materials in regular proceedings. **2 C.L.J. 555=10 C.W.N. 82=3 Cr. L. J. 169.**

(34-*c*)—*Likelihood of breach of the peace—Order not made after judicial inquiry—Crim. Pro. Code (1872), s. 530.*—An order of a Magistrate retaining parties in possession of land can only be passed after judicial inquiry, as required by the Code of Criminal Procedure, s. 530. **25 W.R. Cr. 21.**

(35)—Prior to the institution of proceedings under s. 145 of the Code of 1882, a Magistrate should be satisfied on reasonable grounds of the existence of a dispute likely to cause a breach of the peace. Further, the grounds stated by the Magistrate must be such as to satisfy a Court of Revision, before which the case might be brought by any of the parties concerned. **12 C.P.L.R. Cr. 2.**

(35-*a*)—*Evidence, mode of taking evidence, etc.*—In an inquiry under s. 530, Act X of 1872, as a preliminary to an order relative to land about which there is a dispute likely to cause a breach of the peace, the evidence should be recorded by the Magistrate in the manner provided by s. 334. **11 B.L.R. Ap. 6.**

(35-*b*)—*Evidence on oath.*—In a proceeding under s. 318 of the Crim. Pro. Code, 1861, to determine the right of actual possession, it is

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necessary that the evidence should be taken upon oath. **7 B.L.R. 322=16 W.R. Cr. 13.**

(35-*c*)—*Oral evidence in determination of question of possession.*—Oral evidence has always been and must be the principal matter upon which Magistrates can go in deciding a question of possession under the Code of Criminal Procedure. **5 W.R. Cr. 79.** [*F.*, 9 W.R. Cr. 64].

(35-*d*)—*Omission to record evidence—Inquiry.*—Taking the statements of both the parties without recording evidence in proof of either is not an "inquiry." **2 W.R. Cr. 44.**

(35-*e*)—*Taking evidence in two cases together—Right to separate inquiry.*—Under s. 404, Crim. Pro. Code, 1861, the parties kept out of possession were held to be entitled to a full inquiry. **8 W.R. Cr. 63.**

(35-*f*)—*Neglect to obey order to put in statements—Crim. Pro. Code (1861), s. 318.*—When, in a case under s. 318, Code of Crim. Procedure, a Magistrate had taken any evidence, he is not justified in refusing to proceed with the case because the parties neglected to file written statements on the day fixed for filing the statements. **11 W.R. Cr. 9.**

(35-*g*)—*Order of Criminal Court as to—Likelihood of breach of the peace—Requisite evidence.*—There is nothing which defines on what grounds the Magistrate shall be satisfied, or limits him to being satisfied by the evidence given before him. **9 B.L.R. 229.** 18 W.R. Cr. 11.

(35-*h*)—*Penal Code, s. 143—Unlawful assembly—Dispute regarding possession of land—Onus of proof.*—Where persons, charged with having caused mischief to some indigo plants, put in a road-cess return filed by the complainant showing that the accused were at the date the return was filed, in possession of a large plot of land in the village of which they claimed the land in dispute to be a part, *held*, that the presumption as to the possession of the land was in favour of the accused and that the prosecution should prove the discontinuance of possession by the accused, or that they held some other land in the same village answering to the land mentioned in the road-cess return. **5 C.W.N. 368.**

(35-*i*)—*Nature and effect of decision—Suit in Civil Court for possession—Proof of title—Crim. Pro. Code (1861), s. 318.*—S. 318 of the Code of Criminal Procedure, 1861, does not mean that any party who can show in the Civil Court a possession prior to the Magistrate's award shall be entitled to have the award set aside and to be put in possession, but only that the party out of possession must prove title. **W.R. 1864, 295.**

(36)—*Crim. Pro. Code (1872), s. 530—Delivery of possession by Civil Court Nazir—Duty of Magistrate.*—For the purpose of preventing a breach of the peace, the Magistrate declares, under s. 530, one party to be entitled to retain possession, until the Civil Court declares which

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party has the better right and puts that party in possession. Where a Nazir, acting under the authority of the Civil Court puts the auction-purchaser into possession of a *haut* as appurtenant to a certain *mouzah* sold in execution of a decree, the Magistrate is not competent to direct the judgment-debtor, who raises the plea that the property is *debutter*, to be retained in possession until ousted by a Civil Court, but should see that the possession as given by the Nazir is maintained, leaving it to the debtor to substantiate his claim as *shebait* in a Civil Court. **5 C.L.R. 200.**

(37)—*Crim. Pro. Code (1872), s. 530—Order against one as servant of another—Validity.*—No order, in a proceeding under s. 530, should be made against one person acting as the servant of another who claims to have possession of the land in dispute, unless both the master and the servant are made parties to the proceeding. **6 C.L.R. 193.** [*R.*, 21 C. 404, 31 C. 48=7 C.W.N. 825].

(38)—*Crim. Pro. Code (1872), s. 530—Resistance to execution of decree—Procedure.*—A Criminal Court may properly enquire into and punish a riot or an unlawful assembly if proved. But it altogether oversteps its province when, under s. 530, Crim. Pro. Code, it interferes in cases where a purchaser under a decree is resisted in getting actual possession of the property which he has bought. Ss. 334, 335 of the Crim. Pro. Code, prescribe the procedure to be adopted in such case. **6 C.L.R. 206.**

(39)—*Crim. Pro. Code (1872), s. 530—Communication of order under the section.—Quære.*—Whether an order under s. 530, could be directed to any persons other than the unsuccessful parties in the proceeding, or whether it could be properly directed to the public at large. **7 C.L.R. 291.**

(40)—*Crim. Pro. Code (1872), ss. 530, 533—Breach of the peace, likelihood of, at a future time—Jurisdiction.*—Where there is no present danger of a breach of the peace, but only a likelihood of it at a future time, a Magistrate will not be justified in making an order under s. 530. [*Appr.*, 33 C. 33=2 C.L.J. 271=10 C.W.N. 257=2 Cr. L.J. 670; *Appl.*, 26 A. 190=23 A.W.N. 229; *R.*, 23 C. 557]. The duty of making an enquiry under s. 533 should be deputed to a Magistrate and not to a *canungoe*. **7 C.L.R. 352.** See, also, **24 W.R. Cr. 67.**

(41)—*Crim. Pro. Code (1872), s. 530—Decision of Civil Court, how affects the Magistrate's jurisdiction to pass orders.*—Where the rights of parties have been determined by a Civil Court, and the question of possession of the disputed land has also been settled by it, the Magistrate should not proceed under s. 530, to decide afresh the question of possession. **7 C.L.R. 516.**

(42)—*Crim. Pro. Code (1872), s. 530—Effect of order under section*—Onus *of proof.*—The effect of an order under s. 530 is to throw the burden of proof upon the person to whom it was

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adverse, in an ejectment suit, but such an order can decide nothing as to how possession was obtained or as to antecedent possession. **9 C.L.R. 305.**

(43)—*Crim. Pro. Code (1872), s. 530—Dispute concerning several plots of land—Separate proceedings, if necessary.*—Where a dispute concerning the possession of a number of different plots of land between the ryots of one village and those of another was covered by the same state of circumstances, *held*, that the Magistrate had exercised a sound discretion, in having included all the plots in one proceeding, and in having relied upon the evidence adduced in respect of all of them together. **10 C.L.R. 523.** [*R.*, 6 C.W.N. 206; *D.*, 15 C. 31].

(44)—*Crim. Pro. Code (1872), ss. 283, 531—Proceedings under s. 531—Initialling the* rubokari.—Although the signing of the *rubokari* by a Magistrate, in a proceeding under s. 531, with his initials only, may be irregular, the High Court is precluded by s. 283 of the Code from setting aside the proceedings, on that ground. **12 C.L.R. 221.**

(45)—*Crim. Pro. Code (1898), s. 145—"Concerned in the dispute," meaning of.*—The words "concerned in the dispute" as used in s. 145, Crim. Pro. Code, are not limited to the parties actually concerned in the subject-matter of the dispute, who would be affected by the Magistrate's order maintaining the possession of any third party in their absence. **4 C.W.N. 753.**

(46)—*Crim. Pro. Code (1861), Ch. XVIII—Proceeding under Ch. XVIII, when allowable.*—In the absence of any evidence of a dispute as to the fact of actual possession of either the land or crop, no proceeding under Ch. XXII is allowed. **4 M.H.C. App. 12.** [*F.*, 4 M.H.C. App. 49].

(47)—*Crim. Pro. Code (1861), Ch. XXII—Possession—Occupancy of trespasser.*—The actual possession intended by the Code does not include the occupancy of a mere trespasser. **6 M.H.C. App. 13.** [*D.*, 1 Weir 68=6 M. 245].

(47-*a*)—*Crim. Pro. Code (1872), s. 530—Possession of trespasser*—The recent occupation of a trespasser is not a possession which a Magistrate can direct the party to retain under s. 530, Crim. Pro. Code, 1872. **8 P.R. 1876 Cr.**

(48)—*Crim. Pro. Code (1882). s. 145—Inquiry as to possession- Time of possession—Magistrate's power under the section—High Court's powers to set aside orders of Magistrate and pass proper order.*—No hard and fast rule can be laid down as to the exact point of time to which an enquiry under s. 145 of the Code must be directed. The Magistrate must decide the time at which possession of the disputing parties should be taken into consideration according to the facts of each case. To hold that a Magistrate is precluded from enquiring into anything before the date when he recorded his own proceedings might, in some cases, amount to allowing a

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person who has been acting in an unwarrantable manner to misuse the process of law to enable him to carry out his high handed and improper scheme, which could never have been the intention of the Legislature. [*R.*, 1 C.L.J. 331]. A Magistrate has no power under s. 145 to place either party in possession of the subject-matter in dispute, or any part of it, but only to find who is in possession of it as a whole, and if that is impossible, to make an order under s. 146. [*D.*, 5 C.W.N. 710]. The High Court has power not only to set aside an order of a Magistrate under s. 145 of the Code, but has also power itself to pass the order which should have been made by the Magistrate, upon the facts as proved at the enquiry. In this case, the High Court substituted an order of attachment under s. 146. **22 C. 297.** [*D.*, 30 C. 112. 11 C.W.N. 743].

(49)—*Crim. Pro. Code (1882), s. 145—Parties to the proceedings under the section, who are.*—Where the person in whose favour an order under s. 145 of the Code was made, regarding a dispute as to the right to dig for coal in a certain *mouza*, was merely the manager of the coal company claiming the property, *held*, that the possession of such person was not one as was contemplated by that section and that the order was bad and should be set aside, as the parties really interested were not before the Court. **21 C. 915.** [*F.*, 25 C. 423, 24 B. 527, 7 C.W.N. 208; *R.*, 31 C. 48].

(50)—Where, in a dispute regarding possession of land, the person who was made a party to the proceeding was the *kurpuradaz* of a Mahomedan lady and her children, but these latter persons were not made parties, although the dispute was really between them and another, *held*, that the proceedings were void *ab initio*. **21 C. 916 note.** [*Explained*, 31 C. 48 ; *F.*, 7 C.W.N. 208].

(51)—*Crim. Pro. Code (1861), s. 318 (=s. 145 of the Code of 1898)—Duty of Magistrate—Validity of—Magistrate's action on police report—Notice—Rights of parties.*—A Magistrate, having satisfied himself that a breach of the peace is likely to ensue, may enquire which party is in possession of immoveable property, and after satisfying himself on that point, he may record a proceeding, declaring that the party he holds to be in possession is entitled to retain possession, until ousted in due course of law, and forbidding all disturbance of possession. He may not go on to enquire into the rights of parties in possession and forbid the exercise of any right by such parties. **3 N.W.P. 171.**

(52)—Before taking proceedings under s. 145 of the Crim. Pro. Code, a Magistrate must satisfy himself of the existence of a dispute likely to cause a breach of the peace, and of the suggested apprehension of a breach not being merely colourable and made to induce him to deal with matters properly cognisable by the Civil Courts. **10 C. 78=13 C.L.R. 410.**

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(53)—Before proceeding under s. 145 of the Crim. Pro. Code, a Magistrate is bound to satisfy himself, on grounds which are reasonable, that a breach of the peace is imminent, in regard to properties of the description specified in that section, and that a dispute likely to cause a breach of the peace exists concerning them. The grounds stated by him must be such as to satisfy a Court of Revision before which such case may be brought by any of the parties concerned. [*F.*, 20 C. 520, 12 C.P.L.R. 2 Cr.; *R.*, 23 C. 557.] Where a Magistrate proceeds under s. 145 of the Code on a police report which sets out, sufficiently, substantial reasons for believing that a dispute likely to cause a breach of the peace relating to certain lands exists, the proceedings of the Magistrate will not be irregular. For the purpose of notice to parties, it is also sufficient for the Magistrate to cite, as the ground of his proceeding, the police report on which he is satisfied that a dispute within the term of s. 145 does exist. [*Approved*, 9 C.W.N. 1065=33 C. 352=2 C.L.J. 259 ; *R.*, 33 C. 33=10 C.W.N. 257=2 Cr. L.J. 670=2 C.L.J. 271, 32 C. 771 =2 Cr. L.J. 342=9 C.W.N. 621.] In proceedings under s. 145, it is open to the parties, if they dispute the necessity for such proceedings, either to show, under the last clause of s. 145, that no dispute likely to cause a breach of the peace exists or has existed, or, if they are so advised, to move the Court of revision that the Magistrate has proceeded on grounds which are not reasonable, or which cannot be held to be sufficient to satisfy him that such a dispute exists. **20 C. 513.** [*Diss.*, 33 C. 33=10 C.W.N. 257=2 Cr. L.J. 670=2 C.L.J. 271].

(54)—Unless a Magistrate complies strictly with the terms of s. 145, by stating in his written order all the particulars necessary to enable him to act under that section, his proceedings are without jurisdiction. It is not sufficient that the Magistrate should have before him a police report, and that he should have given orders thereon that a written order be drawn up within the terms of s. 145. It is his duty to draw up or have drawn up an order which, in all respects, satisfies the requirements of the law. It is absolutely necessary that the written order should be correct and complete in its terms. **27 C. 981.** [*F.*, 23 A.W.N. 102=25 A. 537, A.W.N. 1904, 234 =27 A. 296 ; *R.*, 9 C.W.N. 621=2 Cr. L.J. 342=32 C. 771, 9 C.W.N. 1065=33 C. 852 =2 C.L.J. 259, 71 P.L.R. 1908=6 Cr. L.J. 113=24 P.W.R. 1907=7 P.R. 1907 Cr.; *D.*, 7 C.W.N. 599 ; *Diss.*, 7 O.C. 334].

(55)—Where the police stated in their report that, though there was nothing to show that there was a likelihood of a breach of the peace, yet it was not impossible that there could be a breach of the peace, *held*, that the police report was not sufficient for the institution of a proceeding under s. 145. **11 C.W.N. 835=6 Cr. L.J. 36.**

(55-*a*)—*Likelihood of breach of the peace*—A police report was held, both under that

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Code and under the Code of 1872, not to be sufficient evidence. **7 B.L.R. 329**; 16 W.R. Cr. 17, 5 W.R. Cr. 14, 9 B.L.R. Ap. 45, 18 W.R. Cr. 64, 6 B.L.R. Ap. 148, 15 W.R. Cr. 42, 3 B.L.R. A. Cr. 4, 11 W.R. Cr. 46, 25 W.R. Cr. 2.

(55-*b*)—*S. 530, Crim. Pro. Code (1872), Likelihood of breach of the peace—Sufficiency of amin's report for passing order.*—A Magistrate cannot take only the written report of an amin, directed to make a local enquiry, as proof sufficient on which to base his order maintaining a party in possession; such order should be passed on evidence. **20 W.R. Cr. 57.**

(56)—*Crim. Pro. Code (1882), s. 145—Proceedings under the section—Sufficient grounds—Notice to parties—Power of Sessions Judge to order proceedings under section—Proceedings taken in the absence of police report or other information.*—To initiate a proceeding under s. 145 of the Code, it is not sufficient that, in the course of a trial, it should appear from the statement of witnesses examined that a breach of the peace is likely to ensue in consequence of dispute regarding certain lands. Before taking action, the Magistrate is bound to be satisfied from a police report or other information on the point, and he is also bound to make an order in writing, stating the grounds of his being so satisfied, and this order must be served on the parties to the dispute. The intention of the law seems to be not only that Magistrates should have sufficient grounds for proceeding under s. 145, but that they should inform the parties concerned of the grounds on which they are proceeding. [*See* 9 C.W.N. 1065 = 33 C. 352 = 2 C.L.J. 259, 32 C. 771 = 2 Cr. L.J. 342 = 9 C.W.N. 621, 33 C. 33 = 10 C.W.N. 257 = 2 C.L.J. 271 = 2 Cr. L.J. 670; *R.*, 23 C. 557, 24 B. 527, 6 Cr. L.J. 113 = 24 P.W.R. 1907 Cr. = 7 P.R. 1907 Cr.]. A Sessions Judge is not competent to order a Magistrate to take action under s. 145. He should rather draw the Magistrate's attention to the nature of the dispute in trial before him, so that the Magistrate may exercise his own discretion and determine whether proceedings under s. 145 are necessary. [*F.*, 24 C. 391.] Proceedings under s. 145, when there is nothing in the police report or no other information, fall within the terms of s. 530 of the Code and will be void. **20 C. 520.**

(56-*a*)—*Notice to parties—Service of notice—Crim. Pro. Code (1861), s. 318—Service of notice to attend*—The mere serving of a notice upon a mofussil naib who takes no steps whatever to consult his employer or act under his directions is not such a notice as is contemplated by s. 318, Code of Criminal Procedure. **17 W.R. Cr. 9.** [*R.*, 17 W.R. Cr. 33].

(56-*b*)—*Notice to parties—Right to notice—Parties to proceedings—Service of notice—Co-sharers.*—In a proceeding under s. 318, Act XXV of 1861, there is nothing in the law which makes it necessary for the Magistrate to

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serve a notice on all the co-sharers of an estate which may form the subject of the dispute. **9 B.L.R. Ap. 39.** 18 W.R. Cr. 54. [*R.*, 8 C. 756].

(57)—*Crim. Pro. Code (1882), s. 145—Effect of striking off proceedings under—Ground for believing likelihood of breach of the peace—Cessation of likelihood of breach of the peace—Order cancelling proceedings.*—The effect of an order striking off proceedings under s. 145, is to destroy the proceedings, and anything done after that under the section must start afresh and not stand upon the basis of the earlier proceedings. [*F.*, 6 C.W.N. 923.] Before a Magistrate can proceed under s. 145 of the Code, he must state the information upon which he has reason to suppose that a breach of the peace is probable or imminent. [*R.*, 33 C. 352 = 2 C.L.J. 259 = 9 C.W.N. 1065, F.B.] Where parties show to the Magistrate that no dispute exists, and if the likelihood of a breach of the peace has ceased to exist before the proceedings under s. 145 have terminated, the Magistrate may stay the proceedings. **20 C. 867.** [*R.*, 30 C. 112].

(58)—*Crim. Pro. Code (1882), s. 145—Term "parties concerned"—Construction—Duty of Magistrate—Notice—Object of section—When proceedings to be discontinued—Improper procedure under section.*—The words "parties concerned" in s. 145 of the Code do not necessarily mean only the persons who are disputing. They also include persons who are interested in, or claim a right to, the property in dispute. It is the duty of the Magistrate, on the materials before him, to ascertain, so far as he can, who are the persons interested in, or claiming a right to, the property in dispute and to give notice to them all, so that the whole matter so far as his Court is concerned, may be disposed of in one proceeding. [*F.*, 24 B. 527, 4 C.W.N. 753; *Appr.*, 27 C. 892; *R.*, 18 M. 51 = 2 Weir 106, 6 C.W.N. 290 = 29 C. 242, 30 C. = 155, F.B.; *Discussed*, 24 C. 55, F.B.; *D.*, 6 C.W.N. 206.] Although in proceedings under s. 145, the evidence is to be recorded as in summons cases, it is the duty of the Magistrate to issue processes to witnesses, unless he shows good reasons to the contrary. [*R.*, 32 C. 1093 = 2 C.L.J. 280; *Expl.*, 30 C. 508 = 7 C.W.N. 404.] The primary object of s. 145 is the preservation of peace. If it is found during the proceedings that there is no likelihood of the peace being disturbed, there is no necessity for the continuance of the proceedings. Where, in a proceeding under s. 145 of the Code, the owners or proprietors claiming an interest in the subject-matter of dispute were not made parties, but only their servants were made parties, and where the Court refused an application for summons to witnesses without any proper grounds, the High Court set aside the order of the Magistrate under s. 145 of the Code. **21 C. 29.** [*D.*, 23 C. 55].

(59)—*S. 147—Effect of judicial decision on the right of parties.*—Where an enquiry under

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s. 147 was started on a police report, which afforded sufficient grounds for supposing or, at any rate, conjecturing that at that time a dispute existed as to the use of the land in question that might lead to a breach of the peace, and, after the enquiry was postponed until the decision of a second-class Magistrate in a mischief case arising out of the same dispute, the latter ascertained judicially the rights of disputants, *held*, that there was no necessity for holding the enquiry under s. 147. **11 B. 584.**

(60)—*Crim. Pro. Code, s. 147—Proper order under--Order prohibiting a party from taking part in temple ceremonies.*—An order under s. 147, Crim. Pro. Code, is bad in form, if it contains no restriction of time for which it is to operate. [*D.*, Rat. Un. Cr. C. 708.] Where the High Court has held, regarding a suit, that the Civil Courts will not determine trivial questions of mere dignity and privilege, a Magistrate is not competent to interdict one of the parties to such suit, by an order under s. 147, from taking part in ceremonies in the temple, which were in dispute in the civil suit. **14 B. 25.**

(61)—*Crim. Pro. Code (1872), s. 530 (=s. 145 of Crim. Pro. Code, 1898)—Constructive possession,—Powers of Magistrate under section—Nature of such powers.*—In a case of disputed possession between two rival zemindars, constructive possession, through intermediate holders, to whom the rent is paid, is not such as is contemplated by s. 530 of the Crim. Pro. Code. **3 C. 320.** [*Commented*, 5 C.L.R. 287 ; *Dist.*, 11 C. 413].

(62)—Where the dispute between two joint owners of land raised no question of possession, but whether one of them was at liberty to make use of the land against the will of the other in such a manner as to cause annoyance, a Magistrate has no jurisdiction to interfere under s. 530 of the Crim. Pro. Code (of 1872) and award exclusive possession of a portion to one of them. **3 C. 573=1 C.L.R. 352.**

(63)—The power given to a Magistrate to make a binding declaration as to the possession of property is an exceptional one ; s. 530 of the Crim. Pro. Code (of 1872) limits the exercise of this power to cases, in which a Magistrate is satisfied that a dispute, likely to induce a breach of the peace, exists, and it is this likelihood, with the consequent necessity for immediate action, which alone warrants action by the Magistrate, who must record the grounds for his belief as to the existence of such likelihood. **4 C. 650=3 C.L.R. 551.** (3 B.L.R. Cr. 76, *R.*) [*R.*, 9 C.W.N. 1065=2 C.L.J. 259 F.B., 33 C. 33=2 C.L.J. 271=10 C.W.N. 257=2 Cr. L.J. 670].

(64)—The dispute enabling Magistrates to interfere, under this section, must be some substantial dispute necessitating the interference, in some way or other, of the criminal authorities. A mere discussion or verbal altercation between persons claiming rights of the kind described is not enough. There must

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be an actual dispute. The section does not enable a Magistate to make a purely declaratory order. It enables him to prevent arbitrary interruption, by any person, of rights actually enjoyed, which have been exercised by the public or a person or class of persons. **5 C. 194 =4 C.L.R. 324.**

(65)—*Crim. Pro. Code (1872), s. 530—Breach of the peace--Interference by Magistrate—Record of preliminary proceeding, if necessary.*—A Magistrate should, to justify his interference under s. 530 of the Crim. Pro. Code, be satisfied of the existence of a dispute *likely to induce a breach of the peace*, rendering it necessary for him to take immediate steps for its prevention ; it is not enough if it is *probable* that a breach *may* occur if proceedings be not taken. [*R.*, 23 C. 557 ; *Appr.*, 33 C. 33=2 C.L.J. 271=10 C.W.N. 257=2 Cr. L.J. 670.]—*Quære*—Is it necessary that a preliminary proceeding should first be recorded to give the Magistrate jurisdiction ? **7 C. 385=8 C.L.R. 514.** (10 W.R. Cr. 16, *R.*).

(66)—*Crim. Pro. Code (1872), s. 530—Butwara proceedings, possession under, nature of.*—The possession given by an ameen, in butwara proceedings, is possession as owner, and not as occupier, and hence, could not oust tenants holding lands previous to such delivery of possession. **4 C. 378.** [*R.*, 20 C. 285].

(67)—*Crim. Pro. Code (1872), s. 530--Proceedings under—Ouster of person in peaceful possession.*—In proceedings under s. 530 of the Crim. Pro. Code (of 1872), the Magistrate must look to possession that may be termed peaceful. He must go back to the time when the dispute, that occasioned his interference, originated. If two parties came forward—one being lawfully in possession and the other struggling for it—and the latter succeeds in ousting the former, the Magistrate is not to recognize the stronger and successful party as the one to be maintained in possession under the section. **4 C. 417.** [*Not F.*, 15 B. 152].

(68)—*Crim. Pro. Code (1872), s. 530, proceedings under—Essential particulars to be stated—"Dispute," meaning of.*—A Magistrate, acting under s. 530 of the Crim. Pro. Code, must first record a proceeding, setting forth that he is satisfied that a dispute likely to induce a breach of the peace exists concerning land, &c., and this proceeding must state the grounds upon which he is so satisfied. The proceeding itself ought to contain all the particulars essential to give the Magistrate jurisdiction, and reference to any other document, *e.g.*, a police report, ought not to be necessary in order to the ascertainment of those essential particulars. [*D.*, 7 C. 46 ; *R.*, 33 C 352=2 C.L.J. 259=9 C.W.N. 1065, F.B.] The term "dispute," in s. 530 of the Crim. Pro. Code, means a reasonable dispute, a *bona fide* dispute, a dispute between parties, who have each some semblance of right ~~of supposed right~~.—*Per* Field, J. **6 C. 835=8 C.L.R. 247.**

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Dispute as to possession of immoveable property—continued.

(69)—*Crim. Pro. Code (1882), s. 145—Dispute as to the right to collect rents—Dispute as to incorporeal rights.*—A dispute as to the rights to collect rents is one "concerning tangible immoveable property" under s. 145 of the Code. [*F.*, 5 A.W.N. 299, 15 C. 527; *R.*, 5 M.L.J. 95; *D.*, 23 C. 80.] The introduction of the word "tangible" before the words, "immoveable property" in s. 145 shows that incorporeal rights are excluded from the operation of the section. **11 C. 413**. [*F.*, 12 C. 539].

(70)—*Attornment by tenants to stranger.*—A dispute as to the right to collect rents is a dispute concerning "tangible immoveable property" under s. 145 of the Code. [*F.*, 16 C. 513; *R.*, 12 C.W.N. 16; *D.*, 23 C. 80.] In a dispute as to the right of collecting rents of certain land, the tenants were paying rents to one of the parties, up to the commencement of the dispute which led to the proceeding under s. 145, and, upon the dispute taking place, they attorned to the other party by real or pretended payments. *Held*, that such attornment by the tenants did not put an end to the tenancy and to the right of the person, who was collecting rents up to the time of the dispute, to collect the rents. *Held*, also, that such proceedings by the tenant could not deprive him of recourse to s. 145, in case of danger to the peace, to have possession of the right to collect rents maintained pending civil proceedings. **15 C. 527.** [*F.*, 16 C. 513].

(71)—A dispute about the right to collect the rent of lands from the tenant in possession is a dispute concerning tangible immoveable property within the meaning of s. 145, Crim. Pro. Code. **12 M. 88=2 Weir 100**. [*R.*, 5 M.L.J. 95].

(72)—*Held*, that, where there is no dispute between the parties as to the extent of their respective shares in a village, such extent having been declared by the Civil Court, or as to the fact of their being in possession, but the dispute is only as to who is entitled to collect the rent from the tenants, the Criminal Courts have no jurisdiction to take proceedings under s. 145, Crim. Pro. Code, 1898, inasmuch as a dispute about the collection of rent from the tenants is not a dispute about the rents or profits of land within the meaning of s. 145. **10 O.C. 89=5 Cr. L.J. 394.**

(73)—*Crim. Pro. Code, s. 145—Dispute as to the right to collect rents—Extent of the property in dispute—Possession by receipt of rent—Payment of rent to the other party three months anterior to the institution of proceedings.*—A proceeding, under s. 145, is not limited to disputed possession between parties in immediate occupation of a tangible immoveable property, but is intended, also, to apply where the disputed possession consists of receipts of rents from tenants in actual possession. Similarly, the operation of the section cannot be limited by any rule which would depend upon the area of the property in dispute. [*R.*, 6 C.W.N. 206; *D.*, 23 C. 80.] Where one of the parties to a dispute, under s. 145 of the Code, admitted that the other party was in possession of the property by receipt of rent up to a period some three months anterior to the institution of the proceedings under s. 145, the act of the Magistrate in declining to examine more than a limited number of witnesses on the point of possession from that period up to the date of institution of proceedings would not account to such irregularity as to justify the intervention of the High Court, inasmuch as payment of rent to the other party for that short time would not amount to dispossession of the party, previously in possession. **16 C. 513.**

(74)—*Crim. Pro. Code (1882), s. 145, Proceedings under, nature of—Process to enforce attendance of witnesses.*—Proceedings under s. 145 of the Crim. Pro. Code should, from their nature, be regarded, on all points of procedure as summons cases. Although it is discretional with a Magistrate to issue summonses on witnesses cited in such a case, yet, when an application for the issue of processes to secure the attendance of witnesses is made at a proper time, the Magistrate should not arbitrarily refuse his assistance. Such an application for summons ought not to be refused simply because a large number of witnesses is mentioned therein. **11 C. 762.** [*F.*, 21 C. 29; *Expl.*, 30 C. 508=7 C.W.N. 404; *Diss.*, 32 C. 1093=2 C.L.J. 280].

(75)—*Crim. Pro. Code (1882), s. 145—Joint trial of different claims—Legality.*—In a dispute regarding possession of 708 bighas of land belonging to a zemindar, the parties to the dispute being persons interested as tenants under the zemindar, and persons claiming under the same zemindar, to be interested in various portions of the land as their maurasi jote in different quantities and under interests acquired at different times, the Magistrate tried the case together and passed an order in favour of the former directing that they as a body should remain in possession until evicted therefrom, by the order of a Civil Court. *Held*, that the procedure adopted by the Magistrate was prejudicial to the maurasi tenants, and that the order was open to the objection that it would render necessary the making, as defendants in the civil suit, of a multitude of persons who were, by the terms of the order, held to be in possession. The proceedings were set aside. **15 C. 31.** [*R.*, 6 C.W.N. 206].

(76)—*Crim. Pro. Code (1882), s. 145—"Parties concerned in the dispute"—Substitution on the death of one of the parties—Validity.*—Held by Petheram, C.J., and Trevelyan, J. (Rampini, J., *dissenting*). Since the possession to be enquired into under s. 145 of the Code is the possession at the time of the initiation of the proceedings, the words "parties in such dispute" must mean also parties concerned at the time of the initiation of the proceedings. There is no power to introduce father to son, or in any way introduce parties not concerned in the original dispute. *Per* Rampini, J.:—

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The preliminary proceedings referred to in s. 145 may, and in many cases must, partake of the character of a general citation to the parties concerned in the dispute to appear before him, and it is not necessary for the Magistrate to confine his final order to the parties whom he may have named in his preliminary proceedings. **21 C. 404.** [*R.*, 18 M. 41].

(77)—*Crim. Pro. Code (1882), ss. 145 and 148—Order for costs—Amount not specified—Right of successor in office to assess the costs—Order for costs not made for a long time after decision—Notice—Revision by High Court.*—Under s. 148 of the Code, only the Magistrate who passes the decision is authorised to make an order as to payment of costs. Where a Magistrate who passed an order under s. 145 of the Code awarded costs, but did not specify the amount, *held*, that his successor in office had no power to pass an order assessing such costs, when the application for such assessment is made more than two years after the order for costs had been made by his predecessor. **21 C. 609.** [*Diss.*, 23 C. 37 ; *R.*, 22 C. 387, 10 C.W. N. 1030 ; *D.*, 22 C. 384].

(78)—Where a Magistrate, in giving a decision under s. 145 of the Code, made also an order for costs under s. 148, *held*, that the assessment of the costs may be made by his successor, on an application made within a reasonable time. The award of costs under s. 145 is of a *quasi* civil character and indeed the language of the section appears to have been borrowed from s. 219 of the Code of Civil Procedure, and it is not necessary in civil cases that the costs should be assessed or taxed at the time of the decision, or by the same officer who decided the case. **22 C. 384.** [*F.*, 23 C. 37; *R.*, 29 M. 373].

(79)—The award of costs under s. 148 of the Code is a *quasi* civil proceeding, and should be made by the Magistrate at the time of passing the decision, (compare s. 218 of the Code of Civil Procedure). Where the order for costs was not made for a long time after the decision owing to delay arising from the action of the objectors, the High Court declined to interfere with the order so made, under s. 437 of the Code, as there was no suggestion that the order was unjust or improper on the merits. **22 C. 387.** [*R.*, 10 C.W.N. 1030, 29 M. 373].

(80)—When an order for the payment of costs under s. 148 has been made by the Magistrate deciding the case, another Magistrate has jurisdiction to assess the amount of costs. **23 C. 37.** [*R.*, 10 C.W.N. 1030].

(81)—Proceedings under ss. 145 and 148 ar *quasi* civil in their nature. The intention of s. 148 would seem to be that an order for, and the assessment of, costs should be made at the time in the presence of the parties Therefore such costs should not be ordered and assessed by the Magistrate after a long interval and without allowing all the parties affected, an opportunity to appear and show cause. **24 C. 757.** [*R.*, 29 M. 373].

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(82)—*Crim. Pro. Code (1882), ss. 147, 107—Julkur right—Jurisdiction of Magistrate—Evidence of imminent danger of breach of the peace—Dispute concerning easement—Proper procedure.*—Although a Magistrate is not entitled to proceed under s. 145, when a dispute arises before him concerning the exercise of a *julkur* right, still he might take action when such dispute arises under s. 147, and the words "the right to do or prevent the doing of anything in or upon any tangible immoveable property" cover such a case. In order to give jurisdiction to a Magistrate under s. 147, he must be satisfied from Police report, or other materials, that there is an imminent danger of a breach of the peace resulting from a dispute between the parties concerned. Where the materials before the Magistrate do not disclose the existence of such a dispute, the order made by him under the section would be entirely void, and the defect is not remedied, even if it appears from the evidence, taken in the course of the trial, that there was, at the date of the initiation of the proceedings, a dispute likely to cause a breach of the peace. [*Diss.*, 10 C.W. N. 257=2 Cr. L.J. 670=2 C.L.J. 271=33 C. 33; *R.*, 9 C.W.N. 1046=2 Cr. L.J. 618=2 C.L. J. 241=33 C. 68.] The proper course for a Magistrate to follow in a case under s. 147 is to bind down such of the persons as are likely to disturb the peace under s. 107, if the case involves a long and complicated inquiry and the presence of a great number of people. **23 C. 557.** [*R.*, 46 P.L.R. 1903].

(83)—*Crim. Pro. Code (1898), s. 145—Dispute as to possession of* julkur—*Civil Court decree—Duty of Magistrate.*—Where proceedings are taken under s. 145, regarding a dispute as to the boundaries of a *julkur* right, subsequent to a Civil Court's decree, defining such boundaries, the trying Magistrate is to follow that decree and not to attempt to an explanation of it. **6 C.W.N. 161.**

(84)—*Crim. Pro. Code (1882), s. 145—"Parties concerned"—Addition of parties subsequent to the initial proceedings—Joint trial of three cases under section, validity of.*—A Magistrate's duty, before he initiates proceedings, is not only to be satisfied that a dispute exists, but to ascertain, as far as possible, who are 'concerned in the dispute' so that they may be required to attend, in order that the question of possession may be, as far as possible, settled. There is no power during the course of the proceedings to add parties unless, in the initial proceeding, the Magistrate is satisfied that they are concerned in the dispute, any more than there is a power to substitute parties. If in the course of the proceedings, it appears to the Magistrate that it is absolutely necessary that other parties should be required to attend and he is satisfied that they are concerned in the dispute, the only course open to him is, if he be empowered in that behalf and he is satisfied that danger of the breach of peace still exists, to initiate a new proceeding. **24 C. 55=1 C.W.N. 3, F.B.**

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[*Overruled*, 30 C. 155, F.B. ; *F.*, 27 C. 892, 5 C.W.N. 900, 6 C.W.N. 101, *R.*, 24 B. 527 ; *D.*, 25 C. 423, 4 C.W.N. 753].

(85)—A Magistrate must deal with a case under s. 145, Crim. Pro. Code, 1898, as it is originally instituted. If he finds that he cannot do so in respect to one side, because they are not parties to the dispute or because it has been shown that no breach of the peace is likely to occur from any action of theirs he should put an end to the case. He is not competent to add parties after the institution of the proceedings. Where parties in three cases under s. 145 are not the same, the Magistrate is not competent to try all the three cases together, although the parties consent to the adoption of such a procedure. Evidence already taken may be accepted in one of these cases, but the other cases must be tried separately. **4 C.W.N. 748.**

(86)—*Crim. Pro. Code (1882), ss. 144 and 145—Power of District Magistrate over subordinate Magistrate to direct institution of proceedings under s. 145.*—Where a Sub-Divisional Magistrate, having regard to the circumstances of a case before him, held that proceedings should be taken under s. 144 and made an order accordingly, *held*, that a District Magistrate had no authority to direct the Sub-Divisional Magistrate to take proceedings under s. 145 and that there was nothing in the Code of Crim. Procedure, or in any other law, authorising the District Magistrate in such a case to direct proceedings to be taken under s. 145. **24 C. 391 = 1 C.W.N. 393.**

(87)—*Crim. Pro. Code (1882), ss. 107 and 145—Dispute regarding land likely to cause breach of peace—Proper proceedings.*—In a dispute regarding a piece of land likely to cause a breach of the peace the proceedings should be instituted under s. 145 and not under s. 107. The effect of passing an order in such a case under s. 107 would have the effect of binding down only one of the parties to the dispute, leaving the other party free, without any adjudication upon the question as to which of the two parties is in possession. **25 C. 559.** [*F.*, 6 C.W.N. 883, 6 C.L.J. 697 = 6 Cr. L.J. 398 = 35 C. 117; *D.*, 30 C. 112 ; *Diss.*, 2 Weir 56 = 26 M. 471].

(88)—*Crim. Pro. Code (1898), s. 145—Proceedings under section—High Court's powers of interference—Order of Magistrate—Decision of Civil Court—Duty of Magistrate.*—The power of revision to be exercised by the High Court, in proceedings under s. 145, is limited to matters of jurisdiction, *i.e.* to say, to cases in which it is found that the Magistrate, by taking proceedings under s. 145, has acted without jurisdiction. [*F.*, 22 A.W.N. 74 = 24 A. 315, 4 L.B.R. 75 ; *R.*, 5 O.C. 1, 33 C. 68 = 2 C.L.J. 241 = 9 C.W.N. 1046, F.B. = 2 Cr. L.J. 618.] The object of s. 145 is to enable a Magistrate to intervene and to pass a temporary order, in regard to the possession of the property in dispute, having effect until the actual right of

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one of the parties has been determined by any competent Court. It is, consequently, his duty, when that right has been declared within a time not remote from his taking proceedings, to maintain an order which has been passed by any competent Court ; and, therefore, to take proceedings which, necessarily, must have the effect, of modifying or even cancelling such an order, is to assume a jurisdiction which the law does not contemplate, **26 C. 625 = 3 C.W.N. 461.** [*F.*, 5 C.W.N. 563, 29 C. 208, 2 A.L.J. 274; *F. and Expl.*, 6 Bom. L.R. 246; *R.*, 23 P.R. 1902 Cr. = 135 P.L.R. 1902; *D.*, 10 C.W.N. 257 = 2 C.L.J. 271 = 2 Cr. L.J. 670 = 33 C. 33].

(89)—*S. 145—"Parties concerned" meaning of the term—Omission to add necessary party, effect of—Dispute as to collection of rents, necessary parties to—Zamindar and tenant—Alteration of character of proceedings by succeeding Magistrates—Revisional powers of High Court—Charter Act, s. 15.*—The expression "parties concerned" in s. 145 does not necessarily mean only the parties who are disputing, but includes also persons who are interested in or are claiming a right to, the property in dispute. The section contemplates one proceeding against all the parties known to be concerned in the dispute so as to conclude the matter definitely and finally, so far as the Criminal Courts are concerned. The question of leaving out parties or instituting proceedings against wrong parties is not a mere irregularity but is a question affecting jurisdiction. [*F.*, 5 C.W.N. 429 = 28 C. 446; *R.*, 5 C.W.N. 900, 6 C.W.N. 101, 30 C. 155, 24 P.W.R. 1907 Cr. = 6 Cr. L. J. 113 = 7 P.R. 1907 Cr. = 11 P.L.R. 1908; *D.*, 22 A. W.N. 101 = 24 A. 443.] Where in a dispute concerning the ownership of land between certain Zemindars and their tenants on one side, and other Zemindars and their tenants on the other, the dispute not being confined to the rights of the rival Zemindars to collect the rents, the Zemindars were made parties, but the tenants were not, *held* (by Amir Ali and Stanley, JJ.) that the presence of the tenants was essentially necessary for the proper and effectual decision of the case and that the omission of the Magistrate to join them as parties was illegal and without jurisdiction. *Per* Prinsep, J, *contra.*—The omission to join the tenant could not vitiate an order as between the Zemindars, on an objection that it is without jurisdiction, and that no question of jurisdiction arose in this matter. Where, upon a report of the police that a dispute was likely to lead to a breach of the peace and was one concerning the actual possession of land, a proceeding under s. 145 was taken, and subsequently upon the same material this proceeding was revised by a succeeding Magistrate and one of the alterations made was, that the dispute as regards possession of land was changed into dispute relating to collection of rent, *held*, that the recording of the subsequent order was an abuse of jurisdiction, especially when the report on which it rested did not give any information as to any dispute regarding the collection of rent, but

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simply had a reference to the actual possession of a piece of land by two rival sets of tenants claiming to hold under two rival sets of Zemindars. *Per Prinsep*, J.—A case, under s. 145, is not one with which the High Court can deal as a Court of revision under the Code of Criminal Procedure. Such cases are expressly excluded from its cognisance, as a Court of revision under that Code. Its powers are under the Charter Act and these can be exercised only in respect of jurisdiction. *Per* Amir Ali, J.—Where there is an abuse of jurisdiction, in a proceeding under s. 145, the High Court has the power to interfere both under its revisional jurisdiction as also under cl. 15 of the Charter. **27 C. 892=4 C.W.N. 613.** [*R.*, 28 C. 709, 5 O.C. 1, 22 A.W.N. 111=24 A. 443, 23 P.R. 1902 Cr.=135 P.L.R. 1902, 2 L.B.R. 239, 33 C. 68=9 C.W.N. 1046 =2 C.L.J. 241].

(90)—*Crim. Pro. Code (1898), s. 145—Refusal of Magistrate to issue process for attendance of witnesses.*—Where, in a proceeding under s. 145, one of the parties was unable to procure the attendance of any of the witnesses cited by him, and his opponent was, consequently, declared, upon the unrebutted evidence produced by them, to be in possession of the land in dispute, *held*, the Magistrate acted without jurisdiction in refusing to issue process for the attendance of the witnesses cited by that party. **30 C. 508 note.** [*R.*, 30 C. 508, 31 C. 685; *Diss.*, 2 C.L.J. 280=32 C. 1093].

(91)—*Crim. Pro. Code (1898), s. 145 (1)—Omission of Magistrate to state his ground for apprehending breach of peace—Reference by Magistrate to the Police-report containing such grounds, sufficiency of.*—The question referred to the Full Bench in this case was "whether an initial order by a Magistrate, under s. 145, cl. (1) of the Code, is defective because it is not self-contained and does not state in express terms the grounds upon which he is satisfied that a dispute likely to cause a breach of the peace exists, when such grounds appear in the police-report on which the order is founded and to which it makes reference." *Held*, there has been substantial compliance with sub-s. (1) of s. 145 and the question must, therefore, be answered in the negative in accordance with the view taken in the cases of *Goluck Chandra Pal* v. *Kali Charan De*, 13 C. 175, and *Dhanput Singh* v. *Chatterput Singh*, 20 C. 513. *Per* GHOSE, J.—The proceeding drawn up by the Magistrate refers, in express terms, to the police-report which sets out sufficient grounds showing that there was a likelihood of a breach of the peace and the Magistrate expressly states that he is satisfied upon such police-report that there is an imminent danger of a breach of the peace. In this view, therefore, there has been a substantial compliance by the Magistrate with the requirements of cl. (1), s. 145 of the Code. **33 C. 352=9 C.W.N. 1068=2 C.L.J. 259, F.B.** [*F.*, 32 C. 1093=2 C.L.J. 280, 17 M.L.J. 449; *R.*, 1 S.L.R. 50 Cr., 5 C.L.J. 611].

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(92)—*Crim. Pro. Code, s. 147—Record of grounds for being satisfied of the existence of a dispute likely to cause a breach of the peace—Parties to proceeding under.*—Though s. 147 requires that a Magistrate must be satisfied upon materials before him that a dispute likely to cause a breach of the peace exists concerning the right to do or prevent the doing of anything in or upon any tangible immoveable property, before he can institute proceedings under that section, it does not require, as s. 145 does, that he must formally record a proceeding stating the grounds of his being satisfied as to the existence of a likelihood of a breach of the peace. The proper parties to a proceeding under s. 147 are the persons, who are claiming a proprietary right in the tangible immoveable property in question. An order under the section made against a manager of a Coal Syndicate is not an order made against the proper party, when it is proved that he has no interest in the land in dispute. **2 C.W.N. 670.** [*R.*, 31 C. 48].

(93)—*Crim. Pro. Code (1898), s. 145 (5)—Power of Magistrate to add parties to the proceeding—Final order under s. 146—Proper parties.*—Cl. (5) of s. 145 does not enable a Magistrate to add parties to the proceeding. It merely enables a stranger to come in and show that no such dispute likely to cause a breach of the peace concerning any land, etc., exists or has existed. He does not become, nor can he be made a party to the dispute which he seeks to show has never existed. [*F.*, 5 C.W.N. 900; *R.*, 27 C. 892.] Judicial proceedings cannot bind a person who is not a party to them. A final order under s. 146, Crim. Pro. Code, cannot be made against persons not made parties to a proceeding under s. 145 or not regarded as such by the Magistrate. Persons who are found from the Police report to be concerned in a dispute regarding lands, and who are brothers of the original party living in joint mess and belonging to a joint undivided family, ought to be made parties to the proceedings under s. 145. **3 C.W.N. 329.**

(94)—*Crim. Pro. Code (1898), ss. 107, 145—Likelihood of breach of the peace resulting from wrongful act of the aggressing party.*—Where a Magistrate had found that persons who attempted to do *bastu puja* on a waste land were not entitled to perform it, *held*, that, if the persons opposing it acted properly and within their rights, there was no reason to suppose that any breach of the peace was likely to be committed, but that, if the Magistrate were to find that there was likely to be some dispute regarding the possession of the waste land, the proper course for him to take would be to institute proceedings under s. 145. **3 C.W.N. 463.** [*R.*, 35 C. 117=6 C.L.J. 697=6 Cr. L.J. 398].

(95)—*Crim. Pro. Code, s. 145—Complaint of offences not involving breach of the peace—Dispute regarding lands.*—The mere fact that a person complains of being dispossessed of his land is no reason for the institution of

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proceedings under s. 145, Crim. Pro. Code, if the petition made by the complainant refers only to the commission of various offences, none of which necessarily involves a breach of the peace. **4 C.W.N. 57.**

(96)—*Crim. Pro. Code, s. 522—Order under the section, when can be made.*—An order under s. 522 must be made simultaneously with the order of conviction. **4 C.W.N. 308.**

(97)—*Crim. Pro. Code (1898), s. 145—Dispute regarding land in joint possession.*—An order under s. 145 should merely declare whom the Magistrate finds to be in actual possession of the property in dispute. It does not apply where two parties are in joint possession of that property and one of them tries to evict the other. [*F.*, 23 P.R. 1902 Cr.=135 P.L.R. 1902, 7 C.W.N. 118, 10 C.W.N. 1088; *R.*, 8 C.W.N. 885; *Expl.*, 7 C.W.N. 462; *D.*, 6 C.W.N. 883] S. 145 of the Code contemplates a dispute between two parties, each of whom asserts the right to hold actual possession of the property as against the other, and not a dispute between a party claiming to hold joint possession and another contesting such right. **4 C.W.N. 426.**

(98)—Proceedings under s. 145 cannot be instituted with respect to a dispute between two parties having joint right to the lands in dispute, each claiming exclusive possession thereof. In such a case, if any steps are necessary for the prevention of a breach of the peace, the Magistrate should proceed under s. 107. **11 C.W.N. 512=5 Cr. L.J. 296.**

(99)—*Crim. Pro. Code (1898), ss. 145 and 147—Summary disposal of a case under s. 147, after local inspection—Scope of s. 147.*—In a matter under s. 147, as under s. 145, the Magistrate is bound to hear the evidence tendered by the party. He cannot summarily deal with it after an inspection of the locality. [*R.*, 30 C. 112]. The right of use of land contemplated by s. 147 is one of an entirely different description resembling a right of easement, not one arising from the terms of a contract between landlord and tenant. A dispute between the landlord and his tenant regarding the right of the latter to reconstruct a *gola* is not a matter properly coming under s. 147. The settlement of such a dispute will involve issues of right which can only be properly determined by a Civil Court. **4 C.W.N. 779.** [*Diss.*, 29 M. 97=15 M.L.J. 394].

(100)—*Crim. Pro. Code (1898), ss. 107, 144, 145—Dispute relating to possession—Findings as to possession without instituting proceedings under s. 145—Proceedings under s. 107, validity of.*—In a dispute relating to the possession of land, the Magistrate is not competent to arrive at a finding as to possession, except in a judicial inquiry under s. 145; nor can he rely on a previous order passed under s. 51 of the Bengal Chowkidari Act. In a dispute relating to the possession of land likely to cause a breach of the peace, proceedings under s. 107 cannot be properly instituted. **7 C.W.N. 142.**

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[*F.*, 23 A.W.N. 102=25 A. 537; *R.*, 6 C.L.J. 697=6 Cr. L.J. 398=35 C. 117, *Diss.*, 10 C. W.N. 288=2 Cr. L.J. 769=32 C. 966].

(101)—*Crim. Pro. Code (1898), s. 145—Local enquiry by trying Magistrate—Decision based thereon—Jurisdiction.*—Where, in a proceeding under s. 145, the Magistrate discarded the evidence on record as unreliable and decided the case upon what he saw, heard and inferred at a local enquiry held by himself, *held* that the Magistrate had erred materially in his jurisdiction and his order should be set aside. **10 C.W.N. 181=3 Cr. L.J. 193.**

(102)—*Crim. Pro. Code (1898), ss. 145 and 148 (3)—Costs, order assessing—Notice to party ordered to pay—Jurisdiction of Magistrate to set aside his own orders assessing costs.*—A Magistrate may have jurisdiction to make an order as to the costs of a proceeding under s. 145 of the Code, even though the order under s. 145 of the Code was passed by another Magistrate. Where a Magistrate has passed an order assessing costs against a party to a proceeding under s. 145 of the Code, without any notice to that party, he has no jurisdiction to set aside that order. Where a Magistrate passed an order, by which he set aside his own order, assessing costs against a party to a proceeding under s. 145 of the Code, on the ground that it was made without notice to the party ordered to pay the costs, *held*, that both orders of the Magistrate must be set aside and the Magistrate directed to proceed afresh to assess costs after due notice to both the parties. **10 C.W.N. 1030=4 Cr. L.J. 171.**

(103)—*Crim. Pro. Code, s. 145—Debutter estate—Dispute among* Shebaits *regarding management*—Shebait *entrusted with sole management—Possession as agent—Joint possession—Jurisdiction of Magistrate.*—Possession, that can be pleaded in a prceeding under s. 145 of the Code, must be possession based on a claim of right possession. The possession of an agent or a servant, which is permissive, cannot give a party to a proceeding a *locus standi* as against his principal or master. The possession of one of several co-*shebaits*, who, for convenience, has been entrusted with the sole management of the *debutter* estate is, as regards the *shebait* right of his co-*shebaits*, that of an agent. The agency can be withdrawn. A dispute between such a person claiming sole management and his co-*shebaits*, who have withdrawn the agency and claim to have joint management with him, is not a fit subject for a proceeding under s. 145 of the Code. *Debutter* property, being by nature impartible and inalienable, the possession of co-*shebaits* must, necessarily, be always joint and as such beyond the scope of an order under s. 145 of the Code. **10 C.W.N. 1088=4 Cr. L. J. 215.**

(104)—*Crim. Pro. Code (1898), s. 145—Transfer by a District Magistrate—Local jurisdiction throughout the District—S. 12 (2)—Amended proceedings.*—The jurisdiction to

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make a final order, under s. 145 of the Code, is not personal to the Magistrate, who initiates the proceedings, and a District Magistrate may, of his own motion, transfer a case under Ch. XII of the Code to a Magistrate of the first class subordinate to him. A Magistrate of the first class, holding his Court at the headquarters, has local jurisdiction throughout the district. Where the Magistrate added parties and issued fresh copies of the original proceedings. *Held*, that the Magistrate was within jurisdiction. **10 C.W.N. 1095=4 Cr. L.J. 223.**

(105)—*Crim. Pro. Code, s. 144—Jurisdiction of Magistrate—Interlocutory orders—Rule issued by High Court*—Seisin *of case—Extension of time—Rival hats.*—A Magistrate cannot, by passing successive orders under s. 144, Crim. Pro. Code, extend the operation of an order indirectly beyond the time limited by sub-s. 5 of s. 144. Where the first and initial order passed by a Magistrate was in substance and form an order under sub-s. 2, and forbade certain persons from establishing a *hat* at a certain place and gave a vague direction to them forbidding interference with the trade of another *hat*, *held*—The order was irregular and vague and could not stand. As long as an order under s. 144 has legal operation, no intermediate or interlocutory order not contemplated by sub-s. 4 can be passed. When the High Court has issued a rule in any case, it takes full *seisin* of the case, and it is the High Court alone that can pass *ad interim* orders in the case. The Magistrate against whose order the rule is issued has no such jurisdiction. The most appropriate section of the Code to deal with cases of rival *hats* which may cause a breach of the peace is s. 107. **11 C.W.N. 79=4 Cr. L.J. 433.**

(106)—*Penal Code, s. 143—Dispute amongst joint owners—Unlawful assembly with armed men—Force not actually used—Sentence—Crim. Pro. Code (Act V of 1898), s. 106—Order against one joint owner—Proceeding against the other owner under s. 107, desirable.*—Where two parties were entitled to joint possession of a property, but one party having been out of possession, their servants (the petitioners), with 30 or 40 other persons, went armed with *lathies* to take forcible possession of the property and succeeded in getting possession without having had to use any force; *held*, that the petitioners were rightly convicted of an offence under s. 143, I.P.C., but as the masters of the petitioners had a right to possession and as what the petitioners did, though not warranted by law, did not actually lead to a breach of the peace, the sentence ought not to be too severe. That an order under s. 106, Crim. Pro. Code, directing the petitioners to execute bonds to keep the peace for one year, was, in the circumstances, justifiable, but as that order would have the practical effect of preventing the petitioners and their masters from taking possession of the property, it was desirable that the other side should also be bound down in a proceeding

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under s. 107, Crim. Pro. Code. **11 C.W.N. 176=5 Cr. L.J. 19.** [*R.*, 7 C.L.J. 359=12 C.W.N. 384=35 C. 368=3 M.L.T. 385=7 Cr. L.J. 256].

(107)—*Crim. Pro. Code (1898), ss. 145, 147—Subject-matter of the dispute—Claim for trees.*—Before a proceeding is drawn up under s. 145, the subject-matter of the dispute must be clearly determined. *Quære*:—Whether a proceeding under s. 145 or under s. 147 is proper in a case where only trees are claimed and not the land? **11 C.W.N. 198=5 Cr. L.J. 32.**

(108)—*Crim. Pro. Code (1898), ss. 144, 145—Disputed question of possession—Proper order.*—In a dispute regarding land, when the question of possession is disputed between the parties, the proper procedure to be adopted by the Magistrate is to pass an order in a proceeding under s. 145, deciding the question of possession on evidence, and not an order in a proceeding under s. 144. Where, in a proceeding under s. 144, the Sub-Divisional Magistrate, holding that the first party was in possession, directed the second party to refrain from interfering with that possession, but the District Magistrate, on revision, directed the first party to refrain from interfering with the possession of the second party, *held*, that both the orders were bad in law. **11 C.W.N. 271=5 Cr. L.J. 76.**

(109)—*Crim. Pro. Code (1898), s. 145—Jurisdiction of Magistrate to maintain parties in separate possession of shares of land.*—Where, in a proceeding under s. 145, in respect of a dispute concerning some land, the Magistrate finds that one party has been in possession of a portion of the land in dispute, and the other party in possession of the rest, and the possession of the one is not likely to interfere with the enjoyment of the other party's possession, the Magistrate can, in the exercise of the jurisdiction vested in him under s. 145, maintain both the parties in possession of their respective portions. **11 C.W.N. 743=5 Cr. L.J. 490.**

(110)—*Crim. Pro. Code (1898), s. 145—Omission to examine witness and inquire into the question of possession—Absence of a party—Signature of the judicial officer in a judicial order.*—Where in a proceeding under s. 145, Crim. Pro. Code, one of the parties being absent though served with notice, the Magistrate on the written statement of the other party declared them to be in possession. *Held*, that the order of the Magistrate was without jurisdiction. It was his duty to inquire into the question of possession and in the absence of the parties, he would have been well advised to abstain from passing any order under s. 145, Crim. Pro. Code. A Magistrate should sign his name in full in a judicial order made under s. 145, Crim. Pro. Code, and should also note his official position. **12 C.W.N. 771=8 Cr. L.J. 27.**

(111)—*Crim. Pro. Code, s. 145—Trial as in a civil suit—Settlement proceeding, order in, if to be given effect to.*—The Magistrate should

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not deal with proceeding under s. 145, Crim. Pro. Code, as if it is a civil suit. Where the Magistrate tried a case under s. 145, Crim. Pro. Code. as if it was a civil suit, framed several issues and discussed them at length, but did not deal with the question of possession except that in only one passage in his judgment he observed that the oral evidence as to actual possession was in favour of the second party, but in his final order declared the first party to be in possession in order to give effect to a certain order of the Settlement Department, *Held*, that the Magistrate's order was without jurisdiction. The only question the Magistrate had to decide in the case was who was in actual possession of the land in dispute and as he had not done so, his order was entirely without jurisdiction. **12 C.W.N. 773=35 C. 795=8 Cr. L.J. 28.**

(112)—*Crim. Pro. Code, s. 145—Limitation Act, sch. II, art. 47—Suit to recover property, the subject of order under s. 145, Crim. Pro. Code—Limitation—Starting point—Rule issued by High Court against Magistrate's order—"Final order."*—For a suit to recover property in respect of which an order under s. 145 of the Crim. Pro. Code has been made, the period of limitation runs from the date of the order of the Magistrate and not from the date on which a rule issued by High Court under s. 15 of the Charter Act against the Magistrate's order was finally disposed of. **12 C.W.N. 840.**

(113)—*Crim. Pro. Code (1898), s. 145—Information regarding breach of peace—Refusal by Magistrate to hear evidence to show unlikelihood of a breach of the peace—Clubbing together various subjects of dispute in one enquiry—Revisional power of High Court.*—In order that a Magistrate may have jurisdiction to act under s. 145, he must be satisfied, from a Police report or other information, that a dispute likely to cause a breach of the peace exists, concerning any land, etc. A mere petition, by an officer in the employ of one of the interested parties, is not such information, on which the Magistrate can act, without receiving further evidence. The section also lays down that nothing shall preclude any party, required by a preliminary order to attend the Magistrate's Court, from showing that no dispute likely to cause a breach of the peace existed, and it is not open to the Magistrate to refuse to receive the evidence tendered to him. Such a refusal on the Magistrate's part is *ultra vires* and the Magistrate's action is liable to be set aside by the High Court on revision. Where the dispute is alleged to exist in 230 villages, each village stands on its own footing and the Magistrate will be acting *ultra vires*, if he clubbed together 230 subjects of dispute, and treated them as one. The legislature does not contemplate wholesale proceedings of this sort, in cases under Ch. XIV of the Code, the object of which is to provide prompt action to avert breaches of the peace. On the question of possession, the Magistrate should decide which

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party, at the date of his order, was in actual possession of this or that village and confirm that possession, instead of arbitrarily finding that one party was in possession of all the villages. **29 M. 561=16 M.L.J. 419=1 M.L.T. 405=5 Cr. L.J. 291.**

(114)—An order under either s. 145 or s. 147, Crim. Pro. Code, cannot be passed, unless the Magistrate is of opinion that there is a likelihood of a breach of the peace. **6 M.L.J. 193.**

(115)—*Crim. Pro. Code, s. 145—Order under section not affecting persons not parties to the proceeding.*—The owner of a property made a gift of a half of his property to one of his sons and the other half to his wife. After his death disputes arose regarding the property and an order under s. 145 was made declaring the property to be in possession of a third person. The son to whom the gift was made was a party to the proceeding, but not the mother. *Held*, that the order under s. 145 to which the mother was not a party would not be binding on her children with regard to her half share of the property, although the donee of the other half (one of the sons) was a party. **2 M.L.J. 277.**

(116)—*Crim. Pro. Code, s. 145* (1), *order by Magistrate under—Omission to expressly state the grounds for the order—Reference by Magistrate to a petition containing such grounds, effect of—Jurisdiction of Court.*—In an order made under s. 145 (1) of the Code, the Magistrate omitted to state in detail the grounds for his conclusion that there was a likelihood of a breach of the peace. It was however recorded by the Magistrate that upon information received by him and upon the petition presented by one of the parties to the proceedings it appeared there was such a likelihood and there was no denial of the same by the counter-petitioners. *Held*, that there was substantial compliance with the said s. 145 (1) of the Code and no irregularity which would affect the validity of the order. **16 M.L.J. 148=3 Cr. L. J. 487.** [*R.*, 30 M. 548=3 M.L.T. 18=7 Cr. L.J. 28].

(117)—In order that a proceeding under s. 145, Crim. Pro. Code, may be valid, all the procedure prescribed in that section must be strictly followed. There must be a preliminary order of the kind specified in para (1) of the section, and the copy of the order must be served upon the parties or affixed to some conspicuous place at or near the subject of dispute, and all the parties interested in the land must be heard and evidence taken. Where a District Magistrate found, on the ground stated by him, that one of the respondents was ploughing the *abadi-deh* land, in order to annoy the complainant, who had a right to use the land for religious service, *held*, that would amount to a preliminary order. But the other provisions of the section not having been satisfied, the proceedings of the District Magistrate were set aside for want of jurisdiction. **7 P.R. 1907 Cr.=6 Cr. L.J. 113=24 P.W.R. 1907=71 P.L.R. 1908.**

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(118)—*Letters Patent, cl. 15—Order passed in revision under s. 145 of the Crim. Pro. Code—Appeal.*—Although the authority, invested with power to decide a dispute under s. 145, Crim. Pro. Code, is not a Court of Civil jurisdiction but a Criminal Court, an order passed, on revision, by a single Judge of the High Court, of an order under s. 145 is not one made in a "Criminal trial." So, an appeal lies from such a judgment under cl. 15 of the Letters Patent. **17 M.L.J. 158=5 Cr. L J. 343, F.B.**

(119)—*Crim. Pro. Code (1898), s. 145—Defective initial order—Omission to state grounds in the initial order—Jurisdiction.*—A Magistrate's omission, in his initial order made under s. 145 of the Code, to state the grounds, on which he is satisfied of the existence of a dispute likely to lead to a breach of the peace, although defective, does not affect the jurisdiction of the Court. **17 M.L.J. 449=6 Cr. L.J. 345.**

(120)—If the Magistrate, in his preliminary order under s. 145 (1), does not clearly state the grounds on which he is satisfied that there is likelihood of breach of peace, his order is materially defective, and he acts without jurisdiction. **4 M.L.T. 213.**

(121)—*Crim. Pro. Code, s. 145, cl. 4—Magistrate directing subordinate Magistrate to take evidence—Validity of order passed on such evidence*—Where a Magistrate, dealing with a case under s. 145, Crim. Pro. Code, omits to take evidence, as required by s. 145, cl. 4, of the Crim. Pro. Code, but refers it to a subordinate Magistrate to take the evidence in the case and to report thereon, his order based on such evidence only, is made without jurisdiction and must be set aside. The Magistrate must be directed to take the case again on his file and hold a fresh inquiry. **17 M.L.J. 535=6 Cr. L.J. 384=3 M.L.T. 108=31 M. 82.**

(122)—*Crim. Pro. Code (1898), ss. 145, 147—Jurisdiction to make order under s. 145, where notice was given under s. 147.*—A Magistrate gave notice under s. 147. Objection was taken that the cases did not fall under s. 147. The Magistrate, without deciding that the case fell under s. 145 and without giving notice to the parties of his intention to proceed under s. 145, eventually passed an order purporting to be under s. 145. *Held*, that the Magistrate acted without jurisdiction in passing an order under s. 145, Crim. Pro. Code, without first making an order under the first paragraph of that section. **5 M.L.T. 103=19 M.L.J. 18=9 Cr. L.J. 565=2 Ind. Cas. 310.**

(123)—*Crim. Pro. Code (1898), s. 145—Order based upon police report—No notice to the parties, and no institution of proceedings—Legality of order.*—Where a Magistrate, stating that the Police report showed that the counter-petitioners admitted that the petitioner was in possession of the property in dispute, passed an order declaring the possession of the petitioner, without instituting any proceeding and giving notice of the same to the parties, and hearing them. *Held*, that the order was illegal, and must be set aside, and that the Magistrate can declare one of the contending parties to be in possession of the property in dispute, only after trying the question in Court according to the procedure laid down in the Crim. Pro. Code. **6 M.L.T. 91=2 Ind. Cas. 428.**

(123-*a*)—*Crim. Pro. Code (1872), s. 530—Decision of question of possession by Magistrate.*—A Magistrate can, under s. 530, declare all the contesting parties to be in possession, should he find that all of them are actually in such possession. Where, on a consideration of the written statements put in under this section, and in the presence of the parties or their agents putting them in, a Magistrate determines which party is in possession, he might be deemed to have decided the question of possession on evidence taken as required by the explanation. **Colm. Dig. Cr. 17 of 1874.**

(124)—*Crim. Pro. Code (1898), ss. 107, 145—Validity of proceedings—Power of High Court to direct Magistrate to take proceedings under s. 145—Meaning of the word "shall."*—Where there is a dispute between the accused as to the partition of land, and there is a likelihood of the occurrence of a breach of the peace, the Magistrate may take proceedings under s. 107, Crim. Pro. Code, and it is not incumbent on him to take action under s. 145. The use of the word "shall" in s. 145, Crim. Pro. Code, is not mandatory. In matters of procedure, the word is generally construed as directory. As the High Court has no power to revise orders under s. 145, Crim. Pro. Code, *a fortiori*, it has no power to direct a Magistrate to initiate proceedings under that section. **2 S.L.R. 18 Cr.=10 Cr. L.J. 231.**

(125)—*Crim. Pro. Code (1898), ss. 145 and 147—Disputes regarding ferry.*—S. 145, as amended by the Code of 1898, does not limit the action of a Magistrate to disputes relating to the possession of "tangible immoveable property," but it empowers him to take cognizance of a dispute likely to cause a breach of the peace "concerning any land or water or the boundaries thereof," and the section gives an explanation of the meaning of the expression "land or water." The right to a ferry, *i.e.*, the right to carry passengers to and fro, cannot be treated apart from the possession of the lands used on either side of the stream for the purpose of landing them. Therefore, a dispute regarding a ferry, including the land and the water upon which the right is exercised, properly comes under s. 145. **26 C. 188=3 C.W.N. 49.**

(126)—Questions relating to disputes regarding ferries come within the scope of s. 147 and not within that of s. 145. **3 C.W.N. 148.**

(127)—*Crim. Pro. Code (1882), s. 145—Dispute as to right to collect a share of rent of undivided property—Duty of Magistrate.*—To bring a case under s. 145, the property, which is the subject of dispute, must be capable of

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being accurately defined; the words are "tangible immoveable property or the boundaries thereof," and the whole scope and object of the section point to the same conclusion. The Magistrate, without reference to the rights of the parties, is to determine which party is in actual possession of the subject-matter of dispute, that is to say, the tangible immoveable property, and he is to maintain in possession the party found to be in possession and forbid all disturbance of possession until he is evicted in due course of law. The section, therefore, does not apply to a case in which the dispute is as to the right to collect a share of the rent of an undivided property. **23 C. 80.** [*Applied*, 10 C.W.N. 1088; *cited*, 23 P.R. 1902 Cr. = 135 P.L.R. 1902; *explained*, 7 C.W.N. 462].

(128)—*Crim. Pro. Code (1898), ss. 145, 147—Dispute regarding right to take sandalwood paste from an idol.*—The Badves of a temple applied to a Magistrate under s. 147 saying that the right to take sandalwood paste removed from the person of the idol belonged to them, but as this right was disputed by the Pujaris, there was a likelihood of a breach of the peace. The Magistrate held that he had no jurisdiction under the section as the right in question was already adjudicated upon by a Civil Court; but he ordered that the Pujaris should hand over the sandalwood paste after removing it from the idol to the Badves, who had a right to the same. *Held*, (1) that the Magistrate had no jurisdiction to pass the order; (2) that, if he was of opinion that the dispute was likely to occasion a breach of the law, he ought to have proceeded under Ch. VIII of the Code; (3) that ss. 145, 147 did not apply, as there was no dispute concerning the right of use of any land or water as defined in s. 145 or of any right of way or easement over the same; and (4) that the sandalwood paste did not fall within the description given in s. 145 (2) as forming the profits of immoveable property, as it in no way arises or emanates from the temple buildings or can in any regard be held to be properly arising from immoveable property. **4 Bom. L.R. 438.**

(129)—*Crim. Pro. Code (1882), ss. 145, 147—Dispute concerning an undivided share in immoveable property.*—A dispute between a co-sharer of an undivided property and the lessee of another co-sharer, as to the right of the lessee to collect the rents of the share of the lessor, does not come under the provisions of Ch. XII. **5 A. 607.** [*Appr.*, 23 C. 80; *Appl.*, 10 C.W.N. 1088; *R.*, 1 Sind L.R. 50 = 8 Cr. L.J. 170].

(130)—*Crim. Pro. Code (1898), ss. 145 and 537—Parties present—Notice not pasted—Irregularity—Effect of order.*—Where parties to a proceeding under s. 145 of the Code had notice of the proceedings, and had their cases fully heard by the Magistrate, the order should not be set aside in revision, even though the provisions of the section were not strictly complied with, and the parties were not personally served, and no notice was fixed at the disputed property. The object of the section is merely to prevent a breach of the peace by maintaining one or other of the parties in possession. **4 A.L.J. 705 = A.W.N. 1907, 265 = 6 Cr. L.J. 352 = 30 A. 41.**

(131)—*Crim. Pro. Code (1898), s. 145—Specific Relief Act (I of 1877), s. 9—Suit for possession—Criminal proceedings—Effect of—Revision by High Court.*—Criminal proceedings, if any, taken under s. 145 of the Crim. Pro. Code, in no way interfere with the plaintiff's right, under s. 9 of the Specific Relief Act which accrued so soon as his possession was interfered with by the defendant. The High Court will not interfere in revision where other remedies are open to the aggrieved party. **5 A.L.J. 297 = A.W.N. 1908, 142 = 30 A. 331.**

(132)—*Crim. Pro. Code (1898), ss. 145 and 435—High Court's Act of 1861 (24-5 Vic., Ch. 104), s. 15—Order under s. 145, Crim. Pro. Code—Revision—High Court's power to interfere.*—Where a Magistrate, empowered to take proceedings under Ch. XII of the Crim. Pro. Code, takes such proceedings and passes an order, the High Court has no power to interfere in revision, either under the Crim. Pro. Code, s. 435, or the High Court's Act, s. 15. **6 A.L.J. 113 = 31 A. 150 = 9 Cr. L.J. 382 = 1 Ind. Cas. 762.**

(133)—*Crim. Pro. Code (1898), ss. 145 and 439—Order respecting possession of immoveable property—Revision.*—Where a Magistrate passed an order under s. 145 of the Code of Crim. Pro. under circumstances in which the passing of such order was proper, the High Court declined to interfere in revision upon the ground merely that the preliminary order did not set forth, as explicitly as it might have set forth, the reasons which satisfied the Magistrate that there was a likelihood of a breach of the peace, there being a substantial compliance with the requirements of s. 145 of the Code. **A.W.N. 1905, 260 = 3 Cr. L.J. 48.**

(134)—*Crim. Pro. Code (1898), s. 145—Definition—"Crops or other produce of land"—Crops severed from the land not within the definition—Jurisdiction.—Held* that the words "crops or other produce of land" as used in s. 145 (2) of the Code of Criminal Procedure do not include crops which have been severed from the land upon which they grew. A Magistrate has therefore no jurisdiction to attach under s. 146 of the Code a crop of *mahua* no longer growing on the trees. **A.W.N. 1905, 278 = 3 A. L.J. 13 = 3 Cr. L.J. 52 = 28 A. 266.**

(135)—*Crim. Pro. Code (1882), ss. 522, 523, 524—Order to restore possession of immoveable property.*—An order made under s. 522 of the Crim. Pro. Code (Act X of 1882), restoring possession of immoveable property to a person who has been dispossessed of it by criminal force, is an independent order and may be made subsequently to the date of the conviction of the offender. It need not be made at

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the same time as the conviction. The case contemplated by s. 522 is that of a person in possession being dispossessed by force by another person, and the latter being in possession at the date of conviction. In such a case, the section gives the Magistrate power to order possession to be restored to the person in possession. In the case of a proper order, third persons could not be affected; if they are, the order is not thereby necessarily invalid. Clause 2 of the section gives them a remedy by civil suit. **23 B. 494.**

(136)—*Crim. Pro. Code (1898), s. 145—Disputes likely to cause a breach of the peace—Magistrate's order—Order binding upon all concerned.*—The provisions of s. 145 make it clear that the parties whom the Magistrate has to deal with are not merely the actual parties to, but all persons who may be concerned in the dispute, the object being to prevent a breach of the peace. Therefore, it is not the actual parties, but all parties who may have notice of the proceedings, that are bound by the order. **11 Bom L.R. 377=2 Ind. Cas. 513.**

(137)—*Crim. Pro. Code (1861), s. 318—Absence of record of proceedings—Adjudication—Legality.*—A Magistrate cannot decide a question of possession under s. 318 of the Crim. Pro. Code without having recorded a proceeding stating the grounds of his being satisfied that a breach of the peace was likely to result from a dispute as to land. **Rat. Un. Cr. C. 39=Cr. Rg. 18—8—1870.**

(138)—An omission on the part of the Magistrate to conform to the provisions of s. 318 of the Crim. Pro. Code, in stating the grounds of his belief as to the likelihood of a breach of the peace, renders the proceedings null and void. **Rat. Un. Cr. C. 51=Cr. Rg. 15—6—1871.**

(139)—*Crim. Pro. Code (1882), s. 145—Attachment of moveables.*—There is no such power of attachment of moveables as is given about immoveable property by s. 145 of the Crim. Pro. Code. **Rat. Un. Cr. C. 891.**

(140)—*Crim. Pro. Code (1872), s. 530 (=s. 145 of Code of 1898)—Decision of title to land by Revenue Court in registration-proceedings—Jurisdiction of Magistrate to interfere.*—Where the question of title to certain lands had been definitely determined in proceedings under the Land Registration Act, *held*, a Magistrate was not competent to take action under s. 530 of the Crim. Pro. Code, and proceed to consider the question of possession as between the parties. **6 C. 835=8 C.L.R. 217.** (16 W.R. Cr. Rul. 24, *applied.*)

(141)—*Crim. Pro. Code (1872), s. 530 (=s. 145, Crim. Pro. Code, 1898), proceedings under—Incorporation of police report—Final order, character of—Evidence of title and possession.*—A Magistrate's order under s. 530 of the Crim. Pro. Code, though it might not contain within itself all which the law requires to be recorded, is not necessarily defective, if sufficient grounds for apprehending a breach of the peace appear from the police report incorporated by reference. It ought to be based upon evidence of possession and not of title. Evidence of title can only be allowed to have a corroborative value. **7 C. 46=8 C.L.R. 245.**

(142)—*Crim. Pro. Code (1882), s. 145—Inquiry as to possession—Order by Magistrate—Disobedience thereto by persons not parties to the inquiry—Penal Code, s. 188—Sufficiency of—Reference to police report.*—Where, after an inquiry under s. 145 of the Crim. Pro. Code, a Magistrate ordered that possession of certain lands was to remain with one of the parties, until evicted in due course of law, the order not only forbidding all disturbance with the possession so maintained, but referring the opposite party to a Civil Court for a determination of the claim to possession set up by him, *held*, that where certain persons at the instance of the unsuccessful party attempted subsequently to disturb such possession, they were guilty of disobedience to an order duly promulgated by a public servant (Penal Code, s. 188), though none of them was a party to the inquiry by the Magistrate, so long as they were aware of the order. [*F.*, 33 C. 355=2 C.L.J. 259=9 C.W.N. 1065]. *Semble.*—Where a Magistrate, in an enquiry under s. 145 of the Crim. Pro. Code, refers to a police report, which clearly sets out the probability of a breach of the peace, it will be a sufficient statement of the reasons for the Magistrate's being satisfied of the existence of a dispute likely to cause a breach of the peace under the section. **13 C. 175.**

(143)—*Crim. Pro. Code (1882), s. 145—Enquiry into questions of title—Presumption of possession—High Court's powers on revision.*—A Magistrate, inquiring under s. 145 into a question of possession, may consider the question of title and discuss it, if, in his opinion, it is material upon the question of possession. The mere fact that he considers and discusses it, does not invalidate his decision on the question of possession, provided there is evidence as to who is in possession. When it is proved that a property was purchased at an execution sale, and that subsequently the peon of the Court went through the form of giving possession to the purchaser, there is some evidence that the purchaser took possession, although it may be that slight evidence would suffice to rebut that presumption. In a criminal revision from the orders of a Magistrate under s. 145, the only question which the High Court can consider is whether there was evidence on which the Magistrate could come to the conclusion which he had arrived at. **14 C. 169.** [*Explained*, 14 C. 361].

(144)—*Crim. Pro. Code, ss. 145 and 146—Difficulty of finding out the party in possession—Proper order—Power of High Court on revision.*—Where it is difficult for a Magistrate, trying a case under s. 145 of the Code, to come to a conclusion as to the fact of possession, the wise

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and proper course to be adopted is to pass an order under s. 146 of the Code. Where a Magistrate, in such a case, passes an order under s. 145 of the Code, the High Court, on revision, has the power to make the order which the lower Court ought to have made, and to alter the order under s. 145 to one under s. 146 of the Code. **14 C. 361.** [*R.*, 22 C. 297, 24 B. 527].

(145)—*Crim. Pro. Code (1882), ss. 145, 192 and 528—Power of a District or Sub-Divisional Magistrate to transfer or withdraw proceedings under s. 145.*—A proceeding under Ch. XII is an enquiry within the meaning of s. 4 of the Code and, therefore, a District or Sub-Divisional Magistrate has power to transfer a proceeding under s. 145 to a Magistrate subordinate to him or transfer it from one subordinate Magistrate to another, when such Magistrate is duly empowered to deal with such matter. The words of s. 192 are wide enough to include cases under Ch. XII. **22 C. 898.** [*F.*, 2 C.L.J. 614, 10 C.W.N. 1095; *R.*, Rat. Un. Cr. C. 838. 28 C. 709=5 C.W.N. 749, 2 L.B.R. 80, 31 C. 350].

(146)—*Crim. Pro. Code (1898), ss. 143, 144, 145 and 435—Orders passed without jurisdiction under ss. 143, 144—Charter Act, s. 15—Setting aside of the orders.*—Matters under Ch. XII of the Code, *i.e.*, under s. 145, are by s. 435 placed in the same category as orders under ss. 143 and 144, in respect of which s. 435 of the Code of 1898 is expressed in the same terms as in the same section of the Code of 1882. As regards an order under s. 143 or 144, it has been held, that though the powers, as a Court of revision, cannot be exercised, still, if an order is challenged to be without jurisdiction, *i.e.*, if it be outside those sections, the mere fact of the order purporting to be passed under the exempted sections will not debar the exercise of the powers under s. 15, Charter Act, to set it aside as null and void and without jurisdiction. Therefore an order under Ch. XII (s. 145), may also be set aside if it is made without jurisdiction. **26 C. 188=3 C.W.N. 49.** [*F.*, 27 C. 892; *Appl.*, 27 C. 259; *R.*, 5 O.C. 1, 23 A.W.N. 102=25 A. 537, 2 L.B.R. 239, 33 C. 68 =2 C.L.J. 241=9 C.W.N. 1046; *F.*, 30 C. 112; *D.*, 17 C.P.L.R. 133; *Diss.*, 26 A. 144].

(147)—*Crim. Pro. Code, s. 522—Order directing restoration of possession of immoveable property, when can be made—Penal Code, s. 350.*—To support an order under s. 522, for restoration of possession of immoveable property there must be a finding that the dispossession was by the use of criminal force as defined in s. 350 of the Penal Code **27 C. 174=4 C. W.N. 307.** [*F.* 5 C.W.N. 250, A.W.N. 1903, 59=25 A. 341; *F. and Commented on*, 5 Cr. L.J. 278=11 C.W.N. 467; *R.*, 4 Cr. L.J. 293 =12 P.R. 1906 Cr.=54 P.L.R. 1907].

(148)—*Crim. Pro. Code (1898), ss. 145, 435 (3)—Dispute as to collection of rent between two joint owners of Mitakshara family—Jurisdiction of Magistrate—Appointment of receiver subsequent to order under section—Power of High Court to set aside order under the section.*—There is no want of jurisdiction in a Magistrate to take proceedings under s. 145, where the dispute is one regarding the collection of rent between joint owners governed by the Mitakshara Law. [*R.*, 2 L.B.R. 239, F.B.; *D.*, 10 C.W.N. 1088; *Diss.*, 23 P.R. 1902 Cr. =135 P.L.R. 1902.] The appointment of a Receiver to a joint estate subsequent to an order under s. 145 does not affect the jurisdiction of the Magistrate in having made the order. An order under s. 145 cannot be set aside by the High Court in its revisional jurisdiction, except under the provisions of the Charter and on the ground of want of jurisdiction. **27 C. 259=4 C.W.N. 420**; *see, also*, 27 C. 261, note=4 C.W.N. 421, note.

(149)—*Crim. Pro. Code, ss. 144, 145, 146—Order under s. 144, when can be made—Validity of order under s. 144, prohibiting either parties from exercising right of possession—Evidence of possession—Order under s. 144, forbidding parties to exercise acts of possession.*—An order under s. 144 is declared to be only of temporary operation, and can be passed only on an emergency to prevent an imminent breach of the peace. S. 146 was intended to apply to a case in which, on the evidence before him, a Magistrate could not find possession with either of the parties. A Magistrate in taking proceedings to prevent breach of the peace in disputes concerning the possession of land should proceed under s. 145 and when necessary attach the land under cl. (4) thereof, instead of issuing an injunction under s. 144 prior to taking such proceedings. Where, in a proceeding under s. 145, no evidence could be offered to shew the possession of either party by reason of a previous order under s. 144, forbidding the parties to exercise any act of possession, the Magistrate may ascertain the possession immediately before the order under s. 144, and regard his intervention under s. 144, as an attachment suspending the previous possession. **27 C. 785=4 C.W.N. 562.**

(150)—*Crim. Pro. Code, ss. 145 (1), (4), 146—Order based on written statements without taking evidence—Jurisdiction of Magistrate—High Court's power of interference.*—It is not the contravention of the provisions of sub-s. 1 of s. 145 alone that affects the jurisdiction of the Magistrate and gives the High Court power to interfere. Where a Magistrate in contravention of the provisions of s. 145 (4) of the Code, omitted to receive the evidence produced by a party but merely on a consideration of the written statement of the parties passed an order attaching the disputed property under s. 146, it was held that the omission to take the evidence had prejudiced the petitioner and that the order should be set aside. **34 C. 840=6 Cr. L.J. 452.** [*R.*, 3 M.L.T. 108=17 M.L.J. 535=6 Cr. L.J. 384=31 M. 82].

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(151)—*Crim. Pro. Code (1898), s. 145—Review of order under—Jurisdiction—Legality.*—There is no authority for holding that a Magistrate can review a final order passed by himself under s. 145 of the Code. **35 C. 350=12 C.W.N. 605 =7 Cr. L.J. 401.**

(152)—*Crim. Pro. Code (1898), s. 147—Dispute relating to use of water—Order by Magistrate to remove bund—Injunction by Civil Court restraining removal—Subsequent order by Magistrate directing the police to remove the bund—Validity—Jurisdiction.*—In proceedings under s. 147, Crim. Pro. Code, one party obtained an order from the Magistrate, directing the removal of a bund across a pyne, and restraining the other party from erecting any obstruction until they obtained the decision of a competent Court adjudging them entitled to do so. The latter party subsequently obtained a temporary injunction from the Civil Court, restraining the former party from demolishing the bund. But the Magistrate, considering the case imminent, directed the removal of the bund by the police. *Held*, that the Magistrate had no jurisdiction to make an order directing the bund to be removed by the police. There is nothing in s. 147, Crim. Pro. Code, to indicate that the Magistrate can carry out an order under the section through the agency of the police. The section clearly contemplates orders directed to the persons who are parties to the dispute. **36 C. 923.**

(153)—*Crim. Pro. Code (1898), s. 145—Dispute as to collection of tolls in a market—No dispute as to possession—Collection by agent tantamount to possession by the principal—Jurisdiction of Magistrate.*—Under an agreement executed by K's predecessor in title, M was to make the collections of the whole of the tolls from a market, and at the close of the year the collections were to be divided between M and K according to their respective shares. M was accordingly collecting and paying over K's share to him. K gave a lease to A, and A attempted forcibly to collect K's share. *Held* that the collection by M as agent of K constituted K's possession. *Held* also that, as K was thus in possession, and the only dispute that existed related to the machinery by which K exercised his possession, the Magistrate had no jurisdiction to pass orders under s. 145, Crim. Pro. Code. The Magistrate cannot decide, under that section, the method by which the possession is to be exercised or the agency by which the person in possession is to collect the profits. **36 C. 986.**

(154)—*Crim. Pro. Code (1898), s. 145, cl. 3—Notice on spot, omission to issue—Jurisdiction—Irregularity—Charter Act (24 and 25 Vic., Ch. 104), s. 15—Superintendence, power of, when and how to be exercised—S. 145, cl. 4—'Then,' meaning of.*—The provision as to publication of the order mentioned in sub-s. 3 of s. 145 of the Crim. Pro. Code is directory and is a matter of procedure only and omission to comply with it does not destroy the jurisdiction of the Court, which arises as soon as the provisions of sub-s. 1 of the

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section have been complied with. The object of publishing a notice on the subject of dispute is to reach all persons interested therein and unless it be shown that some one interested has been materially prejudiced by the omission to serve the notice, the High Court ought not to interfere under s. 15 of the Charter Act. The omission to publish a notice, under s. 145, cl. 3 of the Crim. Pro. Code, at some conspicuous place at or near the subject of dispute is not an illegality which deprives the Magistrate of his jurisdiction. The power of superintendence, which the High Court possesses under s. 15 of the Charter Act, vests in it a power somewhat analogous to that of the King's Bench Division in the Supreme Court in England to interfere by *mandamus*. Such power of interference is discretionary and ought, in relation to cases under s. 145 of the Crim. Pro. Code, to be exercised with every caution. If the subordinate Court has proceeded with irregularity, the High Court will not interfere unless some one has been materially prejudiced thereby; if, however, the subordinate Court has acted without jurisdiction, the High Court will interfere. The term 'then' in sub-s. 4, s. 145, Crim. Pro. Code, has reference only to the time or order of the Magistrate's proceedings. **2 C.L.J. 241=2 Cr. L.J. 618=33 C. 68 F.B.=9 C.W.N. 1046.** [*F.*, 33 C. 1093=2 C. L.J. 280; *R.*, 33 C. 352=9 C.W.N. 1065=2 C. L.J. 265, 1 S.L.R. 50, 33 C. 33=10 C.W.N. 257 =2 C.L.J. 271=5 C.L.J. 611].

(155)—*Crim. Pro. Code, s. 145—Police report, contents of—Breach of the peace, likely, imminent—Possession—Decree of Civil Court, not necessarily conclusive.*—A police report, upon which the Magistrate found his initial order under s. 145 of the Code, should contain statement of the facts, from which the Magistrate may be satisfied of the existence of a likelihood of a breach of the peace. But there is no inflexible rule that the police report must show that the disputing parties are actually assembling men or doing other specific overt acts. No rule can be laid down so as to specify the sufficiency of the materials upon which he takes action, but he must form his own judgment and not proceed upon a mere expression of the opinion of the police. A Magistrate is entitled to take proceedings, under s. 145 of the Code, when a breach of the peace is likely; it is not necessary that it should be imminent. If the police report is defective, it is not obligatory upon the High Court to interfere, when it is proved, at the trial, that a breach of the peace was likely at the date of the initial order. The question of possession, in a proceeding under s. 145, has to be determined with reference to a specified point of time; upon this question, every previous decree of a Civil Court or order of a Criminal Court is not necessarily conclusive; the evidentiary value to be attached to such document must depend upon the circumstances of each particular case. **2 C.L.J. 271=2 Cr. L.J. 670=10 C.W.N. 257= 33 C. 33, F.B.** [*R.*, 1 S.L.R. 50 Cr.]

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(156)—*Crim. Pro. Code, ss. 145, 146, 192, 528, 529 (f)—Criminal case, if a proceeding under s. 145—Magistrate, power of, to transfer such a case.*—A proceeding under s. 145 of the Code is a criminal case and a Magistrate has power to transfer it under ss. 192 and 528 of the Code. There is therefore no illegality in a Magistrate transferring a case, under s. 145, to a subordinate Magistrate and even if there was any, it is cured by s. 529 (*f*) of the Code. **2 C.L.J. 614=3 Cr. L.J. 83.** [*R.*, 10 C.W.N. 1095=4 Cr. L.J. 223].

(157)—*Crim. Pro. Code (1898), s. 145—Immoveable property, dispute relating to—Fees paid by pilgrims for performing* Sradh *ceremony at Gaya, are not profits of immoveable property—Jurisdiction to institute proceedings under s. 145 for dispute with regard to such fees.*—Proceedings under s. 145 of the Code cannot be instituted in respect of a dispute between two parties relating to the distribution of fees paid by pilgrims at Gaya for performing *Sradh* ceremony, although there may be a likelihood of a breach of the peace in consequence of such dispute. Such fees can, in no sense, be said to be profits, which issue out of land. **3 C.L.J. 137=3 Cr. L.J. 214.**

(158)—*Crim. Pro. Code, s. 145, cl. (4)—Refusal to examine witnesses—Discretion of Magistrate not always a question of jurisdiction.*—A Magistrate acting under s. 145, has a discretion in the matter of examination of witnesses. He is not bound to examine all the witnesses adduced by the parties, but may limit the number for good and sufficient reason. In *Manmatha Nath Mitter* v. *Barada Prasad Roy Chowdhury*, 31 C. 685, it was not intended to lay down such a broad rule that the Magistrate had no discretion but was bound, under all circumstances, to examine every witness produced in a proceeding under s. 145, and that if he omitted to do so, he acted without jurisdiction. The discretion, however, is one which must be exercised with due care and caution and with a careful regard to the circumstances of each particular case. **3 C.L.J. 478=3 Cr. L.J. 423.** (31 C. 685, *Expl.*)

(159)—*Crim. Pro. Code, ss. 145, 517, 520—Cancellation of proceedings under s. 145, Crim. Pro. Code—Order allowing one party to reap the crops, illegal.*—When a Magistrate cancels proceedings under s. 145, on the ground that there is no likelihood of a breach of the peace, he has no jurisdiction to allow one of the parties to reap the crops to the exclusion of the other. Such an order, if passed under s. 517, is fit to be set aside under s. 520. **3 C.L.J. 573 =3 Cr. L.J. 466.**

(160)—*Crim. Pro. Code, s. 145—Institution of proceedings without apprehension of breach of the peace, without jurisdiction—Instituting fresh proceedings in spite of and during pendency of the Rule issued by the High Court to set aside order passed in previous proceedings, highly improper.*—A District Magistrate, having on

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the 5th September, 1905, passed an order purporting to have been under s. 145, Crim. Pro. Code, the High Court on 21st December, 1905, issued a rule upon him to shew cause why the said order should not be set aside. The said rule came on for hearing and was made absolute on the 2nd February, 1906. In the meantime, however, on the 12th January, 1906, a Deputy Magistrate, subordinate to the said District Magistrate, on a petition by the opposite party to the said rule and without any enquiry as to whether there was an apprehension of a breach of the peace or not, instituted another proceeding under s. 145, Crim. Pro. Code, in respect of the same subject-matter. *Held*, that during the pendency of the rule in the High Court, proceedings in the lower Court with reference to the matter in dispute must be considered to have been stayed, and it was not only irregular but highly improper to institute fresh proceedings. *Held further*, that while the order of the District Magistrate was yet in force, there was no reason to suppose that there was any apprehension of a breach of the peace. When a rule is issued by the High Court on the District Magistrate staying further proceedings, all subordinate Magistrates are bound to obey the orders of the High Court, and no subordinate Magistrate would be justified in carrying on proceedings with reference to the property in dispute which is the subject-matter of the rule or institute fresh proceedings. **4 C.L.J. 418=4 Cr. L.J. 397.**

(161)—*Crim. Pro. Code, s. 145—Symbolical possession in execution of a foreclosure decree, not effective against a lessee who was not a party to the mortgage suit—Actual possession, to be considered in s. 145, Crim. Pro. Code.*—It is a settled rule of law that no decree for foreclosure could be effective against a person interested in the property, if he was not made a party to the suit. Where, therefore, S had executed in 1890 a mortgage by conditional sale in favour of G, and had in 1893 leased the properties covered by it to B for 25 years, and G in 1902 instituted a suit against S upon the mortgage without making B a party and obtained symbolical possession in execution of the decree for foreclosure passed therein. *Held*, that such delivery of possession could not affect the possession of B. **4 C.L.J. 562= 4 Cr. L.J. 503.**

(162)—*Crim. Pro. Code, s. 145—Irregularity amounting to want of jurisdiction—Interference by the High Court.*—A Magistrate drew up a proceeding under s. 145, Crim. Pro. Code, but he did not serve any notice upon the first party in accordance with sub-section (3) of s. 145, Crim. Pro. Code, nor did he fix a notice on some conspicuous place at or near the subject of dispute, nor receive a written statement from either party before he passed his final order under s. 145. There was no appearance on behalf of the first party and no opportunity was given to cite witnesses or to put in any documentary evidence. But on examining one witness on behalf of the second party the

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Magistrate held that there was a likelihood of a breach of the peace and declared the second party to be in possession. *Held*, that the proceedings of the Magistrate were very irregular and must have prejudiced the first party and that the irregularities were so great as to amount to a want of jurisdiction and to justify the interference of the High Court to set aside the proceedings. **12 C.W.N. 848=8 C.L.J. 71 =8 Cr. L.J. 119=35 C. 774.**

(163)—*Crim. Pro. Code (1898), ss. 145, 146 and 148—Refusal to grant time for regular proceedings to be followed—Attachment under s. 146, when the parties did not file written statements or produce evidence—Illegality.*—In a proceeding under s. 145, Crim. Pro. Code, the parties appeared on the day of hearing but did not file any written statements, or produce any evidence. They prayed for time which the Magistrate did not grant. He then heard the parties and, being unable to satisfy himself as to which of them was in possession, attached the subject of dispute under s. 146. *Held*, that the Magistrate in so doing refused to exercise jurisdiction. He ought to have granted time to allow regular proceedings to be followed or he might have informed himself of the facts of the case either by local inquiry under s. 148, Crim. Pro. Code, or in other ways. As he did neither, his order under s. 146 is bad in law and ought to be set aside. **12 C.W.N. 896=8 Cr. L.J. 202.**

(164)—*Crim. Pro. Code, s. 145, sub-s. (5)—Transfer of a proceeding under s. 145—Power of Magistrate to quash proceeding upon transfer.*—Where a proceeding under s. 145, Crim. Pro. Code, drawn up by a Deputy Magistrate was transferred by the District Magistrate to his own file and then summarily quashed, *held*, that the District Magistrate could only quash the proceeding in accordance with the provisions of sub-s. (5) of s. 145, Crim. Pro. Code, on facts being brought to his notice which were sufficient to satisfy him that no dispute likely to cause a breach of the peace existed, and that his order quashing the proceeding on the sole ground that he thought that the letter addressed to him by one of the parties contained an admission that the other party was in actual possession of the land in dispute was without jurisdiction and should be set aside. *Semble.*—If the District Magistrate after transferring to his own file a proceeding under s. 145, Crim. Pro. Code, drawn up by a subordinate Magistrate, quashed the proceeding on a full consideration of all the facts and after hearing the objections, if any, of the parties, the High Court would not interfere with the order quashing the proceeding. **13 C.W.N. 125=4 Ind. Cas. 354.**

(165)—*Crim. Pro. Code (1898), ss. 144, 145, 192 (2) and 529—Proceedings under s. 145, if may be instituted during the pendency of a suit under s. 9 of the Specific Relief Act (I of 1877)—Prohibitory order under s. 144, how far invalidates finding of possession, under s. 145—Transfer of proceeding under s. 145 by subordinate*

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Magistrate—Legality—S. 529—Curing of defect in transfer.—A Magistrate is not incompetent to proceed under s. 145, Crim. Pro. Code, with regard to properties which form the subject-matter of a pending suit under s. 9 of the Specific Relief Act. A prohibitory order under s. 144, Crim. Pro. Code, was passed against certain landlords with respect to certain lands in a proceeding to which the tenants were not parties. Subsequently in a proceeding under s. 145, Crim. Pro. Code, the Magistrate found that the landlords were in possession of the lands through their tenants at a date when the prohibitory order was still in force. *Held*, that, as the tenants were not parties to the proceeding in which the prohibitory order under s. 144, Crim. Pro. Code, was made, the subsequent finding in the proceeding under s. 145, Crim. Pro. Code, that the landlords were in possession through the tenants was not bad in law. A subordinate Magistrate cannot be empowered under s. 192 (2), Crim. Pro. Code, to transfer proceedings under s. 145, Crim. Pro. Code. But a transfer of such proceedings made by a subordinate Magistrate empowered under s. 192 (2) is a legal defect, curable by s. 529, Crim. Pro. Code. **13 C.W.N. 530=36 C. 370=9 Cr. L.J. 399=1 Ind. Cas. 817.**

(166)—*Crim. Pro. Code (1898), ss. 145, 146 and 344—Proceeding under s. 145—Postponement* sine die, *whether legal—Attachment pending disposal*—Solenama, *previously executed and confirmed by decrees, how far binding—Regulation VII of 1822, s. 34.*—A Magistrate has jurisdiction to postpone *sine die* a proceeding drawn up under s. 145, Crim. Pro. Code. Where a Magistrate, after drawing up a proceeding under s. 145, Crim. Pro. Code, issued an order for attachment of the disputed land till the disposal of the case, and subsequently he postponed the proceeding *sine die*. *Held*, that the postponement *sine die* did not operate as a withdrawal of the order of attachment, which continued in force till the disposal of the case. How far the Magistrate, in passing final orders in a proceeding under s. 145, Crim. Pro. Code, was bound to act in accordance with a *solenama* previously executed by the parties and confirmed by the decrees of Civil Courts, considered. **13 C.W.N. 601.**

(167)—A Magistrate has no jurisdiction to pass an order postponing *sine die* a proceeding under s. 145, Crim. Pro. Code, at the same time retaining under attachment the property covered by those proceedings, on the ground that the estate or area in which the land in dispute is situate is under settlement by the Revenue authorities under the provisions of Reg. VII of 1822, there being nothing whatever to show either this, or that the Magistrate followed the instructions in s. 34 of the Regulation. **13 C.W.N. 104=8 C.L.J. 564=9 Cr. L. J. 35.**

(168)—*Crim. Pro. Code (1898), s. 147—Rights contemplated by the section, not merely easement—Form of final order in a proceeding*

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under s. 147—Limitation Act (XV of 1877), s. 26.—Where the Magistrate, in a proceeding under s. 147, Crim. Pro. Code, disposed of the case by his final order which ran thus: "*Srimanta Bera* claims a prescriptive right to pass the water of his tank over the paddy land on the south. He has entirely failed to prove exercise of the right uninterruptedly for twenty years. His claim is therefore disallowed." *Held*, that, by his order, the Magistrate has not decided the case one way or the other, and that the case must be sent back to him to pass a proper order on concluding his enquiry, that the Court, in passing orders under s. 147, Crim. Pro. Code, should adopt the Form No. 24 in Sch. V of the Crim. Pro. Code, and that the right, contemplated by s. 147, Crim. Pro. Code, is certainly of a more elastic description than the right which has to be strictly proved in terms of s. 26 of the Limitation Act. **13 C.W.N. 859=3 Ind. Cas. 468.**

(169)—*Crim. Pro. Code, s. 145—Magistrate if may take proceedings by way of execution of the final orders in a proceeding under—Police delivering formal possession to a party whose possession was declared by the Magistrate, legality of.*—After passing final order declaring a party to a proceeding under s. 145, Crim. Pro. Code, to be in possession, the Magistrate has no jurisdiction to take any proceedings in the nature of execution of that order. Where, after the Magistrate, in a proceeding under s. 145, Crim. Pro. Code, has declared the first and third parties to be in possession of the property in dispute, the police gave formal possession to those parties by planting bamboos, but, disputes still not ceasing, the Magistrate held a local enquiry and again declared the possession of the first and third parties, and a further inquiry was held to determine whether the property of which possession had been declared was identical with the subject of the proceeding under s. 145, Crim. Pro. Code. *Held* that all the proceedings after the final order passed by the Magistrate in the proceeding under s. 145, Crim. Pro. Code, were *ultra vires*. There is no specific provision in the Code authorising a Magistrate to take proceedings in the nature of execution after passing orders under s. 145. **14 C.W.N. 78=5 Ind. Cas. 40.**

(170)—*Crim. Pro. Code (1898), ss. 145 and 146—Attachment under s. 146—Written statements, failure to file in time—Evidence, omission to adduce—Jurisdiction of Magistrate to attach under s. 146, when the parties did not adduce evidence on the appointed date.*—Where the parties to a proceeding under s. 145, Crim. Pro. Code, did not file their written statements or adduce evidence, though more than two months had expired from the date the proceeding was drawn up, but applied for time to file the written statements. *Held*, that the Magistrate did not act without jurisdiction in refusing to grant time and in attaching the disputed land under s. 146, Crim. Pro. Code, on the failure of the parties to adduce evidence. **14 C.W.N. 80.**

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(171)—*Crim. Pro. Code (1872), ss. 521 and 532—Right of way—Obstruction—Denial of the right—Competency of Magistrate to pass an ex parte order under s. 532—Order for removal of obstruction, validity of.*—S. 532 authorises the Magistrate to exercise the jurisdiction it confers only when the subject of the dispute is open to the use of the public. The Legislature, in conferring on the Magistracy power to intervene for the temporary settlement of disputed civil rights, is careful to direct the preservation of the *status quo* existing at the time the proceedings are instituted. Having imposed on the exercise of jurisdiction, the condition that the subject of the dispute is open to the public, the Legislature, in declaring that the Magistrate is competent to pass under this section, have refrained from empowering the issue of directions for the removal of an obstacle. In a case, where it appeared from the complaint, that the subject of dispute was not open to the use of the public and the complaint prayed for the removal of an obstruction, *held*, that the provisions of s. 532 were not applicable and even if they had been applicable, the order for removal of the obstruction could not be made. *Held*, also, that the Magistrate was not acting properly in having passed an *ex parte* order, under s. 532, directing the party in possession not to retain possession of the land until he obtained the decree or order of competent Court adjudging him to be entitled to exclusive possession. Such an order could be passed under s. 521, as it would, then, have been competent to the person, to whom the order was directed, to appear and to show cause against it, and to have demanded the submission of question of right to the decision of a jury. **4 M. 121=2 Weir 113.**

(172)—*Crim. Pro. Code (1882), ss. 145, 147—Dispute concerning land—Duty of Magistrate—Validity of order not made between parties.*—It is the duty of a Magistrate, before he interferes in the exercise of a right, to consider whether he cannot protect persons in the enjoyment of their rights by taking a caution bond from the person from whom or at whose instigation the breach of the peace may be apprehended. But, if a probability of a breach of the peace is established and a Magistrate, instead of taking security, acts under s. 145 or s. 147, then, although the other course might be the wiser and the more politic, the High Court could not, as a Court of Revision, disturb his order on that ground only, if the case was one in which, on other grounds, such an order would be legal. Nor would it be a good ground for objection to the Magistrate's order that a Civil Court has refused an injunction. Where an order under either s. 145 or s. 147 is not made between the parties to the proceeding or when neither of the parties to the proceeding establishes that he is in possession, *held*, that the order is not properly made. **7 M. 460=2 Weir 101.** [*F., and R.*, 5 M.L.J. 394=29 M. 97].

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(173)—*Crim. Pro. Code (1882), s. 147—Dispute concerning the right to perform religious worship in* mosque.—Where a dispute likely to cause a breach of the peace is shown to exist concerning the right to perform a religious service in a *mosque*, a Magistrate is competent to pass an order under s. 147, Crim. Pro. Code. **11 M. 323=2 Weir 117.** [*F.*, 29 M. 237, 24 B. 527, 3 Bom.L.R. 416, 46 P.L.R. 1903].

(174)—*Crim. Pro. Code, s. 147—Dispute between persons claiming to be entitled to officiate as* Kazis *in a* mosque, *applicability of the section to.*—A dispute as to a right to user of a *mosque* by persons claiming to be entitled to officiate as *Kazis* therein, is a dispute coming within s. 147 of the Code and an order, under the section, declaring the possession of the subject of dispute to be with the counter-petitioners, cannot be maintained, where there has been no previous inquiry as to whether any and which of the parties was in possession of the said subject. **29 M. 237=4 Cr. L.J. 58.**

(175)—*Crim. Pro. Code, s. 147—Scope of section—User of land by a person in possession—Dispute likely to induce breach of the peace—Procedure of Magistrate—Security to keep peace.*—A tenant, in possession of agricultural land, enclosed it with a wall instead of a hedge. The act was one likely to induce a breach of the peace. The question was whether the case was one falling under s. 147. Though the High Court refused to interfere in revision, *held*, as regards the construction of the section, that it is not confined only to cases in which the user of the land, giving rise to the dispute, is by a person not in possession. It is wide enough to include a case like this, where the user is by the person in possession. It was pointed out that, in a case like this, it would be proper for the Magistrate to take security from the party from whom a breach of the peace is apprehended, though it will not be illegal for him to proceed under s. 147. **15 M.L.J. 394=29 M. 97=3 Cr. L.J. 31.**

(176)—*Crim. Pro. Code, s. 145—Dispute between manager of joint Hindu family and other members.*—A Manager of a joint Hindu family is entitled to be protected in his possession by proceedings under s. 145, Crim. Pro. Code, as against any other member of the family. **18 M.L.J. 343=31 M. 318=8 Cr. L.J. 205=4 M. L.T. 301.**

(177)—*Crim. Pro. Code (1898), s. 145—Execution-sale confirmed and sale certificate issued—No delivery of possession, actual or symbolical—Certificate-holder.*—Where the petitioners bought the lands belonging to the counter-petitioners' family in execution-sale, and the sale was duly confirmed and the sale certificate issued, *held*, that there being no delivery of possession whatever, actual or symbolical, to the petitioners, their rights were not protected by proceedings under s. 145. **4 M.L.T. 189=31 M. 416.**

Dispute as to possession of immoveable property—continued.

(178)—*Crim. Pro. Code (1898), ss. 145 and 526—Transfer of case under s. 145, Crim. Pro. Code—"Criminal cases."—Held*, that proceedings under s. 145 of the Code of Criminal Procedure are "criminal cases" within the meaning of the words as used in s. 526 of the Code, and therefore s. 526 applies to such proceedings. **11 O.C. 61=7 Cr. L.J. 423.**

(179)—*Crim. Pro. Code (1898), s. 145—Jurisdiction of Magistrate—Initiatory order, omission to publish—Procedure when the local area within which land in dispute is situate is doubtful—Revision by High Court.*—An omission to publish the order under s. 145 (3) does not deprive the Magistrate of jurisdiction to deal with the case. Where a Magistrate was satisfied that a breach of the peace was imminent, *held*, that, although his initiatory order was not as explicit and clear as it might have been, yet his proceedings could not be held to be without jurisdiction. *Held*, further, that, in proceedings under Ch. XII of the Code of Criminal Procedure, where there is any doubt as to the exact local area within which the land in dispute is situate, inquiry can be made by a Magistrate having jurisdiction in either of the areas in which the land might be situate. *Held* also that, when a Magistrate has jurisdiction under s. 145 and comes to a decision as to possession within the meaning of s. 145 (4), that decision as to possession, whether right or wrong, cannot be questioned in revision. **12 O.C. 400.**

(180)—*Crim. Pro. Code (Act V of 1898), ss. 145, 146, 439—Dispute relating to immoveable property—Attachment of* mosque—*Revision.*—Where a Magistrate passed an order under Ch. XII of the Crim. Pro. Code attaching a *mosque*, *held*, upon revision, that the order was made without jurisdiction. **46 P.L.R. 1903.**

(181)—*Crim. Pro. Code (1898), ss. 147, 439—Dispute relating to immoveable property—Right of way—Jurisdiction of Criminal Court—Procedure—Revision—Criminal cases.*—Where an order was passed under s. 147, Crim. Pro. Code, without complying with the procedure prescribed and giving notice to the party concerned, to show cause why an order against him should not be passed, the Chief Court on revision set aside the order as passed without jurisdiction. A person against whom proceedings are instituted is entitled to produce evidence to prove that the case does not fall within the section. No order under the section can be passed to remove an obstruction from a public way, when it is not shown that the right of way was exercised within three months of the institution of proceedings. **105 P.L.R. 1909.**

(182)—*Crim. Pro. Code (1898), ss. 145 and 435—Order* ultra vires—*Revision—Joint trial—Illegality of—Possession what.*—S. 435, Crim. Pro. Code, does not exclude the jurisdiction of the High Court to revise an order of the Magistrate which is illegal and irregular, though it purports to have been made under s. 145, Crim.

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Pro. Code. Where several accused persons were found to be in possession of different and separate pieces of land alleged to be the property of the complainant, the accused could not be tried jointly under s. 145, Crim. Pro. Code, and the order passed thereon was, therefore, illegal. Where the Magistrate finds that the dispute was between the owner and the occupant of the land, or, in other words, between the persons in actual and in constructive possession, the Magistrate should maintain the person in actual possession. **9 Cr. L.J. 265=1 S.L.R. 25 Cr.**

(183)—*Crim. Pro. Code (1898), s. 146—Magistrate holding no inquiry—Interference in revision.*—Where a Magistrate, without making any inquiry as to the rights of the parties, passed an order, attaching the property in dispute, pending the decision of a competent Court of civil jurisdiction, *held*, that the order of attachment was erroneous and must be set aside. **9 Cr. L.J. 272=1 S.L.R. 33 Cr.**

(184)—*Crim. Pro. Code (1898), s. 145—Proceedings under, not criminal proceedings—Civil Court's power to stay proceedings in Criminal Court.*—A Civil Court has no right to issue an injunction which would have the effect of staying proceedings in a Criminal Court. But proceedings under s. 145, Crim. Pro. Code, cannot be said to be criminal proceedings within the meaning of that principle, and a Civil Court's action cannot possibly be fettered by any action, which one of the parties to the suit may choose to take before the Magistrate under the provisions of that section. **2 Ind. Cas. 266.**

(185)—*Crim. Pro. Code, Act X of 1882, s. 145—Likelihood of breach of peace.*—Where neither the preliminary nor the final order of a Magistrate under s. 145 of the Crim. Pro. Code, disclosed that he was satisfied of the likelihood of the disputes leading to a breach of the peace, the order was set aside as illegal. **A.W.N. 1884, 317.**

(186)—*Crim. Pro. Code, Act X of 1882, s. 145—Right to collect rent of immoveable property.*—A dispute about the right to collect the rent of immoveable property is a dispute in which a Magistrate can proceed under s. 145 of the Crim. Pro. Code. **A.W.N. 1885, 299.** (11 C. 413, *F.*)

(187)—*Crim. Pro. Code, Act X of 1882, s. 147—Defective in essentials.*—An order passed under s. 147 of the Crim. Pro. Code, which does not contain a statement that the Magistrate is satisfied that a dispute likely to induce a breach of the peace exists and which does not state the grounds on which he is so satisfied, is illegal. **A.W.N. 1885, 302.**

(188)—*Crim. Pro. Code, Act XXV of 1861, s. 318—Question of possession only to be considered.*—Under s. 318 of the Crim. Pro. Code, the Magistrate has to inquire only into the fact of actual possession and not the question how possession was obtained. **6 B.H.C. Cr. 30=4 B.H.C. A.C. 153.**

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(189)—*Crim. Pro. Code, s. 145—Dispute as to right to collect rent—Attornment by tenants to stranger.*—In a dispute as to the right of collecting rents of certain land, the tenants were paying rents to one of the parties up to the commencement of the dispute which led to the proceeding under s. 145, and, upon the dispute taking place, they attorned to the other party by real or pretended payments. *Held*, that such attornment by the tenants did not put an end to the tenancy and to the right of the person, who was collecting rents up to the time of the dispute, to collect the rents. *Held*, also, that such proceedings by the tenant could not deprive him of recourse to s. 145 in case of danger to the peace to have possession of the right to collect rents maintained, pending civil proceedings. **15 C. 527.** [*F.*, 16 C. 513].

(190)—*Crim. Pro. Code, s. 145 (5)—Dispute concerning land—Person interested as tenant, not required to attend as party—Application for addition of party—Practice.*—Under s. 145 (5), any person claiming to be interested in the land in dispute as a tenant of part of it, who is not required to attend as a party, should be heard, if he makes an application to be added as a party, in order to show that no dispute likely to cause a breach of the peace exists or has existed. **37 C. 285.**

(191)—*Crim. Pro. Code (1898), s. 147—Right to perform* puja *in a temple, whether falls within the scope of—"Land," meaning of.*—A dispute concerning the right to perform *puja* by entering into a certain temple is not a dispute concerning the right of use of any land within the meaning of s. 147, Crim. Pro. Code. *Semble.*—The expression "land" in s. 147, Crim. Pro. Code, does not necessarily include buildings. **14 C.W.N. 611=6 Ind. Cas. 182.**

(192)—*Crim. Pro. Code (1898), ss. 145, 146—Receiver, accretions to property, if vests in—Accretion, title to, prevails against all persons not claiming under prior title*—Bona fide *tenant under a* de facto *proprietor, if acquires raiyati rights—Non-occupancy raiyat, if entitled to possession of accretions—Receiver appointed under s. 146, rights of.*—As a general rule, a Receiver takes no title in property acquired by the person formerly in possession. But a Receiver is entitled to any accretion to the property vested in him, upon general principles and the policy of the law by which a proprietor acquires a title to accessions to his property. Where a Receiver has been appointed under s. 146 of the Crim. Pro. Code in respect of any property in dispute, the Receiver is entitled, unless some special circumstance is established not only to the subject-matter of the proceedings under s. 145, but also to the accreted land, and gives good title to a tenant under him. Such title will prevail against a trespasser but not against a person who establishes a title to the accreted land acquired prior to the vesting of the lands in the Receiver. *Semble*:—Whether a tenant, who enters upon a land held under a *de facto* proprietor, can acquire a raiyati interest therein,

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even though the *de facto* possessor ultimately turns out to be no real owner, in case the tenant should have entered on the land in good faith. Where a tenant has acquired the status of a non-occupancy raiyat in respect of any land, he is entitled to possession of land which has accreted to his holding. **14 C.W.N. 681.**

(193)—*Crim. Pro. Code (1898), ss. 145, 146 and 147—Costs of proceedings under ss. 145, 146 or 147—Amount of costs, assessment of—Time for making order for costs.*—*Held*, that only the Magistrate who passes an order under ss. 145, 146 or 147 of the Code can decide by whom the costs of the proceedings are to be paid, but the amount of the costs may be assessed by his successor. *Held*, further, that an order for costs should as a rule be made at the time of passing the order under ss. 145, 146 or 147, when the facts are fresh in the mind of the Magistrate **13 O.C. 66.**

(194)—*Crim. Pro. Code (1898), ss. 145, 146—Order of attachment, without written statement and evidence—Jurisdiction of Magistrate.*—Although it is not beyond the jurisdiction of a Magistrate to make an order under s. 146, Crim. Pro. Code, without written statements and without evidence, yet, if he makes such an order, without making any attempt to investigate the question in the light of evidence and of written statements, he acts without jurisdiction. **11 Cr. L.J. 90=5 Ind. Cas. 249.**

(195)—*Crim. Pro. Code (1898), s. 145—Failure to decide effect of Civil Court decree between parties—Refusal of jurisdiction.*—Neglecting to decide what effect a Civil Court decree between the parties to a proceeding under s. 145 of the Crim. Pro. Code may have had on the question of possession, is omission to deal with a material part of the case made before the Magistrate and a refusal of jurisdiction by him. **11 Cr. L.J. 184=5 Ind. Cas. 646.**

(196)—*Crim. Pro. Code (1872), s. 531—Order of attachment when to be made—Summary order illegal.*—A Magistrate is not competent summarily to order attachment, without recording a proceeding under s. 530, Crim. Pro. Code, and without taking evidence. It is only when he is unable to determine the fact of actual possession that he is competent, under s. 531, to attach the land. **1 J.G. 10.**

(197)—*Crim. Pro. Code (1872), s. 518—Order under the section not to be directed to the owner not in actual possession.*—An order under s. 518, Crim. Pro. Code, cannot be directed to an owner of property who has sublet it to others and who is not in consequence in actual possession or management of it. **1 J.G. 30.**

(198)—*Crim. Pro. Code (1872), s. 530—Joint owner erecting edifice—Magistrate incompetent to order exclusive possession.*—A joint owner of land erected on it an edifice against the will of the joint owner. The Magistrate made an order under s. 530, Crim. Pro. Code, awarding exclusive possession of that portion of the land on which the edifice was erected to the person who erected it. *Held* that s. 530 did not apply to the case. **1 J.G. 45.**

(199)—*Crim. Pro. Code (1872), s. 530—Proceedings based upon insufficient grounds—Jurisdiction of the Magistrate.*—Where the proceedings recorded by a Magistrate under s. 530 were based upon materials which did not disclose sufficient ground for considering that a breach of the peace was imminent, *held*, the Magistrate had no jurisdiction to make an order calling upon the parties concerned in the dispute to attend in Court and give in a written statement of their respective claims in respect of the fact of actual possession of the subject of dispute. **2 J.G. 4.**

(200)—*Crim. Pro. Code (1872), ss. 530 and 533—Question of possession—Local enquiry to be made by Magistrate himself—Local enquiry by subordinate Magistrate legal with parties' consent—Scope of such enquiry.*—In a proceeding under s. 530, Crim. Pro. Code, the Magistrate must decide the fact of possession on evidence taken by himself and not according to the result of a local enquiry made under s. 533, unless the parties have consented to be bound thereby. *Per Prinsep, J.* The local enquiry referred to in s. 533 should be restricted solely to some question relating to the features of the property about which the dispute has risen, and should not be directed to any matter which can be proved before the Magistrate by oral evidence. **2 J.G. 16.**

(201)—*Crim. Pro. Code (1872), s. 530—Execution of decree for ejectment—Power of Magistrate—Effect of ejectment.*—In the execution of a decree for ejectment, a Magistrate has power only to bind down any party whom he might consider as putting forward a wrong claim to the property to keep the peace under s. 530, Crim. Pro. Code. But he has no power to order the cutting up of standing crops and make them over to the party entitled to them. The effect of an ejectment under the rent law is to dispossess the ryot not only of the land, but also of the crop standing thereon. **2 J.G. 23.**

(202)—*Crim. Pro. Code (1872), s. 530—Power of Magistrate under.*—It is the likelihood of a breach of the peace, with the consequent necessity for immediate action, which alone warrants action by the Magistrate under s. 530. **2 J.G. 27.**

(203)—*Crim. Pro. Code (1872), s. 530—Form of notice under the section—Right of intervenor to come in.*—The notice shall be addressed to known individuals and not be in the form of a public proclamation or citation. The Crim. Pro. Code contains no provision for allowing an intervenor to come in, in the middle of the proceedings held by a Magistrate under this section. **2 J.G. 27.**

(204)—*Crim. Pro. Code (1872), s. 530—Power of Magistrate under section.*—A Magistrate has no power to decide a question of

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possession under s. 530, until he has recorded a proceeding stating the grounds of his being satisfied that the dispute for possession is likely to induce a breach of the peace. **2 J.G. 27.**

(205)—*Crim. Pro. Code (1872), s. 532—Actual dispute essential for an order under the section—Verbal altercation not enough—Nature of power under section.*—A person claiming to be the sole proprietor of a private road placed gates at one end of it to prevent its use by the public between sunset and sunrise. On the motion of the Deputy Commissioner of Darjeeling, the Magistrate made an order under s. 532 "that possession of the private road be not taken until the claimant shall have obtained the decision of a competent Civil Court as to exclusive possession." *Held* that there being no evidence of any one having exercised the right of passing over the road between sunset and sunrise, there was no dispute under s. 532. A Magistrate can interfere only when there is an actual dispute. A mere discussion or verbal altercation between parties claiming rights of the kind described is not enough. The section does not enable a Magistrate to make a purely declaratory order, but it enables him to prevent arbitrary interruptions by any person of rights actually enjoyed which have been exercised by the public, or a person, or class of persons. **2 J.G. 31.**

(206)—*Crim. Pro. Code (1872), s. 530—Possession through* tikkadar—*Nature of possession—Per Jackson, J.*—Where a Zamindar has let his farm, he, his farmers and the occupying ryots, are all in their degree concerned in any dispute as to possession which may arise and they ought to be maintained in possession of the interests which they severally enjoy. **3 J.G. 18.**

(207)—*Crim. Pro. Code (1872), s. 530—Decree of Civil Court—Duty of Magistrate as to enforcement of—Magistrate not competent to proceed afresh.*—Where a Civil Court has passed a decree determining the rights of the parties to the suit in respect of a certain land, the Magistrate is bound to uphold that decree. He cannot, as between the parties, proceed under s. 530, Crim. Pro. Code, to decide afresh upon the question of possession. **3 J.G. 45.**

(208)—*Crim. Pro. Code, Act X of 1872, s. 530—Question of possession—Evidence.*—No order as to possession under s. 530 of the Crim. Pro. Code, can be passed without taking evidence. **A.W.N. 1882, 18.**

(209)—*Crim. Pro. Code (1882), s. 145—Test of possession.*—Where in a dispute about some villages, it appeared that none of the parties were in actual possession but one of them was the *lambardar* (collecting rents and paying revenue) of the villages, *held* that the person was to be considered the one in possession for the purpose of s. 145 of the Crim. Pro. Code. **A.W.N. 1890, 178.**

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(210)—*Crim. Pro. Code (1898), ss. 145, 435—Emergent order under s. 145—Subsequent omission by Magistrate to comply with provisions of section—Revision.*—Where a Magistrate made an emergent order for possession of immoveable property under s. 145 (4), but subsequently omitted to follow the procedure prescribed by the section and make an enquiry into the fact of possession, the High Court ordered the Magistrate to make such enquiry, holding that the order was not absolutely without jurisdiction, and therefore not exempted from the application of s. 435 (2) of the Code. **A.W.N. 1901, 154.**

(211)—*Crim. Pro. Code, Act V of 1898, s. 145—Preliminary order—Terms.*—Where a preliminary order in a proceeding under s. 145 of the Crim. Pro. Code stated that the Magistrate had received a police report requesting such an order, that a complaint had been given at the police station and that the Magistrate believed there existed a danger of a breach of the peace, and eventually there was a breach of the peace, *held* there was a sufficient compliance which the terms of s. 145 and that the final order in the case was not open to revision on the ground of such want of completeness in the order as might have been possible. **A.W.N. 1905, 260.** [*R.*, 32 A. 132=7 A.L.J. 132=5 Ind. Cas. 471=11 Cr. L.J. 141].

(212)—In order to give a Magistrate jurisdiction under s. 318, Crim. Pro. Code, 1861, regarding the possession of land, he must be first satisfied that there exists a dispute likely to induce a breach of the peace and he must record the grounds which must be based upon evidence, and not derived merely from his own moral consciousness. **4 M.H.C. App. 49.** 16 W.R. Cr. 74, 9 B.L.R. 229.

(212-*a*)—*Crim. Pro. Code (1872), s. 533—Security to keep peace.*—The taking of security for keeping the peace, in a dispute as to the possession of immoveable property is a matter within the discretion of the Magistrate, provided that he has materials upon which to proceed. **23 W.R. Cr. 58.**

(212-*b*)—*Decision of Magistrate as to possession—Power to decide question of possession—Recognizance to keep peace.*—If a Magistrate is satisfied that the circumstances require it, he may make an order under s. 318 of the Code of 1861, notwithstanding that he has taken recognizance under s. 282. **9 B.L.R. 229=18 W.R. Cr. 11.** 4 W.R. Cr. 12.

(212-*c*)—*Disputes as to right of way, water, etc.—Crim. Pro. Code, 1861, s. 320.*—S. 320 of Crim. Pro. Code does not require that there should be an apprehended breach of the peace before the authorities can interfere to decide a right of way. **2 W.R. Cr. 64.**

(213)—*Disputes as to right of way, water, etc.—Dispute as to use of land—Order to fill up ditch—Crim. Pro. Code (1861), s. 320.*—A Deputy Magistrate has no jurisdiction, under s. 320 of the Code of Criminal Procedure, 1861,

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to order a ditch, which was once a pathway, but afterwards filled up, to be opened out, and a wall to be pulled down which had been built upon it before any complaint was made about filling up the ditch. Even if he had jurisdiction, no such order should be passed without legal proof that the ditch and pathway had been opened to the use of the public and of the prosecutor. **5 W.R. Cr. 57.**

(214)—*Dispute as to right of way, water, etc.—Procedure—Dispute as to right of water.*—In deciding a dispute as to a right of water, the Magistrate must follow strictly the course pointed out by Ch. XXII of the Code of Criminal Procedure, 1861. **7 W.R. Cr. 45.** 13 W.R. Cr. 51.

(215)—*Disputes as to right of way, water, etc.—Right of way, dispute as to—Crim. Pro. Code (1861), s. 320—Obligation of Magistrate in case of right of way.*—A Magistrate is bound to investigate a case in which the complainant alleged that his right of way had been interfered with, and ought not to refer the complainant to the Civil Court. **14 W.R. Cr. 28.**

(216)—*Dispute as to right of way, water, etc.*—Dispute as to right to use water—Crim. Pro. Code (1872), s. 532—Right to use of water—*See* **24 W.R. Cr. 15.**

(217)—*Nature and effect of Civil Court's decision—Duty of Magistrate—Crim. Pro. Code (1861), s. 318—Execution of decree by Civil Court.*—When a Civil Court decree has been passed regarding the whole or any portion of the disputed land, it is the Magistrate's duty to maintain that decree, and he cannot again institute, under s. 318, proceedings regarding the land covered by it. **16 W.R. Cr. 24.** [*App.*, 5 C.L.R. 200. 6 C. 835; *F.*, 7 C.L.R. 516; *R.*, 24 W.R. Cr. 17].

(218)—*Nature and effect of Civil Court's decision—Delivery of possession in execution of decree of Civil Court—Power of Magistrate.*—The act of a process peon, delivering over possession of the disputed land to the purchaser as part of a tenure sold in execution, does not take away the power of a Magistrate to inquire into the question of possession between the parties. **25 W.R. Cr. 18.**

(219)—*Nature and effect of Civil Court's decision—Decree of Civil Court for possession.*—A Magistrate ought not to interfere, under s. 318, Code of Criminal Procedure, 1861, with the execution of a decree of the Civil Cout. **6 W.R. Cr. 10.**

(220)—*Nature and effect of Magistrate's decision—Effect of order as to possession—Right and title of party under order.*—The effect of the order of the Criminal Court giving possession of real estate is merely to prevent the occupation being disturbed by violence, and confers no right or title on the party put in possession. **5 M.I.A. 413.**

(221)—*Nature and effect of decision—Third parties—Disobedience of order.*—Where an order under s. 318 of the Crim. Pro. Code, 1861, was made between A on the one side and B and the three tenants of B on the other, declaring that A was in possession of the property in dispute, *held* that this order was only binding on the actual parties to the case before the Magistrate, and that subsequent tenants of B could not be criminally punished for disobeying the order in question. **3 B.L.R. A. Cr. 13.** [*F.*, 18 M. 51].

(222)—*Nature and effect of decision—Suit for declaration of title.*—A plaintiff in a civil suit brought for confirmation of his possession by a declaration of his title to certain land obtained, pending his suit, an order from the Magistrate under s. 318 of the Crim. Pro. Code, 1861, that he should be maintained in possession until ousted in due course of law. The suit was dismissed, the plaintiff failing to prove his title; and the defendants then applied to the High Court under s. 404 of the Crim. Pro. Code to set aside the Magistrate's order and put them in possession. *Held* that their proper course was by a suit in the Civil Court for possession, and the application under the Criminal Procedure Code was rejected. **3 B.L.R. A.C. 57 = 11 W.R. Cr. 43.**

(223)—*Nature and effect of decision—Obstructing road—Suit for exclusive possession.*—The Magistrate had, on the complaint of the defendant, passed an order under s. 320 of the Crim. Pro. Code, 1861, forbidding the plaintiff to retain possession of a piece of land to the exclusion of the public until he had obtained the decision of a competent Court adjudging him to be entitled to such exclusive possession. The plaintiff accordingly brought his suit in the Munsiff's Court to recover possession of the land. The Munsiff gave him a decree for exclusive possession of the land. On appeal, the Judge *held* that the Munsiff had no jurisdiction to try the question whether the public had a right of way over the land. The Judge's decision was reversed on special appeal, and the case remanded to the Judge to try the issue whether the plaintiff was entitled to the exclusive use of the land. **5 B.L.R. Ap. 68 = 14 W.R. 163.**

(224)—*Nature and effect of Magistrate's decision—Order under Ben. Act IV of 1840 as to possession, omission to set aside.*—*Held* that, the plaintiff having failed to set aside an award as to possession made by the Criminal Court under Act IV of 1840 within the limitation period, his claim in opposition to that award was not maintainable. **1 Agra 120.**

(225)—*Adverse possession.*—Possession under Magistrate's order—Possession under the order of a Magistrate, which is set aside by a decree of a Civil Court, is of no effect against a plea of limitation. **8 W.R. 373.** [*R.*, 28 M. 338].

(226)—*Adverse possession—Possession under erroneous order—Limitation.*—Possession under an erroneous order of a Magistrate does not constitute such a *bona fide* possession as will prevent the law of limitation from running. **2 Ind. Jur. O.S. 4.**

Dispute as to possession of immoveable property—concluded.

(227)—Decision of Magistrate as to possession—Duty of Magistrate to maintain possession even when contrary to former order of another Magistrate—*See* **21 W.R. Cr. 2.**

(228)—Dispossession by criminal force—Order as to person dispossessed from immoveable property by criminal force—Crim. Pro. Code, 1872, s. 534—*See* **23 W.R. Cr. 54.**

(229)—Crim. Pro. Code (1898), ss. 144, 145, 435—Revisional powers of the High Court—where there exists an order passed under s. 145 (1) and in substantial compliance with the requirements of the section, the High Court has no power in revision to interfere with the proceeding under Ch. XII. **4 A.L.J. 91=A.W.N. 1907, 50=5 Cr. L.J. 117.**

(230)—Crim. Pro. Code (1898), ss. 144, 145, 435—Revisional powers of High Court—Power of High Court to call for proceedings of Magistrates under Ch. XII, Crim. Pro. Code. **A.W.N. 1907, 49.**

(231)—Crim. Pro. Code (1898), ss. 145, 435—Revision by High Court of order under s. 145. **7 Bom. L.R. 475=2 Cr. L.J. 451.**

(232)—Crim. Pro. Code (1898), ss. 145, 537—Provisions of s. 145 not strictly complied with—Effect. **A.W.N. 1907, 265=6 Cr. L.J. 352=4 A.L.J. 705=30 A. 41.**

(233)—Crim. Pro. Code (1898), ss. 145, 526—Letters Patent, Madras, cl. 29—Power of High Court to transfer a case under s. 145. **12 M.L.J. 391=2 Weir 678=26 M. 188.**

Sec ACT XXVII OF 1860, 2 B.L.R. A. Cr. 27=11 W.R. Cr. 23, 25 W.R. Cr. 16.

See ACT I OF 1877, s. 9, 7 C.L.J. 547.

See CRIM. PRO. CODE (1898), s. 522, 25 C. 434=2 C.W.N. 305.

See CRIMINAL TRESPASS, 2 N.W.P. 82.

See HIGH COURT, JURISDICTION OF, 2 C. 293, F.B.

See PENAL CODE, s. 180, Rat. Un. Cr. C. 904.

See SECURITY FOR GOOD BEHAVIOUR, 11 C. 13.

See SECURITY TO KEEP THE PEACE. A.W.N. 1906, 61=3 Cr. L.J. 323=28 A. 406, 6 C. 835, 32 C. 966=2 Cr. L.J. 769=10 C.W.N. 288, 6 C.L.J. 697=6 Cr. L.J. 398=35 C. 117=12 C.W.N. 487, 3 C.W.N. 297, 12 C.W.N. 606=7 Cr. L.J. 403, 5 N.L.R. 94=3 Ind. Cas. 64=10 Cr. L.J. 221.

Disqualification of Magistrates.

—*Crim. Pro. Code, ss. 528, 556.*—The fact that a Magistrate applies to prosecute the petitioner for making false charges against himself is a disqualification within the meaning of s. 526, Crim. Pro. Code, preventing him from going on with the criminal charge under s. 506. S. 556 personally disqualifies a Magistrate, who, at the time he convicts the accused, applies for leave to prosecute him for applying for a transfer on false grounds. **2 L.B.R. 220.**

See CRIM. PRO. CODE (1898), s. 556, A.W.N. 1908, 95=5 A.L.J. 357=7 Cr. L.J. 393.

Disqualification of Magistrates—concluded.

See JURY, 7 C. 42=8 C.L.R. 273.

See MAGISTRATE, JURISDICTION OF, 14 B. 572.

Distinct Offences.

See CRIM. PRO. CODE (1898), s. 35, 11 A. 393.

See CRIM. PRO. CODE (1898), s. 233, 29 C. 387=6 C.W.N. 550.

—Punishment how passed in respect of—*See* SENTENCE, 13 C.P.L R. Cr. 124.

Distraint.

See DISTRESS.

See ACT VIII OF 1873, s. 45, 27 A. 499=A.W.N. 1905, 74=2 A.L.J. 219=2 Cr. L.J. 183.

See MAD. ACT II OF 1864, 16 M. 364=1 Weir 422=3 M.L.J. 178.

See MAD. ACT IV OF 1884, ss. 103, 111, 9 M. 429.

See COMPENSATION, 21 C. 979.

See FINE, 20 C. 478.

See MAGISTRATE, JURISDICTION OF, 22 C. 935.

—Removal of property already distrained no offence under s. 206, Penal Code—*See* PENAL CODE, s. 206, A.W.N. 1888, 237.

See PENAL CODE, s. 424, 25 M. 729=1 Weir 67.

—Unlawful distraint of cattle—*See* RIOTING, 13 M. 148=1 Weir 67.

—Obstruction to a distraint by a landholder, when rent is not in arrears—*See* RIOTING, 1 Weir 44=1 Weir 56=8 M.H.C. App. 11.

Distress.

See DISTRAINT.

—*Crim. Pro. Code (1861), s. 61—Distress of immoveable property.*—The law has provided for the distress and sale of immoveable property only for realising a fine, and there is no provision by which immoveable property may be made liable. **5 B.H.C. Cr. 63.** [*F.*, 20 C. 478; *R.*, 2 B. 564].

See MAD. ACT II OF 1864, 16 M. 364=1 Weir 422=3 M.L.J. 178.

See MAD. ACT IV OF 1884, ss. 103, 104, 9 M. 429.

See COMPENSATION, 21 C. 979.

—Distress of joint moveable property and immoveable property—*See* FINE, 20 C. 478.

See MAGISTRATE, JURISDICTION OF, 22 C. 935.

District Cesses and Rural Police Act.

See BUR. ACT II OF 1880.

District Judge, Jurisdiction of.

(1)—*Crim. Pro. Code (1882), s. 476 and Ch. XVI—Penal Code, s. 411—District Judge—Jurisdiction.*—A District Judge cannot order the arrest and prosecution of a person under s. 411 of the Penal Code, since such an order is not sanctioned by ss. 195 and 476 of the Crim. Pro.

District Judge, Jurisdiction of—concluded.

Code. If during the trial of a case, it appears to him that some one should be proceeded against under s. 411, he can make a complaint under Ch. XVI of the Crim. Pro. Code, if the Police have not already proceeded under Ch. XIV. **Rat. Un. Cr. C. 515=Cr. Rg. 37 of 1890.**

(2)—A Sessions Judge has power to try a person for an offence punishable under s. 196, I.P.C., when he has, as District Judge, given sanction for the prosecution under the provisions of s. 195, Crim. Pro. Code. **16 C. 766.**

See CRIM. PRO. CODE (1898), s. 487, 16 C. 121.

See FALSE EVIDENCE, 6 A. 103.

See SANCTION TO PROSECUTE, 16 A. 80, 19 A. 121, 6 A.L.J. 231=9 Cr. L.J. 504=31 A. 313=2 Ind. Cas. 182, 2 B. 481, 10 Bom. L. R. 95=22 B. 203=3 M.L.T. 170=7 Cr. L.J. 120, 9 Cr. L.J. 181=1 Ind. Cas. 220, 6 A.L.J. 796=6 M.L.T. 98.

District Magistrate.

(1)—*Crim. Pro. Code, s. 438—Report by District Magistrate against order made by Sessions Judge.*—It would be contrary to every principle to allow a District Magistrate to report against an order of the Sessions Judge to whom he is subordinate. The words "or otherwise" in s. 438 were not intended to confer upon a Magistrate the power to question the propriety of an order of a Sessions Court and make a reference to the High Court upon that ground. **28 A. 91=2 A.L.J. 589=A.W.N. 1905, 198=2 Cr. L.J. 515.** [*R.*, 1 S.L.R. 40 Cr.]

(2)—*District Magistrates and Sessions Judges—Their position.*—There is nothing in the Crim. Pro. Code which either authorises a District Magistrate to call upon a Sessions Judge for explanations or which justifies a Sessions Judge in furnishing them. **1 A.L.J. 395.**

(3)—*Power of, to pass enhanced sentence, on appeal.*—Where the Deputy Magistrate sentenced an accused to 15 days' rigorous imprisonment and a fine of Rs. 10, or, in default, to a further term of one week, and the District Magistrate, on appeal, altered the sentence to a fine of Rs. 50, or, in default, to one month's rigorous imprisonment, *held*, that the District Magistrate's sentence was an enhanced one which he had no power to do. **A.W.N. 1887, 100.**

(4)—*District Magistrate—Jurisdiction to dispose of case outside British India.*—A District Magistrate cannot legally dispose of a criminal case at a place not in British India. **Rat. Un. Cr. C. 376=Cr. Rg. 25 of 1888.**

(5)—*Crim. Pro. Code, ss. 190, 192 and 435—District Magistrate transferring case to subordinate Magistrate—Power of District Magistrate to pass order relating to such case.*—When once the District Magistrate makes over a case for disposal to a subordinate Magistrate, the case is out of his hands and he is not competent

District Magistrate—continued.

to pass any order relating to it other than an order such as might have been made by him under Ch. XXXII of the Code. **30 C. 449.** [*R.*, 9 C.W.N. 810=32 C. 783].

(6)—*Powers of, to call for and examine the record of any Magistrate within his district—"Immediately subordinate," meaning of, in s. 434, Crim. Pro. Code.*—The words "immediately subordinate" have no reference to the judicial powers vested either in the Courts described as subordinate, or in the Court to which they are described as subordinate. All Magisterial officers in a district, except the Magistrate of the District, are, within the meaning of s. 434, "immediately subordinate" to the Magistrate of the District. The Magistrate of the District has power to call for and examine the record of any Magistrate within his district, for the purpose of satisfying himself as to the legality of any sentence or order passed, and as to the regularity of proceedings of such Magistrate. If he is of opinion that the sentence or order is contrary to law, he should forward the case, through the Sessions Judge, for the orders of the High Court. **7 W.R. Cr. Cir. 1.**

(7)—*Power of District Magistrate to direct a subordinate Magistrate to dispose of a case in a particular manner.*—Although a District Magistrate may call up a case that is being tried by a subordinate Magistrate to his own file or direct its transfer to the file of any other Magistrate, he has no authority to order a subordinate Magistrate to dispose of a case pending in the Court of such subordinate Magistrate in a particular manner. **1 Weir 288.**

(8)—*Power of, to give general instructions to subordinate Magistracy—Refusal of permission to pleader to conduct prosecution.*—It is competent for the District Magistrate, in his capacity of a principal Court of Original Criminal jurisdiction in the District, to supervise the Courts subordinate to him and give general instructions as to procedure, punishments and other matters of discretion. It is not improper for him to issue, if he considers that the too frequent appearance of pleaders for the prosecution in petty criminal cases is detrimental to the interests of justice, general instructions to the subordinate Magistracy on the subject of allowing pleaders to appear for the prosecution. **6 P.R. 1905 Cr.=70 P.L.R. 1905.**

(9)—*Revisional power of—Improper discharge—Further inquiry—Crim. Pro. Code (1882), ss. 435, 436 (b)*—When a District Magistrate considers that an accused person has been improperly discharged, he can direct a further enquiry into such offence as appears from the evidence to have been committed. **L.B.R. (1893—1900), 135.**

(10)—*Cases which the District Magistrate should refrain from trying under their higher powers—Crim. Pro. Code (1882), ss. 30, 34.*—As a general rule, the cases which District Magistrates should refrain from trying under their higher powers are those in which a sentence more severe than a District Magistrate can

District Magistrate—continued.

inflict under s. 34, Crim. Pro. Code, 1882, appears to be called for, if the offence charged be established, and secondly those cases in which the issues are so complex, or the difficulty of ascertaining the true facts or of correctly applying the law to them so considerable, as to make a trial before a Sessions Judge with the aid of assessors clearly more appropriate than a trial before a District Magistrate. **L.B.R. (1893—1900), 219.**

(11)—*Tender of pardon by a District Magistrate to an accomplice—Trial of the case by the same Magistrate - Crim. Pro. Code (1882), s. 337.*—In Lower Burma, a District Magistrate, who tenders pardon to an accused person and examines him as a witness under the provisions of s. 337, Crim. Pro. Code, cannot himself try the case. **L.B.R. (1893-1900), 323.**

(12)—*Crim.Pro.Code, Act X of 1872, ss. 295, 296—Acquittal by Sessions Judge—District Magistrate's report to High Court.*—A District Magistrate has no power, under ss. 295, 296 of the Crim. Pro. Code, to report to the High Court a case which he considers as an improper acquittal by the Sessions Judge in an appeal from a conviction. **A.W.N. 1882, 135.**

(13)—*Application for disclosure of name of informant.—Held* that an application that the District Magistrate may be ordered to give up to the applicant the name of the person who supplied information which led to the applicant's prosecution, would not lie. **A.W.N. 1887, 301.**

(14)—*Power of, to withdraw a maintenance case from a subordinate Magistrate.*—S. 528, Crim. Pro. Code, applies to proceedings under s. 488, Crim. Pro. Code, and a District Magistrate is, therefore, competent to withdraw such proceedings from a Magistrate subordinate to himself. **5 P.R. 1905 Cr.** (19 P.R. 1903, 25 B. 179, 28 C. 709, *R.*).

(15)—*Reference under s. 346, Crim. Pro. Code, 1898—His powers to convict on evidence recorded by the referring Magistrate, Crim. Pro. Code (1898), ss. 346, 350.*—Where a first-class Magistrate who heard a case was of opinion that the accused deserved a more severe punishment than he was competent to inflict, and submitted the proceedings to the District Magistrate under s. 346, *held*, that the District Magistrate could not convict the accused on the evidence recorded by the first class Magistrate, even though the accused waived their right reserved to them under proviso (*a*) to s. 350. **25 P.R. 1905 Cr.**

(16)—*Reference under s. 349, Crim. Pro. Code, 1898--Powers.*—S. 349 governs the powers of a District Magistrate to whom a case has been referred by a second class Magistrate for awarding a severe punishment. **12 P.R. 1903 Cr.; 10 P.R. 1881 Cr.**

(17)—*Crim. Pro. Code (1861), ss. 427, 434—Illegality committed by subordinate Magistrate—Duty of District Magistrate to refer case to*

District Magistrate—continued.

High Court.—Where, on an appeal from a conviction, the District Magistrate is of opinion that the Magistrate who tried the case had no jurisdiction to try it, and that an illegality has, therefore, been committed, he should refer the case to the High Court, under s. 434, Crim. Pro. Code. He is not competent himself under s. 427, to annul the conviction and sentence, and direct the commitment of the accused. **5 B.H.C. Cr. 65.** [*D.*, 7 B.H.C. 72 Cr.].

See ACQUITTAL, U.B.R. (1892—1896), 11.

—Withdrawal of case by—*See* ACT XI OF 1874, s. 6, 8 C. 851.

—Illegal practising by a pleader—Jurisdiction of District Magistrate to punish—*See* ACT XVIII OF 1879, ss. 10, 32, 4 A. 375.

—Trial by, of European British subject with a jury—Power of, to refer case to High Court on dissenting from verdict of jury—*See* ACT III OF 1884, s. 8 (6), 9 A. 420.

See ACT XIII OF 1889, s. 7, Rat. Un. Cr. C. 849 = Cr. Rg. 16 of 1896.

See BOM. ACT VII OF 1867, s. 16, Rat. Un. Cr. C. 478.

See BOM. ACT II OF 1890, s. 52, 4 Bom. L. R. 459.

See PUNJ. ACT IV OF 1872, s. 45, 9 P.R. 1907 Cr. = 36 P.W.R. 1907 = 6 Cr. L.J. 379 = 42 P.L.R. 1908.

—Position of—*See* U.P. ACT XV OF 1883, s. 69, 8 A. 677.

See ADDITIONAL DISTRICT MAGISTRATE, 25 P.R. 1908 Cr. = 9 Cr. L.J. 104.

See APPEAL, 5 B.H.C. Cr. 8.

See CHARGE, 2 Weir 258.

See COMMITMENT TO SESSIONS COURT, 9 Bom. L.R. 225 = 5 Cr. L.J. 213, 15 M.L.J. 373 = 2 Cr. L.J. 774, Rat. Un. Cr. C. 899.

—Jurisdiction of District Magistrate to transfer case sent to him—*See* COMPLAINT, 4 B.H.C. Cr. 30.

See CRIM. PRO. CODE (1898), ss. 10. 12, 32, M. 303.

See CRIM. PRO. CODE (1898), ss. 10 (2), 12, 528, 34 C. 918.

See CRIM. PRO. CODE (1898), s. 17 (1) and (5), 13 M.L.J. 272.

See CRIM. PRO. CODE (1898), ss. 30 and 436, 60 P.L.R. 1904.

—Powers of—*See* CRIM. PRO. CODE (1898), s. 104, 1 A.L.J. 607.

—Jurisdiction of District Magistrates to transfer proceedings to subordinate Magistrates —*See* CRIM. PRO. CODE (1898), s. 107, 31 C. 350.

—Power to transfer security case against person residing outside district—*See* CRIM. PRO. CODE (1898), ss. 107 (2) and 192, 24 A. 151.

District Magistrate—continued.

—Whether District Magistrate can cancel surety-bond accepted by subordinate Magistrate —*See* CRIM. PRO. CODE (1898), ss. 110 and 125, 29 C. 455=6 C.W,N. 291.

—District Magistrate's power to cancel bond for keeping the peace—*See* CRIM. PRO. CODE (1898), s. 125, 32 C. 948=9 C.W.N. 860=2 Cr. L.J. 550.

—Power of, to take proceedings under s. 145, Crim. Pro. Code, after such refusal by subordinate Magistrate to act under same—*See* CRIM. PRO. CODE (1898), ss. 145 and 437, 29 C. 242=6 C.W.N. 290.

See CRIM. PRO. CODE (1898), ss. 193, 195, 465, 471, 476, 9 Cr. L.J. 180=1 Ind. Cas. 220.

—Only Magistrate to whom police are subordinate—*See* CRIM. PRO. CODE (1898), s. 195, 6 O.C.1.

—Power of—to order further enquiry—*See* CRIM. PRO. CODE (1898), ss. 369, 437, 28 C. 102.

See CRIM. PRO. CODE (1898), s. 417, U.B.R. (1892—1896), Vol. I, 47.

See CRIM. PRO. CODE (1898), ss. 428, 437, 439, 6 C.L.J. 251=6 Cr. L.J. 357.

See CRIM. PRO. CODE (1898), s. 435, 3 Bom. L.R. 677.

—Discharge of accused charged with an offence exclusively triable by Court of Session —Further enquiry—Powers of District Magistrate and Sessions Judge—*See* CRIM. PRO. CODE (1898), ss. 435, 436, 437 and 532, 28 C. 397=5 C.W.N. 574.

See CRIM. PRO. Code (1898), ss. 435 (1 to 3), 426, 439 (1 to 4), and 440, 4 C. 647.

—Whether competent to order further enquiry after revision dismissed by Sessions Judge —*See* CRIM. PRO. CODE (1898), ss. 435 and 437, 4 O.C. 119.

See CRIM. PRO. CODE (1898), ss. 435 (1, 2 and 3) and 437, S.C. 88, Oudh.

—Power to order commitment—*See* CRIM. PRO. CODE (1898), s. 436, 26 A. 564=A.W.N. 1904, 125=1 A.L.J. 292.

See CRIM. PRO. CODE (1898), s. 437, Rat. Un. Cr. C. 213. 12 A. 434.

See CRIM. PRO. CODE (1898), s. 438 (1), 2 Weir 564, 6 Bom. L.R. 1099.

See CRIM. PRO. CODE (1898), s. 515, U.B.R. (1892—1896), Vol. I, 75.

See CRIM. PRO. CODE (1898), s. 528 (1 to 3), Rat. Un. Cr. C. 34.

—Power of District Magistrate to order further enquiry—*See* FURTHER ENQUIRY, 2 L.B.R. 80.

See FURTHER ENQUIRY, 10 C. 268.

See HIGH COURT, SUPERINTENDENCE AND POWERS OF, 5 M.L.T. 233, F.B.=9 Cr. L.J. 192=19 M.L.J. 157=32 M. 220=1 Ind. Cas. 228.

District Magistrate—concluded.

—Withdrawal of case by District Magistrate —*See* MAGISTRATE, JURISDICTION OF—8 C. 851.

—Jurisdiction to try charge of murder—*See* MAGISTRATE, JURISDICTION OF, 5 C.P.L.R. Cr. 38.

See MAGISTRATE, JURISDICTION OF, 10 C. 551, 18 C. 75, 2 N.W.P. 132.

See MAINTENANCE, 9 B. 40.

See PARDON, 149 P.L.R. 1901.

—Power of, to reconsider evidence or to direct new enquiry—*See* REFERENCE TO HIGH COURT, 1 L.B.R. 311.

See REFERENCE TO HIGH COURT, Rat. Un. Cr. C. 133.

—Revisional powers of Sessions Judge and District Magistrate—*See* REVISION, 151 P.L.R. 1903.

See REVISION, Rat. Un. Cr. C. 499.

—Power of, to order revival of proceedings against discharged accused—*See* REVIVAL OF CRIMINAL PROCEEDINGS, 1 C. 282=25 W.R. 30 Cr.

—Sanction by, as head of the police—Powers of the High Court—*See* SANCTION TO PROSECUTE, 27 A. 292=1 A.L.J. 597=A.W.N. 1904, 231.

—Revocation of sanction by the Sessions Judge—Granting of fresh sanction by, validity of—*See* SANCTION TO PROSECUTE, 1 A.L.J. 395.

See SANCTION TO PROSECUTE, Rat. Un. Cr. C. 511, 27 C. 452=4 C.W.N. 594, 3 N.L.R. 50=5 Cr. L.J. 432. 24 P.W.R. 1908 Cr.

—Jurisdiction of, to make second enquiry against discharge in security case—*See* SECURITY FOR GOOD BEHAVIOUR, 6 O.C. 262.

See SECURITY FOR GOOD BEHAVIOUR, 12 C.W.N. 299=7 C.L.J. 177=35 C. 243=7 Cr. L.J. 146.

See SECURITY TO KEEP THE PEACE, 12 P.W.R. 1908 Cr.=7 Cr. L.J. 348.

See SESSIONS JUDGE, JURISDICTION OF, 17 M.L.J. 153=2 M.L.T. 24=5 Cr. L.J. 132.

See TRANSFER OF CRIMINAL CASES, Rat. Un. Cr. C. 460, 8 C.L.J. 241, 11 C.W.N. 316 =5 Cr. L.J. 112, 2 L.B.R. 80.

District Magistrate, Jurisdiction of.

See BOM. REG. XII OF 1827, s. 19, Rat. Un. Cr. C. 490.

See BOM. REG. XXI OF 1827, Rat. Un. Cr. C. 62.

See SANCTION TO PROSECUTE, 19 A. 121.

See TRANSFER OF CRIMINAL CASES, Rat. Un. Cr. C. 963.

District Magistrate and Collector.

—*Duties and responsibilities of—Executive acts, legality of.*—The Magistrate and Collector of the district, being for most purposes the principal representative and administrator of the law in the eyes of the people of the District, a position of great power and great responsibility, it is of supreme importance that his acts should be examples of equal justice, rigid impartiality and obedience to the law. **2 C.L.J. 555=10 C.W.N. 82=3 Cr. L.J. 169.** [*R.*, 10 C.W.N. 322, 12 C.W.N. 727].

District Magistrate, Powers of.

(1)—*Crim. Pro. Code, ss. 192, 202, 203 and 204—Power of District Magistrate to interpose in trials before subordinate Magistrates, without transfer to his own Court.*—Where the complaints were not made to the District Magistrate, nor had the cases based on those complaints been withdrawn to his Court by any order, but they were in the Court of the Joint Magistrate, *held*, that the District Magistrate had no authority to interpose in the trial of these cases, and therefore could not direct judicial enquiry by another Magistrate before the issue of processes, so as to postpone the trials. *Held*, also, that it was very questionable whether such order could be passed, even if the cases had been withdrawn to his Court for trial. **27 C. 798.**

(2)—*Criticising decision of a superior Court—Procedure where Sessions Court's decision may require revision.*—It is irregular for a District Magistrate to criticise the decisions of a superior Court. He should, if he considers that any decision of a Sessions Court needs revision by the Court of the Judicial Commissioner, take the necessary steps to get the Government Advocate to move the Court of the Judicial Commissioner to call for the case in revision. **L.B.R. (1893—1900), 311.**

—Power of District Magistrate to revise order granting bail—*See* BAIL, 22 B. 549.

See FURTHER ENQUIRY, 6 M.L.T. 157.

—Whether District Magistrate can refer to High Court on rejection of appeal by Sessions Judge—*See* REFERENCE TO HIGH COURT, 18 C. 186.

See REFERENCE, 8 Cr. L.J. 161=1 S.L.R. 40 Cr.

See SENTENCE, Rat. Un. Cr. C. 131.

District Municipal Improvements Act.

See BEN. ACT III OF 1864.

District Municipalities Acts.

See ACT XXVI OF 1850.
„ BEN. ACT III OF 1864.
„ BEN. ACT V OF 1876.
„ BEN. ACT III OF 1884.
„ BOM. ACT VI OF 1873.
„ BOM. ACT II OF 1884.
„ BOM. ACT III OF 1901.
„ BUR. ACT XVII OF 1884.

District Municipalities Acts—concluded.

See BUR. ACT III OF 1898.
„ C. P. ACT XI OF 1873.
„ C. P. ACT XVIII OF 1889.
„ MAD. ACT X OF 1865.
„ MAD. ACT III OF 1871.
„ MAD. ACT IV OF 1884.
„ MAD. ACT III OF 1889.
„ MAD. ACT III OF 1897.
„ PUN. ACT IV OF 1873.
„ PUN. ACT XX OF 1891.
„ U. P. ACT VI OF 1868.
„ U. P. ACT XV OF 1873.
„ U. P. ACT XV OF 1883.
„ U. P. ACT I OF 1895.
„ U. P. ACT I OF 1900.

District Municipalities Amendment Act.

See BOM. ACT II OF 1884.
„ MAD. ACT III OF 1897.
„ U. P. ACT I OF 1895.

District Munsiff.

See CRIM. PRO. CODE (1898), ss. 426, 439 (1 to 4), 440 and 476, A.W.N. 1882, 92.

District Police Act.

See BOM. ACT VII OF 1867.
„ BOM. ACT IV OF 1890.
„ MAD. ACT XXIV OF 1859.
„ MAD. ACT I OF 1885.

District Registrar.

—Complaint to District Registrar—*See* SANCTION TO PROSECUTE, 2 C.L.J. 619=10 C.W.N. 222=3 Cr. L.J. 112.

Disturbance.

—What constitutes—*See* PENAL CODE, s. 296, 1 Weir 259.

Divisional Magistrate.

—*Crim. Pro. Code (1861), ss. 273, 277 (=ss. 192, 349 of the Code of 1898)—Reference to Divisional Magistrate under s. 277—His duty.*—In a case referred to a Divisional Magistrate under s. 277, he is bound to form his own judgment and pass sentence. **2 Weir 424=5 M.H.C. 43.** [*F.*, 2 Weir 424].

Division Bench.

See HIGH COURT, JURISDICTION OF.

See ACT XVIII OF 1879, s. 36, A.W.N. 1908, 279=6 A.L.J. 22=31 A. 59=9 Cr. L.J. 59.

See FULL BENCH, 2 A. 218, F.B.

See HIGH COURT, JURISDICTION OF, 23 C. 532.

See LETTERS PATENT (ALLAHABAD), 1866, 2 N.W.P. 117, *F.B.*

See REFERENCE, 15 B. 452.

See REVIEW, Rat. Un. Cr. C. 791.

Divorce.

—*Divorce on mere caprice of party.*—There is no right of divorce on the mere caprice of a Burman Buddhist husband or wife. **L.B.R. (1872—1892), 391.**

See HUSBAND AND WIFE, 7 B. 180.

See MAINTENANCE, 5 A. 224, 5 A. 226, 15 A. 143, 19 A. 50=16 A.W.N. 173, 5 C. 558=5 C.L.R. 21, 8 C. 736=11 C.L.R. 237, 19 W.R. 73 Cr.=10 B.L.R. Ap. 33, 1 L.B.R. 19.

See PENAL CODE, s. 494, 6 B. 126.

Document.

Making of document, meaning—*See* PENAL CODE, s. 464, 7 C. 352=8 C.L.R. 572.

See PENAL CODE, s. 477, 12 M. 148=1 Weir 533, 1 Weir 552=7 M.H.C. App. 26.

Document, Inspection of.

See INSPECTION OF DOCUMENTS.

Document, Production of.

See CONTEMPT OF COURT, 12 B. 63.

Double Conviction.

See CONVICTION.

(1)—*Penal Code, ss. 471, 474—Convictions under both sections* —An accused should not be convicted both under s. 471, I.P.C., for using certain forged documents, and under s. 474 for having the same documents in his possession. **6 N.W.P. 39.** [*Appl.*, 6 N.W.P. 293; *cited*, 111 P.L.R. 1904=14 P.R. 1904 Cr.]

(2)—*Penal Code, ss. 380 and 215—Double conviction for theft and receiving illegal gratification for the restoration of stolen property, validity of—Crim. Pro. Code (1898), s. 235.*—A man committed a theft of bulls, was in possession thereof and afterwards received illegal gratification from the owner of the bulls under the pretence of getting back the stolen bulls and did return the stolen bulls to the owner. He was convicted of offences under ss. 380 and 215 of the Penal Code. *Held per* FOX, C.J., and HARTNOLL, J., that the convictions both for theft and the receipt of illegal gratification were illegal, inasmuch as, a man who is convicted for the latter offence cannot be said to be guilty of the former offence, because he would not hand himself up to justice, for the offence of theft. He can be charged alternatively, either with the offence of theft or receipt of illegal gratification or only with theft or receipt of illegal gratification as the case may be. *Per* IRWIN, J., *contra*:—A thief, who returns the stolen property in consideration of a payment, is legally liable to a double conviction under ss. 379 and 215, Penal Code, although such conviction may be opposed to natural justice. In such cases, although the double convictions may be legal, double sentences are improper and unjust. **14 Bur. L.R. 67.**

See ACT XI OF 1878, s. 19 (*e*), 3 L.B.R. 218, F.B.

See ACT XXII OF 1881, ss. 39 and 41, L.B.R. (1872—1892), 350.

Double Conviction—concluded.

See BUR. ACT I OF 1899, ss. 11, 12, 1 L.B.R. 178.

—Where offence made up of parts—*See* PENAL CODE, ss. 71, 379 and 457, Book Cir. 2 of 1864, Oudh.

See PENAL CODE, ss. 379 and 429, L.B.R. (1893—1900), 633.

Doubt.

—*Lenient sentence when accused's guilt doubtful.*—A Magistrate in doubt as to the guilt of the accused should not compromise his doubts by passing a lenient sentence. His best attention must be given to the question whether the doubt, after a consideration of all the evidence, is a reasonable doubt. **L.B.R. (1893—1900), 198.**

Dramatic Performances Act.

See ACT XIX OF 1876.

Drunkenness.

See UNSOUNDNESS OF MIND, 29 C. 493=6 C.W.N. 506.

Dumb Person.

See DEAF AND DUMB PERSON.

Dunlop's Proclamation.

See KHOTI KHASGI LAND, 18 B. 670.

Duress.

(1)—*Imprisonment—Avoidance of contract.*—In England, the mere fact of imprisonment is not deemed sufficient to avoid an agreement made by one who is in lawful custody under the regular process of a Court of competent jurisdiction, where no undue advantage is taken of the situation of the party making the agreement. But in a country in which there is no settled system of law or procedure, and where the Judge is invested with arbitrary powers, imprisonment may in itself amount to duress such as will avoid a contract entered into by the prisoner with the view of obtaining release. **1 C. 330.**

(2)—*Contract made under threat of criminal complaint.*—Where a defendant pleads that a contract was executed under compulsion and intimidation, it is not sufficient for him to prove that it was executed from fear of a criminal complaint, as that might have been a proper fear, and not simply a bodily fear imposed on him, in order to his doing that which he would not of his own free will have done. **11 W.R. 314.**

Dying Declaration.

See EVIDENCE.

See EVIDENCE ACT.

(1)—*Evidence Act, s. 33—Deposition—Proof of dying declaration—Crim. Pro. Code (1882), s. 162.*—Where the dying declaration of a deceased person taken down in writing by a Head Constable is admissible in evidence under s. 162, Crim. Pro. Code, the proper course is

Dying Declaration—concluded.

to put in the document itself and have it formally proved by that officer and not to allow him to give evidence orally as to its purport. The deposition of a Constable which was taken by a committing Magistrate and was admitted in evidence at the trial before the Court of Sessions, under s. 33 of the Evidence Act, should be placed with the Sessions record like the deposition of the Civil Surgeon, and formal evidence of the circumstances that rendered the deposition admissible under s. 33 should be recorded. **7 C.P.L.R. Cr. 14.**

(2)—When what purports to be the dying declaration of a deceased person is not taken down by the committing Magistrate, it cannot be admitted in evidence without proof or solemn affirmation that the deceased person actually made such a declaration. **S.C. 29, Oudh.**

Easement.

(1)—*Crim. Pro. Code (1882), s. 147.*—The right to restrain another from exercising ordinary proprietary rights over his own land, by refraining from cutting a *bund*, which will have the effect of giving a liberal supply of water to his land, is of the nature of an easement different from ordinary rights of owners of land. To obtain such an order under s. 147 of the Code, persons claiming such right must satisfy the Court on the existence of such right. *Quære*: —Whether the proviso to s. 147 applies to a case of this kind. **11 C. 52.** [*R.*, 2 P.R. 1903 Cr., 29 M. 97=15 M.L.J. 394=3 Cr. L.J. 31].

(2)—*Scope of the term.*—The Legislature of this country has not used the term "easement" in the restricted sense in which it is used in the English law so as to exclude profits *a prendre*. **23 C. 55.**

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 23 C. 557.

See PENAL CODE, s. 425, Rat. Un. Cr. C. 387.

Easements Act.

See ACT V OF 1882.

Eastern Bengal and Assam Act.

See BEN. ACT II OF 1907.

Ecclesiastical Jurisdiction.

—Exercise of—*See* JURISDICTION OF CRIMINAL COURTS, 8 M. 140=2 Weir 249.

Ejectment, Suit for.

—*Reasonable notice to quit—Criminal proceedings cannot constitute notice to quit.*—A ten days' notice to quit is not sufficient for the maintenance of an ejectment suit against a yearly tenant. (2 Cal. 146, *followed.*) [*R.*, 12 C. 82.] Criminal proceedings, under s. 530 of the Crim. Pro. Code (X of 1872), cannot constitute a notice to quit in an ejectment suit. **4 C. 339.**

Ejusdem Generis.

See CRIM. PRO. CODE, ss. 179, 222, 235 to 239, 531, 537, 18 P.W.R. 1908 Cr.=8 Cr. L.J. 75.

Embankment.

See BEN. ACT II OF 1882, ss. 6 and 80, 11 C. 570.

Embankment Act.

See BEN. ACT II of 1882.

See BUR. ACT XIII OF 1877.

Emigration Act.

See ACT XXI OF 1883.

Emigration of Native Labourers Act.

See ACT XIII OF 1864.

Empowering Revenue Officers to summon Witnesses Act.

See MAD. ACT III OF 1869.

Encroachment.

(1)—*Cantonment Rules, Rule 59 (3)—Encroachment—Declaration—Sanction by Committee, if enough.*—Before a person can be convicted under Rule 59 (3) of the Cantonment Rules for encroachment on the public road, it is necessary that the Cantonment Magistrate, with the sanction of the Cantonment Committee, should have made the declaration specified in the rule. The omission to make it cannot be cured by a sanction given by the Committee after the trial. **Rat. Un. Cr. C. 505=Cr. Rg. 19 of 1890.**

(2)—*Prosecution for encroachment on grazing grounds—Report of Revenue Officer—Procedure to be adopted by Magistrate in trial—Ignorance of fact, good ground of excuse.*—The Crim. Pro. Code does not place the reports of Revenue Officers on the same footing as those of Police Officers. In taking cognizance of an offence on the report of a Revenue Surveyor, the Magistrate must proceed either under cl. (*a*) or under cl. (*c*) of s. 190, sub-section (1), of the Crim. Pro. Code. If he proceeds under cl. (*a*), he must examine the complainant thoroughly and ascertain from him the full particulars of the complaint and all necessary details. The Magistrate can proceed under clause (*c*) only if he is specially empowered to do so and he is then bound by the imperative provisions of s. 191 of the Code. Before issuing process, the Magistrate should endeavour to ascertain whether the grazing ground has been finally demarcated and whether its boundaries are defined by visible marks or are otherwise well known. A plea of the accused that he did not know that the land which he cultivated was in a grazing ground is a good ground of defence. The statement of the accused is not sufficient, but the plea must be investigated. **2 L.B.R. 311.**

See PENAL CODE, ss. 268, 290, 7 M.L.J. 95.

Engineer.

See PUBLIC SERVANT, 6 B.H.C. Cr. 64.

English decisions.

See BAIL, 13 C.W.N. 43=36 C. 166=9 Cr. L.J. 375=1 Ind Cas. 738.

—Applicability of—*See* FALSE EVIDENCE, 7 A. 44.

English Law.

—*English cases on evidence—Applicability to India.*—Though, as the rules of evidence which were in force at the passing of the Evidence Act, were repealed, the English decisions on the subject cannot be regarded as authorities, they may still serve as valuable guides. **9 B.H.C. 358.**

See CULPABLE HOMICIDE, 1 Weir 288.

—Applicability of—*See* EVIDENCE ACT, ss. 11, 167, 16 B. 414 and 19 B. 749.

See DEFAMATION, 19 B. 340.

—Applicability of—*See* FALSE EVIDENCE, 1 Weir 156=4 M.H.C. 51.

See THEFT, 1 Weir 407.

Englishmen.

—Englishmen and Indians constitute two separate classes—*See* **14 P.W.R. Cr. 1907=5 Cr. L.J. 439=2 M.L.T. 272=10 P.R. 1907 Cr.**

Enhancement of sentence.

See SENTENCE.

—*Enhancement of sentence.*—Before a Sessions Judge or a Magistrate refers a case to the High Court for an enhancement of sentence, he should satisfy himself that there is trustworthy evidence of the facts which he considers call for a severer punishment. **L.B.R. (1893—1900), 5.**

Enquiry.

See FURTHER ENQUIRY.

See INVESTIGATION.

See LOCAL ENQUIRY.

—By a registrar's clerk—*See* ACT III OF 1877, s. 92, 23 W.R. Cr. 55.

—Under Legal Practitioners' Act if a judicial proceeding—*See* ACT XVIII OF 1879, 6 M. 252 =1 Weir 116.

See COURT, 12 B. 36.

See CRIM. PRO. CODE (1898), ss. 4, 145 and 350, 13 C.W.N. 420=9 Cr. L.J. 278=1 Ind. Cas. 336.

—Investigation in a case under s. 145, whether an, in a Criminal Court—*See* CRIM. PRO. CODE (1898), ss. 4, cl. (*k*), 145 and 526, 28 C. 709=5 C.W.N. 749.

See CRIM. PRO. CODE (1898), ss. 4, 476 28 A. 89=A.W.N. 1905, 195=2 A.L.J. 717=2 Cr. L.J. 454.

—As to sufficiency of surety, by whom to be made—*See* CRIM. PRO. CODE (1898), ss. 110 and 118, 25 A. 272=A.W.N. 1903, 36.

Enquiry—concluded.

—Delegation of functions to a subordinate officer to inquire into sufficiency of security—*See* CRIM. PRO. CODE (1898), ss. 110 and 118, 27 A. 293=1 A.L.J. 601=A.W.N. 1904, 231.

—Recording evidence in inquiry as to the fitness of surety—*See* CRIM. PRO. CODE (1898), s. 122, 26 A. 371=A.W.N. 1904, 52.

—Enquiry by Magistrate of case triable by Court of Sessions—Annulling conviction—Commitment on the same evidence—*See* MAGISTRATE, JURISDICTION OF, 2 A. 910.

See RESTORATION OF PROPERTY, 4 L.B.R. 229=7 Cr. L.J. 490.

Enticing.

See ABDUCTION, 1 W.R. Cr. 45.

Enticing away Married Woman.

See PENAL CODE, ss. 497, 498.

(1)—*Penal Code, s. 366—Enticing away minor girl with intention of seducing her to illicit intercourse—Offence committed in Native State—Trial in British territory without certificate from the Political Agent—Objection taken too late.*—The accused enticed away a married girl under the age of 16 years from the house of her father, where she was temporarily staying, in the dominions of the Maharaja of Kashmir. The accused took her to various places and was ultimately captured while asleep with her in the same cot at a village near Guzarat, in the British territory. Although the girl was made to leave her home on a deceitful message, she was persuaded to go away with the accused. Her subsequent movements were not against her will but with her consent due to the persuasions of the accused. The accused also induced her to file a petition at Guzarat to the effect that she was without a guardian and was going to settle there in order to practise prostitution, and to make a similar statement at the Sadar Thana. He also rented a shop for her in order to carry on prostitution. He was convicted under s. 366, I.P.C. Upon the hearing of the appeal against the conviction, it was contended on his behalf that the offence having been committed in Kashmir territory, the trying Magistrate had no jurisdiction to enquire into it without a certificate by the Political Agen, for the Kashmir State. *Held*, by the Full Bench, that the objection was made too late and was at all events not fatal to the conviction which was accordingly maintained. **21 P.L.R. 1902, F.B.** (35 P.R. 1888 Cr., 11 P.R. 1896 Cr., A.W.N. 1884, 85, 19 A. 109, 13 M. 423, 19 C. 667, 5 C.W.N. 866, *R.*).

(2)—*Penal Code, s. 498—Enticing away a married woman—Jhanjrara marriages valid in the Kangra District—Divorcing and selling a wife illegal—No offence in the absence of lawful marriage.*—*Held*, that a complainant is incompetent to prosecute another man under s. 498, Penal Code, for enticing away a womant unless he establishes that he is her lawful husband. Jhanjrara (Chadar Andazi) marriage with a widow is no doubt valid according to

Enticing away Married Woman—concluded.

the custom prevailing generally in the Kangra District, but there is no custom (and even if there be any, it cannot be enforced) allowing a husband to divorce and sell his wife to another on receipt of pecuniary compensation. Such a connection between the woman and the purchaser does not create any legal relationship of husband and wife which can be recognised by any Civil or Criminal Court. **22 P.W.R. 1909 Cr.**

(3)—*Penal Code, s. 498—Enticing away a married woman—Crim. Pro. Code (Act V of 1898), s. 345—Compounding of offence before Police.*—The complainant, a man of some 50 years of age, had a wife of some 16 years of age. On 2nd September 1907, he brought a case against one K and his mother, under s. 498, I.P. Code. On the 18th January he compounded the case. On the 18th December 1908 he instituted a case against the present petitioner under ss. 497, 498 and 363, I.P.C., asserting that, on 1st February 1908, the petitioner had taken away his wife and child after removing the hinges of her door. In the proceedings that ensued, he stated that his wife had left him in his absence, and simply mentioned his suspicions that petitioner had got hold of the woman through the agency of the third person. On the 18th March 1909 a compromise was effected before the Inspector of Police, when the case was under investigation by the police, and the same was withdrawn. On 7th May 1909 the complainant asserted that he had been forced into the compromise and wished to go on with his case against the petitioner. The Magistrate ordered a warrant to be issued against the petitioner for an offence under s. 498, I.P.C. *Held*, that, as the offence had been compounded, the proceedings before the Magistrate were *ultra vires*. That, as to the charge of kidnapping, it was impossible under the circumstances of the case to prove it. **22 P.L.R. 1910 Cr.**

(4)—*Penal Code, s. 498—Enticing away married woman—Evidence of marriage.*—In order to sustain a conviction under s. 498, I.P.C., it must be strictly proved that the woman said to have been enticed away was married to the complainant. **A.W.N. 1898, 186.** [*R.*, 31 B. 218=9 Bom. L.R. 143=5 Cr. L.J. 164].

See ADULTERY, 5 M.H.C. App. 22.

See COMPOUNDING OFFENCE, 1 M. 191.

Epidemic Diseases Act.

See ACT III OF 1897.

Erratum.

—*In Circular No. 19, dated 21st July, 1863.*—S. 67 may be substituted for s. 367 in para 4 of Circular No. 19, dated 1st July, 1863, the latter figure being a clerical error. **6 W.R. Cr. Cir. 1.**

Error.

See CHARGE, 15 M.L.J. 224=2 Cr. L.J. 381.

Escape from lawful custody.

See PENAL CODE, ss. 223—226.

(1)—*Escape from lawful custody—Penal Code, s. 223, scope of—Arrest under civil process.*—S. 223 of the Penal Code applies only to cases, where the person, who is allowed to escape, is in custody for an offence, or has been committed to custody, and not to cases where such person has simply been arrested under civil process. **12 C. 190.**

(2)—*Penal Code, ss. 224 and 226—Essential of the offence under s. 226—Escape while undergoing sentence of transportation.*—To constitute an offence under s. 226, it is essential that the convict should have been actually sent to a Penal Settlement and have returned before his term of transportation had expired or been remitted; but where a prisoner escapes from the custody of the police, when under sentence of transportation and whilst on his way to undergo such sentence, *held*, that the accused was punishable under s. 224 and not under s. 226. **1 Weir 213=4 M.H.C. 152.**

(3)—*Penal Code, s. 224—"Offence," meaning of—What facts to be proved.*—The word 'offence' in "whoever escapes from any custody, in which he is lawfully detained for any such offence" is any offence, with which the accused is charged, or of which he has been convicted. The question, whether he is guilty of such offence, is immaterial. The facts to be proved are that he was charged with an offence, that he was lawfully detained in custody for that offence, and that he escaped from that custody. **3 L.B.R. 221=4 Cr. L.J. 389.**

(4)—*Penal Code, s. 225-B—Escape from custody—Unlawful detention—Liability.*—In order to obtain a conviction under s. 225-B of the Penal Code, it is necessary for the prosecution to prove that the custody from which the accused escaped was a lawful custody, *i.e.*, that the accused person was lawfully detained. **4 L.B.R. 103=7 Cr. L.J. 74.**

(5)—*Penal Code, s. 224—Meaning of term "any such offence"—Arrest for cognisable offence—Escape from lawful custody.*—The words "for any such offence" in s. 224, Penal Code, mean "for any such offence with which a person is charged or of which he has been convicted." Therefore, it is an offence for a person to escape from custody after he has been lawfully arrested on a charge of having committed an offence, although he may not be convicted of such latter offence. If a person is lawfully arrested, the subsequent detention of that person is also lawful, even if he may not be convicted of the offence for which he was arrested. **28 C. 253=5 C.W.N. 289.** [*R.*, 3 L.B.R. 221].

(6)—*Apprehension without warrant—Penal Code, s. 224*—If a person apprehended on a charge of a cognizable offence escapes from lawful custody, the circumstance that a competent Court determines his offence to be other than that with which he has been charged will not affect his liability to punishment. But if charged with a non-cognizable offence, the

Escape from lawful custody—continued.

police officer arresting him without warrant does not have him in lawful custody, and his escape is not punishable under the Penal Code, s. 224. **24 W.R. Cr. 45.**

(7)—*Penal Code, s. 224*—"*Lawfully detained in custody,*" *construction of.*—In construing the term "lawfully detained in custody" in s. 224, regard must be had to the nature of the custody itself as well as to the circumstances under which the authority to arrest and keep in custody arises. Detention in stocks of a person, who is not so sentenced for any offence, but who is detained in that manner simply as a convenient mode, is not legal custody. **1 Weir 199.** [*R.*, 5 M. 22=1 Weir 200].

(8)—*Crim. Pro. Code (1882), s. 167—Detention in custody—Escape from custody owing to negligence of police officer—Penal Code, ss. 222 and 223.*—A complaint by a private person was presented to a Magistrate that a certain person was concerned in a murder, and the Magistrate arrested him, and, after hearing the complainant and such person, sent him to the Superintendent of the Police. He, in turn, sent him to a Sub-Inspector. *Held*, that the Magistrate's order might be held to have been passed under s. 167, Crim. Pro. Code, and the Sub-Inspector was bound to detain him in custody, until released by due course of law, and that he was guilty of an offence under s. 222, I.P.C., by negligently suffering him to escape from his custody. **6 A. 129.**

(9)—*Crim. Pro. Code (1882), ss. 55, 110, 117, 118—Order requiring security for good behaviour—Nature of the order—Arrest of person—Penal Code, ss. 40, 224, 225.*—A person required to furnish security for good behaviour is not charged with an offence within the meaning of s. 44, I.P.C. Therefore, if such person, with the help of others, evades and resists his apprehension under s. 55, Crim. Pro. Code, and escapes, no offence made punishable by s. 224 or s. 225, I.P.C., is committed by him. **7 A. 67.** [*F.*, 9 A. 452].

(10)—*Penal Code, ss. 224, 411—Escape from custody—Thief arrested by private person with possession of stolen property—Legality of the arrest.*—The retention by the thief of the stolen property is not an offence within the meaning of s. 411. Where a private person, whose bullock was lost, traced the bullock to the house of the accused, who was the actual thief, arrested him and made him over to the police *chaukidar*, from whose custody he escaped, *held*, that the arrest was not lawful, as the offence of theft was not committed in the presence of the private person arresting him, and, therefore, the custody being illegal, his escape was not an offence under s. 224. Where a qualified person having made an arrest and handed over the person arrested to the custody of an agent, such custody continues to be, what it was originally, a lawful custody. **23 A. 266.** [*R.*, 29 A. 377=A.W.N. 1907, 94=5 Cr. L.J. 277; *D.*, 28 A. 372=A.W.N. 1906, 52=3 Cr. L.J. 247=3 A.L.J. 146; *F.*, A.W.N. 1907, 179=29 A. 575 =6 Cr. L.J. 10=4 A.L.J. 483].

Escape from lawful custody—continued.

(11)—*Penal Code, s. 225-B—Escape from custody—Defaulter for payment of Government revenue—Rules of Board of Revenue, rule 9, cl. (2)—Land Revenue Act (III of 1901), ss. 142, 143, 149.*—The use of the word "ordinarily" in rule 9, cl. 2, Rules of the Board of Revenue, relating to the recovery of arrears of revenue, shows that the intention of the Board was that in every case process should issue against the *lambardar* in the first instance, but that occasion may arise when it is found expedient to issue process in the first instance against the defaulter. Under s. 142, Land Revenue Act, all the proprietors are jointly and severally responsible to Government for revenue, and the arrears may be realised, under s. 146, by the arrest and detention of the defaulter, as defined in s. 143. The writ of demand and the writ of arrest and detention may issue simultaneously against the defaulter; the words of s. 146, Land Revenue Act, are wide, and there is nothing to limit the order in which they should issue. Hence, where a co-sharer had made default in the payment of Government revenue and under a writ of detention was confined in the lock-up wherefrom he escaped, *held* that he was guilty of an offence under s. 225-B, Penal Code. **7 A.L.J. 21.**

(12)—*Warrant in execution of decree—Escape from custody—Indian Penal Code, s. 174.*—S. 174 of the Indian Penal Code does not apply to the case of a defendant escaping from custody under a warrant in execution of a decree of Civil Court. **1 B.H.C. Cr. 38.**

(13)—Escape from custody under a warrant in execution of the decree of a Civil Court is not an offence punishable under s. 174, I.P.C. **27 P.R. 1870 Cr.**

(14)—A person escaping from custody under a warrant in execution of the decree of a Civil Court is punishable under s. 174. A revenue defaulter escaping from the custody of peon is punishable under s. 186, I.P.C. **1 P.R. 1871 Cr.**

(15)—*Convict escaping from custody—Trial in the district in which he escaped.*—A convict escaping from custody must be tried for that offence in the district within which he escaped; a Magistrate of another district has no jurisdiction to try him for the offence. **1 B.H.C. 139 Cr.**

(16)—*Penal Code, s. 223—Escape from custody of village policeman.*—A village policeman is nowhere required or authorized to take charge of convicted prisoners; hence, if a convicted prisoner escapes from his custody, the village policeman is not guilty of an offence under s. 223, I.P.C. **1 Bom. L.R. 349.**

(17)—*Penal Code, s. 224—Escape from custody of village watch-man—Crim. Pro. Code (1872), s. 105.*—Village *Talayari* and *Totti* are not Police Officers. Escape from their custody by a person wanted by the Police on a charge of theft is not an escape from lawful custody, if the offence of theft is not committed in the presence of either of them. **5 M. 22=1 Weir 200.** [*D.*, 1 Weir 200=11 M. 480=1 Weir 201 =17 M. 103].

Escape from lawful custody—continued.

(18)—*Escape from custody while being taken before Magistrate—Penal Code, ss. 224 and 225-A, convictions under.*—A person, who escaped from custody, while being taken before a Magistrate for the purpose of being bound over for good behaviour, cannot be convicted under s. 224 or s. 225-A of the Penal Code. **8 C. 331 = 10 C.L.R. 290.** [*F.*, 7 A. 67 = 4 A.W.N. 267].

(19)—*Penal Code, s. 224—Arrest of a person under the belief that he was an offender—Acquittal—Escape.*—A person arrested by a police constable under the belief that he was a man who had been charged with an offence, escaped from custody. He was subsequently brought to trial, and acquitted on the ground that he was not the person who was charged with that offence, but was another person bearing the same name as the real accused person. *Held*, that he was not liable to punishment under s. 224, Penal Code, for his escape from police custody, as he was not lawfully detained for any offence. **21 C. 337.** [*D.*, 5 C.W.N. 289 = 28 C. 253; *R.*, 3 L.B.R. 221].

(20)—*Crim. Pro. Code (1898), ss. 56 and 80—Arrest in accordance with an order in writing under s. 56—Police Officer making the arrest, whether bound to notify the authority of arrest.*—S. 80 should not be extended to an arrest made by the police on an order in writing under s. 56 so as to require that any information must be given to the person arrested in order to make it an arrest warranted by law. The order in writing is an authority to a subordinate police officer to make an arrest which the superior police officer, if present, could himself make on his own responsibility. It may be desirable or even obligatory that, if called upon, the police officer making such an arrest should show the person arrested the authority under which he is acting; but to hold that he is bound to do so before he can properly arrest and detain in custody such a person so as to make the arrest and the detention lawful, would be to extend the law beyond what the Legislature has thought proper to declare it. **27 C. 320 = 4 C.W.N. 311.**

(21)—*Crim. Pro. Code (1898), s. 79—Warrant of arrest, without endorsement of any name.*—Under the terms of s. 79, the endorsement should be regularly made by name to a certain person in order to authorise him to make the arrest. If not, the person resisting the arrest and escaping is not liable to be punished under s. 224, I.P.C. **4 C.W.N. 85.**

(22)—*Crim. Pro. Code, ss. 59, 239, 535 and 537—Joint trial of two cases of theft and rescuing from lawful custody the person accused of theft—Penal Code, s. 225—Nature of custody to support a conviction under.*—Where a person was charged with theft and two others were charged with rescuing the former from lawful custody and the Magistrate tried both the cases together and convicted all the accused in one trial, *held* that, although it was irregular to try both cases together, the accused, under the circumstances of the case, were not prejudiced by the irregularity. [*R.*, 83 P.L.R. 1901 = 7 P.R. 1901, 27 C. 839 = 4 C.W.N. 656, F.B.] It is not necessary that the custody from which a person is rescued should be the custody of a police officer to support a conviction under s. 225 of the Indian Penal Code. It is sufficient that the custody is one authorised by law. **11 M. 441 = 1 Weir 210.**

(23)—*Penal Code, s. 224—Arrest by private person on suspicion of theft—Accused handed over to village servants—Escape—Liability to punishment—Crim. Pro. Code (1882), s. 59.*—The intention of s. 59, Crim. Pro. Code, is to prevent arrest by a private person on mere suspicion or information and *not* to impose on him the obligation of taking the party arrested in person to a police station. Where an accused person was arrested by a person in whose view the offence of theft was committed and was handed over to the Village Magistrate, who sent him in the custody of two village servants to a police station, and the accused escaped on the way, *held*, that the accused was guilty of an offence under s. 224, Penal Code. **11 M. 480 = 1 Weir 200.** [*F.*, A.W.N. 1907, 179 = 29 A. 575 = 6 Cr. L.J. 10 = 4 A.L.J. 483; *R.*, 17 M. 103 = 1 Weir 201, 21 A.W.N. 77 = 23 A. 266].

(24)—*Penal Code, s. 224—Escape from the custody of a Village Magistrate—Madras Reg. XI of 1816, s. 5.*—By s. 5, Reg. XI of 1816, heads of villages are authorised and directed to apprehend all persons charged with committing crimes and to forward them to the police officer of the District. Where a person, who had been apprehended on a hue and cry being raised as he was running away after committing a robbery, was handed over to the Village Magistrate and was by the latter placed in charge of the *taliyaries* for detention till next morning, when he was to be taken to the police station, and the person escaped in the meanwhile from the custody of the *taliyari*, *held*, that the accused was rightly convicted of an offence under s. 224, Penal Code, inasmuch as the arrest was legal. **17 M. 103 = 1 Weir 201.**

(25)—*Penal Code, s. 224—Accused left unguarded—Escape.*—Where a person, who was legally arrested for an offence, was left unguarded, the police officer, in whose custody the accused was, having absented himself for a few minutes, and escaped, *held*, that the accused was guilty of an offence under s. 224, Penal Code. **18 M. 401 = 1 Weir 203.**

(26)—*Penal Code, s. 224—Custody for an offence committed against special or local laws—Escape—Held by the Full Bench, Innes, J., dissenting.*—A man who escaped from lawful custody in which he has been detained for an offence committed against special or local laws can be punished for such escape under s. 224, Penal Code. **3 M.H.C. App. 11.**

(27)—*Penal Code, s. 224—Custody for inability to give security, nature of.*—A person in custody owing to his inability to give security

Escape from lawful custody—continued.

is not in custody for an offence with which he has been charged or of which he has been convicted. **3 M.H.C. App. 23.**

(28)—A person, who is detained in custody for the purpose of giving security for good behaviour, is not in custody for an offence, although his detention may be lawful. **1 Weir 198=7 M.H.C. App. 41.**

(29)—*Penal Code, s. 224—Punishment under the section to be an addition to the original sentence—Crim. Pro. Code, s. 316 (=s. 396 of the Code of 1898)—Person in charge of prisoner becoming insensible—Escape.*—Under s. 224, Penal Code, the punishment prescribed for escape from lawful custody is to be in addition to the original sentence. The Court, in passing the sentence, must comply with the provisions of s. 316 (s. 396 of the Code of 1898). Where a prisoner was in a part of the jail, *held*, that the mere fact that the constable in charge of him became insensible could not determine the lawful custody of the prisoner. **1 Weir 203.**

(30)—Where a constable, in charge of a prisoner, who was taken out from the prison, became insensible, and the prisoner walked off, *held*, that the prisoner was not guilty of an offence under s. 224, Penal Code, inasmuch as the prisoner, when he escaped, was not in custody, the constable being insensible. **1 Weir 202.** [*D.*, 1 Weir 203].

(31)—*Penal Code, s. 224—Sentence of detention under a tree by a Village Magistrate—Madras Reg. XI of 1816.*—Reg. XI of 1816 does not authorise a Village Magistrate to order the detention, under a tree, of a person convicted before him. Such detention being illegal, the accused, if he escapes, cannot be said to have escaped from a lawful custody. **1 Weir 205.**

(32)—*Penal Code, ss. 174, 186 and 224—Escape from arrest on civil and revenue process.*—A process-peon went with a warrant to the village of the accused and told him that he was a process-peon of the Court, with a warrant for him and took him before the Village Magistrate. The Village Magistrate, then, read out the warrant to the accused and the process-server informed him that he must pay the amount or go before the District Munsiff. The accused offered to pay a less sum than that named in the warrant which the process-server refused to take and the accused then ran away. *Held*, that the accused was duly arrested and that he was in the custody of the process-server at the time he made his escape. **1 Weir 206.**

(33)—*Penal Code, s. 224—Escape from custody--Identity of person—Procedure.*—Where a person believed to be an escaped convict is brought before a Magistrate, the proper course is to charge and try him for an offence under s. 224 of the Penal Code, when his identity will have to be established by the prosecution. His identity cannot be the subject of an independent inquiry. **A.W.N. 1882, 77.**

Escape from lawful custody—concluded.

(34)—*Penal Code, s. 224—Escape of convict under sentence of death.*—Where an escaped convict under sentence of death was found and convicted under s. 224 of the Penal Code, the Court ordered the previous sentence to be carried into execution. **A.W.N. 1882, 164.**

(35)—*Penal Code, s. 225—Arrest by private person—Person arrested handed over to* chaukidar— *Escape.*—A private person arrested a person whom he saw committing theft, and made him over to a village *chaukidar*. While in custody of the *chaukidar*, the person who committed the theft was rescued by the accused. *Held* that they were lawfully convicted of an offence under s. 225, the original custody was lawful custody, and this custody did not become unlawful by associating the village *chaukidar*. **A.W.N. 1883, 214.**

(36)—*Penal Code, s. 224—Arrest on suspicion—Escape from custody.*—A person who has been arrested on suspicion (s. 54 of the Crim. Pro. Code) and escapes from such custody is guilty of an offence under s. 224, though it may be that he may happen to be acquitted of the offence of which he was suspected. **A.W.N. 1896, 151.**

(37)—*Right of entry in pursuit of prisoner escaped—Entry into lodging house.* A prisoner who has escaped from the custody of Court peons may be pursued into the yard of a lodging house, the door leading into which is open. **3 W.R. Cr. 68.**

(38)—*Rescue from lawful custody—Penal Code, s 225.*—For a conviction under s. 225, Penal Code, it must be established that the person whom the accused are charged with having rescued was in lawful custody at the time. **21 W.R. Cr. 22.**

(39)—*Penal Code, s. 225.*—A police officer duly appointed under Act V of 1861, and engaged in the discharge of his duty as such police officer at a time when an unlawful assembly took place, was held to be competent to apprehend any of the members of such unlawful assembly; and a person who rescued the persons apprehended was held to be guilty of rescuing from lawful custody within the meaning of s. 225, Penal Code. **13 W.R. Cr. 75.**

See ACT XXVI OF 1870, 4 N.W.P. 4.

See BOM. ACT XLVIII OF 1860, s. 8, 6 B.H.C. Cr. 15.

—Of judgment-debtor arrested without warrant, whether punishable—*See* ACT XIV OF 1882, s. 651, 5 A. 318.

See CONTEMPT OF COURT, 1 B.H.C. Cr. 38.

See PENAL CODE, ss. 23, 186, 22 C. 759.

See PENAL CODE, s. 186, 2 B.H.C. 123.

See PENAL CODE, ss. 221, 222, 223, 224 and 225.

See SENTENCE, Rat. Un. Cr. C. 965.

Estates Partition Act.

See BEN. ACT VIII OF 1876.

Estoppel.

See RIGHT OF SUIT, 6 C. 291=7 C.L.R. 433.

Europeans.

—Jurisdiction over, in the State of Sandoor—*See* JURISDICTION OF CRIMINAL COURTS, 3 M.H.C. 354.

European British Subject.

(1)—*Crim. Pro. Code, Ch. XXXIII—Rights and privileges of European British subjects.—Crim. Pro. Code (1872), s. 72.*—An European British subject, when tried by a District Magistrate, enjoys the following privileges:—*firstly*, that the Magistrate's powers of punishment are restricted and, *secondly*, that the accused can claim trial by jury. But, where the privilege of trial by jury is not claimed and the sentence passed is legal, the appellate Court has no right to order a new trial by a jury, but must dispose of the appeal on its own merits. **27 A. 397=2 A.L.J. 20=A.W.N. 1905, 5=2 Cr. L.J. 17.**

(2)—The provisions of s. 72 of tne Crim. Pro. Code of 1872 constitute a privilege in favour of a European British subject, *i.e.*, they do not so much take away jurisdiction entirely from Magistrates as confer on the accused a right to be tried by a certain class of Magistrates and by no others, which right the Code enables them to give up. No person can by waiver or consent enable a Magistrate or a Judge to try a case which he is disqualified to try by some circumstance not personal to the accused. **6 C. 83=6 C.L.R. 463.** [*Cons.*, 12 B. 561].

(3)—*Crim. Pro. Code (1882), ss. 197, 532—Commitment without previous sanction, of European British subject, who is also a public servant.*—A European British subject, who was a public servant within the meaning of s. 197, was committed by the Judicial Superintendent of Railways in H. H. the Nizam's Dominions, without obtaining a previous sanction. *Held* that the proceedings were irregular, and a subsequent sanction would be of no use. But the Judge had power, in his discretion, under the provisions of s. 532, to accept the commitment and to proceed with the trial. **9 B. 288, F.B.** [*Not followed*, 16 P.R. 1890 Cr.; *F.*, 22 B. 112; *D.*, 10 Bom. L.R. 1053].

(4)—*European British subjects in Mysore—Offence not punishable with death or transportation for life—Committal to Madras High Court.*—Inasmuch as the High Court of Madras has been duly constituted a Court of Original Criminal Jurisdiction to take cognizance of offences committed by European British subjects being christians, it may be that, in the absence of any special direction, a commitment to the High Court of such person charged with an offence not punishable with death or transportation for life, committed in Mysore Province, would be a good commitment. **5 M. 33=1 Weir 7.**

European British Subject—continued.

(4-*a*)—*European British subject—Offence in Native State—Jurisdiction—Penal Code.*—S. 44 of the Charter of the Supreme Court of Bombay gave to that Court jurisdiction over offences committed by European British subjects in Native States in alliance with the British Government, if the acts would be offence if committed in British territory. The High Court has, therefore, jurisdiction to try such offences on charges framed under the Penal Code. **8 B.H.C. Cr. 92.** [*R.*, 19 B. 105].

(5)—*Penal Code, s. 56—Penal servitude.*—The punishment of penal servitude is only applicable to Europeans and Americans. **19 M. 483=1 Weir 298.**

(6)—*Power of local Legislature to confer jurisdiction on Magistrate over European British subject for a newly created offence.—Quære.*—Whether the local Legislature has the power to render European British subjects punishable by a Magistrate on a summary conviction for an offence newly created by them. **5 M.H.C. 277.**

(7)—*Crim. Pro. Code (1872), s. 72 (=s. 44 of the Code of 1898)—Offence by an European British subject under Act I of 1859—Jurisdiction.*—No Magistrate, who is not a Justice of the Peace and also a European British subject, has jurisdiction to enquire into a complaint and try a charge under Act I of 1859, against a European British subject. **2 Weir 578=7 M.H.C. App. 32.**

(8)—*Crim. Pro. Code, s. 454—European British subject—Right to be tried as such—Waiver—Revocability of waiver.*—Where a European British subject waived his right to be tried as such, *held* that his waiver was not, under the circumstances, irrevocable, and that, if the withdrawal of the waiver was made promptly shortly after the waiver had been made, and if substantially nothing had been done in the interval on the abandonment of the privilege, the withdrawal of the waiver should be allowed. **1 P.R. 1908 Cr.=4 P.W.R. 1908=7 Cr. L.J. 274=136 P.L.R. 1908.**

(8-*a*)—*Opportunity to plead being European British subject—Plea not taken till too late—Waiver.*—A prisoner ought not to be allowed to plead that he is a European British subject. The mere statement of a prisoner that he is a European British subject made before a Deputy Magistrate after the completion of the trial cannot be acted on. **5 W.R. Cr. 53.**

(9)—*Trial of, by jury where there was no notification under s. 269, Crim. Pro. Code—Validity.*—Where a European British subject in the Punjab was tried with a jury instead of assessors, there being no notification under s. 269 of the Code in the Punjab, the Chief Court, under s. 536, Crim. Pro. Code, treated the jurors as assessors and considered the appeal on the merits of the conviction. **18 P.R. 1888 Cr.** [*Not F.*, 11 P.R. 1896 Cr.]

European British Subject—continued.

(10)—*Power to try or to commit European British subject to Sessions Court not taken away from Magistraies—Lower Burma Courts Act, s. 8 (1) (a) and (b).*—Tho provisions of s. 8 (1) (a) and (b) of the Lower Burma Courts Act, 1900, dc not mean that all commitments that are made of European British subjects must be made to the Chief Court of Lower Burma, but that, where, under the Code of Criminal Procedure, a commitment is made to a High Court, it is to be made to the Chief Court of Lower Burma. The power to try the case or to commit it to a Sessions Court is not taken away from Magistrate. **1 L.B.R. 158.**

(10-*a*)—*Mode of procedure—Charge against European British subject.*—Procedure with regard to European British subjects accused of an offence before a Magistrate. **6 W.R. Cr. 13.**

(11)—*Commitment to Sessions Court—Security proceedings—Power of Magistrate to commit—Power of Court of Session to proceed on such commitment—Crim. Pro. Code (1898), s. 107.*—A Magistrate instituting proceedings under s. 107, Crim. Pro. Code, against an European British subject, requiring him to show cause why he should not execute a bond for keeping the peace, has no power to commit him to the Court of Session, and the Court of Session has no power to proceed on such a commitment. **1 L.B.R. 275.**

See ACT V OF 1861, 3 N.W.P. 128.

See ACT XXI OF 1879, s. 8, 26 M. 607.

See ACT III OF 1880, s. 28, 40 P.R. 1884 Cr.

See ACT III OF 1884, s. 8 (6), 9 A. 420.

See COMMITMENT TO SESSIONS COURT, A.W.N. 1881, 150.

See CRIM. PRO. CODE (1898), s. 450, 11 P. R. 1896 Cr.

—Right to be tried by a jury—*See* CRIM. PRO. CODE (1898), s. 451 (1), 24 A. 511=A.W.N. 1902, 142, 2 P.R. 1896 Cr.

See CRIM. PRO. CODE (1898), ss. 452, 408, 404, 14 B. 160.

See CRIM. PRO. CODE (1898), s. 454, 5 P.R. 1885 Cr., 17 P.R. 1878 Cr., L.B.R. (1872-1892), 408.

See CRIM. PRO. CODE (1898), s. 526, 18 C. 247.

—In Native States—*See* HIGH COURT, JURISDICTION OF, 9 B. 288, F.B.

See HIGH SEAS, OFFENCE COMMITTED IN, 21 C 782.

See JURISDICTION OF CRIMINAL COURTS, 4 A. 141, 12 B. 561, 5 M.H.C. App. 25, 1 Weir 4=2 M.H.C. 444, 2 Weir 11=6 M.H.C. 11, 5 P.R. 1907 Cr.=6 Cr. L. J. 108=41 P.L.R. 1907=26 P.W.R. 1907.

See LOCAL GOVERNMENT, 5 M.H.C. 277.

European British Subject—concluded.

See MAGISTRATE, JURISDICTION OF, 16 M. 308=2 Weir 579.

See SECURITY TO KEEP THE PEACE, 36 C. 163=13 C.W.N. 151=8 C.L.J. 565=9 Cr. L.J. 36=9 Cr. L.J. 359=1 Ind. Cas. 737.

See WAIVER, 6 C. 83=6 C.L.R. 463.

European Soldier.

See ACT III OF 1880, s. 14, S.C. 104, Oudh.

Evidence.

1.—GENERAL.
2.—ADMISSIBILITY OF EVIDENCE.
3.—NON-ADMISSIBILITY OF EVIDENCE.
4.—CHARACTER EVIDENCE.
5.—DYING DECLARATION.
6.—EXPERT EVIDENCE.
7.—GENERAL REPUTE.
8.—HEARSAY EVIDENCE.
9.—MEDICAL WITNESS.
10.—REFRESHING MEMORY.
11.—STATEMENTS MADE TO POLICE.

——**1.—(General).**

See ACCUSED PERSON.

See EXAMINATION OF ACCUSED.

See CRIM. PRO. CODE (1898), ss. 287, 288, 289.

(1)—*Meaning of the term "Evidence"*—The term "evidence" in its ordinary sense, signifies that which makes apparent the truth of a matter in question. It is no doubt more frequently applied to proof before a judicial tribunal, but it is not necessarily confined to this sense; it is used with equal correctness to express the intimation acquired by any person, who undertakes an enquiry on any matter in question. **4 M. 393=1 Weir 76.**

(2)—*Rules of evidence, value of.*—Since, on the rules of evidence, the property, the liberty and the lives of men depend, it is of high importance that no security for truth, especially in criminal cases, should be weakened. **19 B. 749.**

(3)—*Circumstantial evidence—Its nature and effect.*—In India, evidence entirely circumstantial is frequently the most satisfactory evidence, though, in appreciating such evidence, a Court ought to see that each of the facts, from which the guilt is inferred, must be proved beyond reasonable doubt, and that there is a complete link of evidence leaving no reasonable ground for any conclusion consistent with the innocence of the accused. **15 P.R. 1867 Cr.**

(3-*a*)—It is not necessary that there should be direct evidence of an act of adultery nor that the adulterer should know whose wife the woman is, provided he knew she was a married woman. **21 W.R. Cr. 13.**

Evidence—continued.

——1.—(General)—*continued.*

(3-*b*)—But the Chief Court declined to confirm a sentence of death on a conviction for murder, which rested on circumstantial evidence or a violent presumption of guilt. **69 P. R. 1866 Cr.**

(4)—*Direct and indirect proof, distinction between.*—The Indian Evidence Act contains no reference to a distinction between direct proof and indirect proof or proof by circumstantial evidence. **44 P.R. 1888 Cr.**

(5)—*Of witness—Its admissibility and credibility distinguished—Crim. Pro. Code (1882), s. 288.*—Under s. 288 of the Crim. Pro. Code, the evidence of a witness duly taken in the presence of the accused before the committing Magistrate, may, in the discretion of the presiding Judge, if such witness be produced and examined, be treated as evidence in the case. But there is a manifest distinction between the admissibility and the credibility of evidence. As the Legislature, which has enacted what evidence is admissible, has never attempted the impossible task of enacting what witnesses should be believed by Courts of justice, all that can be said is that a provision, which makes the evidence of a witness before a committing Magistrate admissible as evidence at the Sessions trial, does not in any way relieve the Court of the duty of applying well-ascertained and well-established judicial principles as to sifting, scrutinizing, and weighing evidence before it accepts any particular evidence of a witness as true or most probably true. **L.B.R. (1893—1900), 280.**

(6)—*Recording of evidence in regular trials—Summary trial.*—In regular trials. the evidence has to be recorded in a narrative form and in the witness's own words, unlike summary trials where the evidence has not to be recorded and notes thereof may suffice. **L.B.R. (1893-1900), 626.**

(7)—*Evidence of a convict, value of.*—The evidence of a person who has been convicted of perjury, or of a person who has been convicted of a criminal offence, can hardly be regarded as entitled to the same credit, as would be accorded to the testimony of a person against whom no such imputation could be brought. **2 N.W.P, 97.**

(8)—*Evidentiary value of* kabuliyats, chittas, *accounts, receipts, and survey maps.—Kabuliyats, chittas,* accounts and receipts are valueless without proper oral evidence regarding them. **29 C. 187=29 I.A. 24=6 C.W.N. 386, P.C.**

(9)—A survey map is not direct evidence of title, in the same way as a decree in a disputed cause is evidence of title, for the survey officers have no jurisdiction to enquire into or to decide questions of title. But it is good evidence of possession according to the boundary demarcated. **9 C.L.R. 305.** [*R.*, 7 C.W.N. 349].

(10)—*Sessions trial—Right of accused to have his witnesses examined.*—The Sessions Judge has no option either to examine or not to examine the defence witnesses, and the accused is entitled, as of right, to have them examined. **118 P.R. 1866 Cr.**

(11)—*Depositions given in a former trial—Conviction thereon—Validity.*—Where, in a Sessions trial, the depositions of certain witnesses given at a former trial were read to them, and they were asked if they were true, a conviction based upon such evidence was not valid. **2 N.W.P. 100.**

(12)—The deposition of a witness in a former trial is not admissible, unless he is examined, where he is available for examination. **Rat. Un. Cr. C. 5.**

(13)—*Previous statements of witnesses incriminating the accused—Admissibility—Crim. Pro. Code (1882), s. 288.*—Former statements made by witnesses, in a different case, incriminating the accused in his absence, can only be used for the purpose of contradicting the statements now made by them, and they cannot be treated as independent evidence of the guilt or innocence of the accused for the simple reason that they were not made in the presence of the accused; and the mere fact that those statements have been put to the witnesses and referred to in the course of the evidence given before the committing Officer would not make them evidence against the accused. **23 C. 361.**

(14)—*Cross-examination—Discrepancies between deposition made before Magistrate and that before Judge.*—In a Sessions trial, the attention of the Jury may be called to the differences between the evidence given by witnesses in such Court, and that given before the committing Magistrate, without putting in the deposition taken before the committing Magistrate. **6 C.L.R. 390.** [*Overruled*, 31 C. 142, F.B.]

(15)—*Crim. Pro. Code (1882), ss. 107, 117, 118—Nature and* quantum *of evidence required before passing order for security to keep the peace.*—Although a Magistrate may initiate proceedings under s. 107, upon such information as may satisfy him as to the likelihood of a breach of the peace being committed, and although, in holding the enquiry under s. 117, the nature or *quantum* of evidence need not be as conclusive as in trial for offences, yet, the Magistrate should not proceed purely upon an apprehension of a breach of the peace, but is bound to see that substantial grounds for such an apprehension are established by proof of facts against such person implicated, which would lead to the conclusion that an order for security is necessary. When the nature of the information requires it, overt acts must be proved, before the Magistrate can make an order under s. 118 of the Code. **9 A. 452.** [*R.*, 15 A.W.N. 241, U.B.R. (1893—1900), 16 Cr.]

(16)—*Crim. Pro. Code (1861). ss. 295, 296—Evidence, recording of.*—Both under s. 295 and under s. 296 of the Crim. Pro. Code, evidence

Evidence—continued.

——1.—(General)—*continued.*

should be recorded to the effect specified in the sections, before security is ordered. **Rat. Un. Cr. C. 44=Cr. Rg. 15—12—1870.**

(17)—*Partly heard case—Power of one Magistrate to use evidence recorded by another Magistrate.*—Where a case was decided by the Magistrate of the District after the trial had been commenced before a subordinate Magistrate, and after a portion of the evidence had been recorded by that Magistrate, and the Magistrate utilized that evidence in his judgment, *held*, that such procedure was not legal. **2 N.W.P. 468.**

(18)—*Crim. Pro. Code (1872), ss. 27, 280—Admission of improper evidence—Power of High Court.*—If, in a case tried by a jury, the High Court finds that inadmissible evidence had been received, and if there was no evidence to go to the jury on which a conviction would reasonably be based, the High Court would simply reverse the conviction and sentence. If, on the other hand, the Court is satisfied that, independently of the evidence improperly admitted, there was sufficient evidence to justify the decision, or, in other words, that the prisoners had not been prejudiced by the admission of the illegal evidence, then, having regard to the provisions of s. 167, Evidence Act, 1872, the High Court should not interfere. But, where the evidence remaining after the exclusion of the inadmissible evidence, on which a jury might not unreasonably find the accused or some of them guilty, does not appear to be conclusive as to their guilt, the proper course should be to order a new trial. **10 B.H.C. 497.** [*R.*, Rat. Un. Cr. C. 245, 452, 19 B. 749].

(19)—*Discrepancies in oral evidence—Effect.*—Discrepancies are not less infirmative of testimony, because greater sagacity on the part of the witness would have avoided them. **11 B.H.C. 146.**

(20)—*Accused, if bound to produce any evidence—Evidence for the prosecution—Duty of accused to rebut it—Effect of the evidence not being rebutted.*—Although the accused is not "bound" to call any evidence at all whether the evidence for the prosecution was true or not, the Court is bound by well-ascertained principles and rules in dealing with evidence. If evidence stands unrebutted, it gains weight from the very fact of its being unrebutted, unless the circumstances are such that evidence in rebuttal can hardly be expected to be forthcoming. *Per Aston, J.* **6 Bom. L.R. 481.**

(21)—An accused person is under no obligation whatever to produce any evidence; and, until a strong case has been made out against him, no inference can be drawn from non-production of such evidence. **Rat. Un. Cr. C. 779=Cr. Rg. 43 of 1895.**

(22)—*Identification of thing containing poison in cases of murder by poisoning.*—Judges, who try cases of murder by poisoning, should invariably put beyond the possibility of doubt the identification of every single thing that is suspected to contain any poison. The evidence should be complete as to the history of such articles and it should be shown that they have been kept in proper custody throughout, if they are to be relied on as supporting a conviction, and there should be no possibility of any question being raised as to the identity of any such article. **7 Bom. L.R. 640=2 Cr. L.J. 585.**

(23)—*Evidence of identification—Practice.*—Evidence of identification is not necessarily untrue, because it was not given immediately after the occurrence. But when such evidence is withheld for a time, the Court should endeavour to obtain from the witnesses an explanation of the reason. **U.B.R. (1897-1901), Vol. I, 142.**

(24)—Panchnama—*Proof—Practice.*—It is necessary, if a *Panchnama* is to be put in, that it should be legally proved, for, it does not prove itself. **7 Bom. L.R. 978=3 Cr. L.J. 41.**

(25)—*Evidence given before the Magistrate—Use in Sessions Court, when such evidence is retracted.*—The only use that can be made of the evidence given against the accused by witnesses before the committing Magistrate, when such witnesses retract such statements in the Sessions Court, is to render the latter evidence valueless. The Sessions Court cannot convict the accused disbelieving the evidence given before it and believing the evidence given before the committing Magistrate. **Rat. Un. Cr. C. 39=Cr. Rg. 15—9—1870.**

(26)—*Respective duties of the Police and the Magistrate.*—The police perform their duty in *collecting evidence* and it is the function of the Magistrate alone to decide upon the sufficiency or credibility of this evidence when collected. **6 C. 496=7 C.L.R. 467.**

(27)—*Record of evidence for defence before case for prosecution closed—Effect on decision.*—The fact of a Deputy Magistrate having recorded some evidence for the defence, before the close of the case for the prosecution, would be no ground for reversing his decision. **8 C. 154=10 C.L.R. 51.**

(28)—*Option of prisoner to offer evidence or not.*—A prisoner is at liberty to offer evidence or not, and no inference, unfavourable to him, can be drawn, if he takes one course in preference to another. **10 C. 140=13 C.L.R. 358.**

(29)—*Evidence disbelieved in some parts and accepted in others—Validity of conviction based on such evidence,*—Where the evidence for the prosecution is disbelieved in parts, as to which the jury thought that the witnesses had committed perjury, it is not safe to accept their evidence in other parts and to convict the prisoner. **14 C. 164.**

(30)—*Penal Code, s. 159—Affray—Nature of evidence.*—The Court does not expect in an affray to find specific evidence as to the acts of each fighter. General evidence as to the accused taking part in it will be sufficient. **21 C. 392.**

Evidence—continued.

——**1.—(General)**—*continued.*

(31)—*Judgments in civil and criminal cases—Their admissibility in evidence in criminal prosecutions and civil cases respectively.*—*Per Rampini, J.*—A judgment in a criminal case cannot be received in a civil action to establish the truth of the facts upon which it is rendered. Similarly a judgment in a civil action cannot be given in evidence for such a purpose in a criminal prosecution, and the Magistrate ought to decide the question of the accused's criminality for himself, without reference to the decision of the Civil Court. *Per Ghose, J,*—The decision in a civil suit may be admissible in evidence in a criminal case, if the main issue in both the cases is identically the same. **23 C. 610.**

(32)—*Circumstantial evidence, conviction on—Validity.*—In the absence of direct evidence, a person may be convicted solely on circumstantial evidence. **4 C.W.N. cxvi.**

(33)—It is not safe to pass the extreme sentence of death in a case based on circumstantial evidence only. It is safer to pass a sentence of transportation for life. (*Per Kernan, J., Brandt, J., dissenting*). **2 Weir 736.**

(34)—*Circumstantial evidence strongly against accused—Conviction—Medical evidence.*—Though the circumstantial evidence in a case of murder may throw great suspicion on the accused, he should not be convicted in the absence of direct evidence connecting him with the crime. And where the medical evidence suggests suicide, the medical witness ought to be examined on the point. **S.C. 159, Oudh.**

(35)—*Crim. Pro. Code (1898), s. 503—Evidence taken on commission in Nepal—Admissibility—General Clauses Act X of 1897, s. 3 (27).*—Where evidence of certain witnesses in Nepal is taken on commission, the *onus* lies on those who rely on that evidence to approximately establish that Nepal comes within India as defined by s. 3 (27) of the General Clauses Act. **7 C.W.N. 635.**

(36)—*Inconsistency between first information and the theory of the prosecution—Circumstantial evidence.*—The inconsistency of the first information with the theory of the prosecution is a very weak feature of a case depending on circumstantial evidence. **9 C.W.N. 474=2 Cr. L.J. 255.**

(37)—*Trial for kidnapping, robbery and murder—Offences constituting parts of the same transaction—Verdict of jury in charge of robbery, admissibility of, in the charge of murder—Recent and unexplained possession of stolen property, whether evidence of murder.*—The accused, who were charged on three counts, namely, of kidnapping, robbery and murder, were tried on the second count by a Sessions Judge and a Jury, and on the first and third counts by the Sessions Judge and Assessors, the charge relating to a boy who was alleged to have been enticed away, robbed and murdered. The accused were convicted of robbery by the Jury and of kidnapping by Assessors and of murder by the Sessions Judge, who dissented from the verdict of 'not guilty' by the Assessors on the charge of murder. On appeal, *held*, that the accused were not prejudiced by the joint trial on all the three charges and that the verdict of the Jury could not be taken into consideration, in the appeal, on the question whether the evidence justified the conviction for murder. In cases in which murder and robbery have been shown to form parts of one transaction, the recent and unexplained possession of the stolen property, while it would be presumptive evidence on the charge of robbery, would similarly be evidence against accused on the charge of murder. **13 M. 426=1 Weir 290.**

(38)—*Magistrate, duty of, to consider whole evidence.*—In a case of breach of trust, the prosecution examined some witnesses and then produced a receipt with an affidavit by the complainant. The Magistrate, thereupon, passed an order:—"According to the affidavit and the receipt filed this day the case has become one of a civil nature." *Held*, the Magistrate ought, without confining himself to the affidavit and the receipt alone, to form his opinion on the whole evidence produced by the prosecution. **3 M.L.T. 324=7 Cr. L.J. 397.**

(39)—*Identification of accused—Duty of Court.*—In serious cases triable by the Court of Sessions, the witnesses should not be allowed to identify the numerous prisoners in a body and such statements as, "I identify all the prisoners as having taken part in the dacoity" are inadmissible. The witness should be called on to identify each individual prisoner and the identification of each should be separately recorded. Moreover, when the witness has pointed out each individual prisoner to the Judge, it is not sufficient for the Judge to make a note that the witness has done so. He should record the words in which the witness identifies the prisoner, as part of the witness's deposition. **3 O.C. 72.**

(40)—Where cases depend upon the identification of the accused with the offender, the Courts should narrowly scrutinize the evidence. **27 P.R. 1868 Cr.**

(41)—*Evidence of Judge—Personal knowledge.*—A Judge cannot, without giving evidence as a witness in the usual way, import into a case his own knowledge of particular facts. **5 O.C. 37.**

(42)—A Judge is not justified in proceeding in a case on his own personal knowledge. **5 C. P.L.R. Cr. 3**

(43)—*Medical opinion as to insanity, insufficient for quashing conviction.*—A conviction should not be set aside on the mere written opinion of a medical man that the convicted prisoner was insane at the time of his trial. **S.C. 53, Oudh.**

(44)—*Trial of several prisoners and a number of articles in evidence—Procedure.*—Where there is a number of prisoners under trial and

Evidence—continued.

——1.—(General) - *continued.*

a number of articles of property in evidence, the greatest care and precision are called for in taking the evidence, and it is essential to a proper trial of the case that it should be made to appear as clearly as possible what is the exact evidence against each person. The proper procedure, in such cases, described. **10 C.P. L.R. Cr 23.**

(45)—*Admissibility in—of insufficiently stamped document in criminal trials—Stamp Act, s. 61.*—The ruling laid down in 16 C. 432 that, in determining whether a document is sufficiently stamped for the purpose of deciding upon its admissibility in evidence, the document itself as it stands must be looked to, and not any collateral circumstances which may be shown in evidence, is not applicable to a criminal trial under s. 61, Stamp Act. It is only applicable to cases where the sufficiency of stamp appears on the face of the document, *e g.*, a cheque or a promissory note purporting to be payable on demand. **L.B.R. (1893 1900), 119.**

(46)—*Duty of the prosecution, in a criminal case, to procure—Of all persons connected with the transactions alleged.*—The accused, in this case, were charged with having abducted the complainant with the intention or knowledge that she would be forced or seduced to illicit intercourse. The whole case for the prosecution hinged on the question whether complainant, who was not a minor, was taken away *by force* against her will, or whether the apparent compulsion was only a show of force, a mere pretence done with her consent. According to the prosecution, about the time of the alleged offence, the complainant was living in a respectable house ; and, whether such evidence would be favourable to the prosecution cr not, it was the duty of the prosecution to let in the evidence of people, who lived in the house, for the purpose of proving the conditions under which she was residing there, so as to enable one to infer whether she was a free agent or a person acting under compulsion. The absence of this evidence was held to raise a strong presumption against the allegations made by the prosecution. The only witness called by the prosecution was the complainant herself ; and it was, therefore, *held*, that the prosecution failed in its duty, in not producing the independent evidence, that could have been produced, since it is the duty of the prosecution to call all the persons, who are shown to be connected with the prosecution and who, from such connection, must be able to give material evidence ; and the only thing that can relieve the prosecution from calling such witnesses is the reasonable belief that, if called, they would not speak the truth. **3 L.B.R. 133.**

(47)—*Adultery—Proof of marriage.*—In an offence like adultery, where the existence of marriage is an essential ingredient of the offence, it is incumbent on the prosecution to prove the *factum* of marriage strictly. The mere statement by the husband that he is married to the

Evidence—continued.

——1.—(General)—*continued.*

complainant is not sufficient proof of marriage. **40 P.R. 1882 Cr.**, ***Contra***, **5 P.R. 1894 Cr., 23 P.R. 1895 Cr.**

(48)—*Conviction—Reference for confirmation of sentence passed—Accused committing violent act—Medical evidence—Whether such evidence afforded sufficient reason for altering original sentence.*—*Held*, that, though the medical evidence, proving that the accused committed the violent act proved against him, whilst in a trance arising from epilepsy, and that, at the time, he did not know the nature of his act, or that he was doing wrong, did not afford the real explanation of the cause of the accused's act, it afforded sufficient reason for altering the sentence originally passed. **14 Bur. L.R. 169.**

(49)—*Evidence partly recorded by one Magistrate and partly by another—Conviction—Validity.*—*Held*, that a conviction by a District Magistrate based on evidence partly recorded by a subordinate Magistrate, was not illegal. **5 C.P.L.R. 20 Cr.**

(50)—*Previous conviction—Evidence.*—The extract from a calendar, recording a previous conviction, is not evidence of that conviction without proof of identity, and in no case, will it amount to proof of alleged earlier convictions. **2 Weir 393.**

(51)—*Books, reference to, during trial.*—Well-known treatises (*e.g.*, Taylor's Medical Jurisprudence) may be referred to in the course of a trial. **10 C. 140=13 C.L.R. 358.**

(52)—*Doubtful cases—Admissibility of evidence.*—In cases of doubt, the Judge should decide in favour of the admissibility of the evidence under consideration rather than of non-admissibility. *Per* Straight, J. **12 A. 1.**

(53)—*Summing up of evidence by Sessions Judge, record of—how to be made.*—If the Sessions Judge is not able to record the substance of his summing up of the evidence in the case, he should employ an independent person to record it and not ask the public prosecutor to do it. **9 C. 875=12 C.L.R. 506.**

(54)—*Statements by accused.*—Statements by accused persons can only be received as evidence against themselves, and not in corroboration of the evidence of an approver as against his co-accused. **2 N.W.P. 336.**

(55)—*Crim. Pro. Code (1882), ss. 248, 337, 345—Theft—Co-accused—Evidence—Admissibility.*—Where the Magistrate, having issued a warrant against A on a complaint of theft, allowed the complaint to be withdrawn as against her and examined her as a witness against another co-accused person, *held* that the evidence was inadmissible, the offence being one which could not be compounded under s. 345 or withdrawn under s. 248 of the Crim. Pro. Code, and not one in which pardon could be tendered under s. 337, and the Magistrate not having discharged A under s. 253. **Rat. Un. Cr. C. 461=Cr. Rg. 18 of 1889.**

Evidence—continued.

——1.—(General) - *continued.*

(56)—*Evidence of Police Inspector regarding approver's confession.*—The deposition of a Police Inspector that a person since dead, had, in the capacity of an approver, made a statement implicating the present accused, was held not to be admissible in evidence against the accused. **A.W.N. 1881, 164.**

(57)—*Crim. Pro. Code (1882), s. 288—Admissibility of evidence given at preliminary enquiry at Sessions trial—Rumours—Hearsay evidence.*—Before a Judge presiding at a criminal trial can use, as evidence, on which, in whole or in part, to form his judgment, the deposition of a witness taken before the committing Magistrate, he is bound to let his intention, or the possibility that he may do so, be known to the accused and to the prosecution, in order to afford the accused and the prosecution an opportunity for testing such statement by cross-examination or otherwise dealing with such statement as part of the case which may be taken into consideration by the Judge. Otherwise, it is impossible for the prosecution or the defence to deal with the matters which may influence the Judge's mind in coming to a decision. [*R.*, 28 A. 683=3 A.L.J. 852=A.W.N. 1906, 187=4 Cr. L.J. 61]. A Judge should be most careful not to allow his judgment to be influenced by mere rumour or hearsay evidence, which, from not being objected to, possibly gets before him, particularly when persons whose statements are spoken to could be called as witnesses and have not been called. **A.W.N. 1886, 256.**

(58)—*Crim. Pro. Code, Act X of 1872, amended by Act XI of 1874, s. 249—Depositions in preliminary inquiry.*—Under s. 249 of the Crim. Pro. Code, 1872, as amended by s. 20 of Act XI of 1874, depositions made in a preliminary enquiry are evidence in the Sessions Court, only when the Sessions Judge determines in his discretion to use them as such. It is his duty to use them as evidence when there is material discrepancy between such deposition and the evidence given by the witnesses in his Court. When he fails to do it, the appellate Court either orders a new trial or the further examination of the witnesses with reference to the previous depositions. **11 B.H.C. 281.** [*R.*, Rat. Un. Cr. C. 728, 31 C. 142, F.B.]

(59)—*Report made at a thana—Deposition of witnesses in another case—Evidence.*—Although a report of the commission of an offence, made at a *thana*, or the deposition of a witness previously made in another case in which the accused is a different person, may be used in a criminal case to corroborate or cross-examine a witness, such reports or depositions are no evidence of the existence of facts of which they may make mention. **A.W.N. 1897, 47.**

(60)—*Evidence—Appreciation.*—A Judge is not right in discarding the whole of the direct evidence of credible and unimpeached witnesses who state on oath that they saw a thing being done, on the strength of the opinion of a medical witness to the effect that such a thing could not have been done. **A.W.N. 1889, 74.**

Evidence—continued.

——1.—(General)—*continued.*

(61)—A jury should not be told that the prisoners had previously been bad characters. It is a fact to be taken into consideration by a Sessions Judge after conviction and when awarding sentence. **10 W.R. Cr. 39.**

(62)—*Previous conduct and character.*—A prisoner's character and previous conduct, being matters of prejudice and not direct evidence of facts relevant to the charge against him, ought not to be put before the jury. **10 W.R. Cr. 17.**

(63)—*Records of former trial—Depositions in former case.*—The power of Civil Courts to call for and inspect the records of a previous trial ought to be exercised with the greatest caution, and does not extend to criminal proceedings. **12 W.R. Cr. 73.**

(64)—*Documents not on record before Sessions Judge.*—Case where certain documents on the record sent up by the Magistrate, but which were not put in evidence before the Sessions Judge, were looked at because they told in favour of the prisoner. **10 B.L.R. 332.**

(65)—*Documents tendered in civil case—False evidence, trial for giving.*—Documents filed in a civil suit, if adduced in evidence in a prosecution for giving false evidence, must be proved in the Criminal Court before they can be admitted in evidence. **9 W.R. Cr. 58.**

(66)—*Written reports of depositions—Crim. Pro. Code (1861), s. 369.*—Written reports of depositions, except under s. 369 of the Code of Criminal Procedure, 1861, are no evidence. **6 W.R. Cr. 92.**

(67)—*Deposition of dead witness.*—The deposition of a witness alleged to be dead must be preceded by strict proof of the death, unless it is admitted on the other side, and the reading of the deposition is not objected to. **4 B.L.R. Ap. 50=12 W.R. Cr. 80.**

(68)—*Deposition of absent witnesses—Act I of 1859, s. 111.*—The deposition of a merchant seaman alone and of no other is admissible in evidence under s. 111 of the Merchant Shipping Act (I of 1859). **1 Hyde, 195.**

(69)—*Depositions taken before Civil Court—Crim. Pro. Code (1861), s. 369—Evidence Act (II of 1855), s. 67.*—When a Civil Court, authorising a criminal prosecution in cases of offences against public justice simply refers the proceedings and leaves it to the Magistrate to commit or not, the depositions taken before the Civil Court are not relevant as depositions taken before the Magistrate are, in certain cases under s. 369, Code of Criminal Procedure. But under s. 57, Act II of 1855, the improper admission of such evidence is no

Evidence—continued.

——1.—(General)—*continued.*

ground for the reversing a Sessions Judge's sentence, when, apart from that evidence, there is sufficient evidence to justify the decision. **6 W.R. Cr. 41.**

(70)—*Crim. Pro. Code (1861), s. 369.*—Where a deposition is admitted in evidence under s. 369, Code of Criminal Procedure, at a Sessions trial, the record must contain distinct proof of the existence of such a state of things as makes the deposition legal evidence. **7 W. R. Cr. 114.**

(71)—*Depositions taken by Collector.*—A prisoner's evidence taken by a Collector was held inadmissible against him on his trial before a Magistrate. **10 W.R. Cr. 23.**

(72)—*Absence of accused.*—Where the evidence of witnesses taken in the absence of the prisoner at a former trial was read out to them, and put in on their assenting to it as a true record of the facts, *held* that the proceeding was irregular and prejudicial to the prisoner; that such witnesses should have been subjected to a fresh oral examination; and that then the former depositions might have been put in not to add to their testimony, but to corroborate it. A new trial was ordered. **3 B.L.R. A. Cr. 20 = 12 W.R. Cr. 3.**

(73)—In a case where the accused was bound down to keep the peace, the Magistrate admitted in evidence the depositions of witnesses in cases in which the accused was tried on a charge of being a member of an unlawful assembly and of rioting, and was acquitted. *Held* that this evidence ought not to have been admitted. **24 W.R. Cr. 4.**

(74)—*Absence of accused.*—A Magistrate took the depositions by reading over to the witnesses depositions made by them in another case, at the hearing of which the prisoner was not present, and by procuring them to affirm the truth of the same. *Held* that the depositions were illegally taken, and, therefore, could not sustain a charge. **1 B.L.R. O. Cr. 36.**

(75)—The prisoners were convicted under s. 154 of the Penal Code, upon evidence taken in another case to which the prisoners were not parties. The conviction was set aside. **6 B.L.R. Ap. 83 = 15 W.R. Cr. 6.**

(76)—Case where the evidence taken on the trial of one prisoner wrongly admitted as evidence on the trial of another. **8 B.L.R. Ap. 21 = 16 W.R. Cr. 36.**

(77)—The deposition of a witness in a previous case is not relevant in a subsequent case in which he is examined, except to contradict him. **8 W.R. Cr. 87.**

(78)—*Depositions in previous case.*—Sworn statements of witnesses previously made are not evidence in a subsequent trial. **7 W.R. Cr. 8.**

Evidence—continued.

——1.—(General)—*continued.*

(79)—*Depositions of witnesses taken by Magistrate—Admissibility on appeal.*—One condition which must be fulfilled before using on appeal the depositions of witnesses taken before a Magistrate is that, either in the depositions or elsewhere, the evidence must be shown to have been read over or interpreted to the respective witnesses. **14 W.R. Cr. 13.**

(80)—*Mode of recording depositions—Evidence of.*—Where a writer in the Judicial Commissioner's Office deposed to the effect that "the document shown to him was a deposition taken before the Assistant Commissioner, taken in due form upon solemn affirmation and attested by the signature of the Assistant Commissioner," *held*, it was not sufficient evidence of the prisoner having duly deposed. **3 B.L.R. A. Cr. 36 = 12 W.R. Cr. 31.**

(81)—*Mode of recording depositions—Crim. Pro. Code (1882), s. 355—Crim. Pro. Code (1861), s. 195—Memo of depositions of witnesses.*—A memorandum by a Judge that the deposition of certain witnesses was the same as that of the former witnesses contravenes the requirements of s. 195, Code of Criminal Procedure. **W.R. 1864 Cr. 18.**

(82)—*Procedure.*—For a dying declaration to be received in evidence, there must be a finding that the person who made the declaration knew or believed at the time he made it that he was dying or was likely to die. A Sessions Judge who observes from the Magistrate's record that there is evidence which could prove that the declaration was a dying declaration should call for that evidence. Where dying declarations are made, a Magistrate should examine the complainant on the point, and record the question as well as the answer to it upon the record of the examination. **15 W.R. Cr. 11.**

(83)—*Crim. Pro. Code (1861), s. 371.*—Before admitting in evidence a dying declaration under s. 371, Code of Criminal Procedure, a Sessions Judge should consider whether the declarant believed himself to be in danger of approaching death. The evidence of persons who cannot depose to their own personal knowledge of such a declaration is irrelevant, and, in deciding whether the accused is guilty of the charge of murdering the deceased declarant, the Court should only enquire into the facts which occurred on the day of the murder. **10 W.R. Cr. 11.**

(84)—*Police evidence, diaries, papers and reports—Evidence of Police Officer—Act II of 1855, s. 31.*—The practice of not examining a police officer who investigates a case condemned. The statements made to him might be proved by him in the witness-box, and would be admissible to corroborate the evidence of other witnesses on the same point given in Court before the Magistrate and the Sessions Judge under s. 31, Act II of 1855. **11 W.R. Cr. 25.**

Evidence—continued.

——1.—(General)—*continued.*

(85)—*Police diaries—Corroborative evidence.*—Police diaries cannot be legally used as corroborative evidence under s. 154, Code of Criminal Procedure, 1861. **13 W.R. Cr. 22.**

(86)—Police diaries cannot be legally used as substantive evidence or read to the jury. **8 W.R. Cr. 68.**

(87)—*Use of portion of diary — Crim. Pro. Code (1861), s. 154.*—Where certain portions of a police officer's diary are used as evidence against him, s. 154 of the Code of Criminal Procedure does not bar the admission of other portions of the diary as explaining the portions so used. **8 W.R. Cr. 87.**

(88)—*Police papers—Judicial notice.*—Police papers ought not to be taken judicial notice of as evidence, nor consulted in order to test the evidence in the case. **8 W.R. Cr. 35.**

(89)—Police reports are not evidence, except against the reporting police officer. **6 W.R.Cr. 52.**

(90)—*Crim. Pro. Code, Act XXV of 1861, s. 205.*—A Deputy Magistrate committed certain prisoners for trial on a charge of dacoity. Some of the prisoners had confessed before the Deputy Magistrate, but he failed to record the examination of the prisoners, or to attest it, as required by s. 205 of the Code of Criminal Procedure. The Sessions Judge, therefore, refused to admit the examination of the prisoners by the Deputy Magistrate in evidence, and also refused to postpone the trial for the purpose of summoning the Deputy Magistrate, and taking his evidence in the matter. *Held* that the examination of the prisoners was inadmissible in evidence. **3 B.L.R. A. Cr. 59=12 W.R. Cr. 44.**

(91)—*Statements to police officers—Admission of guilty knowledge—Crim. Pro. Code (1861), s. 150—Dacoity.*—To make a prisoner's admission of guilty knowledge of the means by which money supposed to have been acquired by dacoity was obtained, evidence under s. 150 of the Code of Criminal Procedure, it must be shown that the admission was antecedent to the discovery of the money. **17 W.R. Cr. 50.**

(92)—*Statements to police officers—Statement of accused overheard by police officer.*—The evidence of a policeman who overheard a prisoner's statement made in another room, and in ignorance of the policeman's vicinity and uninfluenced by it, is not legally inadmissible. **7 W.R. Cr. 56.**

(93)—*Statements not made in Court—Evidence Act, II of 1855, s. 31.*—It is not competent to a Court of Session to inspect an original report from the office of the Superintendent of Police, and to make it evidence against the prisoners. Statements made otherwise than before the Court and officers specified in s. 31, Act II of 1855, may be given in corroboration of the testimony; but such statements must be regularly proved by the person who received them or by some one who heard them given. **7 W.R. Cr. 31.**

Evidence—continued.

——1.—(General)—*continued.*

(94)—*Breach of the peace, likelihood of—Report of police officer.*—The report made by a police officer that there was a likelihood of there being a breach of the peace was held not to be legal evidence to prove the existence of any dispute likely to cause a breach of the peace. **6 B.L.R. Ap. 148=15 W.R. Cr. 42;** 3 B.L.R. A. Cr. 4=11 W.R. Cr. 46, 7 B.L.R. 329, 9 B.L.R. Ap. 45, 18 W.R. Cr. 64.

(95)—*Previous convictions—Admissibility of evidence.*—Previous convictions are inadmissible in evidence. **7 W.R. Cr. 7.** 8 W.R. Cr. 11.

(96)—*Previous convictions—Report from Record office*—A *kaifeut*, or report from the record office, that A had been convicted of a crime, is no evidence of a previous conviction. There should be sworn testimony to the fact and also to the identification of the prisoner before the Court. **6 B.L.R. Ap. 15=15 W.R. Cr. 53.** 15 W.R. Cr. 52.

(97)—*Letters--Letters implicating prisoner found in his house.*—Letters, etc., found in a man's house after his arrest and while he was in custody, though not admissible in evidence generally, are subject to the exception that, if the previous existence of the letters found is established, either by direct proof or strong presumptive evidence, that is, if their previous existence has been proved, they will become admissible. **9 B.L.R. 36=17 W.R. Cr. 15.**

(98)—*Handwriting, Knowledge of.*—The knowledge by the Sessions Judge of the handwriting of the judicial officer before whom the statement was made is no evidence of the statement having been made before that officer. **1 B.L.R. A. Cr. 13.** 10 W.R. Cr. 37.

(99)—*Murder cases—Officer preparing* "surat hal," *examination of.*—The officer who prepares the "*surat hal*" should be examined in cases where culpable homicide is charged, when decomposition leading to obliteration of marks of injury has set in between the date of the preparation of the "*surat hal*" and the *post mortem* examination. **9 P.R. 1888 Cr.**

(100)—*Joint trial—Retrial of one of the accused ordered—Convict, whether can depose in new trial*—Where the conviction of one of two persons jointly tried and convicted is set aside and a retrial is ordered, the other person can be lawfully examined as a witness in the new trial. **23 P.R. 1878 Cr.**

(101)—*Joint trial—Retrial ordered as against some of the accused—Convict, whether can depose in retrial.*—Where one only of three persons jointly tried was convicted and the appellate Court ordered the retrial of the acquitted person, confirming the conviction of the accused who was convicted by the lower Court, *held*, that the latter was competent to be examined in the retrial of the other two accused, as he was in no sense an accused person. **8 P.R. 1904 Cr.**

***Evidence*—continued.**

——1.—(General)—*continued.*

(102)—*Dishonest possession of stolen property—Guilty knowledge to be proved—Recognition of things not before witnesses not evidence against accused.*—In order to establish the offence of dishonestly retaining stolen property, it must be proved that the accused had a guilty knowledge and that the property had been stolen. Recognition of things not before the eyes of the deposing witnesses is not evidence against a prisoner, accused of having been in possession of those things. **8 W.R. Cr. 16.**

(103)—*Sessions trial—Opinion of assessors given—Further evidence.*—In a sessions trial, after the opinion of the assessors is given, no further evidence can be taken, as the trial ends with the opinion of the assessors. **14 P.R. 1870 Cr.**

(104)—*Notes on inquiry by registering officer.*—The notes of an inquiry held before a registering officer are not admissible as evidence of what the prisoner said on that occasion. **11 W.R. Cr. 13.**

(105)—*Criminal trial—Duty of prosecution.*—The prosecution in a criminal case is bound, notwithstanding the fact that it is for the accused to establish in his defence any exception on which he relies, to throw all the light within its power upon all controverted facts relevant to the main issue. The police is bound to test the truth or falsity of any exculpatory statement made by the accused without delay and to lay before the Court any evidence which tends to establish its truth or falsity. **1 P.R. 1888 Cr.**

(106)—*Comparison of native seals—Evidence Act, 1855, s. 48.*—S. 48, Act II of 1855, is applicable to criminal trials. The test of comparison of native seals is at best but a fallible one, and must always be received with extreme caution. **6 W.R. Cr. 5.**

(107)—*Statement under promise of pardon.*—Where a statement is made under a promise of pardon it is not relevant against a prisoner. **8 W.R. Cr. 53.**

(108)—*Admission by husband of having kicked his wife—Causing death.*—A husband admitting in the presence of several witnesses that he had kicked his wife, and that she died after it, was held to furnish direct evidence against himself. **8 W.R. Cr. 29.**

(109)—*Confession of prisoner made to Magistrate or to private person.*—Where a confession is made to the Joint Magistrate of a District in charge of the Sudder Sub-division, it is admissible in evidence, even if the joint Magistrate is not specially empowered, under Act VIII of 1869, to receive the confession of the prisoners. A confession before a private individual may be relevant against the prisoner if proved by the person before whom it was made. **13 W.R. Cr. 69.**

***Evidence*—continued.**

——1.—(General)—*continued.*

(110)—*Statements of prisoners—Depositions before Magistrate.*—The bare statements of prisoners are inadmissible in evidence; so are depositions before the Magistrate except to contradict the evidence of the same witnesses as given before the Sessions Court. **7 W.R. Cr. 108.**

(111)—*Statement of prisoner before Magistrate—Attestation of Magistrate.*—It is not necessary for a Sessions Judge to read out to prisoners confessions made by them before a Magistrate, and ask them if they have any objection to the reception of these confessions. The examination of prisoners before a Magistrate is to be received in evidence, and the attestation of the Magistrate is *prima facie* proof of the circumstances. **14 W.R. Cr. 9.**

(112)—*Attestation of Magistrate.*—The attestation of a Magistrate stating why he could not proceed with the further examination of a witness is *prima facie* proof of the fact, and may be laid before a jury. **12 W.R. Cr. 51.**

(113)—*Attestation of Magistrate.*—If the attestation of the Magistrate is affixed to a statement made by the accused before such Magistrate, it is *prima facie* proof of such statement having been made, and it is to be presumed that the proceedings were regular. **11 W.R. Cr. 39.** 7 B.L.R. 67, 2 B.H.C. 131, 2nd Ed., 125.

(114)—*Crim. Pro. Code (1861), s. 205.*—A statement made by a prisoner before a Magistrate, though signed by the Magistrate, but without the certificate required by s. 205 of the Code of Criminal Procedure, does not of itself constitute *prima facie* evidence of his examination, within the meaning of s. 366 of that Code; and not giving other proof to show that the statement was made by the prisoner before the Magistrate will make the statement inadmissible as evidence at the sessions. **14 W.R. Cr. 10.**

(115)—*Examination of accused—Crim. Pro. Code (1861), ss. 205, 366—Attestation of Magistrate.*—For the examination of a prisoner in the presence of the committing officer to be used as evidence against him under s. 366, Crim. Pro. Code, the requirements of s. 205 of that Code should be complied with, and the attestation of the committing Magistrate affixed in full to the examination. **15 W.R. Cr. 83.**

(116)—*Evidence Act, s. 91—Crim. Pro. Code (1872), s. 339—Prosecution for false evidence.*—Where, in a case of giving false evidence, the English record written by the Magistrate was put in to prove what the accused had stated before him and the document was not interpreted to the accused in the language in which it was given or which he understood; nor read over in accordance with the requirements of s. 339, Code of Criminal Procedure, in the presence of the person then accused, *held* that the English record of the Magistrate was

Evidence—continued.

——**1.—(General)**—*continued.*

irrelevant, under the Evidence Act, s. 91, to prove what the prisoner said before the Magistrate. The exact words which are used by the person who is charged with perjury must form the basis for charges of perjury; and no evidence which does not purport to give those exact words can alone suffice for a conviction. **23 W.R. Cr. 28.**

(117)—*Omission to make memorandum of evidence by Civil Court in case of perjury.*—A Civil Court in a case of perjury omitted to make a memorandum of the evidence of the accused when examined before it. *Held* that the omission did not vitiate the depositions, if the evidence itself was duly recorded in the language in which it was delivered in such court. **9 W. R. Cr. 69.**

(118)—*Statement of accused before Magistrate—Mode of recording evidence—Crim. Pro. Code (1872), s. 80.*—Where the deposition of a prisoner was given in Hindustani, but taken in English by the Magistrate, and the memorandum at the foot of the deposition that it was read to the witness and was by him acknowledged to be correct, was not quite satisfactory, it was yet held to be relevant as a proper deposition within the provisions of the Crim. Pro. Code and the memorandum was held to have been taken under s. 80, Code of Criminal Procedure, as evidence of the facts stated therein, and as affording some evidence of the correctness of the translation. **22 W.R. Cr. 2.**

(119)—*Examination of accused person—Mode of recording evidence.*—The examination of an accused person should be recorded by the courts in the language in which it is delivered and as far as possible in his own words. **24 W.R. Cr. 54.**

(120)—*Gazette of India—Calcutta Gazette—Act II of 1855, ss. 6 and 8—Official letters.*—The Gazette of India or the Calcutta Gazette, containing official letters on the subject of hostilities between the British Crown and Mahomedan fanatics on the frontier, was rightly admitted in evidence under ss. 6 and 8 of Act II of 1855 as proof of the commencement, continuation, and determination of such hostilities. Similarly under s. 6, a printed letter from the Secretary to the Government of the Punjab, to the Secretary to the Government of India, was properly resorted to by the Court for its aid as a document of reference. It was not necessary that these documents should be interpreted to the prisoner. It was sufficient that the purposes for which they were put in were explained. **7 B.L.R. 63=15 W.R. Cr. 25.**

(121)—*Admissibility of wife's evidence for or against husband or person charged jointly with him.*—Upon a criminal trial in the mofussil, the evidence of a wife was held to be admissible for or against her husband or persons charged jointly with him. **B.L.R. Sup. Vol. App. 11 =6 W.R. Cr. 21. 7 B.H.C. Cr. 50.**

Evidence—continued.

——**1.—(General)**—*continued.*

(122)—*Evidence of person bribing.*—The evidence of the person who bribes is admissible against the person bribed. **3 W.R. Cr. 19.**

(123)—*Crim. Pro. Code (1861), ss. 205, 211 and 366.*—A person who, in the opinion of a Sessions Judge has infringed the conditions under which a pardon has been extended, ought not to be tried by the Sessions Judge in the exercise of the power given him under s. 211, Crim. Pro. Code, along with the prisoners in whose case he has already given testimony. **14 W.R. Cr. 10.**

(124)—*Evidence Act—Main heading—(1872, s. 34).*—Independent primary evidence of the payment to which the entries refer, in factory books, is not afforded by the books themselves. **23 W.R. Cr. 27.**

(125)—*Record of proceedings of Small Cause Court—Summons book.*—The summons book of the Small Causes Court, Calcutta, was held to be admissible in evidence, though not signed by the presiding Judge. **6 B.L.R. 729.**

(126)—*Authentication of record.*—The record of proceedings in the Small Causes Court is not admissible in evidence unless authenticated by the signature of the presiding Judge. **6 B. L.R. 730, Note.**

(127)—*Burden of proving exemption from criminal liability.*—The absence of all circumstances constituting either a special or a general exception is to be presumed, and the burden of proving them lies upon the accused, and it is not for the prosecution to negative such circumstances. **27 P.R. 1887 Cr.**

(128)—*Copy of translation of Magistrate's order in English—Evidence of admission.*—Evidence of an admission is not afforded by a copy of the translation of what a Magistrate is supposed to have said in English in a proceeding under Act IV of 1840. **7 W.R. 141.**

(129)—*Plan, proof of.*—A witness's statement that a plan was prepared in his presence and bears his signature is not a sufficient reason for admitting the plan in evidence. The witness should depose to his knowledge that it is correct. **11 B.H.C. 242.**

See ACCOMPLICE, L.B.R. (1872—1892), 54, L.B.R. (1872—1892), 246.

See ACCUSED PERSON, 10 M. 295=L.B.R. (1893—1900), 368.

—Notes of.—*See* ACT X OF 1875, s. 147, 15 B.L.R. App. 14.

—Serial written information, if evidence—*See* ACT I OF 1878, ss. 14, 15, 16, 4 L.B.R. 121=14 Bur. L.R. 202=7 Cr. L. J. 87.

—Arms found in house occupied by a Hindu joint family—Evidence of possession—*See* ACT XI of 1878, s. 25, 15 A. 129.

—Admissibility of personal knowledge of Judge—*See* ACT XVIII OF 1879, s. 36, 120 P.L.R. 1909.

Evidence—continued.

——1.—(General)—*continued.*

See ACT XVIII OF 1891, ss. 2 and 4, 4 C. W.N. 433, F.B.

See BOM. ACT IV OF 1887, 5 Bom. L. R. 1047.

—*See* PUNJ. ACT XX OF 1891, s. 95, 31 P. W.R. 1908 Cr.

See ACT III OF 1867=ss. 4, 5 and 6, A.W.N. 1905, 257=28 A. 210.

See APPEAL, 2 A. 386, 6 B.H.C. Cr. 64, 11 O.C. 360=9 Cr. L.J. 55.

See APPROVER, 4 M.H.C. App. 21.

—Recording evidence in the absence of assessors—*See* ASSESSORS, 15 A. 136.

See ASSESSORS, 15 W.R. Cr. 3, 9 C. 875=12 C.L.R. 506.

See BAIL BOND, 55 P.L.R. 1902.

—Complaint by accused in previous trial—Admissibility without proof of presentation of it by him—*See* CHARGE TO JURY, 26 C. 49.

—Improper reception of evidence—*See* CHARGE TO JURY, 17 C. 642.

See CHARGE TO JURY, 2 Ind. Cas. 434.

—Accused pleading guilty, admissibility of —*See* CO-ACCUSED, 10 M.L.J. 147, F.B.

See COMPOUNDING OFFENCE, Rat. Un. Cr. C. 331=Cr. Rg. 22 of 1887.

—Confession not made in the presence of Magistrate, when admissible—*See* CONFESSION, 2 Weir 735=3 M.H.C. 318.

—Relevancy of confessions made before a judicial officer in a Native State—*See* CONFESSION, 12 A. 595.

See CONFESSION, 4 N.W.P. 16, 5 C. 958=6 C.L.R. 353, 6 C. 530=7 C.L.R. 541, 15 C. 595, F.B., 1 C.P.L.R. Cr. 115, L.R.R. (1893—1900), 70, 2 S.L.R. Cr. 34=10 Cr. L. J. 200, L.B.R. (1872—1892), 497, 4 C. 696=4 C. L.R. 137.

See CONSPIRACY, 9 Bom. L. R. 347=5 Cr. L. J. 323.

—Circumstantial evidence—*See* CONVICTION, 136 P.L.R. 1909.

—Penal Code, s. 239—Delivery of counterfeit coins—*See* COUNTERFEITING COIN, 8 B. 223.

See CRIM. PRO. CODE (1898), ss. 30, 337, 388, 10 C.W.N. 847=4 Cr. L.J. 44.

See CRIM. PRO. CODE (1898), s. 103, 11 Cr. L.J. 136=5 Ind. Cas. 438=7 M.L.T. 362.

—Mode of taking evidence as to the likelihood of a breach of the peace.—*See* CRIM. PRO. CODE (1898), s. 107, Colm. Dig. Cr. 15 of 1874.

—Of general repute in security proceedings —*See* CRIM. PRO. CODE (1898), ss. 107, 117, 25 A. 273.

Evidence—continued.

——1.—(General)—*continued.*

—Evidence of general repute in security proceedings—*See* CRIM. PRO. CODE (1898), ss. 110, 1 A.L.J. 611, A.W.N. 1905, 34, 1 A.L. J. 616, 3 Bom. L.R. 269, 27 C. 993=5 C.W. N. 29, 5 C.W.N. 249.

—Evidence to prove charge against habitual offenders—*See* CRIM. PRO. CODE (1898), s. 110, 29 C. 779.

—Evidence required in security for good behaviour cases—*See* CRIM.PRO. CODE (1898), ss. 110 and 118, 2 A.L.J. 174=A.W.N. 1905, 41.

—Opportunity to adduce evidence in cases under s. 145, Crim. Pro. Code—*See* CRIM. PRO. CODE (1898), s. 145, 28 C. 416.

—Evidentiary value of decrees of Civil Court and orders of Criminal Courts on question of possession—*See* CRIM. PRO. CODE (1898), s. 145, 33 C. 33=10 C.W.N. 257=2 C.L.J. 271 =2 Cr. L.J. 670.

—Recording, in disputes about land, when necessary—*See* CRIM. PRO. CODE (1898), s. 145, 7 C.W.N. 351.

—Validity of order under s. 147, Crim. Pro. Code, unsupported by—*See* CRIM. PRO. CODE (1898), ss. 145 and 147, 30 C. 918=7 C.W.N. 510.

—First information, when should be recorded —Admissibility.—*See* CRIM. PRO. CODE (1898), s. 154, 7 C.W.N. 345.

See CRIM. PRO. CODE (1898), s. 162, 11 P. L.R. 1905.

—Statements to police entered in case diary not relevant in evidence—*See* CRIM. PRO. CODE (1898), ss. 162 and 172, 7 C.P.L.R. Cr. 22.

—Statements under s. 164, Crim. Pro. Code (1898), admissibility of.—*See* CRIM. PRO. CODE (1898), s. 164, 2 A.L.J. 100=2 Cr. L. J. 59.

See CRIM. PRO. CODE (1898), ss. 164, 289, 342, 364, 367, 533, 9 C.L.J. 55.

—Confession of accused—Inducement to confess—Admissibility of.—*See* CRIM. PRO. CODE (1898), ss. 164, 350, L.B.R. (1893—1900), 52.

—Police diaries and occurrence reports—Their evidentiary value—*See* CRIM. PRO. CODE (1898), s. 172, 2 Weir 142.

See CRIM. PRO. CODE (1898), s. 172, 10 C.W.N. 600=3 Cr. L. J. 408, 27 C. 295=4 C.W.N. 129.

—Admissibility of confessional statements and depositions.—*See* CRIM. PRO. CODE (1898), ss. 193, 287, 288, 339 and 349, 15 M. 352= 2 Weir 394.

See CRIM. PRO. CODE (1898), s. 195, Rat. Un. Cr. C. 242=Cr. Rg. 10 of 1886.

Evidence—continued.

——**1.—(General)**—*continued.*

—Identification evidence.—*See* CRIM. PRO. CODE (1898), ss. 221 (7), 342, 412 and 511, 4 N.L.R. 163=9 Cr. L. J. 56.

See CRIM. PRO. CODE (1898), s. 252, 11 Bom. L.R. 1153.

See CRIM. PRO. CODE (1898), ss. 253, 435 and 439, 18 P.W.R. 1909 Cr.

—Admissibility of deposition—*See* CRIM. PRO. CODE (1898), s. 288, S.C. 229, Oudh.

—Statements before committing Magistrate —*See* CRIM. PRO. CODE (1898), s. 288, A.W.N. 1906, 187=4 Cr. L. J. 61=3 A.L.J. 852=28 A. 683, 22 A. 445.

—Given before committing Magistrate, use to be made of such evidence in Sessions trial—*See* CRIM. PRO. CODE (1898), s. 288. 24 M. 414 =2 Weir 377, 7 C.W.N. 345, 21 A. 175, 21 A. 111.

See CRIM. PRO. CODE (1898), ss. 289, 292, 10 C. 1024.

—Inadmissibility of illegally pardoned accomplice's evidence—*See* CRIM. PRO. CODE (1898), s. 337, L.B.R. (1893—1900), 51.

See CRIM. PRO. CODE (1898), ss. 337, 339, 52 P.L.R. 1903.

—Evidence of co-accused—*See* CRIM. PRO. CODE (1898), s. 342, 3 Bom. L.R. 437.

See CRIM. PRO. CODE (1898), s. 353, 5 C.P.L. R. 33 Cr., L.B.R. (1872—1892), 399.

See CRIM. PRO CODE (1898), s. 355, 2 Weir 432.

—Power of native second class Magistrate to record memorandum of evidence in English—*See* CRIM. PRO. CODE (1898), ss. 355, 356, 357, 537, 19 M. 269=2 Weir 433=6 M.L.J. 134.

—Mode of recording evidence of witness—*See* CRIM. PRO. CODE (1898), ss. 356 and 537, 6 O.C. 73.

—Examination of accused before a Magistrate, admissibility in Court of Sessions—*See* CRIM. PRO. CODE (1898), s. 364, 5 M.H.C. App. 4.

See CRIM. PRO. CODE (1898), s. 437, U.B.R. (1897—1901), Vol. I, 100.

See CRIM. PRO. CODE (1898), s. 512 (1), 10 C. 1097.

—Of previous conduct—*See* DEFAMATION, 7 A. 906.

See DEPOSITION, Cr. Rg. 26—8—1869.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 14 C.W.N. 80.

See FALSE EVIDENCE, 10 B. 190.

—Conviction upon same evidence on which accused discharged previously—*See* FURTHER ENQUIRY, 6 A. 367.

Evidence—continued.

——**1.—(General)**—*continued.*

—Judge's notes of evidence and proceedings —Right of accused—*See* HIGH COURT, JURISDICTION OF, 1 M.H.C. 138.

—Misappreciation of evidence, if a ground for interference—*See* HIGH COURT, SUPERINTENDENCE AND POWERS OF, 5 M.L.T. 233, F. B.=9 Cr. L.J. 192=19 M.L.J. 157=32 M. 220=1 Ind. Cas. 228.

See INSANITY, Rat. Un. Cr. C. 10.

See JUDGE, 10 B.H.C. 75.

—Evidence of handwriting—*See* JUDGE AND JURY, Rat. Un. Cr. C. 452.

See JUDGMENT, 4 M.H.C. App. 42.

—Taking evidence in the absence of Jury—*See* JURY, 7 Bom. L.R. 979=3 Cr. L.J. 42.

See KIDNAPPING, A.W.N. 1902, 143.

—Statement made out of Court—*See* MAGISTRATE, JURISDICTION OF, 14 B. 572.

See MAGISTRATE, JURISDICTION OF, 7 C.L.R. 193.

—Theory of case should succeed collection of evidence—*See* MEDICAL JURISPRUDENCE, 13 C.W.N. 622.

—Evidence of mental state in determining nature of provocation—*See* MENTAL STATE, L.B.R. (1893—1900), 249.

—What should guide Judge in convicting an accused of murder—*See* MURDER, 6 C.P.L.R. Cr. 3.

—Evidence of a girl of 10 years requires corroboration, when she had made previous inconsistent statements—*See* MURDER, 6 M.L.T. 123.

See PENAL CODE, ss. 34, 141, 142, 147 and 149, 11 Cr. L.J. 30=4 Ind. Cas. 700=6 M.L.T. 17.

—Intention of editor and publisher—Contributions to the paper, admissibility of to know intention—*See* PENAL CODE, s. 124-A, 22 B. 112.

—Admissibility in evidence of notes of speeches—*See* PENAL CODE, s. 124-A, 5 M.L.T. 393=32 M. 384.

—*See* PENAL CODE, s. 124-A, 5 M.L.T. 415 =32 M. 338=9 Cr. L.J. 506=2 Ind. Cas. 193.

See PENAL CODE, s. 193, 6 C.L.R. 47.

—Evidence merely amounting to grave suspicion, but not justifying conviction—*See* PENAL CODE, ss. 300 and 302, 29 C. 483=6 C.W.N. 596.

—Circumstantial evidence—*See* PENAL CODE, s. 302, 11 C.W.N. 1085=6 Cr. L.J. 304.

See PENAL CODE, ss. 366, 372, 419 and 420, 114 P.L.R. 1904.

—Demeanour of witness—*See* PENAL CODE, s. 420, 9 Cr. L. J. 261=1 S.L.R. 20 Cr.

Evidence—continued.

——1.—(General)—*concluded.*

—Proof of marriage—*See* PENAL CODE, **s. 498, 3 O.C. 342.**

See PENAL CODE, s. 498, 2 S.L.R. 22 Cr. = 10 Cr. L.J. 235.

See POLICE REPORT, Rat. Un. Cr. C. 23.

—Proof of previous convictions—*See* PREVIOUS CONVICTION, Colm. Dig. Cr. 12 of 1873.

—Suspicion insufficient for conviction—*See* PROSECUTION, 5 C.P.L.R. Cr. 11.

See PURDAHNASHIN WOMAN, 2 Weir 432.

—Weak and suspicious evidence—*See* REVISION, 20 P.W.R. 1907 Cr. = 6 Cr. L.J. 263.

See REVISION, 5 M.L.T. 258.

See SANCTION TO PROSECUTE, 9 C.L.J. 690.

—Duty of Magistrate to record evidence on which order for security based—*See* SECURITY FOR GOOD BEHAVIOUR, Colm. Dig. Cr. 20 of 1874.

See SECURITY PROCEEDINGS, 6 A. 132.

See STOLEN PROPERTY, 5 N.W.P. 120.

See WITHDRAWAL OF CHARGE, 5 Ind. Cas. 21.

See WITNESS, 11 C.W.N. 1085 = 6 Cr. L.J. 304, 6 M.H.C. App. 43, 20 A. 155, 13 C. 53, 24 C. 288, 7 A. 862.

——2.—(Admissibility of Evidence).

See EVIDENCE ACT, ss. 5—55.

(1)—*Evidence, admissibility of.*—Evidence, otherwise admissible, cannot be excluded at a trial merely on the ground that the evidence shows that the prisoner against whom it is given has committed some other offence with which he was not charged at the trial. **14 A. 502.**

(2)—*Notes of evidence taken by a Magistrate at trial—Sufficiency thereof as ground of transfer of case.*—*Held*, that the notes of evidence taken by a Magistrate at the trial were sufficient materials to decide the question of the advisability of transferring a case. **1 C. 354.**

(3)—*Deposition of accused—Admissibility in evidence against him in subsequent proceeding, condition of.*—A deposition by an accused person is inadmissible in evidence against him in another proceeding without proof of his identity. **11 C. 580.** [*F.*, L.B.R. (1893—1900), 70; *R.*, 26 A. 108, P.C.; *D.*, 3 L.B.R. 208].

(4)—*Evidence of co-accused.*—Where two persons were jointly accused of theft, but the Magistrate issued process against one of them only, the evidence of that person, against whom process was not issued, adduced on behalf of the accused who was on his trial, was held to be admissible in evidence. **10 C.L.R. 553.** [*Appr.*, 4 N.L.R. 81; *R.*, 16 B. 661, 100 P.L.R. 1902 = 12 P.R. 1902 Cr., 10 C.W.N. 962 = 33 C. 1353 = 4 C.L.J. 145.]

Evidence—continued.

——2.—(Admissibility of Evidence)—*concld.*

(5)—*Report of Chemical Examiner—Crim. Pro. Code (1861), s. 380.*—The report of a Chemical Examiner is evidence in a criminal trial, if it bear the signature of the Examiner. The original should be produced. **6 B.L.R. App. 122 = 15 W.R. Cr. 49.**

(6)—The Chemical Examiner's report can be read and acted upon as evidence by Magistrates as well as Sessions Judges. **6 M.H.C. App. 11.**

(7)—*Dacoity—Damages—Suit against approver—Confession and evidence at criminal trial, if admissible—Crim. Pro. Code (Act V of 1898), s. 339—Sessions Court's finding, if binds Civil Court—Civil Court suit, if barred—Merger of tort in felony, rule of—Applicability in India—Civ. Pro. Code (Act XIV of 1882), s. 11.*—*Held*, that the confession and sworn evidence of an approver in a criminal trial for dacoity are admissible in evidence against him in a suit *for* damages brought against him by the complainant for having instigated the dacoity. *Held*, further, that the Civil Court could act upon such statements, even though the Sessions Judge did not think it safe to convict the accused upon such statements. "The conditions for receiving and acting on evidence in Civil Courts are very different to those governing the procedure of Criminal Courts. Especially is this the case with respect to the statements of accused persons and accomplices." Having regard to the provisions of s. 11 of the Civ. Pro. Code, the fact that the criminal trial had not resulted in a conviction of the accused was no bar to the institution of the civil suit against him. **13 C.W.N. 501.**

(8)—*Evidence of absent witness, admissibility of.*—The evidence of absent witnesses, as recorded by the Magistrate, is admissible only under exceptional circumstances, and, in such cases, the Sessions Judge should satisfy himself that the witness is either dead or that, for any sufficient cause his attendance cannot be procured. **1 W.R. Cr. Letters, 6.**

(9)—*Evidence of improved circumstances—Admissibility of.*—Evidence of the improved circumstances of an accused person, after the commission of the offence of which he has been convicted, is admissible, and evidence on this very important point must be produced before the Sessions Judge. **1 W.R. Cr. Letters, 7.**

(10)—*Medical evidence.*—In a charge of voluntarily causing hurt with a dangerous weapon, *held*, that medical evidence should be recorded to ascertain the nature and extent of the hurt caused. **U.B.R. (1897—1901), Vol. I, 318.**

——3.—(Non-admissibility of Evidence).

See EVIDENCE ACT, ss. 5—55.

(1)—*Whether evidence, not admissible, can be received as corroborative proof.*—Evidence, which is not admissible, cannot be received as corroborative proof. **1 N.W.P. 310.**

Evidence—continued.

——3.—(Non-admissibility of Evidence)—*ctd.*

(2)—*Evidence of previous information about offence—Admissibility.*—A statement by a police constable that he had previous information that the particular offence was about to be committed should not be admitted as evidence against the accused. **8 B.H.C. Cr. 164.**

(3)—*Evidence of general reputation in a charge of defamation.*—Where the question of the truth of definite charges was in issue in a case of defamation, the Court would not be wrong in law in rejecting evidence of general reputation and also in refusing consideration to what had been published on former occasions. **9 B.H.C. 451.**

(4)—*Prosecution based on hearsay evidence—Admissibility of evidence.*—In a certain case, the evidence for the prosecution consisted of the information given by one N to an Inspector of Police, which information was reproduced by the Inspector on behalf of the prosecution. The defence objected to the admissibility of such evidence on the ground that N was not examined as a witness in the case. The Magistrate, however, disposed of the objection by saying that "the information received from N was so complete as to bring all the circumstances of the case to light without any further evidence being called by the prosecution," that "the facts elucidated by the Police Inspector in his evidence are neither disputed nor disproved by the defence" and that "N seems to be one of the keepers of a common gaming house and, as a general rule, very little can be expected from such a witness." *Held* that the reasons given by the Magistrate were not sufficient for admitting the evidence of the Police Inspector, and that it lay on the prosecution to prove, by legally admissible evidence the facts which were alleged to constitute the offences charged. **1 Bom. L.R. 433.**

(5)—*Hearsay evidence—Admission.*—Necessity of caution in receiving evidence of admissions and of excluding hearsay evidence illustrated. **L.B.R. (1872—1892), 350.**

(6)—*Evidence of surgeon from notes of another surgeon, if permissible.*—A Sessions Judge is not authorised to allow a surgeon to describe the *post mortem* appearances of the deceased merely from knowledge acquired by him from the perusal of the notes prepared by another surgeon. **Rat. Un. Cr. C. 549.**

(7)—*Evidence upon commission taken upon order by committing Presidency Magistrate—Trial before High Court—Admissibility.*—Evidence taken upon commission, by an order of the Presidency Magistrate that committed the case to the High Court, would not be admissible in the trial before the High Court; for such to be admissible, it must be shown that it was so taken upon an order by the High Court itself, or that it is admissible under s. 33 of the Evidence Act. **6 C. 532.** [*R.*, 19 C. 113].

Evidence—continued.

——3.—(Non-admissibility of Evidence)—*ctd.*

(8)—*Reports of* post mortem *examination—No evidence.*—The report of a medical man on his *post mortem* examination, though it may be used to refresh his memory when giving evidence, cannot be treated as evidence, and no facts can be taken from it. **9 C. 455=11 C.L.R. 569.** [*R.*, 16 C.P.L.R. 122].

(9)—A *postmortem* report is not admissible as evidence except to contradict the officer who made it, and it may be used by that officer, when under examination, for the purpose of refreshing his memory. **27 C. 295=4 C.W.N. 129.**

(10)—The *post mortem* report could not be used as evidence in the Sessions trial, except by way of refreshing the memory of the person who made it, or to contradict him. **6 C.W.N. 98.**

(11)—The report made by a Civil Surgeon in the *post mortem* register of a *post mortem* examination held by him and the statements made by the Assistant Surgeon about the correctness of the entries without personal knowledge thereof are inadmissible in evidence. **L.B.R. (1893—1900), 39.**

(12)—*Crim. Pro. Code (1882), s. 510—Report of "Additional Chemical Examiner.*—S. 510 of the Code enacts that a document purporting to be a report under the hand of the "Chemical Examiner or Assistant Chemical Examiner" may be used as evidence in an enquiry; but a certificate signed by a person styling himself "Additional Chemical Examiner" does not come under the section, and cannot be received in evidence. **10 C. 1026.**

(13)—*Depositions before committing Magistrate, statement of* Muktear *as to faultiness of—Refusal by Sessions Judge to admit, propriety of.*—Where a Sessions Judge, relying upon a general statement made by a *Muktear* that certain depositions were not properly taken by the committing Magistrate, refused to allow them in evidence to contradict the statements made by these witnesses before the Sessions Court, although no objection to their admission was taken on behalf of the Crown, and the trial resulted in the conviction of the accused, *held*, that the conviction must be set aside and a retrial ordered. **13 C. 121.**

(14)—*Proposals of compromise, no evidence of guilty knowledge against the accused.*—Evidence relating to proposals of a compromise during the pendency of the case ought not, in the exercise of a proper discretion, to be allowed to go in as evidence of guilty knowledge against the accused. **25 C. 736=2 C.W.N. 484.**

(15)—*Crim. Pro. Code (1872), s. 126 (s. 172 of Crim. Pro Code (1898)—Police diaries and reports—Inspector's diary.*—The diary of a Police Inspector is not evidence. **10 C.L.R. 54.**

(16)—Diaries kept by police officers are not original evidence. **2 Weir 143.**

Evidence—continued.

——3.—(Non-admissibility of Evidence)—*ctd.*

(17)—Police reports are not evidence and should not be treated as such, though some of the Subordinate Courts are too fond of doing so; it is a practice to be condemned and avoided. **P.L.R. 1900, 71.**

(18)—*Evidence before committing Magistrate, not used at trial—Admissibility in appeal.*—Evidence taken before a Magistrate, but used at the trial, cannot be referred to on appeal. **6 B.L.R. App. 63=15 W.R 37 Cr.**

(19)—*Finding by Criminal Court.*—A Civil Court cannot rely on evidence taken in the Criminal Court, but is bound to record its own evidence, and come to a determination on the evidence taken before it as to the fact found by the Civil Court. **12 W.R. 477=2 B.L.R. A. C. 31.**

(20)—*Available evidence not given at trial—Admissibility of such, on appeal.* -The High Court would not, on appeal, receive evidence which was available on the trial in the Court below, when the prisoner deliberately elected not to give evidence in reply to the case made against him. **21 W.R. Cr. 13.**

(21)—*Evidence taken in one proceeding—Admissibility in another proceeding.*—Where evidence has been given in one case upon the issue raised in that case, nothing can be more dangerous than to take that evidence and apply it in another case in which other issues arise. Where a legal practitioner was charged with certain acts of professional misconduct in connection with a case, in which he had been engaged, and the records in that case and in some other proceedings were put in their entirety and treated as evidence in the proceeding. *held*, that the proceeding was irregular. **15 M.L.J. 432=1 M.L.T. 17=7 Bom. L.R. 894 =2 A.L.J. 800=2 C.L.J. 421=10 C.W.N. 57= 33 C. 151, P.C.**

(21-*a*)—*Inference drawn from evidence in one case, whether can be precedent in another.*—The finding of fact and the inferences drawn from it upon the evidence given in one case form no precedent for another case, in which the evidence is different and another mind is occupied with drawing inferences from it. **12 P.R. 1891 Cr.**

(22)—*Dying declarations—Their admissibility —Manner of proving them.*—Dying declarations are not admissible in evidence, unless they are proved by the Magistrate who recorded them. Although recorded by a Magistrate, in the absence of the prisoner, the mere production of them is not proof that they were made, so as to make them legal evidence against the prisoner. **2 Weir 339.**

(23)—The statement of a deceased person though recorded by a Magistrate, must be proved in the usual way by calling the Magistrate or clerk who took it down. The law does not provide that the mere signature of a Magistrate shall be a sufficient authentication of such a document, and it is obviously desirable

Evidence—continued.

——3.—(Non-admissibility of Evidence)—*ctd.*

that the person who took the statement should be subject to cross-examination as to the dying man's state of mind when he made it, and as to the other circumstances. **L.B.R. (1872—1892), 157.**

(24)—*Statements made before a Magistrate other than the committing officer.*—In a sessions trial, receiving in evidence the statements of persons made before a Magistrate, who was not the committing officer, is illegal in the absence of any proof that they were so made; the mere signature of a Magistrate is not sufficient in law to authenticate such statements, as these are not the records of the evidence given by a witness in a judicial proceeding. **S.C. 30 Oudh.**

(25)—*Relevancy of statements of accused who were previously tried.*—The statements made by accused persons who were previously tried are irrelevant; if their evidence was required, it should have been taken in the presence of the accused, or, on commission, if such a procedure were under the circumstances permissible. **5 C.P.L.R. Cr. 3.**

(26)—*S. 411, I.P.C.—Offence under—Statement made to police.*—A statement, made by an accused to the Police as to how he came by the goods, which are alleged to be stolen property, cannot be used in evidence against him, when he is being tried for an offence under s. 411 of the Penal Code. **11 P.L.R. 1905.**

(27)—*Evidence—Evidence of public officer refusing cross-examination—Evidence Act (I of 1872), ss. 35—45, 65 (a) and 74.*—The accused was convicted of having forged a bond purporting to have been executed on the 31st July 1884. The main evidence in the case was that of the store-keeper in the office of the Superintendent of Stamps, Calcutta, to the effect that the stamp paper on which it was written was not manufactured till February 1st, 1890. The witness deposed that his knowledge was based on papers received from the India Office, and that he was unable to give a copy of the papers without authorisation from his superiors, that there were marks on the paper by which he could form an opinion as to the year in which the paper was manufactured, but that the marks were private and that he was prohibited by his superior officer from pointing them out. It was objected that this evidence was inadmissible, and, if admissible, was worthless as the witness could not be cross-examined. *Held*, that the evidence was not admissible, and, even if it were, it was very inconclusive, owing to the refusal of the cross-examination. The witness was not giving evidence as an expert, for, he was not stating an opinion on any of the points referred to in paragraphs 45-50 of the Evidence Act; and his knowledge was based on the papers received from the India Office, and those papers were not produced. Granting that those papers were admissible as public records under ss. 35 and 74 of the Evidence Act, yet they could only be proved by the production

Evidence—continued.

——**3.—(Non-admissibility of Evidence)**—*cld.*

of the papers themselves, or, by secondary evidence of the nature described in 65 (*a*) and they could not be proved by the oral evidence of the witness. **66 P.L.R. 1903=5 P.R. 1903 Cr.**

(28)—*Penal Code, s. 498—Proof of—Marriage.*—In a case of enticing away a married woman, the mere denial of the marriage by the woman is not sufficient evidence to discharge the accused. The evidence given in a civil suit is not admissible as proof of marriage in a case under s. 498, I.P.C. **3 P.R. 1881 Cr.**

——**4.—(Character Evidence).**

See EVIDENCE ACT, Ss. 52–55.

(1)—*Evidence of bad character.*—Where a man is being tried upon a specific charge, unless within the four corners of the law, proof of a previous conviction is allowed for the purpose of proving guilty knowledge, or whatever it might be, no question ought to be permitted and no evidence allowed to show that he is a man of bad and dishonest character. But if the accused, at his trial, chooses to put in issue the question of his good character, it is then competent to rebut such evidence by giving evidence of general evil reputation. **14 A. 25.**

(2)—*Evidence of good conduct.*—No importance can be attached to evidence of good character when the case against the accused is clear. When it is doubtful, some weight must be given to it. **8 B. 223.**

(3)—*Evidence of bad character, as affecting the sentence—Evidence of departmental punishments, admissibility of—Evidence Act, ss. 54 and 55—Evidence of previous conviction, exception in case of.*—Upon the conviction of an accused, the Court has to determine what punishment to award, and, to do this, should take into consideration, not only the nature and gravity of the offence committed, but also the character of the accused. The bad character of the accused then becomes a fact in issue. Evidence of bad character being admissible as affecting the sentence, evidence may be given only of general reputation and general disposition and not of particular acts by which reputation or disposition is shown. Evidence as to previous convictions is an exception to this rule. Evidence of departmental punishment is inadmissible for the above purpose. **L.B.R. (1893—1900), 352.**

(4)—*Bad character, evidence of.*—Evidence of bad character should not be put before the jury; but is only for the consideration of the Judge in determining the sentence to be awarded. **6 B.L.R. App. 108=5 W.R. Cr. 37.** 8 W.R. Cr. 11, 6 W.R. Cr. 72, 7 W.R. Cr. 7.

(5)—*Evidence of bad character.*—It is improper to allow prosecution witnesses to state that the accused was not of good character. **2 B.H. C. 125.**

(5-*a*) Bad livelihood—Crim. Pro. Code (1898), s. 110—Admissibility of evidence of general

Evidence—continued.

——**4.—(Character Evidence)**—*concluded.*

repute—Evidence, if must be of neighbours—Evidence of misconduct committed long ago, value of—Joinder of charges in a proceeding under s. 110. **11 C.W.N. 789=6 Cr. L.J. 1.**

—Of bad character—*See* EVIDENCE ACT, ss. 6, 14 and 64, 27 C. 139=4 C.W.N. 97.

See EVIDENCE ACT, ss. 14 and 54, U.B.R. 1908, 2nd Qr., Evidence 1.

—Evidence of bad character—*See* HABITUAL OFFENDER, 5 O.C. 203.

See SECURITY FOR GOOD BEHAVIOUR, 3 M. 238=2 Weir 54.

—Good character of the accused—Mitigation of punishment—*See* SENTENCE, 16 C. 310.

See UNLAWFUL ASSEMBLY, 6 M.L.T. 17.

——**5.—(Dying Declaration).**

See DYING DECLARATION.

„ EVIDENCE—1.—GENERAL.

„ EVIDENCE ACT, ss. 8, 32.

(1)—*Dying declarations, admissibility of—Grounds—Penal Code, s. 396.*—The admission of dying declarations is not limited to cases in which the death of the injured party is the sole object of the inquiry. It is admissible in evidence in all criminal cases. The ground on which dying declarations are admitted in evidence is that, when they are made, the declarant is in a condition in which, according to the experience of mankind, it is not less likely that what he says is true than if it had been said before a Magistrate under the sanction of an oath, and in the presence of the prisoners. Before a dying declaration can be received in evidence, it must be distinctly found that the person who made the declaration knew or believed that at the time he made it he was dying or likely to die. The Magistrate recording a dying declaration should put, on the record of the statement, the answer of the declarant to a question touching his knowledge or belief regarding his approaching death. **3 N.W.P. 212.**

(2)—A dying declaration recorded, in the absence of the accused, by a Magistrate, other than the Magistrate who held the enquiry preliminary to commitment to the Court of Sessions, is not admissible in evidence, unless and until it has been proved by the Magistrate, who recorded it. A note on the order sheet that the document was admitted without any objection on the part of the accused does not make any difference. **34 C. 698=11 C.W.N. 666=5 Cr. L. J. 427.**

(3)—Where the declaration of a person wounded by the accused in committing dacoity was made on the 13th August 1899, and he died on the 20th of that month, and there was no other evidence to prove that the death was caused or accelerated by the wounds received at the dacoity, or that it was the transaction which resulted in his death, the High Court *held* that his declaration ought not to have been admitted in evidence. **25 B. 45=4 Bom. L.R. 331.**

Evidence—continued.

——5.—(Dying Declaration)—*continued.*

(4)—*Crim. Pro. Code (1898), s. 512—Dying declaration, how to be proved—Evidence Act, s. 32—Declaration elicited by questions put to the deceased—Retrial.*—A dying declaration was reduced to writing under the supervision of a police patel who questioned the dying man, and was attested by the *panch*; at the trial, it was duly proved by the patel and one of the *panch*, and was not objected to by the pleaders who defended the prisoners. *Held* that it was not necessary to order a new trial in order that the *kulkarni*, who reduced the statement to writing, might be called or that the *panch* and patel might repeat the words used by the dying man, after refreshing their memory by looking at the statement reduced to writing at the time. **2 Bom. L. R. 1129.**

(5)—Dying declarations taken in the absence of the accused and not falling under the provisions of the conditions prescribed by s. 512, Crim. Pro. Code, should be proved by the oral evidence of some witnesses who heard it made, they being at liberty to refresh their memory by referring to the notes made by them or read over by them at or about the time the statement was made. Witnesses should not be allowed to prove a dying declaration, as if it were a substantial piece of evidence in the case. The relevant fact to be proved is the statement by the deceased, and that statement is not the document made by the Magistrate, but the verbal statement made by the deceased person. Where the statement made by a dying person was not a continuous statement, but was elicited in answer to one or more questions, the document, to be really of use, should clearly set out the exact questions put and the answers made to them. A declaration made by a dying person, could not be admitted as evidence in the case, if it is not recorded in the language in which it was made, and if it is not proved as required by law. **6 C.W.N. 72.**

(6)—*Evidence of dying statement—Record in the presence of the accused, or judicial officer.*—The dying statement of a deceased person, if not recorded in the presence of the accused, cannot be admitted in evidence to prove the statement; the statement may be proved only in the ordinary way by one who heard it, with recourse to the writing to refresh the witness's memory if necessary. **8 C. 211=10 C.L.R. 11.** [*Expl.*, 2 Weir 753; *F.*, 6 C.W.N. 921].

(7)—Though a dying declaration may be made in the absence of the accused or of a judicial officer, yet, whenever it is possible, the declaration should be taken by a judicial officer as a guarantee of its authenticity. **3 P.R. 1870 Cr.**

(8)—Where a statement made by the deceased as a dying declaration had been used as evidence against the accused, though the Magistrate who recorded it was not the committing Magistrate, and though it was not recorded in the accused's presence, s. 80, Evidence Act, was

Evidence—continued.

——5.—(Dying Declaration)—*continued.*

held to have no bearing on the question of the admissibility of the statement, and the document was held to be inadmissible to prove the truth of the facts stated therein. **9 P.R. 1900 Cr.**

(9)—Where the written record of a dying declaration was made when the accused was absent, *held*, that such writing was admissible under s. 32 (1) Evidence Act, but that it must be proved in the ordinary way. **18 P.R. 1886 Cr.**

(10)—*Admissibility of statements in police reports or made to another person in police enquiry.*—Where the police recorded certain statements relating to the cause of the death, made by the deceased during the investigation of a criminal case, *held*, that they were admissible in evidence. **17 P.R. 1886 Cr.**

(11)—*Statement by deceased mentioning infliction of wound by accused to another deceased—Admissibility.*—Where the deceased, who had not himself charged the accused with having wounded him stated that another who had died was stabbed by the accused, *held*, that such statement was not admissible under s. 32 (1), Evidence Act. **17 P.R. 1901 Cr.**

(12)—*Taken by a Magistrate—Attestation not mentioning accused's presence—Proof.*—A dying declaration was taken down by a Magistrate other than the committing Magistrate. The Magistrate had not recorded in his attestation that the statement was taken in the presence of the accused. *Held*, that, before such a statement could be used against the accused, it was necessary to summon the Magistrate to attest in Court the deposition recorded by him, and that he should be examined, in the presence of the accused, as to the circumstances under which the statement was recorded. **29 P.R. 1887 Cr.** [*F.*, 114 P.R. 1887 Cr.]

(13)—*Weight to be attached to dying declarations.*—A Court should receive a dying declaration with caution. The details of the violence referred to by the deceased might have occurred under circumstances of confusion and surprise, tending to prevent their being correctly observed. The deceased might have stated his inferences from events regarding which he might have arrived at a wrong conclusion. Before the dying declaration is received in evidence, any enmity between the accused and the deceased should also be taken into consideration. **117 P.R. 1866 Cr. 8 P.R. 1868 Cr.**

(14)—*Evidence Act, s. 32, sub-s. (1)—Dying declaration—Value of trustworthy—Murder—Plea of voluntary drunkenness—Indian Penal Code, ss. 85, 86 and 302.*—*Held*, that a trustworthy dying declaration alone, made by a deceased person in full possession of the faculties, and proved by the clearest and most reliable evidence to be exact words of the person making it, and corroborated by the surrounding circumstances, is sufficient to support a conviction for murder under s. 302, I.P.C. *Held*, also,

Evidence—continued.

——**5.—(Dying Declaration)**—*concluded.*

that, under the terms of ss. 85 and 86, I.P C., voluntary drunkenness is no excuse for committing a crime. **4 P.W.R. 1909 Cr.=9 Cr. L. J. 156=1 Ind. Cas. 100.**

(15)—*Dying declaration made by signs—Procedure.*—Where a dying declaration is made by signs in response to questions put, it is admissible in evidence. In such cases, however, the statement should be a true record of what, in point of fact, occurred, and should bear on its face the questions put, and the nature of the gesticulations made in response. Also the officer who recorded the statement should be called as a witness. **2 P.R. 1886 Cr.** (26 P.R. 1885 Cr., *R.*)

(16)—*Dying declarations—Statement of deceased—Rape.*—The dying declaration of a deceased person held relevant on a charge of rape. **6 W.R. Cr. 75.**

(17)—*Dying declarations—Statement made by deceased—Evidence Act, s. 32, cl. 1—Murder.*—A case of murder where the statement made by the deceased before his neighbours and in the presence of a head constable was admitted as evidence under s. 32, cl. 1, Act I of 1872, that section providing that such statement is relevant, whether the person who made the statement was or was not, at the time it was made, under expectation of death. **19 W.R. Cr. 44.**

(18)—*Sessions Court—Record of.*—The dying declaration of a deceased person is admissible as part of the sessions record. **9 W.R. Cr. 2 and 11 W.R. Cr. 2.**

See JUDGE, P.L.R. 1900, p. 69 Cr.

See PENAL CODE, ss. 34, 302, 326, 13 C.W. N. 680=36 C. 659=2 Ind. Cas. 841=10 Cr. L. J. 186.

——**6.—(Expert Evidence).**

See EVIDENCE—1.—GENERAL.

See EVIDENCE ACT, ss. 45—51.

(1)—*Evidence of expert.*—Evidence of an expert should be approached with considerable caution, especially where much depends upon such evidence. **1 C.L.J. 385=2 Cr. L.J. 311.**

(2)—*Experts, opinion of.*—The opinions of experts are not binding on the jury, for, it is with the jury, and not with the experts, that the determination of the case rests. The weight due to their testimony is a matter to be determined by the jury, and it will be proportionate to the soundness of the reasons adduced in its support. **1 C.W.N. 465.**

(3)—*Opinion of experts, how elicited.*—The proper mode of eliciting expert evidence of a medical witness of the latter class is to put to the witness, hypothetically, the facts, which the evidence of the other witnesses attempts to prove, and to ask the witness's own opinion on those facts. **9 C. 455=11 C.L.R. 569.**

Evidence—continued.

——**6.—(Expert Evidence)**—*continued.*

(4)—*Handwriting — Expert evidence.*—To base a conviction upon the opinion of an expert in handwriting is, as a general rule, very unsafe. **2 A.L.J. 444=2 Cr. L.J. 353.** [*F.*, 6 A. L J. 184].

(5)—*Expert in handwriting, evidence of—Conviction based on opinion of expert—Circumstantial evidence, conviction based on.*—In the case of a prosecution based upon circumstantial evidence, it is incumbent on the prosecution to show that it is impossible to explain the circumstances otherwise than upon the hypothesis of the accused being the guilty person. *Held* that, as a general rule, it is very unsafe to base a conviction upon the opinion of an expert in handwriting. Where according to the opinion of the expert there was no marked peculiarity in the handwriting of the accused, nor anything rare in style, *held*, that in such a case a conviction could not be based upon the opinion of the expert. **13 O.C. 1.**

(6)—*Proof of previous convictions—Identification of accused—Certificate of officer in charge of Finger Print Bureau—Admissibility of.*—The accused was convicted of theft. He had three previous convictions. The previous convictions were denied by the accused, and, in order to prove them, the prosecution produced certain finger impression slips, and the finger print instructor at Rangoon was called. He took impressions of the accused's fingers in Court, and after having compared them with finger impressions on sheets he produced from the finger impression bureau, he declared that the accused must be the man whose finger impressions were on the sheets he produced and whose previous convictions were entered on those sheets. He did not personally know the accused and had not himself taken the impressions on the sheets he produced. *Held*, the previous convictions of the accused stated on the slips were not proved by mere production of such slips. **4 L.B.R. 125=7 Cr. L. J. 406.**

(7)—*Expert opinion of thumb impressions—Evidentiary value—Power of jury to reject the expert evidence.*—Where the thumb impressions on a document were blurred, and many of the characteristic marks were far from clear, rendering it difficult to trace the marks enumerated by an expert witness as demonstrating the correspondence between the thumb impressions in the document and those made by the accused in Court *held*, that, under the circumstances of the case, the evidence was not reliable and the jury were right in not accepting the evidence of the expert as conclusive. *Per* Henderson, J.—Where the evidence to corroborate the testimony of an expert witness is of an unreliable character it is not proper to accept his evidence. Though the evidence afforded by the correspondence of thumb impressions is ordinarily of great value, it would be unsafe to convict on the mere result of a critical examination of the thumb

Evidence—continued.

——**6.—(Expert Evidence)**—*concluded.*

impressions made by an expert. *Per* Geidt, J. —A jury is not bound to accept the opinion of an expert upon thumb impressions without corroboration of their own intelligence as to the reasons which guided him to his conclusion. **32 C. 759=9 C.W.N. 520=2 Cr. L.J. 259.**

(8)—*Proof of previous conviction—Identification of accused—Certificate of officer in charge of Finger Print Bureau, admissibility of.*—The accused was convicted of theft. He had three previous convictions. The previous convictions were denied by the accused, and, in order to prove them, the prosecution produced certain finger impression slips, and the finger print instructor at Rangoon was called. He took impressions of the accused's fingers in Court, and after having compared them with finger impressions, on sheets he produced from the finger impression bureau, he declared that the accused must be the man whose finger impressions were on the sheets he produced and whose previous convictions were entered on those sheets. He did not personally know the accused and had not himself taken the impressions on the sheets he produced. *Held*, the previous convictions of the accused stated on the slips were not proved by the mere production of such slips. **4 L.B.R. 125=7 Cr. L.J. 406.**

See CHARGE TO JURY, 1 C.L.J. 385=2 Cr. L.J. 311.

—Issue of commission to examine expert—*See* COMMISSION, 15 C.P.L.R. Cr. 66.

See CRIM. PRO. CODE, ss. 179, 222, 235 to 239, 531, 537, 18 P.W.R. 1908 Cr.=8 Cr. L.J. 75.

——**7.—(General Repute).**

See EVIDENCE—1.—GENERAL.

„ EVIDENCE ACT, SS. 52—55.

„ CRIM. PRO. CODE (1898), s. 117.

(1)—*Crim. Pro. Code (1898), s. 110, cl. (f)—Evidence of general repute, admissibility of—"Man of desperate and dangerous character"—Acts of extortion.*—In s. 110, cl. (*f*), a man of desperate and dangerous character means a man who has a reckless disregard of the safety of the person or the property of his neighbours; and under that clause evidence of general repute is not sufficient. Evidence of acts of extortion unaccompanied by acts causing danger to the person and properties of other persons, is not sufficient to bring the case within cl. (*f*), s. 110. **11 C.W.N. 789=6 Cr. L. J. 1.**

(2)—*Of general repute, if admissible in prosecutions under s. 12 of the Burma Gambling Act.*—Evidence of general repute is not admissible in a trial under s. 12, Burma Gambling Act. Offences under s. 12 of the Act should be tried regularly and not by way of a summary trial. **1 L.B.R. 92.**

Evidence—continued.

——**7.—(General Repute)**—*concluded.*

See ACT XII OF 1896, ss. 45 and 51, 2 P.W.R. 1907 Cr.

See BUR. ACT I OF 1899, s. 17, 1 L.B.R. 145.

See CRIM. PRO. CODE (1898), s. 55, 3 L.B.R. 94=3 Cr.L.J. 20.

See CRIM. PRO. CODE (1898), s. 117 (1, 2, 3), 23 C. 621.

See HABITUAL OFFENDER, 5 O.C. 203.

—Judge not to import personal knowledge of facts into case—*See* JUDGE, B.L.R. (1893—1900), 445.

See SECURITY FOR GOOD BEHAVIOUR, 11 C.W.N. 413=5 Cr.L.J. 191, 12 C.W.N. 299=7 C.L.J. 177=35 C 243=7 Cr.L.J. 146. 13 C.W.N. 244, 9 O.C. 69=3 Cr.L. J. 290.

——**8.—(Hearsay Evidence).**

(1)—*Hearsay evidence.*—A statement by a witness that he heard another person say, in the absence of the accused, that he has paid a sum of money to the accused, as a bribe, is hearsay evidence and is not admissible. **2 C. W.N. 672.**

(2)—*Evidence of rumours, reports etc., inadmissible as evidence of general repute.*—Evidence of rumours, reports, and information given is mere hearsay evidence, and, as such, wholly inadmissible as evidence of general repute. Evidence of repute is a totally different thing. A man's general reputation is the reputation which he bears in the place in which he lives amongst all the townsmen, and if it is proved that a man who lives in a particular place is looked upon by his fellow-townsmen, whether they happen to know him or not, as a man of good repute, that is strong evidence that he is a man of that character. On the other hand, if the state of things is that the body of his fellow-townsmen, who know him, look upon him as a dangerous man, and a man of bad habits, that is strong evidence that he is a man of bad character; but to say that, because there are rumours in a particular place among a certain class of people that a man has done particular acts or has characteristics of a certain kind, those rumours are in themselves evidence under s. 110, 112, Crim. Pro.Code, is to say what the law does not justify us in saying. **1 L.B.R. 71.** (23 C. 621, *F.*).

(3)—*Hearsay evidence—Hearsay evidence, inadmissibility of.*—The admission of hearsay evidence prohibited. **7 W.R. Cr. 2.** 7 W.R. Cr. 25.

See CRIM. PRO. CODE (1898), s. 537, 3 M.L. T. 263=7 Cr.L.J. 358=18 M.L.J. 250.

See HOUSE TRESPASS, 29 P.W.R. Cr. 1907 =7 Cr.L J. 230.

See SECURITY FOR GOOD BEHAVIOUR, 6 Bom. L. R. 34.

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Evidence—continued.

——9.—(Medical Evidence).

(1)—*Deposition of medical witness—Admissibility against individual accused, condition for—Crim. Pro. Code (Act X of 1872), s. 323.*—The examination of a medical witness taken and duly attested by a Magistrate, though it may be given in evidence in any criminal trial under s. 323 of the Crim. Pro. Code, must, in order to be admissible against any individual accused person, have been taken in the presence of the accused person—*Per* Field, J. **8 C. 739 =12 C.L.R. 233.**

(2)—*Medical witness, evidence of—Grounds of admissibility—Medical witness examined before Magistrate may be examined at Sessions trial—Crim. Pro. Code (1872), s. 323.*—The evidence of a medical man, who has seen a corpse and made its *post mortem* examination, is admissible in an enquiry regarding the death, to prove the nature of the injuries observed by him and as expert evidence as to the manner of the infliction of the injuries and as to the cause of death; whereas a medical man, that has not seen the corpse, can give only expert evidence. [*Appr.*, 15 C. 589]. S. 323 of the Crim. Pro. Code, does not preclude a Sessions Judge from calling and examining the medical witness, that has been examined before the Magistrate, and especially where the deposition, before the Magistrate, is deficient or calls for further elucidation, such witness should be re-called and examined by the Sessions Judge. **9 C. 455 =11 C.L.R. 569.**

(3)—*Medical certificate as to cause of death, effect of—Necessity for the examination of medical man.*—The certificate of a Medical Officer as to the cause of the death of a person and of the fatal character of the wounds is no evidence. He should be examined regarding these points, and some evidence should be taken to identify the wounded body with that of the person whose murder is the subject of charge. Where the deposition of the medical witness who has given a certificate did little more than attest its accuracy as to the nature of the wounds, *held*, that such deposition would not be sufficient. **2 Weir 659.**

(4)—*Medical evidence—Evidence of the medical man before Magistrate, whether sufficient.*—In a Sessions case, depending almost entirely on the medical evidence, the examination of the Surgeon before the Magistrate should not be tendered or accepted as sufficient. **2 Weir 660.**

(5)—*Report of Subordinate Medical Officer—Concurrence of superior officer.*—The substance of a report from a Subordinate Medical Officer, with an expression of concurrence by his superior, cannot be read in evidence under s. 368 of the Code of Criminal Procedure. **11 W.R. Cr. 2.**

(6)—*Letter from Medical Officer—Letter expressing opinion.*—The letter of a Medical Officer

Evidence—continued.

——9.—(Medical Evidence)—*concluded.*

expressing an opinion is not evidence under ss. 368 and 370 of the Code of Criminal Procedure. **12 W.R. Cr. 25.**

(7)—*Medical witness—Scope of his evidence.*—It is not the business of a medical witness to state whether the injuries he is speaking of amount to grievous hurt or not, but only to describe the nature of the injuries. **A.W.N. 1885, 296.**

See CRIM. PRO. CODE (1898), s. 350, 12 C.L.R. 233.

See CRIM. PRO. CODE (1898), s. 470, 2 Weir 583.

See CRIM. PRO. CODE (1898), s. 510, 2 Weir 661.

See PENAL CODE, s. 326, L.B.R. (1872—1892), 292.

——10.—(Refreshing Memory).

See EVIDENCE ACT, ss. 159, 160, 161.

(1)—*Memorandum by police officer—Refreshing such officer's memory during examination—Crim. Pro. Code (Act X of 1872), s. 119.*—An accused is not entitled to insist upon a police officer refreshing his memory, during his examination in Court, by referring to certain notes prepared by such officer under s. 119 of the Code. **8 C. 154 = 10 C.L.R. 51.** [*R.*, 19 A. 390 = 17 A.W.N. 174, F.B., 33 C. 1023 = 10 C.W.N. 890 = 4 Cr. L. J. 79].

(2)—*Evidence—Writing to refresh memory, right of opposite party to inspect--Grounds—Neglect of opposite party to use such right at proper time.*—The grounds upon which the opposite party is permitted to inspect a writing and to refresh the memory of a witness are threefold :—(1) to secure the full benefit of the witness's recollection as to the whole the facts, (2) to check the use of improper documents and (3) to compare his oral testimony with his written statement.—(*Per* Field, J.) Counsel (on the opposite side) having a right to look at a particular writing before or at the moment when the witness uses it to refresh his memory in order to answer a particular question, and not then exercising this right, does not continue to retain the right throughout the whole of the subsequent examination of the witness.—*Per* Field, J. **8 C. 739 = 12 C.L.R. 233.**

See TRDAE MARK, 4 C.L.J. 268 = 10 C.W.N. 107.

——11.—(Statements made to police).

See CONFESSION.

,, CRIM. PRO. CODE (1898), ss. 161—164.

,, EVIDENCE ACT, s. 157.

(1)—*Crim. Pro. Code (1898), ss. 162 and 537—Police investigation—Statements made before the police—Use of such statements by the Magistrate—Prejudice—Procedure—Practice*—A Magistrate, in trying a case against several

Evidence—continued.

——11.—(Statements made to police)—*contd.*

accused persons, confined his attention only to those, whose names were mentioned before the Chief Constable, during the police inquiry. He used the statements, made before the Chief Constable, without complying with the provisions of s. 162 of the Crim. Pro. Code. Those of the accused, whose names were not mentioned during the police investigation, were acquitted by the Magistrate: and the Magistrate considered the case against the rest and convicted and sentenced them. It was contended that, though the procedure adopted by the Magistrate was irregular, the accused were not prejudiced thereby. *Held*, that the prejudice to the accused was clear, when, as a result of the perusal of the statements made to the Chief Constable, some of the accused were acquitted, because their names did not appear in them and the rest were convicted. The necessary inference was that, as to the latter, the Magistrate was influenced by the fact that the statements of the witnesses examined before him were corroborated by the statements made before the Chief Constable, whereas the law directs that they cannot be used in evidence unless they are admitted in accordance with the provisions of the Indian Evidence Act and of the Crim. Pro. Code. Therefore, having regard to the explanation to s. 537 of the Code, the Court was bound to presume, under the circumstances of the case, that there was a failure of justice, so far as the trial before the Magistrate was concerned. **9 Bom. L.R. 366=5 Cr. L.J. 353.**

(2)—*Crim. Pro. Code (1898), s. 162—Statements of prosecution witnesses before police—Their depositions before Magistrate--Comparison of two statements—Conviction based upon the comparison—Trial - Illegality.*—It is illegal for a Magistrate, trying an accused person, to use as evidence against him the statements made by the prosecution witnesses before the police, by comparing them with their depositions, and as a result of that comparison to convict him. **9 Bom. L.R. 895=6 Cr. L.J. 224.**

(3)—*Crim. Pro. Code, Act X of 1882, s. 423—Statement of witnesses before police—Weight of.*—A conviction based merely on the statements made by witnesses before the police at the time of the occurrence, is illegal where the witnesses give an entirely different story at the trial. **Rat. Un. Cr. C. 833=Cr. Rg. 75 of 1895.** (21 W.R. 49 Cr., *R.*).

(4)—*Evidence—Person in custody of police—Statement made to police as complainant while in such custody.*—Where a person, as a complainant in a case of rioting, gives information to the police while he was in custody as an accused in a counter-case of rioting, such information is on no better footing than a statement made by an accused person to a police officer while in custody, and is no evidence at all against him on his trial for rioting. **21 C. 392.**

(5)—*Statements to police officers—Evidence Act, s. 27—Theft of jewels from murdered woman.*—The accused, charged with the murder of a

Evidence—continued.

——11.—(Statements made to police)—*ctd.*

woman, made a confession to a Police Inspector, part of which related to the concealment of certain jewels which belonged to the deceased woman, and, in consequence of the information so received, the jewels were discovered. *Held* that, under s. 27 of the Evidence Act, that part of the accused's confession which described his assault on the deceased and her consequent death, and the way in which he became possessed of the jewels, related distinctly to the fact of the discovery of the ornaments and might be proved against the accused. **19 W.R. Cr. 51.**

(6)—*Statements to police officers—Statement made to Magistrate by party in custody.*—A statement, which a man in the custody of the police volunteers to one in the position of a Magistrate, can be used as evidence against the man who makes it. **24 W.R. Cr. 33.**

(7)—*Statements to police officers—Answers given by prisoner to police constables or Magistrate.*—G.D., presented a Government promissory note at the Bank of Bengal bearing a forged endorsement, and was arrested. A police constable asked N, if he knew G.D; N replied that he knew him as a common man. The police constable then asked N if he knew anything about the note. N replied that he did not. No threat or inducement was held out, nor was any caution administered to N. *Held* that the statements made by N in answer to the questions of the police constable were admissible. N was afterwards brought before R, the Deputy Magistrate of Serampore, who told him, before any depositions were taken, that he (N) was charged with having received a stolen promissory note, and R asked him if he wished to say anything. N replying in the affirmative, R, without administering any caution to him, asked him where or how he had obtained the note, and other questions, the answers to which were taken down. N was again brought up before R, and was asked whether a promissory note then produced was the one he had delivered to G.D., to take to the Bank. R told N that he was not bound to answer the question, but if he did, the answer would be taken down, and that, if he objected to answer, that would also be noted. R committed N to take his trial before the High Court. *Held* that on the trial the answers of N to the question of R, whether R acted as a Justice of the Peace for Bengal or as a Magistrate, were admissible. **1 B.L.R. O. Cr. 15=15 W.R. Cr. 71, note.**

(8)—*Statements to police officers—Statement obtained by persuation and promise of immunity—Crim. Pro. Code (1861), s. 146*—An admission obtained from a prisoner by persuasion and promises of immunity by the police ought not to be received in evidence, as being in direct contravention of s. 146, Code of Criminal Procedure. The deposition of the police officer, moreover, should be taken before the admission can at all be used against the prisoner under the Code of Criminal Procedure. **9 W.R. Cr. 16.**

Evidence—concluded.

——**11.—(Statements made to police)**—*cld.*

(9)—*Statements to police officers—Statement extorted by police officer by inducement.*—A police officer acts improperly and illegally in offering any inducement to an accused person to make any disclosure or confession. No part of his evidence as to the discovery of facts in consequence of such a confession is legally admissible. **8 W.R. Cr. 13.**

(10)—*Statements to police officers—Admission to police officer.*—Admissions made by prisoners to police officers while in their custody are not admissible in evidence. **3 W.R. Cr. 21.**

(11)—*Statement of defence witnesses to the police.*—Under s. 162, Crim. Pro. Code, a statement made by a defence witness to the police should not be read out at the trial. He can be asked whether he made that statement before the police. If no sufficient explanation is given for not stating at the first opportunity what he knows of the fact, the value of his evidence is materially decreased. **18 P.R. 1900 Cr.**

See CRIM. PRO. CODE (1898), s. 161, 16 A. 207, 19 A. 390. F.B.

See CRIM. PRO. CODE (1898), ss. 161, 162, 15 A. 25, 17 A. 57.

See CRIM. PRO. CODE (1898), ss. 161, 172, 16 C. 610, 20 C. 642.

See CRIM. PRO. CODE (1898), ss. 161, 172, 537, 16 C. 612 (Note.)

See EVIDENCE ACT, ss. 25, 26 and 27, 15 C. 589.

See FALSE EVIDENCE, 15 A. 11.

See PENAL CODE, s. 193, Rat. Un. Cr. C. 503.

See PERJURY, 4 A.L.J. 811=7 Cr. L.J. 3=A.W.N. 1908, 22.

See SANCTION TO PROSECUTE, 11 B. 659.

Evidence Act, 1855.

See ACT II OF 1855.

Evidence Act (I of 1872).

[REP. IN PART, 44 AND 45 VICT., C. 58, S. 127, ACT X OF 1897, AMENDED, ACT XVIII OF 1872, ACT III OF 1887, ACT III OF 1891, SS. 1—8, ACT V OF 1898, ACT XIII OF 1898, ACT V OF 1899.]

(1)—*S. 3—Proof of fact—Degree of proof required in criminal and civil prcceedings—Duty of the prosecution in criminal proceedings—Benefit of the doubt.*—Under s. 3, a fact is said to be proved, when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. A much stricter degree of proof is required in criminal proceedings than in civil ones, and, in criminal proceedings, the persuasion of guilt must amount to such a moral certainty

Evidence Act (I of 1872)—continued.

as convinces the minds of the tribunal as reasonable men, beyond all reasonable doubt. It is the business of the prosecution to bring guilt home to the accused, to the satisfaction of the minds of the jury, but the doubt, to the benefit of which the accused is entitled, must be such as rational, thinking, sensible men may fairly and reasonably entertain, not the doubts of a vacillating mind, that has not the moral courage to decide, "but shelters itself in a vain and idle scepticism." There must be doubts, which men may honestly and conscientiously entertain. Where two people were convicted of being in possession of bundles of cocaine, and it was urged that the labels affixed to the bundles were not sufficient evidence that the contents were an intoxicating drug, for the purposes of conviction, and it appeared that the bundles were never sent to the chemical examiner for analysis, *held*, considering the degree of proof required in criminal cases, and it being within the knowledge of Court that the Burmese do sometimes put false labels, that it was not conclusively proved that the bundles really did contain cocaine and that the accused were entitled to the benefit of the doubt. **3 L.B.R. 216=4 Cr. L.J. 382.**

(2)—*S. 3—"Court"—Registration Act (VIII of 1871), s. 82—Sub-Registrar—Penal Code, s. 228.*—By s. 82 of the Registration Act, a Sub-Registrar is a public officer, and proceedings before him are judicial proceedings within the meaning of s. 228 of the Penal Code; and, as he is legally authorized to take evidence, he is a "Court" as defined by the Evidence Act, s. 3. **13 B.L.R. App. 40=22 W.R. Cr. 10.** 14 B. 260.

(3)—Ss. 3, 133 and 30—*See* ACCUSED PERSON, L.B.R. (1893—1900), 368.

(4 and 5)—S. 3—*See* ACT X OF 1873, ss. 4, 5 and 14, 16 M. 421=1 Weir 175.

(6)—S. 3—*See* COURT, 12 B. 36.

(7)—*Ss. 4, 114, ill. (b), 133—Accomplice—Evidence—Corroboration—Rule of Law—Rule of guidance—Presumption—Bribery—Corroboration, of what kind required.*—S. 133 of the Evidence Act is the only absolute rule of law as regards the evidence of accomplices. But there is a rule of guidance to which the Court also should have regard; that rule of guidance is to be found in ill. (*b*) to s. 114 of the Evidence Act. S. 114 of the Evidence Act enacts a rule of presumption: and, read with s. 4 of the Act, it indicates that this is not a hard and fast presumption, incapable of rebuttal, *a presumptio juris et de jure.* The right to raise this presumption as to an accomplice is sanctioned by the Act; and it would be an error of law to disregard it; what effect is to be given to it must be determined by circumstances of each case. The evidence of the accomplice requires to be accepted with a great deal of caution and scrutiny, because, among other things, he is likely to swear falsely in order to shift the guilt from himself. But this consideration hardly applies to the evidence of one, who testifies that he has

Evidence Act (I of 1872)—continued.

bribed the accused ; for, by his own testimony, so far from shifting the offence from himself, he, in fact, thereby fastens it upon himself, for it is by making himself out to be a briber that he shows another has been bribed. The corroboration of the evidence of an accomplice, when required, should be such corroboration in material particulars, as would induce a prudent man, on the consideration of all the circumstances, to believe that the evidence si true not only as the narrative of the offence committed but also so far as it affects each person thereby implicated. **7 Bom. L.R. 969=3 Cr. L. J. 33.**

(8)—Ss. 4 and 114.—*See* BURDEN OF PROOF, L.B.R. (1893—1900), 276.

(9)—*S. 5—Exclusion of evidence.*—Under the Evidence Act, admissibility is the rule and exclusion is the exception, and circumstances which, under other systems, might operate to exclude are, under the Act, to be taken into consideration only in judging of the value to be allowed to evidence when admitted. **16 B. 661.**

(10)—*Ss. 5—14—Receiving illegal gratification—Subsequent, but unconnected receipt, evidence of—Admissibility.*—Where a person was charged with having received illegal gratification under s. 161 of the Penal Code, on three specific occasions, in a certain year, from a firm, *held*, evidence of similar, but unconnected instances of receiving illegal gratification from the same firm in subsequent years is inadmissible under ss. 5—13 of the Evidence Act. Nor would it be admissible under s. 14 of the Evidence Act—*Per Garth, C.J. (Maclean, J. concurring).* If the receipt of illegal gratifications mentioned in the charges be considered to have been proved to the satisfaction of the Court by *other* evidence, and if it be necessary to ascertain whether the accused *received* them as a *motive* for showing favour in the exercise of his official functions, the alleged subsequent transactions would be relevant under s. 14. But they are not relevant for the purpose of establishing the *fact* of receiving such gratification in an earlier transaction.—*Per* Mitter, J. [*R.*, 15 B. 491.] S. 14 applies to cases where a particular act is more or less criminal or culpable, according to the state of mind or feeling of the person who does it ; but the operation of the section must not be extended to other cases, where the question of guilt or innocence depends upon *actual facts* and *not upon the state of a man's mind or feeling*—*Per* Garth, C.J. in **6 C. 655=8 C.L.R. 197.** [*F.*, U. B. R. (1897—1901), Vol. I, 144 ; *R.*, 28 B. 129].

(11)—*Ss. 5, 11, 153—Witnesses to contradict statement of other witnesses.*—Where witnesses have been examined by the prosecution to state that they saw the accused at a particular place at a particular time, *held* that evidence of other witnesses could be let in to prove that the former witnesses could not have seen the accused as stated by them. Such evidence is admissible under ss. 5, 11, 153 of the Evidence Act.

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It is not to impeach the credit of witnesses that such evidence is let in, but to contradict evidence as to relevant facts. **11 B.H.C. 166.**

(12)—*S. 6—Commission of criminal breach of trust—Confession—Relevancy.*—Where a prisoner, a booking clerk of a Railway Company, committed criminal breach of trust as a servant in respect of certain sums, his confession before the Traffic Manager of the Company would be a relevant fact under s. 6. **9 B.H.C. 358.**

(13)—*S. 6, Illus. (a)—Murder*—Res gestæ—*Statement of eye-witness shortly after occurrence, if relevant—Hearsay evidence—Admissibility—Same transaction—Interval of time—Physical and mental condition of person making statement.*—Hearsay evidence of the statement of a by-stander as to an occurrence would be admissible in evidence as a part of the *res gestæ*, only if it was made at the time the transaction was taking place or so shortly before or after it as to form part of the transaction. If the transaction had terminated when the statement was made, it would be irrelevant. In this case a *chowkidar* deposed that one G ran up to him and stated that he had seen the accused persons murder his mistress whom he had met by assignation and that he had run away from the place of occurrence to save his life. What interval of time passed between the murder and the alleged statement did not appear. G seemed to be quite sensible when he made the statement and the condition of his mind did not appear to be such as to exclude the supposition of his fabricating evidence or being tutored : *Held*, that the statement was inadmissible in evidence. **11 C.W.N. 266 =5 Cr. L.J. 71.**

(14)—*Ss. 6, 8, ill. (g)—Statement by injured person to third party.*—A statement made by an injured person, in the presence of the prisoner who caused the injury, to a third party, immediately after the offence, would be admissible in evidence, when the prisoner did not deny having done the act. **10 C. 302.** [*D.*, 11 C.W.N. 266].

(15)—*Ss. 6, 14 and 54—Evidence of bad character—I.P.C., s. 401.*—In a trial of persons for an offence under s. 401, where the character of the accused is not in issue, evidence of bad character or reputation is not admissible, and therefore evidence of previous convictions cannot be adduced. **27 C. 139=4 C.W.N. 97.**

(16)—Ss. 6, 80, 91—*See* FALSE EVIDENCE, 25 P.R. 1890, Cr.

(16-*a*)—S. 6—*See* No. 10, *supra*.

(16-*b*)—S. 7—*See* No. 10, *supra*.

(17)—*S. 8—Answers given to official superior in official enquiry.*—The answers to his superior officer, given by an accused person in explanation of an official irregularity, can be proved against him, if subsequently ascertained to be false. The subordinate is under no legal obligation to attend an official enquiry, but if he

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does attend and answers the questions put to him, the answers that he gives fall under the category of statements which accompany and explain acts other than statements. **4 Bom. L.R. 284.**

(18)—*Ss. 8, 9 and 32—Statements by deceased as to cause of his death given by signs in answer to questions, admissibility of.*—When a witness is called for the purpose of deposing to his having put certain questions to a person shortly before his death, who, being unable to speak, although conscious, made signs by way of reply, the questions being as to the cause of his death, *held, Per* Oldfield and Brodhurst, JJ., *concurring*:—The signs cannot be regarded as conduct within the meaning of s. 8, as these signs, taken alone without the questions, cannot be connected with the cause of death. The questions cannot be proved either under Expl. 2 of s. 8 or under s. 9, for, before they can be admitted, the conduct which they are also alleged to affect should be proved to be relevant. In this case until the questions are admitted, the conduct is not relevant, and, therefore, the questions cannot be let in because the condition precedent to their admissibility has not been satisfied. Where a statement is made merely in response to some question or suggestion, it shows a state of things introduced, not by the fact in issue, but by the interposition of something else, and it does not, therefore, amount to "conduct" under s. 8 of the Evidence Act. But the questions and signs in response are admissible under s. 32 of the Evidence Act, as they amount to "verbal statements" under that section, made by a person as to the cause of his death. *Per* Straight, J.—The questions taken with the dying person's assent or dissent in response to them, clearly proved, constitute a "verbal statement" as to the cause of the death, within the meaning of s. 32. Statements by the witnesses as to their impression of what these signs meant, are inadmissible, and should be eliminated, but assuming the questions put to the deceased were responded to in such a manner as to leave no doubt in the mind of the Court as to the meaning, then, it is not straining the construction to hold that the circumstances are covered by s. 32. *Per* Mahmood, J.—S. 32, cl. (1) can only apply to "statements" written or verbal. The word "verbal" cannot mean more than "by means of a word or words." As nodding the head or waving the hand is not a word, the questions and the signs in response are not admissible under s. 32. But the signs made by the deceased, being the conduct of a person, an offence against whom is the subject of a proceeding, are relevant under s. 8, of the Evidence Act, inasmuch as the word "conduct" as used in s. 8, does not mean only such conduct as is directly or immediately influenced by a fact in issue or a relevant fact. The questions put to the deceased are admissible either under expl. 2 of s. 8, or under s. 9, by way of explaining the meaning of the signs. **7 A. 385, F.B.**

Evidence Act (I of 1872)—continued.

(19)—*Ss. 8, 24, 25, 26, 27—Accused pointing out articles stolen—Conduct—Admissibility of evidence—Application of Evidence Act—s. 27, an exception to preceding sections—Crim. Pro. Code, Act V of 1898, s. 169.*—M was charged with the murder of a girl. On the hope of pardon being given to her, she took the police to a place and pointed out and produced certain ornaments, which the deceased was wearing at the time of her death. *Held,* that evidence was admissible to show that the accused did go to a certain place and there produced certain ornaments. It is the Evidence Act and not the Criminal Procedure Code that must be looked to as to whether the evidence in point is or is not admissible. S. 27 of the Evidence Act is an exception to the preceding sections, and its object is to provide for the admission of evidence which, but for the existence of that section, could not be admitted. So much of the information, even if it amounted to a confession, made to a police officer, may be proved, as related to the discovery of the articles stolen. The conduct or acts of the accused are not dealt with by s. 27 and are relevant under s. 8. **6 A.L.J. 839 Cr., F.B.**

(20)—*Ss. 8, 32, 118, 119—Signs made by deaf mute—Admissibility in evidence.*—The gesticulations of a deaf mute at the place where a dead body was found during the police enquiry, and subsequently in Court cannot be used in evidence against an accused person, as he is not a competent witness under s. 118, Evidence Act; nor are they admissible against the accused as conduct under s. 8, Evidence Act; and, if they are regarded as statements, they are equally inadmissible under s. 32 (1). **5 O. C. 246.**

(21)—*S. 8, ill. (k)—Admission—Confession.*—A prisoner was indicted for theft and dishonestly receiving stolen property. The prosecutor, while travelling by train to Calcutta, discovered the loss of the property, and stated his loss to a Railway Police Inspector at the first station at which the train stopped after he became aware of the theft, the prisoner not being then present. This statement was tendered in evidence, and admitted under s. 8, ill. (*k*), of the Evidence Act. Evidence was also tendered of a statement, made by the prisoner to the constable who arrested him, to the effect that some of the property had been given him, and that he had bought the rest, and this was admitted; the Court remarking that there was a distinction in the Evidence Act between "admission" and "confession." **10 B.L.R. App. 2.**

(22)—Ss. 8, 14, 43, 54—*See* BAD CHARACTER, 7 P.R. 1895 Cr.

(23)—Ss. 8, 25, 26, 27—*See* CONFESSION, 14 B. 260, F.B.

(23-*a*)—S. 8—*See* Nos. 10, 14, *supra*.

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(24)—*Ss. 9, 11, cl. (2), and 45—Comparison of thumb impression.*—A comparison of thumb impressions is admissible, under s. 9 of the Evidence Act, if the similarity of those impressions can establish the identity of a person, who is charged with having forged a document purporting to have been executed by another, with the latter, or under cl. (2) of s. 11 of the Act, if their dissimilarity makes such identity improbable. Though the comparison of thumb impressions is allowable such comparison must be made by the Court itself; the opinion of an expert as to the similarity of such impressions is not admissible under s. 45 of the Evidence Act. **1 C.W.N. 33.** [*R.*, 3 N.L.R. 1 =5 Cr. L.J. 220].

(24-*a*)—S. 9—*See* Nos. 10, 18, *supra*.

(25)—S. 10—*See* ABETMENT, 4 C.W.N. 528.

(26)—S. 10—*See* CONSPIRACY, 28 C. 797, 5 O.C. 321.

(27)—S. 10—*See* PENAL CODE, ss. 109, 114, 124-A, 5 M.L.T. 16=32 M. 3=1 Ind. Cas. 36 =9 Cr. L.J. 130.

(28)—S. 10—*See* PENAL CODE, ss. 121 (*a*), 122 and 123, U.B.R. (1892—1896), Vol. I, 148.

(28-*a*)—S. 10—*See* No. 10, *supra*.

(29)—*Ss. 11, 14 and 15—Scope—Applicability of English law—Practice.*—The words of s. 11 of the Evidence Act are very wide, and, under it, all evidence which would be properly held admissible under English law, would be properly admitted under the Evidence Act. Evidence touching circumstances and transactions which are connected with the special subject-matters of the charges as parts of one and the same transaction, is not inadmissible. The Courts are justified in looking to English decisions to elucidate the meaning of the Evidence Act, and the evidence which Judges in England have admitted and juries have acted upon, must be held to be clearly within the terms of ss. 11, 14 and 15. **16 B. 414.**

(30)—*Ss. 11, 21—Crime committed between A and C—Relevancy of the fact that it has not been committed by C—Inference of guilt of A drawn from incriminating circumstances.*—M gave birth to an illegitimate child. It was alive at bed time, it was attended during the night by M, its mother, and B, midwife, and was found lifeless next morning. The medical evidence proved that its death was due to strangulation. There was no other evidence except the statements of B and J, a *Chowkidar*, to the effect that M admitted, before each of them, that she (M) killed the child and begged them to keep it secret. These statements, however, were not considered conclusive. *Held*, that M was guilty of causing the death of the child mainly on the principle that, where the guilt lies between A and C and there is no reason for believing that C has any concern with the commission of the crime, while the motive and other surrounding circumstances are too incriminating against A, the irresistible inference

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is that A has committed the crime. But the Chief Court, thinking it was probable that M committed the crime in a distracted state of mind, etc., directed that a copy of this judgment be laid before his Honour the Lieutenant-Governor, in order that His Honour might exercise his prerogative of mercy with respect to the sentence, if His Honour thinks fit. **8 P.W.R. 1907 Cr.**

(31)—Ss. 11 and 54.—*See* BOM. ACT IV OF 1887, ss. 4, 5, 6, 7, 28 B. 129=5 Bom. L.R. 805.

(32)—S. 11—*See* SECURITY FOR GOOD BEHAVIOUR, 14 C.W.N. 49=37 C. 91=5 Ind. Cas. 29.

(33)—S. 11—*See* STOLEN PROPERTY, A.W.N. 1885, 27.

(33-*a*)—S. 11—*See* Nos. 10, 24, *supra*.

(33-*b*)—S. 12—*See* No. 10, *supra*.

(34)—S. 13—*See* CRIM. PRO. CODE (1898), s. 145, 29 C. 187=29 I.A. 24=6 C.W.N. 386, P.C.

(34-*a*)—S. 13—*See* No. 10, *supra*.

(35)—*Ss. 14 and 15—Evidence admissible under the sections.*—Where a person was charged with having made three transfers on a certain day with the intention of evading the execution of a decree, evidence of other such transfers on the same day was held to be admissible under ss. 14 and 15, Evidence Act, to show that all the transfers were in one and the same transaction in question, and were made with a fraudulent intent. **16 B. 414.** [*R.*, 9 C.L.J. 610=13 C.W.N. 973=36 C. 573].

(36)—*Ss. 14, 15—Evidence of previous convictions when relevant.*—In a prosecution for theft, it cannot be assumed, as a matter of course that a previous conviction for the same offence is relevant in establishing the guilt of the accused. In order that it may be relevant under s. 15, it must be strictly shown that that section applies. **U.B.R. (1897—1901), Vol. I, 144.** (6 C. 655, *R.*).

(37)—*Ss. 14, 15—Intention—State of mind—Evidence of intention—Evidence as to previous or subsequent acts forming one series of transactions—Admissibility of evidence—Penal Code, s. 420—Cheating.*—Accused was charged with deceiving one B by leading him to believe that he could secure an employment for him and with thereby inducing B to give him some money. Evidence was given to show that this transaction with B was one of a series of similar frauds practised by the accused upon various other persons. *Held*, (on a review of the English decisions) that such evidence was admissible. S. 15 of the Evidence Act is an application of the general rule laid down in s. 14, and it is not necessary under the section that all the acts should form part of one transaction, but, if they form part of a series of similar occurrences, such acts may be proved. Where the

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particular transaction is one of a series of similar frauds, evidence of the other frauds is admissible to prove the intention of the accused in the particular case. **9 C.L.J. 610=36 C. 573=13 C.W.N. 973=2 Ind. Cas. 601.**

(38)—*Ss. 14, 43, 53—Offence under s. 400, I. P. C.—Evidence of previous convictions.*—As regards an offence under s. 400, I.P.C., previous commission of dacoity by the same accused is relevant under s. 14 of the Evidence Act. Convictions previous to the time specified in the charge, or previous to the framing of the charge are relevant under expl. 2 of s. 14, Evidence Act. But convictions subsequent to the time specified in the charge and to the framing of the charge itself are not admissible in evidence. **1 C.W.N. 146.** [*Appl.*, 5 Bom. L.R. 805=28 B. 129; *R.*, 27 C. 139=4 C.W.N. 97].

(39)—*Ss. 14, 54—Evidence of previous convictions under, when and for what purpose admissible.*—Although evidence of previous convictions is ordinarily irrelevant under the above sections for the purpose of affecting the opinion of the Court as to the guilt or innocence of the accused in respect of the charge against him, it may be admissible after conviction for the purpose of affecting the punishment imposed. **U.B.R. (1892—1896), Vol. I, 82.**

(40)—*Ss. 14 and 54—Evidence as to general dishonesty of character, whether admissible for raising presumption of dishonesty in any particular case.*—Evidence as to general dishonesty of character is not admissible under the Evidence Act for the purpose of raising a presumption of dishonesty in the particular case under trial. **U.B.R. (1908), 2nd Qr., Evidence, 1.**

(41)—S. 14, ill. (*a*)—*See* PENAL CODE, ss. 379, 411, 9 Bom. L.R. 27=5 Cr. L.J. 63.

(41-*a*)—S. 14—*See* Nos. 15, 22, 29, *supra*.

(41-*b*)—S. 15—*See* Nos. 29, 35, 36, 37, *supra*.

——Ss. 17—30.

See ADMISSION.

See CONFESSION.

(42)—*Ss. 21 and 30—Confession of co-accused when relevant—Suspicious confession to be rejected altogether—ss. 114 and 202, I.P.C.—Held*, that (*a*) it is settled law that, before the confession of the accused can be taken into consideration against others jointly tried with him for the same offence, it must appear that the confession implicates the confessing person substantially to the same extent as it implicates those against whom the confession is to be used; (*b*) a confession cannot be expanded or extended to make it available for incriminating persons other than the confessing accused; (*c*) where a confession is a suspicious one and grossly improbable in certain parts, it must altogether be set aside, and (*d*) where it is admissible, it is even then necessary that there should be its corroboration, which must be furnished by independent evidence and should incriminate each accused individually, in respect of the

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offence charged. *Held also*, on the above principles, that K's following statement is neither a confession of guilt of murder, nor is it admissible against the other accused. "M asked him to get her a chicken and he did so. He was asked to come in the evening and he came and shouted from outside the house that he had come. After some time, M and her husband appeared and gave him a bundle to carry and they all went to Ramidass' house, where he put down the bundle under the portico and, when the incantations were performed, he carried the bundle into the *Jungle* and threw it down. He never saw what the bundle contained and was, in fact, told to run away on putting it down, lest something come out of it and catch him. *Held further*, that the following confession of S does not make him an abettor of murder under s. 114 of the Indian Penal Code, but may make him guilty of concealment of the offence after it was committed, which is a minor offence under s. 202 of the Indian Penal Code, and this confession is also admissible against the other co-accused. "I was brought by L to the house of P and M. I saw the boy. I was told to come next day and I did so, and began to repeat my incantation when the boy was throttled to death by P and M and his blood was drawn off with the sweeper's knife and caught in a vessel, and thereafter, the boy was taken over the roofs of houses by P and K, while I and the others proceeded by the road to R's house, where the incantations were performed, and then, they went out into the garden where M bathed and K took the corpse and threw it way." **17 P. W.R. 1907 Cr.=6 Cr. L. J. 141.**

(43)— *Ss. 21, 30, 32—Admissibility of evidence of accomplice—Admissibility of confessions of accused against co-accused.*—S. 30 merely enacts a special exception to the general rule that a confession (admission) can be proved (only) against the person who made it. It does not limit the operation of s. 32. Illustration (*b*) to s. 30 cannot be construed to have this effect. Therefore, the confession of an accused who is dead, implicating himself and an accomplice in a crime, is admissible under s. 32 (3) as a statement, which would expose him to a criminal prosecution. Not only that part of the statement, which is against interest, is admissible, but all those parts of it, which relate to connected facts, including the share taken by others in the crime. **U.B.R. (1906), Evidence, 3=5 Cr. L.J. 300.**

(44)—*Ss. 21, 24, 25, 26, 27—Confession to person not a police officer, when confessor not in police custody—Inducement by person not in authority—Proof of confession by Magistrate recording it—Crim. Pro. Code (1898), ss. 164 and 533.—See* **8 O.C. 395.**

(45)—*S. 21—Statement of accused persons.*—The statements of an accused person, from which his guilt may be inferred are admissions and may be proved under s. 21. **3 P.R. 1880 Cr.**

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(46)—Ss. 21, 26, 29—*See* CRIM. PRO. CODE (1898), s. 342, Rat. Un. Cr. C. 679.

(46-*a*)—S. 21—*See* No. 30, *supra*.

(47)—*Ss. 24, 25 and 27—Admissibility of confession—Corroboration.*—A confession to be admitted at all in evidence must be proved to have been made voluntarily; and, when it is admitted in evidence, it has to be dealt with like any other piece of evidence and acted on only if it be believed to be true. **Rat. Un. Cr. C. 952=Cr. Rg. 3 of 1898.**

(48)—Confessions, to be of value as evidence, should be free from reasonable suspicion of corrupt influences, and also require some kind of extrinsic corroboration. **U.B.R. (1897—1901), Vol. I, 152.**

(49)—*Ss. 24, 25, 26 and 27—Confessions, admissibility of under—Crim. Pro. Code, s. 164.*—When a fact is deposed to as discovered in consequence of information received from a person accused of an offence in the custody of a police officer, proof of such fact must be strictly confined to so much of the information as relates distinctly to that fact. Police officers are clearly prohibited from offering any inducement or threat to the prisoner and extract confessions from him, and s. 164 of the Crim. Pro. Code, declares such confessions so obtained to be illegal. If the identification of prisoners in police custody is to be of any value, it should be prompt and clear and free from suspicious circumstances. **U.B.R. (1892—1896), Vo!. I, 83.**

(50)—*S. 24—Confession—Inducement to confess, by police constable.*—Where a police constable told the prisoner that he would ask the Magistrate to pardon him, if he told all he knew about the offence for which he (the prisoner) was under arrest, and confessed to the Magistrate, *held* that s. 24 of the Evidence Act applied, and that the confession could not be admitted in evidence. **L.B.R. (1872—1892), 396.**

(51)—*S. 24—Confession caused by threat.*—For a threat by the Magistrate to come under this section, it must be such as to give the accused grounds for supposing that, by making the confession, he would gain an advantage. In this case, before the accused confessed, the Magistrate said to him, "It is no use your trying to get out of it. You were seen with the pair of shoes." *Held*, though the language used might be considered to overcome the mind of an uneducated and inexperienced boy, yet, it was not sufficient to overcome the mind of a man of the age, experience, education, and position of the accused, so as to induce him to make a confession, and that it, therefore, did not invalidate the confession. **U.B.R. (1897—1901), Vol. I, 147.**

(52)—*S. 24—Suggestion to confess, made by superior officer.*—The suggestion that it would be better to confess made by a superior officer renders the confession inadmissible under s. 24 of the Act. **2 L.B.R. 316.**

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(53)—*S. 24—Confession made before a* Punchayat.—A *Punchayat* is not a police officer, but only a person in authority within the meaning of s. 24 of the Evidence Act. Therefore, a confession made by an accused before a *Punchayat* is admissible in evidence, if the *Punchayat* does not make use of any inducement to admit his guilt. **11 C.W.N. 904=6 Cr. L.J. 154.**

(54)—Where an inducement to confess a crime proceeds from a member of the *Panch*, the confession made in virtue of such inducement is not bad under s. 24, Evidence Act, the member of the *Panch* not being a person in authority. **4 Bom. L.R. 785.**

(55)—*Ss. 24, 25, 26, 27 and 28—S. 27 not a proviso to s. 24—Confession made by illegal inducement.*—S. 24 of the Act contains an absolute rule which is not affected by the proviso, made for a different purpose in s. 27. When the Legislature wished to make an exception to the absolute rule, it did so by a separate section, namely s. 28, which declares under what circumstances a confession rendered irrelevant by s. 24, may become relevant. Statements that are irrelevant under one section of the Act may be relevant under some other section of the Act. No confession made under inducement, threat or promise can be relevant, except in the circumstances provided for by s. 28. **2 L.B.R. 168.** (8 W.R. 13 Cr., 3 B. 12, 4 A. 198, 6 A. 509, 14 B. 260, *R.*)

(56)—*Held*, that a confession caused by illegal inducement is irrelevant under s. 24, Evidence Act, and the question of its truth is immaterial, and that s. 27 is not a proviso to s. 24. **U.B.R. (1909), 1st Qr., Evidence, 3=11 Cr. L.J. 41=4 Ind. Cas. 759.**

(57)—*S. 24—Confession by accused.*—A confession by an accused person is not made irrelevant, if otherwise relevant, merely because the accused person has been sworn or affirmed. **3 P.R. 1880 Cr.**

(58)—S. 24—*See* ACCOMPLICE, 4 P.R. 1903 Cr.

(59)—Ss. 24 and 167—*See* BOM. ACT IV OF 1902, s. 63, 9 Bom. L.R. 789, F.B.=6 Cr. L.J. 164=2 M.L.T. 414=32 B. 111.

(60)—Ss. 24, 25 and 26—*See* CRIM. PRO. CODE (1898), s. 164, 7 C.W.N. 345.

(61)—S. 24—*See* CRIM. PRO. CODE (1898), ss. 164, 350, L.B.R. (1893—1900), 52.

(62)—S. 24—*See* CRIM. PRO. CODE (1898), ss. 193, 288, 337, 22 C. 50.

(63)—S. 24—*See* JUDGE and JURY, Rat. Un. Cr. C. 730.

(63-*a*)—S. 24—*See* Nos. 19, 44, *supra*.

(64)—*S. 25—Confession made before an investigating police officer.*—Where a confession was made before an investigating police officer, who joined the prosecutor in questioning the accused,

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it should in fact be held to have been made to a police officer, though actually taken down by the prosecutor, and it is hence inadmissible under s. 25, Evidence Act. **10 C.P.L.R. Cr. 16.**

(65)—*Evidence Act, ss. 25, 26—Statements made by accused to police constable, not amounting to admission of guilt.*—A statement made by the accused to the police, which does not amount directly or indirectly to an admission of any criminating circumstance, is admissible in evidence; hence, where the accused was found carrying away a box at night and, when asked by a policeman on duty about the ownership of the box, stated that it belonged to him, the statement was held admissible against him, in a trial for theft of the box. **5 Bom. L. R. 312.**

(66)—*Ss. 25, 26, 27—Statements made by accused to police—Admissibility in evidence.*—In a case in which three persons, B, M, T were charged with the murder of one H, the following statements made by T to a Police Superintendent on the day next to the day of the occurrence, while M was arrested, but neither of the other two accused was suspected of having had any hand in the murder, and was not then under arrest, were sought to be given in evidence for the prosecution. Of these were held to be admissible, and others some inadmissible. The Police Superintendent deposed that the following took place in answer to his question whether T had seen H the previous day. "T remained silent, and on my repeating the question, he said H had come to the premises (where H was alleged to have been murdered) on the day of the occurrence." *Held*, that evidence of this statement of the accused was admissible. The Police Superintendent then proceeded to depose that he went with T into a godown, and on telling T to empty his box, T produced a Bengalee bill (which it was alleged H had taken with him to the place where he was alleged to have been murdered, for the purpose of payment of moneys due to him from M) and stated "Sir, I have something to give you. M gave me this paper yesterday evening to keep for him." *Held*, that the statement was admissible in evidence as it was perfectly innocuous. The further statement, "that the deceased H had called the previous day, was taken with cholera, was purged three times, after which a dispute arose regarding the Bengalee bill; that H had abused M's wife, on which M had given H a push in the throat when H fell backwards and became insensible; that they tried to get a box and to put the corpse into the box; that as the body was too big, they had to tie the body to make it fit into the box; that they then put the lid after placing a sheet on the body; that they lowered the box with a gunny and then tied it up with a rope; that they left the box till evening; and that, at 6 P.M. M got a cooly and had the box removed," was held to be inadmissible. **15 C. 589.** [*R.*, L.B.R. (1893—1900), 42].

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(67)—*Ss. 25, 26 and 27—Confessions by accused while in custody of police.*—A witness ought not to be allowed to describe a 'confession' made by the accused, if the fact was deposed to as discovered in consequence of information received from the accused while in the custody of the police. **S.C. 81, Oudh.**

(68)—*Ss. 25, 91—Confession to police, of having given false information—ss. 182 and 211, I.P.C.*—Confession to a police officer of having given false information cannot be proved against the person making it charged under s. 182 or s. 211, Penal Code. **U.B.R. (1897—1901), Vol. I, 156.**

(69)—*Ss. 25, 167—Trial by jury—Misdirection—Improper admission of evidence—Retrial.*—Three persons were tried jointly for rioting. During the trial, an information lodged by one of them with the police was proved, and, in his charge to the jury, the Judge, said "It (the information) contains an admission that all three accused persons were present at the occurrence." *Held*, the information was not a confession under s. 25 of the Evidence Act, and, as against the persons other than the informant, it amounted to an improper admission of evidence against them. "When a case has been tried before a jury, and the conviction has been set aside on the ground of misdirection, the accused is entitled to have his case retried by a jury, and, as a matter of procedure and in justice to the accused, this course should be adopted." Acting on this principle, the Court declined to exercise its powers under s. 167 of the Evidence Act, and sent the case back for retrial. **11 C.L.J. 301.**

(70)—*S. 25—Confession to a village headman—Act II of 1880 (Burma Rural Police) and Lower Burma Village Act, 1889.*—A confession to a village headman or *gaung* appointed under the Burma Rural Police Act, is inadmissible under s. 25 of the Evidence Act. **L.B.R. (1872—1892), 479.**

(71)—S. 25 of the Act does not forbid the proving in evidence of a confession made to a *ywathugyi* or village headman under the Lower Burma Village Act, 1889. **1 L.B.R. 65.** (L.B. R. 1893—1900, 22, *Diss.*).

(72)—*Ss. 25 and 26—Confession made to* chowkidar—*Confession to a Magistrate subsequently retracted—Bengal Act, 1 of 1892, (Village* chowkidars)—*Village* chowkidar, *whether a police officer.*—Where a person, charged with murder, made a confession, while in the custody of a *chowkidar*, in the presence of another person, who was considered by the Judge not to be a satisfactory witness, and the accused, a few hours later, made also a confession to the Magistrate which was subsequently retracted, *held*, that, although it would not be safe to act upon the confession made to the *chowkidar*, the second confession to the Magistrate was, under the circumstances of the case, reliable. A *chowkidar*, although he is not a police officer under Act V of 1861, is

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one under Reg. XX of 1817 and Act I of 1872, and a confession made to him is inadmissible. **2 C.W.N. 637**.

(73)—*S. 25—Lower Burma Village Act—Ten-house gaung is a police officer—Admission to him inadmissible.*—A 'ten-house *gaung* appointed under the Lower Burma Village Act, 1889, is a police officer within the meaning of s. 25 of the Evidence Act, and an admission to him of the accused's guilt is inadmissible in evidence under the section. **3 L.B.R. 283=5 Cr. L.J. 421.**

(74)—*S. 25—Statement voluntarily made to a police officer by accused, not in custody, not admissible—Police officer's evidence as to conduct and condition of the accused while making the statement, admissible.*—A person, who had committed a murder, voluntarily went to a police station, and made a statement to a police officer that he had done the deed, and that the instrument of murder was in a place named. He was subsequently arrested: *Held*, that the statement was a confession and was not admissible under s. 25 of the Evidence Act. Evidence of the police officer, however, was admissible to prove the conduct and condition of the murderer at the time when the statement was made. **10 C.L.J. 13=10 Cr. L. J. 193=2 Ind. Cas. 951.**

(75)—*Ss. 25 and 26—Admission by first accused—Second accused questioned on information given by first accused—Recovery of stolen property from second accused.*—The only evidence against the first accused was that, in consequence of information given by him, the second accused was questioned and the stolen property was produced. The first accused was also said to have admitted the theft before the police. *Held*, that the evidence was too insufficient to justify the conviction of the first accused for theft. The confession was irrelevant, as it did not lead directly to the recovery of the property. **3 M.L.T. 333=7 Cr. L.J. 398.**

(76)—S. 25—*See* CRIM. PRO. CODE (1898), s. 161, 27 C. 295=4 C.W.N. 129.

(77)—S. 25—*See* PARDON, 10 P.R. 1895 Cr.

(78)—Ss. 25 and 26—*See* POLICE OFFICER, 1 C. 207=25 W.R. Cr. 86.

(78-*a*)—S. 25—*See* Nos. 19, 23, 44, 47, 49, 55, 60, *supra* and No. 93, *infra*.

(79)—*S. 26—Statement made by accused, during temporary absence of police—Police custody—"Magistrate and police officer," scope of the expressions.*—Where a woman charged with the murder of her husband was taken into the custody of the police, a friend of hers also accompanying her, and the policeman in charge of the woman left her with her friend for the purpose of procuring a fresh horse, *held*, that any confession made to the friend accompanying her, while the policeman was away, would not be admissible in evidence, as the prisoner should be regarded to have been in the custody of the police, notwithstanding the temporary absence of the policeman. **20 B. 165.** [*R.*, Rat. Un. Cr. C. 855].

(80)—Where an accused person is brought to a Magistrate for recording a confession, while the police officer, in whose custody he had been, remained outside ready to capture him if he ran away, the accused should be treated as still being under police custody. (20 B. 165, *R.*) The words "police officer and Magistrate," in s. 26 of the Evidence Act, include police officers and Magistrates in Native States. **Rat. Un. Cr. C. 855=Cr. Rg. 22 of 1896.**

(81)—*S. 26*—Chowkidar, *whether a police officer—Quære*:—Whether a *chowkidar* is a police officer within the meaning of s. 26. **9 C. W.N. 474=2 Cr. L.J. 255.**

(82)—*Ss. 26 and 45 to 51—Confession made to a police officer—Recording opinion of police officer as evidence.*—A confession made to a police officer, but not in the immediate presence of a Magistrate, is inadmissible. Recording the opinion of a police officer as evidence regarding the points in the case under enquiry, which he considers to establish the guilt of the accused person is an irregularity. **S.C. 98 Oudh.**

(83)—*Ss. 26 and 27—Statements made by accused persons, while in police custody—Discovery of stolen property by one of them.*—Two accused persons admitted the offence imputed to them to the persons who assisted the police in the investigation. The first accused accompanied the police and others to his house, where certain of the stolen property was discovered. The second accused was not taken there till after the discovery. *Held*, that the conviction of the second accused was not sustainable, as an admission of the accused made while in police custody, was inadmissible under s. 26, and the admission of the first accused was inadmissible against the second under s. 27. **12 P.R. 1900 Cr.**

(84)—S. 26—*See* ACT I OF 1868, 2 M. 5=2 Weir 123.

(84-*a*)—S. 26—*See* Nos. 19, 23, 44, 46, 49, 55, 60, 65, 66, 67, 72, 75, 78, *supra*, and No. 93, *infra*.

(85)—*S. 27—Fact not directly discovered from information given to the police—Inadmissibility of such information.*—A fact discovered in consequence of the information which an accused person gives the police must be directly discovered in consequence of the information given by the accused to make evidence as to the information admissible under s. 27, Evidence Act. **L.B.R. (1893—1900), 363.**

(86)—*S. 27—Confessions to police officer, when admissible under.*—In order that a statement in the nature of a confession made by an accused person to a police officer at the time of producing property may be admissible under

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s. 27, it must be information in consequence of which a fact is discovered and does not include an explanatory statement made at the time, or after discovery, of the fact. **10 C.P.L. R. Cr. 25.**

(87)—Where, in a case of murder, on searching the accused's house, an axe was found by the police, which the accused then admitted to the police was the instrument with which he committed the murder; *held*, that the statement was inadmissible in evidence under s. 27 of the Evidence Act and that the fact discovered by such a statement must be a material thing. and not a mere mental state induced in another person by that statement. **16 C.P.L.R. 122.** (10 C.P.L.R. 75, *F.*).

(88)—*S. 27—Crim. Pro. Code (1882), ss. 380 and 408—Statement by accused in police custody—Appeal.—Held*, that under s. 408, Crim. Pro. Code, 1882, an appeal against a sentence passed by a District Magistrate exercising powers under s. 30, Crim. Pro. Code, lay to the Chief Court, in a case in which the District Magistrate passed a sentence against any of the accused, which was subject to the confirmation of the Court of Session. *Held*, also, that s. 27, Evidence Act, does not permit statements made by an accused person, while in police custcdy, to be proved, when he gave no clue which led to the discovery of the stolen property. **P. L. R. 1900, 56 Cr.=12 P. R. 1900 Cr.**

(88-*a*)—*S. 27.*—Where the police were enabled to go to a place where stolen property was discovered on account of certain information given by the accused, *held*, that so much of the information as related to the facts discovered could be proved, notwithstanding that the information was given while the accused was in police custody **30 P.R. 1885 Cr.**

(88-*b*)—*S. 27—Statements by prisoner under police custody.*—The provision in s. 27 of the Evidence Act for the admission of a certain class of statements made by prisoners while under police custody, is an exception to the general rule excluding all statements made while in such custody, and as such, its operation must be confined to only such statements as properly fall within the description therein given. If they amount to confessions, they ought to be excluded. **11 B. H. C. 242.** [*R.*, 3 B. 12, 6 C. 530=7 C. L. R. 541, 4 A. 198, 6 A. 509, F.B., 10 B. 595, Rat. Un. Cr. C. 285, 12 M. 153, 14 B. 260, F.B., Rat. Un. Cr. C. 829, 833, 952, L.B.R. (1893—1900), 363].

(89)—*S. 27—Discovery of property by accused after inducement by police officer.*—The pointing out of the jewels of a child, with whose murder the accused was charged, after an inducement improperly held out to her by a constable, was held to be a relevant fact, legally admissible in evidence. **2 Weir 736.**

(90)—*S. 27—Confession—Accused pointing out stolen property concealed in a pond.*—The accused pointed out the place in the pond whence the bundle of stolen ornaments was recovered. The prosecution alleged that the accused had said to the police that he had buried the things in the pond. *Held*, that the statement of the accused was inadmissible in evidence. **155 P.L.R. 1908=21 P.W.R. 1908 Cr.**

(91)—*S. 27—Property discovered in consequence of information—Indian Penal Code, s. 395—Dacoity—Cash—Identification—Number of men concerned—Severity of sentence.*—Cash is generally incapable of identification; but the coincidence that each and every one of a number of accused was found in possession of a considerable sum in cash, along with other things which were undoubtedly stolen from the complainant, and that a very large sum in cash was actually taken away by the dacoits, and that the accused can give no satisfactory account as to how they came to be in possession of so much cash, leads to the inevitable conclusion that the cash also formed the subject of the dacoity. As regards the discrepancy between the number of men alleged by the complainant to have actually entered the house and the number of men concerned in the dacoity, it must be assumed that there must have been many more dacoits than those who actually entered the house. Guard is always kept outside to prevent surprise and keep away any villager who may attempt to interfere. Having regard to the wording of s. 27, Evidence Act, the admission by the accused that their share of the proceeds of the dacoity would be found with men whom they named, can be legally proved against them. In awarding punishment, two matters are to be considered:—(1) What punishment does the individual deserve having regard to the gravity of his offence. (2) Is an unusually heavy sentence necessary in any particular case to protect the interests of the public at large by acting as a deterrent to others. Where all the accused (19 in number)were sentenced to transportation for life, *held* that, so far as the individual accused were concerned, a much lighter sentence would suffice, as there was no allegation that any of them had been previously convicted, and as by their wholesale transportation for life, a large number of innocent beings—the members of their families—will suffer directly or indirectly. As regards the other reason that the prevalence of dacoities in Upper Sind necessitated exemplary punishment, *held* that sentences, on 19 men, in one case, of seven years' rigorous imprisonment, would have the desired effect. **2 S.L.R. 27 Cr.=10 Cr. L.J. 239.**

(92)—*S. 27—Accused making detailed statement to Magistrate—No subsequent discovery—Description of manner in which offence committed not relevant.*—Where an accused person made a statement to a Magistrate describing in *extenso* the occurrence of the crime, but there was no discovery of the articles subsequent to the making of the statement, the description of the manner in which the crime was committed was held to be not relevant. A confession of murder made to a police constable is not at all

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confirmed by the prisoner saying "that is the place where I killed the deceased," and when, starting from the pointing to a ditch or tree, a long narrative of transactions, some of them altogether remote from any connection with the spot indicated, is allowed to be deposed to as confessed by a prisoner, the intention of the Evidence Act is not fulfilled but defeated. **3 B. 12.** [*R.*, Rat. Un. Cr. C. 286=10 B. 595].

(93)—*Ss. 27, 25 and 26—Applicability of s. 27 to ss. 25 and 26.*—S. 27 of the Evidence Act applies to s. 25 as well as to s. 26. **14 B. 260, F.B.**

(94)—*S. 27—No proof of discovery having been made.*—Where an accused person made a statement to the police of facts which were already within their knowledge, *held*, that, as it did not previously appear whether anything was discovered in consequence of the information, the statement could not be used against him under s. 27, Evidence Act. **11 P.R. 1900 Cr.**

(95)—Ss. 27, 30—*See* CONFESSION, 9 C.P.L. R. Cr. 37.

(96)—S. 27—*See* JOINDER OF CHARGES, 11 C.L.J. 182.

(97)—Ss. 27 and 30—*See* JUDGE AND JURY, 18 M.L.J. 66=31 M. 127=3 M.L.T. 270=7 Cr. L.J. 325.

(97-*a*)— S. 27—*See* Nos. 19, 23, 44, 47, 49, 55, 66, 67, 83, *supra*.

(97-*b*)—S. 28—*See* No. 55, *supra*.

(98)—S. 29—*See* MURDER, 2 Ind. Cas. 622 =8 P.W.R. 1909 Cr.

(98-*a*)—S. 29—*See* No. 46, *supra*.

(99)—*S. 30, scope of.*—S. 30 of the Evidence Act only relates to *confessions* made by accused persons who are being jointly tried for the same offence. **5 C.P.L.R. Cr. 9.**

(100)—*S. 30—Confessions of co-accused—Admissibility—Value.*—In order that the confession of a co-accused may be admissible under s. 30 of the Act, it must implicate himself (the confessing person) substantially to the same extent as it implicates the persons against whom it is to be used, in the commission of the offence for which the prisoners are being jointly tried. **S.C. 153 and 98 Oudh.**

(101)—Where a person admits his guilt to the fullest extent, and exposes himself to the pains and penalties provided for his guilt, there is a guarantee for his truth, and the Legislature provides that his statement may be considered against his fellow prisoners charged with the same crime. **6 B. 288.** [*R.*, Rat. Un. Cr. C. 436].

(102)—A confession which does not amount to such an admission of guilt as is contemplated in s. 30 of the Evidence Act, though it may be accepted for what it is worth against the accused making it, cannot be taken into consideration against other accused persons. **Rat. Un. Cr. C. 84.**

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(103)—A confession duly made, at any time, by one of several accused persons under trial jointly for the same offence, can be used under s. 30 of the Evidence Act. The section is not to be read as though the words "at the trial" were inserted after "made" and the word "recorded" substituted for "proved." **Rat. Un. Cr. C. 510=Cr. Rg. 30 of 1890.**

(104)—Confessions made by an accused person may be considered against persons who are tried with him, but they cannot be accepted as evidence of any fact necessary to constitute the offence. **2 Weir 741.**

(105)—In order that a confession of an accused person may be admissible as against the other accused tried with him, it is not necessary that the confession should have been made in the latter's presence. **2 Weir 745.**

(106)—The confession of a prisoner affecting himself and another person, who was being tried with him for the same offence, is, when duly proved, admissible *as evidence* against both; but a confession, unsupported by other testimony, is evidence of the weakest kind against a co-accused. The Court must, in each case, decide what weight should be attached to it. **11 O.C. 328.**

(107)—*S. 30—Statement by co-accused—Its evidentiary value as against the other accused—"Taken into consideration," meaning of the expression.*—The words "taken into consideration" in s. 30 of the Indian Evidence Act mean "taken into consideration" for the purpose of arriving at a conclusion of fact, and though a co-accused's statement is not *technically evidence* within the definition given in s. 3, it may still be used *quantum valeat* for the basis of a reasonable inference, and, if a jury think it sufficiently supported by a partial or qualified admission of guilt on the part of the accused himself and by admitted physical facts pointing to his connection with the crime imputed to him, they are not precluded by law, any more than by reason, from a finding of guilty thus sustained. **Rat. Un. Cr. C. 311=Cr. Rg. 64 of 1886.**

(108)—The meaning of the words "the Court may take into consideration" such confession as against such other persons as well as against the person who makes such confessions is that, if there is other evidence which, if true, would establish the charge, the confession of a person being tried jointly for the same offence may be taken into consideration by the Court and may be used for the purpose of corroborating the other evidence. **4 O.C. 69.**

(109)—*S. 30—"Being tried jointly," meaning of.*—The words "are being tried jointly" which occur in s. 30 of the Evidence Act refer to the initiation of the proceedings before the particular judicial officer who deals with the case under Ch. XXI of the Crim. Pro. Code. To hold otherwise might result in the exclusion of confessions by one of the accused before him,

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as s. 253, Crim. Pro. Code, seems to contemplate that the accused should be examined before the charge is actually framed. **L.B.R. (1893—1900), 642.**

(110)—*S. 30—"Offence" in section whether inciudes abetment of offence also—Penal Code, s. 108, expl. (4)—Abetment.*—It is very improbable that the Legislature, having before it the definition contained in s. 108, expl. (4), Penal Code, should, in enacting s. 30, Evidence Act, have omitted to explain that the term "offence" contained in the latter section included the "abetment of an offence" also, if the intention really was that s. 30 was to be so understood. But, if the offence abetted is committed as the result of an abetment and the abettor is present at its commission, the abettor must be held to have committed the substantive offence. **S.C. 143 Oudh.**

(110-*a*)—*S. 30—Joint trial of abettor and principal offender—Confession by one of them.*—In a joint trial of two persons for the same offence, a confession by one of them implicating the other in acts which amount to abetment of the offence cannot be considered as against him. **39 P.R. 1885 Cr.**

(111)—*S. 30—Confession of co-accused—Its value—Approver's evidence, corroboration of.*—Though under s. 30, confessional statements of co-accused implicating the other accused may be taken into consideration as against the latter, they are not evidence on which a conviction can be based. The utmost value that can be claimed for them is, that, if there is other untainted evidence against the accused, they may be considered together with such evidence. When the other evidence is not untainted, it is no legal corroboration of the tainted evidence of the approver. They are of less value, for, while a prisoner under trial has the advantage of cross-examining the approver, the statement of his fellow-prisoner is subject to no such test; nor is it given under the sanction of a solemn affirmation. An approver's evidence should be corroborated not only as to the general facts, but also as to the individual prisoners charged. **2 Weir 742.**

(112)—*S. 30—"Court," scope of the word.*—The word "Court," in this section means and includes, in a trial by jury, both Judge and Jury. **4 C. 483=3 C.L.R. 270, F.B.**

(113)—*S. 30—Statement of co-accused—Consideration—Duty of Judge in trials by jury—Self-exculpatory statement—Weight.*—The statement of a fellow prisoner jointly tried is by itself evidence of the weakest kind and it is the duty of the Judge to point this out to the jury. Where an accused person makes a confession exculpating himself and inculpating the other accused, the confession must be taken together and it is evidence both for and against the prisoner. The jury may, if they think proper, believe one part of it and disbelieve the other. **Rat. Un. Cr. C. 436.**

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(114)—*S. 30—Confession of co-accused—Same offence—I.P.C., ss. 304 and 325.*—The confession of one accused cannot be taken into consideration as against another unless they are tried for the same specific offence. Offences under ss. 304 and 325 of the Penal Code do not constitute "the same offence" though they arose out of the same facts. **Rat Un. Cr. C. 450=Cr. Rg. 9 of 1889.**

(115)—*S. 30—Confession of co-accused—Accomplice—Value of evidence.*—A confession of a co-accused person, is not even of the same probative value as the evidence of an accomplice taken on oath. It is wrong to treat the former as testimony. **Rat. Un. Cr. C. 456=Cr. Rg. 11 of 1889.**

(116)—*S. 30—Retracted confession by co-accused, value of—Meaning of s. 30.—Per Knox, J.*—A prisoner may be convicted on his own confession without any corroborating evidence, even when such confession is retracted. If a Judge believes that the confession contains a true account of that prisoner's connection with the crime, he is bound to act, so far as that prisoner is concerned on the confession which he believes to be true. The law does not anywhere forbid the Courts in this country from considering against persons tried jointly for the same offence a confession made by one of such persons affecting himself and the persons who were being tried jointly, when such confession has been subsequently withdrawn. To introduce such a qualification would be not to follow the law as it stands in s. 30, Evidence Act, but to legislate. *Per Richards, J.*—The meaning of the Legislative enactment in s. 30 of the Evidence Act that a confession may be taken into consideration by the Court is that the Court may treat the confession, in the circumstances provided for by the section, as evidence. A conviction of an accused person even on the unsupported evidence of a co-accused would not be illegal. But, in all cases, the Court should approach the consideration of such evidence with the greatest caution and with at least the caution with which the Courts have always approached the consideration of the evidence of an accomplice or an informer. If the Court believes the confession, it is not unlawful to convict. **29 A. 434=4 A.L.J. 310=A.W.N. 1907, 140=5 Cr. L.J. 360.** [*R.*, 11 O.C. 328].

(117)—The retracted confession of accomplices may be taken into consideration under s. 30, Evidence Act, where there is evidence tending to conviction, but they cannot form the basis of a conviction when there is no evidence whatever. **Rat. Un. Cr. C. 108**

(118)—Statements of accomplices, co-prisoners who may not be cross-examined and who may have motives for telling lies against the other co-prisoners, cannot be accepted as a criterion of guilt or innocence, especially in a capital case, and where they have retracted their stories. **Rat. Un. Cr. C. 771=Cr. Rg. 35 of 1895.**

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(119)—*S. 30—Confession—Joint trial—Plea of guilty by one of the accused—Use of confession against the rest—Crim. Pro. Code, s. 271 and 342.*—Where an accused person has pleaded guilty and the Court is prepared to convict on that plea, it is contrary to the spirit of the law to postpone the conviction so that the person who has pleaded guilty may technically be said to be tried jointly for the same offence with the other co-accused, and any statement in the nature of a confession that he may make used against them. **A.W.N. 1908, 241=4 M.L.T. 398=8 Cr. L.J. 380.**

(120)—*S. 30—Statement by prisoner in absence of jointly charged co-prisoners—Conviction—Validity.*—A conviction of each of the prisoners, jointly charged with the same offences, based chiefly upon the statements made by his co-prisoners during his absence from Court, is untenable. **7 C. 65=8 C.L.R. 352.** (*F.*, 13 C.L.R. 275, 6 B. 124).

(121)—*S. 30—Uncorroborated confession of co-accused—Conviction—Validity.*—A conviction cannot be based merely on uncorroborated statements contained in the confession of a co-accused. **L.B.R. (1872—1892). 388.**

(122)—*S. 30—Admission by co-accused—Admissibility—Trial by jury—Misdirection.*—Statements made by some of the accusde persons which do not amount to a confession, nor incriminate the person making them are not admissible in evidence against any person other than those making them. An omission to point out this to the jury amounts to a misdirection. **25 C. 711=2 C.W.N. 369.**

(123)—*S 30—Co-accused pleading guilty—Admissibility of his confession against the other accused.*—The first and the second accused were committed for trial charged with murder and abetment of murder respectively. The former pleaded guilty. *Held*, that the confession of the former could not be used against the *latter*, as the former was no longer on his trial. **11 P.R. 1900 Cr.**

(123-*a*)—*Evidence of co-accused.*—Where two persons were jointly accused of theft, but the Magistrate issued process against one of them only, the evidence of that person against whom process was not issued adduced on behalf of the accused who was on his trial was held to be admissible in evidence. **10 C.L.R. 553.**

(124)—S. 30—*See* ABETMENT, 3 P.R. 1879 Cr.

(125)—S. 30—*See* ACCOMPLICE, 31 P.R. 1866 Cr.

(126)—S. 30—*See* ACCUSED PERSON, 9 C.L.J. 291=13 C.W.N. 552.

(127)—Ss. 30, 114—*See* CONFESSION, 22 M. 491=2 Weir 746.

(128)—Ss. 30, 113, 114, 157—*See* CONFESSION, 11 B.H.C. 196.

(129)—Ss. 30, 133—*See* CONFESSION, 9 C. P.L.R. Cr. 35.

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(130)—S. 30—*See* CRIM. PRO. CODE (1898), s. 164, 2 A.L.J. 100=2 Cr. L.J. 59.

(131)—S. 30—*See* CRIM. PRO. CODE (1898), ss. 423, 435, 439, 70 P.L.R. 1904.

(132)—S. 30—*See* RE-TRIAL, L.B.R. (1893—1900), 111.

(132-*a*)—S. 30—*See* Nos. 3, 42, 43, 95, 97, *supra*.

(133)—*S. 31—Admission made before the Registrar—Rebuttable presumption.*—An admission made before the Registrar or contained in a deed of sale that the consideration has been received by the vendor, raises only a rebuttable presumption, the weight of which varies with the circumstances of each case. **A.W.N. 1889, 142.**

(134)—*Evidence Act, s. 32 (1)—Dying declarations, credibility of.*—Though dying declarations are, in some respects, deserving of a great degree of consideration and of credence to which ordinary statements are not, they are not subject to the test of cross-examination, and, if not substantially borne out by independent evidence and the probabilities of the case, or admitted facts, are worth little or nothing. **2 Weir 753.**

(135)—*S. 32 (1)—Statement by deceased as to the cause of his death—Admissibility.*—In a case of culpable homicide, where the question was whether the deceased had died from the effects of a beating, the deceased's statement that the prisoner gave him a certain blow, from the effect of which he undoubtedly died, might reasonably be admitted, under s. 32 of the Evidence Act, although he might not be conscious of impending death. **6 C.L.R. 278.**

(136)—The commission of a violent assault, by several accused persons, upon two persons, caused their death. *Held*, that the statements of a deceased person, made prior to his death, as to the cause of his death or as to any of the circumstances of transaction which brought about his death, are relevant as against all the accused. **67 P.L.R. 1905=2 Cr. L.J. 237.**

(137)—Statements made by a deceased person as to the cause of his death, where the cause of that person's death is in question, need not be made in the presence of the accused, in order to be admissible in evidence. But they are not admissible without legal proof, that is to say, it will not be enough to simply put them in. **2 Weir 750.**

(138)—*S. 32 (1)—Dying declaration, not recorded in writing—Oral evidence, if admissible.*—Although a dying declaration is not recorded in writing, oral evidence of what the deceased said is receivable. **2 Weir 755.**

(139)—*S. 32—Dying declarations, against whom admissible.*—Where, in committing a dacoity, the dacoits caused the death of a person, the latter's dying declaration, as to what was done by those concerned in the dacoity, in which the murder was caused, was

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held to be not only relevant against the person who actually caused the death, but also against those concerned in the dacoity. **2 Weir 750.**

(140)—*Statement made by the dying person, when admissible—Evidence Act, s. 32 (1)—Crim. Pro. Code, s. 154.*—Where, upon information received from the *chowkidar* of an offence, the Sub-Inspector had gone to the hospital to see the wounded man and had there recorded a statement made by him, *held*, the writing containing the statement so recorded and attested by the witnesses cannot be regarded as evidence. The statement may be proved only in the ordinary way by one who heard it, with recourse to the writing to refresh the memory, if necessary. **6 C.W.N. 921.** (20 C. 867, *F.*) [*R.*, 8 C.W.N. 218].

(141)—*S. 32—False deposition by dying men, value of.*—Cases are not uncommon in this country of false depositions being made by dying men. **5 M.L.T. 217.**

(142)—*S. 32—Statements in police reports—Statements made by one witness to another in police enquiry.*—Statements embodied in the first report to the police, or statements made by a witness to another person in the course of a police enquiry, are not ordinarily admissible in proof of the facts stated, though they may be admissible to rebut the suggestion of the recent fabrication of a case, or though they may be admissible under s. 32, Evidence Act. **5 O.C. 246.**

(143)—*Ss. 32 and 157—Dying declaration, use to be made of, when the person making it chances to be alive.*—Where a person making a dying declaration chances to live, his statement cannot be admitted in evidence as a dying declaration under s. 32 of the Evidence Act, but it may be relied on, under s. 157 of the Act, to corroborate his testimony when examined in the case. **4 Bom. L.R. 434.**

(144)—*S. 32, cl. (5)—Statements relating to existence of relationship.*—Statements of the kind referred to in s. 32, cl. 5 of the Evidence Act may be evidence, but they must be received with great caution, since they are always open to the objection that the parties making them are not subject to any cross-examination; the caution is all the more needed especially when the parties making them could not have had any very certain knowledge of the matters regarding which they made the statement. **D.C.R. Part X, 65.**

(145)—*Ss. 32, 157—Letter by a third person containing a statement of what the witness had written to him—Admissibility—Statement by third person to a witness.*—Where a letter written by a witness to a third person was missing, and the witness wrote another letter to which he got a reply containing a statement of what that witness had written previously to such person, *held*, that the reply was not admissible in evidence to corroborate the evidence of the witness. *Held* also that the oral testimony of such person, if he was alive, may be admissible

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under s. 157, Evidence Act. Evidence of the fact that a statement was made by a third person to the witness is admissible, but evidence of the terms of the statement is inadmissible. **2 Weir 823.**

(146)—*S. 32, cl. (2)—Letter of advice.*—On the trial of a person charged with forging a railway receipt or bill of lading for the purpose of obtaining possession of certain goods which had been sent from Delhi to Calcutta, a letter from the consignee at Delhi to his partner in Calcutta, advising the despatch of the goods, was tendered in evidence under s. 32, cl. 2, of Act I of 1872 (the Evidence Act), but the Court refused to receive it, and intimated a doubt whether it fell within the instances specified in the section. **9 B.L.R. App. 42.**

(147)—*S. 32, cl. 8, meaning of—Repetition of collected information inadmissible in evidence—Jurors or assessors to be men of judgment and experience.*—The meaning of the clause is that when a number of persons assemble together to give vent to a common statement expressing the feelings or impressions made in their minds at the time of making it, that statement may be repeated by the witnesses and is evidence. Consequently the statement of a police officer based on the information collected from persons of different places and afterwards put in second hand before the court cannot be received as evidence under the clause. The persons composing the jury ought to be persons of independent condition in life, men of judgment and of experience. **23 W.R. 35 Cr.**

(148)—Ss. 32 (1), 91—*See* PENAL CODE, ss. 34, 302, 326, 13 C.W.N. 690=36 C. 659=2 Ind. Cas. 841=10 Cr. L.J. 186.

(148-*a*)—S. 32—*See* Nos. 18, 20, 43, *supra*.

(149)—*S. 33—Evidence of absent witness when admissible in Sessions Court.*—Under s. 33 of the Evidence Act, the evidence of an absent witness taken in the Magistrate's Court cannot be received in the Sessions Court without proof of the circumstances rendering it admissible. Such circumstances should be proved like any other fact by the evidence of witnesses and a mere report that the witness is dead or absent is not sufficient. **L.B.R. (1872—1892), 134.**

(150)—*S. 33—Sessions trial—Evidence given at preliminary enquiry, admissibility of.*—It is only in extreme cases of expense or delay that the personal attendance of a witness should be dispensed with, and his evidence given in the preliminary enquiry referred to. **2 A 646.** [*F.*, A.W.N. 1881, 38].

(151)—*S. 33, evidence of witnesses taken on commission—"Opportunity to cross-examine"—Crim. Pro. Code, Ch. 40.*—The deposition of a witness, obtained by a commission issued by the committing Magistrate and forming part of the record of the enquiry, is admissible under s. 33 of the Evidence Act, provided that the requirements of that section are satisfied.

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notwithstanding Ch. 40, Crim. Pro. Code. The words "opportunity to cross-examine" include the method of cross-interrogatories, which, for many years, were the chief mode of cross-examination in the Courts of Equity and the Admiralty Courts of England, and for which provision is made in the Common Law Procedure Acts. An opportunity to administer cross-interrogatories under a commission is sufficient to render the evidence elicited by the cross-interrogatories relevant under s. 33, Evidence Act. The words do not imply that the actual presence of the cross-examining party or his agent before the tribunal taking evidence is necessary. To require such presence would be to put a strain on the words of s. 33 and lead to inconvenience, and much difficulty would be found in getting evidence under this enabling section, where a party is in police custody. The fact that an accused person had full opportunity of cross-examining, if not admitted, must be proved, before evidence can be admitted under s. 33. **19 B. 749.**

(152)—*S. 33—Evidence taken before a committing Magistrate, when admissible in sessions trial—Crim. Pro. Code (1882), s. 503—Examination of witnesses on commission.*—Where two principal witnesses for the prosecution, in a case under s. 411, I.P.C., were examined, in the preliminary enquiry, on commission, and the Sessions Judge admitted their evidence taken before the committing Magistrate under s. 33 of the Evidence Act, and also issued a supplementary commission to one of them, on the ground that the attendance of the witnesses could not be procured without an expense of Rs. 500, which he considered to be unreasonable and would inconvenience them, *held*, that, as the whole case rested on their evidence, as the question of the identification of the stolen property to which they deposed was a most material one in the case. and as the accused had not cross-examined them, nor could he arrange for their cross-examination, the Judge had acted improperly in admitting their evidence, and was not justified, under s. 503, Crim. Pro. Code, in issuing the commission. **6 A. 224.** [*R.*, 15 C.P.L.R. 66; *R.*, 19 C. 113, 19 B. 749].

(153)—A prisoner being charged with having committed murder at Zanzibar, the British Consul there held a preliminary enquiry and sent the prisoner for trial before the Bombay High Court. The Consul, having no power to require witnesses to attend to give evidence at Bombay, transmitted the depositions taken by him during the enquiry. Objections were raised, *inter alia*, that the depositions were inadmissible, as the Consul had no power to take them in a case of murder. *Held*, that the Consul was authorised by law to take the depositions of witnesses in this case, and that they were admissible in evidence at the trial under s. 33, Evidence Act. **3 B. 334.**

(154)—*S. 33—Evidence before committing Magistrate—Death of witness—Admissibility in Sessions Court.*—The deposition of a witness

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who was not cross-examined before the committing Magistrate and who died before the trial, is admissible in evidence under s. 33, Evidence Act, because the accused had the right and opportunity of cross-examining him, notwithstanding the omission of their pleader to avail himself of that right. **25 B. 168=2 Bom. L. R. 761.**

(155)—*Ss. 33, 157—Crim. Pro. Code (1882), s. 512—Evidence of witnesses recorded before committing Magistrate—Admissibility, after death of witnesses, during the subsequent sessions trial of an absconding accused.—Scope of s. 33*—Out of six persons accused of murder, five were arrested, and, after an enquiry by a Magistrate, were committed to the Court of Sessions by which they were convicted. The sixth accused absconded at the time of the enquiry by the committing Magistrate. In that trial, some of the witnesses deposed before the committing Magistrate that the absconding person was also a participator in the crime. In the Sessions trial, the Judge did not record that the sixth accused person had absconded, and the evidence was recorded against the prisoners then under trial only. Two years afterwards, the absconding person was arrested and tried before a Sessions Judge who admitted the evidence given by the witnesses in the former case before the Magistrate and the Sessions Judge, because those witnesses excepting one, were dead then. The deposition of the surviving witness given in the former case was also admitted in this case, in addition to her deposition in the case also. *Held*, that the depositions given before the committing Magistrate in the previous case were admissible under s. 512, Crim. Pro. Code, but not under s. 33, Evidence Act, but that the depositions of the deceased witnesses given before the Sessions Judge were not admissible. *Held*, further, that the deposition of the surviving witness in the previous Sessions trial was admissible under s. 157, Evidence Act. [*R.*, 16 A. W.N. 182]. In order to render the depositions, given in any proceedings by persons who are now proved to have died, admissible in evidence, the proceedings in which the same evidence was given must have been between the same parties or their representatives in interest, and the person against whom such depositions could be heard must have had an opportunity of cross-examining the witnesses. **8 A. 672.**

(156)—*S 33—Statement by a witness in criminal proceeding, whether admissible in subsequent proceeding against same accused.*—Where there are two or more charges arising out of the same allegations made by an accused, the testimony of a deceased witness in a previous proceeding against the accused is admissible in evidence in a subsequent proceeding against the same accused, although the prosecutor in the second case is the widow of the prosecutor in the first. **Rat. Un. Cr. C. 347=Cr. Rg. 38 of 1887.**

(157)—*S. 33—"Incapable of giving evidence"—Nature of incapacity.*—The incapacity to give

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evidence mentioned in s. 33 of the Evidence Act need not be a permanent one; something short of permanent incapacity might satisfy the words of the section "incapable of giving evidence." **6 C. 774=8 C.L.R. 124.** (4 C.L.R. 504, *Diss.*).

(158)—The words "incapable of giving evidence" in s. 33, Evidence Act, denotes an incapability of a permanent kind. The Court has no discretion under s. 33 as to admitting a deposition, when the witness is proved to be "incapable of giving evidence." But where the absence of a witness is due to temporary causes, the Court has a discretion to admit the deposition of a witness, if it is proved to be either actually impossible to produce him, or to be so difficult to do so, or if it is unreasonable to insist on his production. **4 C.L.R. 504.** [*Appl.*, 21 C. 955; *Diss.*, 6 C. 774=8 C.L.R. 124].

(159)—*S. 33—Proviso to section, applicability of.*—The question whether the proviso to s. 33 is applicable—*i.e.*, whether the questions at issue are substantially the same—depends upon whether the same evidence is applicable, although different consequences may follow from the same act. **7 C. 42=8 C.L.R. 273.**

(160)—*S. 33—Evidence given in proceedings* coram non judice—*Admissibility in subsequent proceeding*—"*Questions,*" *meaning of*—*Identity of matter at issue—Previous deposition whether relevant against person not party to it.*—The evidence of a witness given in a proceeding subsequently pronounced to be one *coram non judice* is not admissible under s. 33, on the death of the witness, in a subsequent proceeding regarding the same matter. Although the section, by using the word "questions" in the plural, seems to imply that it is essential that all the questions shall be the same in both the proceedings to render the evidence admissible, that is not the intention of the law. The principle involved in requiring identity of the matter in issue is to secure that in the former proceedings the parties were not without an opportunity of examining and cross-examining on the very point on which their evidence is adduced in the subsequent proceeding. Though separate proceedings may involve issues, of which some only are common to both, the evidence to those common issues given in the former proceedings may, on the conditions mentioned in s. 33 arising, be given in the subsequent proceedings. Where a person charged another with breach of trust, and, the complaint being dismissed, the complainant and one of his witnesses were tried on the charges of making a false charge and giving false evidence respectively, *held*, that the deposition of the witnesses given in the former proceedings would, on the conditions mentioned in s. 33 arising, be admissible as against the former in the subsequent proceeding, but not as against the latter, notwithstanding the fact that there was in the second case the additional question whether the complainant in the former proceeding knew, or had reason to believe that the charge was false, beside the question whether there has been the breach of trust alleged by the complainant, which was common to both the cases. **3 M. 48=2 Weir 756.**

(161)—*S. 33—Evidence of gosha woman—Personal attendance.*—In a case in which a gosha woman is not exempted from appearance in Court, her evidence, not given in presence of the accused, cannot be received as the evidence of an absentee witness, as the personal attendance of the deponent can be procured by the process of the Court. **2 Weir 755=4 M.H.C. App. 15.**

(162)—*S. 33—Evidence in a former judicial proceeding.*—Admitting evidence given in a former judicial proceeding under s. 33, Evidence Act, without explaining reason for so doing, is an irregularity. **A.W.N. 1881, 38.**

(163)—*S. 33—Recording of facts making section applicable.*—When a case arises in which s. 33 Evidence Act can be applied, the circumstances rendering the section applicable should be recorded. In the absence of such record, the Judge was held to be wrong in applying the section, and the High Court declined to consider the evidence of witnesses taken before the Magistrate. **A.W.N. 1898, 22.**

(164)—*S. 33—Depositions of an absent witness when admissible—Law laid down in Crim. Pro. Code (1872), different from that laid down in Crim. Pro. Code (1861).*—Under Crim. Pro. Code, 1861, as well as under the Evidence Act, s. 33, the depositions of an absent witness are only admissible when the prisoner has had the right and the opportunity to cross-examine. But s. 327 of the Crim. Pro. Code 1872, permits the depositions, of a witness to be taken in the absence of the accused who has absconded, and, even in such cases, it is necessary to establish that, when the former deposition was taken, the accused had absconded, and, after due pursuit, could not be arrested. **21 W.R. 12.**

(165)—*S. 33—Deposition of absent witness, grounds for its admission, to be stated fully and clearly.*—When the evidence of an absent witness is admitted under s. 33, the grounds for its admission should be stated fully and clearly so as to enable the High Court to judge of the propriety of its admission. In order to make a deposition admissible under the section, there must be something to show that, by ordinary care and the use of ordinary means, the witness could not be produced, and there must be evidence that the accused person did, in fact, have an opportunity to cross-examine. **20 W.R. Cr. 69.**

(166)—*S. 33—Deposition of an absent witness—Ground for non-production of witness—Trial to be adjourned.*—Before a Sessions Judge can, under s. 33, admit the depositions of witnesses, given in a former judicial proceeding, instead of, and in place of, the oral testimony of the witnesses themselves, it ought to appear that the presence of the witnesses could not be procured without an amount of delay or expense which,

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under the circumstances of the case, the Court considers unreasonable, consequently where there is nothing of a special nature to stand in the way of the postponement of the trial, the case should be adjourned to the next Sessions to procure the attendance of the witnesses. **21 W.R. Cr. 56.**

(167)—*S. 33—Evidence of deceased witness—Evidence Act, I of 1872, s. 33—Crim Pro. Code, Act X of 1882, s. 512.*—The only provisions of law under which the evidence of a deceased witness is made admissible in evidence are s. 33 of the Evidence Act, in cases between the same parties or their representatives in interest, and s. 512 of the Crim. Pro. Code, under which it must be proved that the accused was absconding and there was no immediate prospect of arresting him. **A.W.N. 1896, 182.**

(168)—*S. 33—Use in Sessions Court of evidence taken before Magistrate—Meaning of "cannot be found."*—"Where a Sessions Judge, seeing that some of the witnesses examined before the Magistrate were absent on the day fixed for hearing in the Sessions Court, ordered fresh summons for the next hearing at which also they were not present, and thereupon used the evidence they had given before the committing Magistrate as evidence in the case, *held* that the provisions of s. 33 of the Evidence Act did not apply, since it could not be held that the witnesses "could not be found." The Judge should have issued warrants to enforce their attendance in Court. **A.W.N. 1905, 202.**

(169)—S. 33—*See* COMMISSION, 19 C. 113.

(170)—S. 33—*See* CRIM. PRO. CODE (1898), s. 512, 26 P.R. 1885 Cr.

(171)—S. 33—*See* No. 348, *infra*.

(172)—*S. 34—Entries in account books, when admissible.*—Entries to be admitted as evidence by way of corroboration of other testimony must be made in the regular course of business. It is not sufficient to prove that the entries were taken from books which were regularly and correctly kept. **Rat Un. Cr. C. 344=Cr. Rg. 37 of 1887.**

(173)—*S. 34—Absence of entry in account book.*—Although s. 34 of the Act makes an entry in a book of account relevant, such a book is not, by itself, relevant to disprove an alleged transaction by the absence of any entry concerning it. **10 C. 1024.** (7 C.L.R. 356, 22 A.W.N. 207=25 A. 90.) [*R.*, A.W.N. 1902, 207=25 A. 90].

(174)—S. 34—*See* ACCOUNTS, 1 B. 610.

(175)—*S. 35—Official public book, whether evidence of absence of entry.*—S. 35 only provides that "any entry in an official book, which is duly made by a public servant in the execution of his duty, is of itself a relevant fact." But it is no evidence for the purpose of proving the absence in them of any particular entry. **7 C. L.R. 356.** [*R.*, 22 A.W.N. 207=25 A. 90].

(176)—S. 35—*See* CRIM. PRO. CODE (1898), s. 162, 28 C. 348=5 C.W.N. 65.

Evidence Act (I of 1872)—continued.

(177)—*S. 43—Judgment in civil suit giving rise to criminal trial—Admissibility in evidence.*—The judgment of a Munsiff who, disbelieving the genuineness of the signature of the executants of a bond on which a suit had been brought, directed the prosecution of the plaintiffs in the case for forgery, is not legally admissible in evidence in a trial for the offence. **6 C. 247=7 C.L.R. 74.** [*Cons.*, 23 C. 610].

(178)—*S. 43—Record and judgment in a trial in which principal was convicted of breach of the peace—Admissibility as evidence against surety—s. 514, Crim. Pro. Code (1893).*—*Per* Wilkins, J.—The mere production of the original record or of its certified copy of the trial in which the principal has been convicted of breaking the peace within the period covered by the bond, would not be conclusive, if indeed it would be any evidence, against the surety in a proceeding under s. 514, Crim. Pro. Code (1898). *Per* Banerjee, J.—Where a bond is given by a surety, and the condition on the bond is that it shall be forfeited, not if the principal party is convicted of a breach of the peace, but if he commits a breach of the peace, the judgment convicting the principal of a breach of the peace is no evidence under the Evidence Act, (s. 43) against the surety who was no party to it, to prove that the party bound down to keep the peace has really committed a breach of the peace. Such fact must be proved by evidence taken in the presence of surety, unless it is admitted by him. **25 C. 440.** [*Diss.*, 32 P.R. 1903 Cr.].

(179)—*Ss. 11, 43 and 153—Proof of possession of other completed or inchoate forged documents—Admissibility—Evidence of execution of similar documents.*—In a charge of forgery, evidence of possession by the accused of other documents suspected or even proved to be forged, is inadmissible under s. 11 of the Evidence Act. [*R.*, Rat. Un. Cr. C. 312, 15 B. 491, U.B.R. (1892—1896), 158, 10 Bom. L.R. 907; *D.*, 8 B. 223, 16 B. 414.] Where, on the denial by the complainant in a prosecution for forgery of ever having executed a pro-note, evidence that he had executed a pro-note similar to the one in question in the charge or even that a judgment had been obtained on another note is inadmissible under s. 43 or s. 153 of the evidence Act. **11 B.H.C. 90.**

(179-*a*)—S. 43—*See* CRIM. PRO. CODE (1898), s. 514, 9 C.P.L.R. Cr. 8.

(179-*b*)—S. 43—*See* Nos. 22, 38, *supra*.

(180)—*S. 45—Expert medical evidence--Cause of death.*—A medical man, who had not seen the dead body and who had not been present at the *post mortem*, could be asked to give his opinion about the cause of death, after placing before him the appearance of the body as spoken to by the medical man who made *post mortem* examination, together with the signs spoken to by him as having been noticed by him when making the *post mortem* examination. **15 C. 589.**

Evidence Act (I of 1872)—continued.

(181)—*S. 45—Expert evidence—Evidence to prove handwriting—Sufficiency of.*—To base a conviction on the evidence of an expert in handwriting, as a general rule, is very unsafe. There may be cases in which the handwriting is of such a peculiar character that the conclusion as to identity of the writer is irresistible. In this case, two anonymous threatening letters were sent to the Government of India. The Government expert in handwriting was examined and he deposed that, having regard to the movement, execution, style, direction, curve and pen-pressure of certain letters, the writing of the exhibits resembled the admitted handwriting of the accused. *Held*, that, that evidence was not enough to prove beyond reasonable doubt that the accused was the writer of the anonymous letters. **6 A.L.J. 184=9 Cr. L.J. 498=2 Ind. Cas. 154.**

(182)—*S. 45—Expert in thumb-marks—Sub-Registrar.*—It is not right to assume that a Sub-Registrar is an expert in the matter of thumb-marks. **2 Weir 760.**

(183)—*S. 45—Comparison of handwriting.*—Comparison of handwriting is permissible in criminal no less than in civil cases. **2 Weir 759.**

(184)—Ss. 45, 74 and 78—*See* FINGER IMPRESSIONS, 3 N.L.R. 1=5 Cr. L.J. 220.

(185)—Ss. 45, 165—See LUNACY, Rat. Un. Cr.C. 279=Cr. Rg. 18 of 1886.

(185-*a*)—S. 45—*See* Nos. 24, 82, *supra.*

(185-*b*)—S. 46—*See* No. 82, *supra.*

(185-*c*)—S. 47—*See* No. 82, *supra.*

(185-*d*)—S. 48—*See* No. 82, *supra.*

(185-*e*)—S. 49—*See* No. 82, *supra.*

(186)—*S. 50—Scope of.*—The scope of s. 50 of the Act, leaving the exception out of consideration, seems to be that the person himself is not to be called to state his own opinion, but that, when he is dead or cannot be called, his conduct may be proved by others. The section appears to afford an exceptional way of proving a relationship, but by no means to prevent any person from stating a fact of which he or she has special means of knowledge. A husband or wife is not, therefore, precluded from proving his or her marriage. **9 M. 9=1 Weir 572.**

(187)—*S. 50—Proof of marriage.*—Under the proviso to s. 50, Evidence Act, in proceedings of the kind therein specified, opinion relevant under that section is not by itself sufficient to prove marriage which must, in consequence, be proved in some other way. **5 P.R. 1894 Cr.**

(188)—S. 50—*See* ADULTERY, 5 A. 233, 5 C. 566=5 C.L.R. 597, F.B.

(189)—S. 50—*See* PENAL CODE, s. 498, 9 M. 9=1 Weir 572.

(189-*a*)—S. 50—*See* No. 92, *supra.*

(189-*b*)—S. 51—*See* No. 82, *supra.*

(189-*c*)—S. 53—*See* No. 38, *supra.*

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(190)—*S. 54—Scope of.*—This section has no bearing whatever upon the question of the relevancy of a previous conviction after an accused has been convicted of the offence with which he has been charged, and for the purpose of enhancing the sentence to be passed upon him. It refers solely to the relevancy of a previous conviction as evidence to prove that the accused is guilty, and should be convicted of the particular offence with which he is charged. **L.B.R. (1872—1892), 449.** (14 C. 721, *D.*).

(191)—*S. 54—Previous conviction, as evidence of character.*—The Evidence Act gives the Court a discretion to admit previous conviction as evidence of character, at any stage of the trial, in all cases in which there is such a conviction between the act of which the prisoner was found guilty on the previous conviction and the facts to be proved, as bears upon the probability of the prisoner having committed the act charged, and in those cases where the previous conviction is of a kind falling within any of the classes of connection with the facts to be proved, stated in ss. 6 to 16. **2 Weir 760.**

(192)—A Judge's direction to the jury to consider the proof of previous convictions as evidence giving rise to an inference regarding the character of the prisoner amounts to a misdirection, such evidence (of bad character) being irrelevant and inadmissible under s. 54 of the Evidence Act. **5 C. 768=6 C.L.R. 219.** [*R.*, 14 C. 721, F.B., 28 B. 129].

(193)—Under s. 54 of the Act, previous convictions are in every case admissible against an accused person. **14 C. 721.** [*R.*, L.B.R. (1872—1892), 449, L.B.R. (1872—1892), 574, L.B.R. (1893—1900), 93, 1 C.W.N. 146, 28 B. 129].

(194)—*S. 54—Previous conviction when relevant—Penal Code, s. 75—Enhanced sentence.*—A trying Magistrate ought not to take any previous conviction into consideration for the purpose of establishing the charge, upon which the accused was tried, and deciding as to the guilt of the accused in respect of the offence for which he was tried. But the trying Magistrate is not debarred by s. 54 or by any other of its provisions, from using any previous conviction for the purpose of aiding him in determining the amount of punishment to be awarded on the prisoner being convicted of a fresh offence. "Enhanced sentence" under s. 75, Penal Code, explained. **L.B.R. (1893—1900), 93.** (L.B.R. 1872—1892, 449, *R.*).

(195)—*Ss. 54, 136 and 157—Evidence of bad character elicited by defence, whether can be admitted—Evidence to corroborate witness, whether can be admitted before witness himself is examined.*—Under s. 54, the fact that the accused has a bad character is irrelevant, and so, the evidence that the accused was reputed to be a thief is irrelevant, and cannot be admitted, whether elicited by the prosecution or by the defence. It is doubtful whether s. 136 gives the Court any discretion to allow evidence to corroborate a witness to be given

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under s. 157, before the witness himself is examined. But, in any case, such evidence can be admitted only very rarely and for special reasons to be recorded by the Judge. **5 L.B.R. 4=9 Cr. L.J. 576=2 Ind. Cas. 349.**

(196)—S. 54—*See* BAD CHARACTER, 15 P.R. 1888 Cr.

(197)—S. 54—*See* PREVIOUS CONVICTION, 5 Bom. L.R. 1034, A.W.N 1886, 47.

(198)—S. 54—*See* Nos. 15, 22, 31, 39, 40, *supra*, and No. 278, *infra*.

(199)—S. 55—*See* DEFAMATION, 2 C.P.L. R. 198.

(199-*a*)—S. 55—*See* No. 198, *supra*.

(200)—*S. 57—Judicial notice.*—The statement by H. M.'s Commissioner and Consul-General for Uganda is sufficient for the Court's taking judicial notice, under s. 57, evidence Act, of the existence of hostilites between Kaberga, the King of Unyoro, and Her Majesty the Queen, and the Protected State of Uganda. **22 B. 54.**

(201)—*Ss. 57, 60—Reference to books of science*—Under the provisions of the penultimate paragraph of s. 57, and the first proviso of s. 60 of the Evidence Act, the Courts can refer to books of science. The Court in this case referred to Taylor's Medical Jurisprudence for learning the effect of a sudden blow on the abdomen. **12 C.L.R. 86.** [*F.*, 10 C. 140].

(202)—Ss. 57 and 78 (2)—*See* LIBEL, 14 C.W.N. 713.

(203)—*S. 59—Discrepancies in evidence to be reconciled, if possible.*—Discrepancies in evidence must be carefully considered and their effect allowed for, but when they can be fairly reconciled by explanation or can be naturally and reasonably accounted for, evidence, otherwise trustworthy, cannot be put aside, although its value may be *pro tanto* impaired, solely because of their occurrence. **U.B.R. (1897—1901), Vol. I, 162.**

(204)—*S. 60—Improper admission of hearsay evidence—Setting aside of conviction.*—Where information was given to the police that the first three accused were collecting in the house of the fourth accused with the intention to commit dacoity, and the person who gave the informations was not produced before the Court, *held* that the Judge had wrongly admitted the hearsay evidence of the police officers as to the intention of the accused to commit dacoity, although the Judge was not wrong in allowing the officers to name the persons who told them that they would find the first three accused in the house of the fourth. The conviction was set aside on the ground that the jury may have been influenced by the mistake of the Judge. **2 Weir 762.**

(205)—S. 60—*See* ADULTERY, 13 C.L.R. 125.

(205-*a*)—S. 60—*See* No. 201, *supra*.

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(206)—*S. 73—Proof of handwriting—Procedure.*—In matters expressly provided for by the Evidence Act, such as proof of handwriting under s. 73, the correct procedure is to start from the Act and not deal with it as a mere modification of the Law of Evidence prevailing in England. **Rat. Un. Cr. C. 452.**

(207)—*S. 73—Crim. Pro. Code (1882), s. 298—Document for comparison by jury—Duty of Judge.*—Before a Judge allows documents to go to the jury for the purpose of comparison of handwriting under s. 73 of the Evidence Act, it is his duty, under s. 298 of the Crim. Pro. Code, to find whether these documents are admitted or proved. The record of the case should contain a note of such finding. **Rat. Un. Cr. C. 491=Cr. Rg. 61 of 1889.**

(208)—S. 73—*See* JUDGE AND JURY, **Rat. Un. Cr. C. 452.**

(209)—*S. 74—Census Register—Public document.*—Census Registers are not public documents within the meaning of s. 74 of the Evidence Act. **6 Bom. L.R. 535.**

(210)—Ss 74. 76—*See* CRIM. PRO. CODE (1898), ss. 162, 164, 17 M.L.J. 471=30 M. 466 =6 Cr. L.J. 346=3 M.L.T. 14.

(211)—Ss. 74, 76, 77.—Public document and certified copies thereof—*See* CRIM. PRO. CODE (1898), s. 154, U.B.R. (1892—1896), Vol. I, 24.

(212)—Ss. 74, 80—*See* CONFESSION, 12 A. 595.

(212-*a*)—S. 74—*See* No. 184, *supra*.

(213)—*S. 76—Right of private persons to inspect public documents.*—Neither in the Crim. Pro. Code nor in the Evidence Act is there any provision declaring or limiting the right of private persons interested in criminal proceedings to inspect documents in the hands of third parties. A right to inspect public documents is, however, assumed in s. 76 of the Evidence Act. It may be inferred that the Legislature intended to recognise the right generally for all persons, who can show that they have an interest for the protection of which it is necessary that liberty to inspect such documents should be given. Per *Sheppard, J.* **20 M. 189=2 Weir 763, F.B.** [*F.*, 8 C.W.N. 132=31 C. 284].

(213-*a*)—S. 76—*See* Nos. 210, 211, *supra*.

(213-*b*)—S. 77—*See* No. 211, *supra*.

(214)—S. 78—*See* PENAL CODE, s. 121, L. B.R. (1872—1892), 389.

(214-*a*)—S. 78—*See* Nos. 184, 202, *supra*.

(215)—*S. 80, Scope of.*—The statements as to which s. 80 of the Evidence Act says that certain presumptions shall be drawn, are statements or confessions taken in accordance with the law. The section does not render admissible any particular kind of evidence, but only dispenses with the necessity for formal proof in the case of certain documents taken in accordance with law. S. 80 does not operate

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to render it admissible. The section merely gives legal sanction to the maxim "*Omnia præsumuntur rite esse acta*" with regard to documents taken in the course of a judicial proceeding. *Per* Parker, J. **9 M. 224=2 Weir 125.**

(216)—*S. 80—Presumption under—Requisites for raising the presumption.*—Under s. 80 of the Act, the Court presumes certain facts concerning a document purporting to be a record of the evidence. But it must purport to be signed by a Judge or Magistrate, and where the person taking the deposition omits to claim the position of a Judge or Magistrate, the presumption that he is so, does not arise. The defect may be supplied by oral evidence. The certified copy should also show on the face of it that it is a copy of part of the record in a specified proceeding. **1 L. B. R. 268.**

(217)—*S. 80—Admissibility of confession by accused under.*—A confession by an accused, recorded by a Magistrate, is admissible under s. 80, Evidence Act, even though the Magistrate, who recorded it, ultimately came to the conclusion that he had no jurisdiction to try the case. **10 C.P.L.R. Cr. 16.**

(218)—*S. 80—Crim. Pro. Code (1882), s. 509—Deposition of medical witness before committing Magistrate when admissible in a Sessions trial—Presumption.*—Although a Magistrate should take and attest a deposition of a witness in the presence of the accused, and should also, by the use of apt words, on the face of the deposition, make it apparent that he has done so, yet, there is no provision of law which makes the attestation of the deposition by the Magistrate, in the presence of the accused, obligatory, and the provisions of s. 80 cannot, therefore, apply to it. S. 509, Crim. Pro. Code, does not enact that a deposition of a medical witness shall be taken and attested by the Magistrate in the presence of the accused. What it provides is that the deposition, if so taken and attested, may be put in evidence in the Sessions trial. Therefore, that the deposition was taken and attested by the Magistrate in the presence of accused cannot be presumed under s. 80 of the Evidence Act. **10 A. 174.** [*Appr.*, 18 C. 129].

(219)—*S. 80—Dying declaration—Admissibility of the document.—Held*, that s. 80, Evidence Act, had no bearing on the question of the admissibility of a statement made by the deceased as a dying declaration, the Magistrate, who took the statement, being other than the committing Magistrate and the statement not being taken in the presence of the accused. *Held*, also, that the document itself was not relevant to prove the truth of the facts stated therein. **9 P. R. 1900 Cr.**

(220)—*Ss. 80 and 114, ill. (e), Crim. Pro. Code (1882), s. 509—Admissibility in evidence of deposition of medical witness—Magistrate's statements as to circumstances under which deposition was taken—Effect.*—To render the deposition of

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a Civil Surgeon or other medical evidence admissible in evidence under s. 509 of the Crim. Pro. Code, it must be shown to have been taken and attested by the Magistrate in the presence of the accused. These facts may be proved by calling the committing Magistrate or any other person who was present at the enquiry before him and is able to testify thereto. But the Court, in the absence of such evidence, is not bound to presume, either under s. 80, or s. 114, ill. (*e*) of the Evidence Act, that the deposition was so taken and attested. (9 A. 720 and 10 A. 174, *approved.*) S. 80 of the Evidence Act will be of no assistance in a case, under s. 509, Crim. Pro. Code, where there are no "statements as to the circumstances under which the deposition was taken purporting to be made by the person signing it;" but if the Magistrate records a statement at the foot of the deposition to the effect that the deposition was taken and attested by him in the presence of the accused and signs such statement, the Court would be bound, under s. 80 of the Evidence Act, to presume that such statement was true, and to admit the deposition under s. 509, Crim. Pro. Code. **18 C. 129.** (10 A. 174, *approved.*).

(220-*a*)—*Ss. 80, 32—Dying declaration—Proof.*—A dying declaration is not admissible in evidence without proof that the deceased actually made the declaration. Even if it bears a Magistrate's attestation, it is not admissible under s. 80, where the Magistrate was not the committing Magistrate. The person who took the statement should be subject to cross-examination as to the dying man's state of mind when he made it, and as to other circumstances. **11 B.H.C. 247.** [*R.*, L.B.R. (1872—1892), 157].

(221)—S. 80—*See* ACT X OF 1873, 10 C.P. L.R. Cr. 16.

(222)—Ss. 80, 132.—*See* BRIBERY, 15 M. 63=2 Weir 794.

(223)—S. 80—Presumption as to confessions. —*See* CONFESSION, 1 L.B.R. 340.

(224)—S. 80—*See* CONFESSION, 1 B. 219.

(225)—S. 80—*See* CRIM. PRO. CODE (1898), ss. 164, 342, 364 and 533, 10 O.C. 112=6 Cr. L.J. 94.

(225-*a*)—S. 80—*See* Nos. 16, 212, *supra.*

(226)—S. 84—*See* CONFESSION, 9 C.L.J. 663=13 C.W.N. 861=2 Ind. Cas. 681.

(227)—S. 88—*See* TELEGRAMS, 4 Ind. Cas. 240.

(228)—*S. 91—Summary trial—Oral evidence admissible to prove depositions of witnesses.*—In ordinary cases, a Magistrate trying a criminal charge must take down the evidence, and then the record thus made is the only admissible proof of what was said, but in a summary trial, the Magistrate need not generally record the evidence, and where no obligation is laid upon the Judge or presiding officer by law to reduce depositions or statements to writing,

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they may be proved by the presiding officer or by persons who heard them, in order to establish the fact that they were made. **Rat. Un. Cr. C. 334 = Cr. Rg. 24 of 1887.**

(229)—*S. 91—Statement before constable—Admissibility—Deposition before Magistrate—Oral evidence.*—The accused was charged in the alternative with having given false evidence either before the chief constable in a police investigation or before a Magistrate in a criminal trial. *Held*, that the statement made to the chief constable by the accused, and reduced by him to writing, was not admissible in evidence against the accused ; the only evidence as to such statement that would be admissible for the purposes of such a case as the present being the oral testimony of the constable, who could, however, refresh his memory by referring to the statement reduced by him to writing ; and that the oral evidence of the contents of the accused's deposition at the trial before the Magistrate was inadmissible under s. 91, Evidence Act. The deposition itself ought to have been put in, and the proceedings in the case in which it was taken ought also to have been put in, to show the nature of the proceeding in which the evidence was taken. **Rat. Un. Cr. C. 401 = Cr. Rg. 62 of 1888.**

(230)—*S. 91—False evidence in judicial proceeding—Deposition of accused when inadmissible—Civ. Pro. Code, 1877, ss. 182, 183—Other evidence of such deposition.*—Where, with respect to a deposition in a judicial proceeding, the provisions of ss. 182 and 183 of the Crim. Pro. Code of 1877 were not complied with, such deposition would be inadmissible in evidence on a charge of giving false evidence based on such deposition. No other evidence of such deposition would be admissible under s. 91 of the Evidence Act. **6 C. 762 = 8 C.L.R. 292.** [*Not F.*, 25 P.R. 1890 Cr.; *R.*, 9 M. 224 = 2 Weir 128.]

(231)—*S. 91—Confessions—Secondary evidence, if admissible.*—Where statements made by an accused person are inadmissible in evidence, secondary evidence of the contents of those statements are inadmissible also, under s. 91, Evidence Act. *Per* Parker, J. **9 M. 224 = 2 Weir 125.**

(232)—*S. 91—Search list, value of—Oral evidence.*—A search list is not evidence of the facts stated therein and s. 91 has, therefore, no application to it. It is simply a declaration, not on oath or affirmation or subject to cross-examination, made by a police officer and the persons present at a search, that certain formalities were observed and certain events took place. Oral evidence may, therefore, be given as to what took place at the time of the search. **2 Weir 776.**

(233)—S. 91—*See* ASSAULT, 3 L.B.R. 128.

(234)—S. 91—*See* COMPLAINT, L.B.R. (1872—1892), 572.

(235)—S. 91—*See* CONFESSION, 10 B.H.C. 166, 9 M. 224 = 2 Weir 125.

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(236)—S. 91—*See* CRIM. PRO. CODE (1898), s. 103, 2 Weir 47 = 2 Weir 515.

(237)—S. 91—*See* CRIM. PRO. CODE (1898), ss. 310, 343, 511, 28 C. 689 = 5 C.W.N. 670.

(238)—S. 91—*See* CRIM. PRO. CODE (1898), s. 533, 23 B. 221.

(239)—S. 91—*See* FALSE EVIDENCE, 1 L.B.R. 268, 54 P.R. 1887 Cr.

(239-*a*)—S. 91—*See* Nos. 16, 68, 148, *supra*.

(240)—S. 98—*See* ADMISSION, Rat. Un. Cr. C. 769.

(241)—S. 101—*See* BURDEN OF PROOF, Rat. Un. Cr. C. 779.

(242)—*S. 105—Right of private defence—Evidence.*—Under the provisions of s. 105, an answer, setting up the right of private defence, must be supported by evidence, giving a full and true account of the transaction from which the charge against an accused person arises. No accused person can at the same time, deny committing an act and justify it. The law does not admit of justification by putting forward hypothetical cases; it must be by proof of actual facts. **1 C.L.R. 62.**

(243)—*S. 105—Penal Code, s. 300—Exceptions under Penal Code—Plea.*—Unless a plea that the acts with which an accused person is charged as constituting an offence came within one of the exceptions named in the Penal Code, is distinctly taken by the accused, the Court is not competent to infer from the evidence in the case that any such exception exists in favour of the accused. **A.W.N. 1898, 209, 210.**

(244)—S. 105—*See* BURDEN OF PROOF, Rat. Un. Cr. C. 820, 4 C. 124 = 3 C.L.R. 122.

(245)—S. 105—*See* DEFAMATION, 6 A. 220.

(246)—S. 105—*See* GRAVE AND SUDDEN PROVOCATION, L.B.R. (1898—1900), 207.

(247)—S. 105—*See* PENAL CODE, s. 76, 7 A.L.J. 438.

(248)—S. 105—*See* PENAL CODE, s. 325, 8 C.W.N. 714.

(249)—S. 105—*See* PRIVATE DEFENCE, RIGHT OF, 11 C.L.R. 232, A.W.N. 1904, 113.

(250)—Ss. 105 and 106—*See* ACT XII OF 1896, ss. 3 (1) (*n*), 30, 51, 5 L.B.R. 52, F.B. = 2 Ind. Cas. 543.

(251)—Ss. 105, 123, 124 and 125—*See* DEFAMATION, 4 P.W.R. 1910 Cr.

(252)—S. 106—*See* C. P. ACT, XVIII OF 1889, s. 84, 16 C.P.L.R. 63.

(253)—S. 106—*See* PENAL CODE, s. 402, 23 A. 124.

(254)—*S. 106, ill. (a)—Presumption arising out of character and circumstances of an act—Burden of rebutting such presumption—Penal Code, s. 373.*—Where the character and the

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circumstances of an act committed by an accused, charged under s. 373 of the Code, proved that the accused, a prostitute, bought two girls, about a year old, with the intention mentioned in the section, *held*, that it was for the accused to prove that the intention was something other than that which would evidently be suggested by the character and circumstances of the act, and that she intended to put off the employment of the girl for the purpose of prostitution until the completion of the sixteenth year, as was argued on her behalf. **22 C. 164.** [*R.*, 21 A.W.N. 16=23 A. 124, 16 C.P.L.R. 171.]

(254-*a*)—S. 106—*See* No. 250, *supra*.

(255)—*Ss. 112, 132, 133 and 146—Discharged co-accused, whether competent to testify—Value of his evidence—Crim. Pro. Code (1898), s. 209 (2)—Discharge of accused before recording evidence and without recording reasons therefor, whether legal—Practice.*—Where two persons were sent up by the police on a charge of murder, and the Magistrate discharged one of them even before recording evidence and without recording any reasons therefor, but subsequently examined him as a witness in the trial of the other, it was contended that the discharge so made was illegal and consequently the evidence of such discharged co-accused was inadmissible. *Held*, the evidence of such person, whether his discharge was legal or not, was admissible, though it was of little value. *Per* Irwini, J.—The Magistrate certainly had power to discharge the accused as he did, but he should have then and there recorded his reasons for so doing, under s. 209 (2) of the Crim. Pro. Code. It is difficult to say that the omission to record reasons makes the order of discharge illegal. But in any case such a defect would not make the evidence inadmissible. **4 L.B.R. 362=9 Cr.L.J. 370.**

(256)—S. 112—*See* CRIM. PRO. CODE (1898), s. 488, U.B.R. (1892—1896), Vol. I, 74.

(257)—S. 112—*See* MAINTENANCE, 18 B. 468.

(257-*a*)—S. 113—*See* No. 128, *supra*.

S. 114—*See* ACCOMPLICE.

See APPROVER.

See CHARGE TO JURY.

(258)—*S. 114—Presumption, value of—Duty of pleader, presumption in respect of.*—It cannot be accepted as a rule of law that any presumption, however weak, is sufficient to sustain the conviction of an accused person unless such person be able to give direct evidence to rebut such presumption. It may no doubt be said that it is the duty of a pleader carefully to examine all applications presented by him in Court, and it may fairly be presumed that a pleader will generally do so. But it is manifest that the strength of such a presumption depends upon many considerations. **Rat. Un. Cr. C. 113.**

(259)—*S. 114—Evidence of accomplice, credibility of—Conviction—Validity.*—By s. 114, the Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. Where the statement of an accomplice is not only not corroborated, but is distinctly contradicted by the evidence in the case, it is not worthy of credit. **22 M. 491 =2 Weir 746.**

(260)—*S. 114 (a)—Possession of stolen property—Presumption.*—The Court may presume, from the possession of stolen property, that the possessor is either the thief or has received it knowing it to be stolen property, unless the possession is accounted for. Where the possession of property, stolen some years before, is reasonably and circumstantially explained, such explanation should not be rejected merely because it is unproved. **15 P.R. 1891 Cr.** (31 P.R. 1879 Cr., 18 P.R. 1884 Cr., 46 P.R. 1887 Cr., 39 P.R. 1881 Cr., 25 P.R. 1883 Cr., 13 P.R. 1867 Cr., and 15 P.R. 1875 Cr., *R.*)

(261)—As a rule it is unsafe to convict on the uncorroborated evidence of an accomplice, and the evidence of one accomplice is not sufficient corroboration of that of another to justify a conviction. But there may be circumstances, such as where previous concert by the informers is highly improbable, in which the agreement in their stories together with corroboration which is afforded by the circumstance that those stories cannot have been arranged between them beforehand, must be taken into account. **2 Bom. L.R. 610.**

(262)—*S. 114 (b)—Evidence of accomplice—Admissibility—Corroboration—Accomplices, who are—Witness to payment of bribe—Bribery—Indian Penal Code (Act XLV of 1860), s. 161.*—It is generally unsafe to convict an accused person on the testimony of his accomplices, unless they are corroborated in material particulars connecting the accused with the offence. But this rule does not apply to all persons, who technically come within the category of accomplices. The particular circumstances of each case will affect its application and no general rule can be laid down on this point. When the accomplices were persons, who paid the bribe to a public servant, accused under s. 161, Indian Penal Code—not of their free will but rather of necessity—and particularly when they did not strive to save themselves by throwing the blame for the offence upon the accused and, furthermore, it appeared that their guilt, such as it was, was not used as an instrument to induce them to give evidence; *held*, that their testimony, even without corroboration, might justify the conviction of the accused. At any rate, their evidence would require a much slighter degree of corroboration to establish their credit than would be the case, if they were entirely voluntary accomplices in the offences which they spoke to. Witnesses to the payment of bribes are not accomplices, unless they co-operated in the payment of the bribes or were instrumental in the negotiations for the payment. **10 C.W.N. 69=3 Cr. L.J. 452=33 C. 649.** [*F.*, 12 C.W.N. 140=6 Cr. L.J. 434.]

Evidence Act (I of 1872)—continued.

(263)—*Ss. 114, 133—Evidence of accomplice—Corroboration—Practice—Evidence of persons bribing public servants—Its nature.*—Per *Birdwood, J.*—A conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Such evidence, being admissible, furnishes as legal a basis for a conviction as any other evidence which is admissible. The omission to follow the established rule of practice as to the corroboration of such evidence does not constitute an error in law. But where the character of the evidence relied on by the prosecution was not of a kind to warrant the refusal of the Judge to apply to the case the maxim enunciated in illus. (*b*) of s. 114, Evidence Act, a conviction on the uncorroborated testimony of an accomplice is not legal. Per *Jardine, J.*—So long-established a rule of practice as that which makes it prudent, as a general rule, to require corroboration of accomplices, cannot, without great danger to society, be ignored by the Magistrates and Sessions Judges, simply because s. 133, Evidence Act, declares that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. The Courts should give proper effect to the provision of s. 114, illus. (*b*). The rule in s. 114, illus. (*b*) and that in s. 133 are part of one subject, and both are found in most of the great judgments; and neither section is to be ignored in the exercise of judicial discretion. The illus. (*b*) to s. 144 is the rule, and when it is departed from, the Court should show, or it should appear, that the circumstances justify the exceptional treatment of the case. [*R.*, L.B.R. (1893—1900), 70, Rat. Un. Cr. C. 750, 806, 844, 1 L.B.R. 29.] Evidence of persons who subscribed to a fund for the purpose of bribing certain public servants is only evidence of accomplices in a charge of bribery against the public servant. **14 B. 331.** [*R.*, Rat. Un. Cr. C. 720, 746. 19 B. 51, 20 B. 394, 26 B. 193=3 Bom. L.R. 694, 33 C. 649=10 C.W.N. 669; *D.*, 27 C. 144.]

(264)—Although under ordinary circumstances, corroboration of an accomplice must be afforded by independent evidence, the substantive rule of law is that a conviction is not illegal merely because it is based on the uncorroborated evidence of an accomplice. **U. B.R. (1897—1901), Vol. I, 173.** (21 W.R. Cr. 69 and 9 A. 528, 554, *R.*).

(265)—Illustration (*b*) to s. 114 directs attention to the general principle that it is unsafe to convict on the evidence of accomplices, unless corroborated in material particulars. But along with this principle must be borne in mind the qualifications contained in the further illustration which the Court is directed to consider when determining whether the general maxim does or does not apply to a particular case. They show that all persons coming technically within the category of accomplices cannot be treated as on precisely the same footing; and no general rule on the subject can be laid down. **26 B. 193=3 Bom. L.R. 694.** [*R.*, 6 Bom. L.R. 443, 10 C.W.N. 669 =33 C. 649=8 Cr. L.J. 452.]

Evidence Act (I of 1872)—continued.

(266)—*Ss. 114. ill. (b), 133—'Accomplice,' meaning of the word—Person helping the accused in disposing of the corpse of person murdered, whether an accomplice—I.P.C., ss. 201, 202—Accomplice Evidence—Practice.*—The term "accomplice" signifies a guilty associate in crime; or, when the witness sustains such a relation to the criminal act that he could be jointly indicted with the accused, he is an accomplice.—Per *Subrahmania Ayyar, J.*—The evidence of a witness, who has helped the accused to conceal the corpse of the person murdered or has omitted to give information of the murder of which he was aware, should not be regarded and tested as that of an accomplice and need not be corroborated in material particulars for acting upon it. The case against an accused person who was convicted by a Sessions Judge of murder entirely depended upon the evidence of the first prosecution witness, a young man of 18, who said he was present when the accused committed the murder of a cooly woman, and saw him in disposing of the body by throwing it into a *cholam-pit*, where it was found some 16 days later, upon information given by him 15 days after the murder. He deposed that he worked for the accused and that the deceased woman, also a servant, become *enceinte* by him. She had been frequently asking the accused for money and would not leave, unless money was given her. On the date of the murder, the deceased came to the accused's garden and asked for money and threatened to complain to the *Pattagar* and his relations and disgrace him if he did not pay her. On the evening of that day the accused took a crow-bar from the witness. At night, the witness heard a cry, hid himself in *cholam* and saw the accused beating the woman and striking her on the head with the crow-bar. The witness having refused to help the accused in disposing of her dead body, the latter dragged it alone to the *cholam-pit* and threw it into the pit. Next morning the accused came to the place where the witness was lying and threatened that, if he disclosed the murder, he would be murdered. A quarrel, subsequently, arising between the witness and the accused, the former reported the fact to the brother of the deceased and also to the Station-House Officer. *Held*, by Subrahmania Ayyar and Bhashyam Ayyangar, JJ. (Boddam, J, *contra*), that the witness could not be regarded as an accomplice in the crime of murder, and the fact that he helped the accused in disposing of the dead body after murder would make him only liable to be convicted under ss. 201 and 202, Penal Code, but would not make him an accomplice in the murder. What is laid down as to the untrustworthiness of uncorroborated accomplice testimony is not a presumption, in the strictly legitimate sense of the term, in the law of evidence; in other words, it is not a rule of law which throws upon the party, against whom it works, the duty of going forward with the evidence, but is only a precept of caution, followed indeed by constant practice in charging juries and never to be lost sight of in estimating the weight due

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to such tainted testimony. To claim for it a greater potency, in the face of s. 133 of the Evidence Act, would be to introduce an artificial scale of credit—*Per* Subrahmania Ayyar, C.J. —The presumption allowed by ill. (*b*) of s. 114 that an accomplice is unworthy of credit, unless he is corroborated in material particulars, has become a rule of practice of almost universal application. Judges now in their charge usually tell a jury that, under ordinary circumstances, it is unsafe to convict on such evidence without the substantial corroboration of independent evidence. A Judge who combines the functions of Judge and jury is equally bound to scrutinise accomplice evidence with great care and to consider whether there is any corroborating evidence when the main evidence is of an accomplice character.—*Per* Boddam, J.—In regard to the testimony of accomplices or *participes criminis*, there is no doubt of the maxim that an accomplice is unworthy of credit, unless he is corroborated in material particulars ; this rests, not on any rule of law, but only "on a rule of practice which has become so hallowed as to be deserving of respect." But there is no authority whatever in English Law which warrants the extension of the maxim to persons who are not accomplices. A Judge, when there is no special circumstance which would induce him to give credit to the evidence of an accomplice and convict the accused on his sole uncorroborated testimony, may, under ss. 298 (2), Crim. Pro. Code, express such opinion to the jury and in that sense advise them to acquit the prisoner. —*Per* Bhashyam Ayyangar, J. **27 M. 271=2 Weir 803=14 M.L.J. 226.**

(267)—*Ss. 114, ill. (b) and 133—Evidence of accomplice—Corroboration—S. 161, I.P.C.—When High Court would interfere in revision.*— By the law both of India and England, the evidence of an accomplice is admissible, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. But the presumption that he is unworthy of credit unless he is corroborated in material particulars, has become a rule of practice of almost universal application. In the present case, *Scott, J.*, differed from *Jardine and Bayley, JJ.*, and *held* that the testimony of persons who gave bribes to a public officer was sufficient to convict the public officer, as the ordinary ground for doubting the evidence of an accomplice—to wit, that they will try to throw the guilt upon others—did not apply to the case, as they were not subject to any accusation whatever. *Held by Jardine and Bayley, JJ.*—The conviction of the accused was illegal, as there was no evidence to corroborate the testimony of the accomplice, and the accused was prejudiced by the course adopted by the Magistrate, and that there was such a failure of justice as would justify the interference of the High Court in revision. **14 B. 115.** [*R.*, 33 C. 649=10 C.W.N. 669, 14 B. 331, Rat. Un. Cr. C. 844, Rat. Un. Cr. C. 750, 26 B. 193= 3 Bom. L.R. 694, 14 M.L.J. 226, 27 M. 271= 2 Weir 803.]

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(268)—*Ss. 114, illus. (b), 133—Self-incriminating portion of accomplice evidence, credibility of—How accomplice evidence to be dealt with.*—There is no rule of law or practice that the self-incriminating portion of the evidence of an accomplice is unworthy of belief unless corroborated. The credibility of a witness who says that he and another joined in committing an offence stands *per se* so far as his self-accusation is concerned, on the same footing as that of a witness who says that he alone committed an offence, though in the latter instance there would be a narrowed basis for cross-examination to test his own self-accusation. What must first be decided is whether the witness in question is in truth an accomplice or merely posing as an accomplice. When it is once established that he is an accomplice, then, the next practical question arises as to who are the other accomplices, and it is at that stage, when his evidence implicating others has to be weighed, that there comes into application the maxim that it is unsafe to convict upon the evidence of an accomplice unless he is corroborated in material particulars, both as to the circumstances of the offence and the identity of the person whom he implicates. **6 Bom. L. R. 443.** [*R.*, 6 Bom. L.R. 481.]

(269)—*Ss. 114 (b), 133—Evidence of accomplice—Corroboration, as to identity of accused.* —*Per* Crowe, J.—However convincing the testimony of an accomplice may be of the facts necessary to be proved, it has become a settled course of practice not to convict an accused person on the uncorroborated testimony of an approver, and the corroboration ought to consist in some circumstances that affect the identity of the accused. Per *Chandavarkar, J.* —The corroboration required of the testimony of an accomplice should go to some circumstances affecting the identity of the accused as participating in the transaction. Such corroboration ought to be that which is derived from unimpeachable or independent evidence as distinguished from that derived from the earlier statements of the same accomplice or the statements of other accomplices. Per *Aston, J. (dissenting)* :—There is no rule of law or practice that the corroboration of the accomplice's evidence must be as to all details, or so complete as, in itself, to establish guilt. To set up such a rule would be to nullify the provisions of the law which admit of pardon to approvers in order to secure evidence for the Crown. **6 Bom. L.R. 481.**

(270)—*Ss. 114, ill. (b) and 133—Accomplice Evidence—Corroboration—Revision by High Court.*—It is not a rule of law but one of mere practice and prudence that an accomplice is unworthy of credit, unless he is corroborated in material particulars. A conviction will not be disturbed by the High Court under its revisional jurisdiction, on the mere ground that the said rule of practice has not been adhered to by the Court which has convicted, unless

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there are exceptional circumstances calling for the exercise of that jurisdiction in the interests of justice. **11 Bom. L.R. 858.**

(271)—*Ss. 114 (b) and 133—Evidence of pardoned accomplice—Conviction—Validity* —The evidence of a pardoned accomplice taken with the statements of unpardoned co-prisoners is not sufficient by itself to warrant the conviction of those who never confessed. **Rat. Un. Cr. C. 750.**

(272)—*Ss. 114, ill. (b) and 133—Admissibility of evidence of accomplice—Corroboration—Accomplices by implication or in a secondary sense—Duty of Court.*—Although a conviction is not illegal, merely because it proceeds upon the uncorroborated testimony of an accomplice, the evidence of an accomplice, ordinarily speaking, should be corroborated in material particulars, and such evidence should be accepted with a great deal of caution and scrutiny. The amount of criminality is a matter for consideration, and when a person is only an accomplice by implication or in a secondary sense, his evidence does not require the same amount of corroboration as that of a person, who is an actual perpetrator with the principal offender. [*R.*, 7 Bom. L.R. 969.] In dealing with the question what amount of corroboration is required in the case of testimony given by an accomplice, the court must exercise careful discrimination and look at all the surrounding circumstances in order to arrive at a conclusion, whether the facts deposed to by the person alleged to be an accomplice are borne out by those circumstances, or whether the circumstances are of such a nature that the evidence purporting to be given by the alleged accomplice should be supported in essential and material particulrs by evidence *aliunde*, as to the facts deposed to by that accomplice. **28 C. 339=5 C.W.N. 517.**

(273)—*Ss. 114, ill. (b) and 133—Involuntary accomplices—Value of their evidence.*—Where a Police Inspector was charged with having extorted money by a threat of implicating the witnesses in a charge of murder and by handcuffing and imprisoning them, unless they paid money, *held*, that, although the witnesses were to be treated as accomplices yet they were more involuntary than voluntary accomplices and, in that light, their evidence was not tainted as much as it would otherwise be. **2 Weir 798=4 M.H.C App. 7.**

(274)—*Ss. 114, 133—Limitation to rule as to accomplice evidence.*—The general rule under which the evidence of accomplices is discredited, must, as the illustration given in the Evidence Act shows, be subject to the qualification that the less heinous the offence disclosed, the less liable would the evidence of the accomplice be to suspicion and discredit. Gambling is not an offence so grave as entirely to deprive the evidence of an accomplice therein of credibility. **6 Bom. L.R. 1091=29 B. 264.**

(275)—*S. 114—Possession of stolen property —Presumption.*—From the possession of stolen

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property soon after the theft, the Court may presume that the person in possession is either the thief or the receiver of the goods knowing them to be stolen. A most important, if not the most important circumstance to be considered in dealing with the presumption, is the length of time which has elapsed between the loss of the property and the finding of it. No definite rule can be laid down as to the precise time which is too great to make it necessary for the prisoner to account for his possession. **2 Weir 489.**

(276)—A bullock was stolen from a pen underneath a house during the night. On the following day, the accused offered to find it, if he were given Rs. 8. On receipt of the money, the accused told the complainant where the bullock was to be found. The bullock was just tied up in the place indicated by the accused. *Held* that it must, from the circumstances spoken to, be presumed that the accused was in possession of the bullock when it was tied up in the jungle, from which possession, it might undoubtedly be presumed that he was the person who stole the animal. **1 L.B.R. 332.**

(277)—*S. 114, illus. (a)—Presumption—Possession of stolen ornaments, six months after dacoity—No explanation, effect of.*—Where, more than six months after the dacoity, some ornaments (consisting of a pair of bangles, a frontlet and earrings) were found in the possession of the accused, *held*, that, having regard to the nature of the ornaments, which were of common description, and were likely to pass from hand to hand, the case was not covered by s. 114, illus. (*a*) of the Evidence Act, and the accused should not have been called upon to explain their possession. **3 A.L.J. 808=A.W.N. 1906, 314=4 Cr .L.J. 436=29 A. 138=1 M.L.T. 449.**

(278)—*Ss. 114 and 54—Penal Code, ss. 411, 414—Husband and wife—Presumption.*—The two accused in this case were husband and wife, and both were in possession of the stolen property within such a short time of the theft as to raise the usual *prima facie* presumption against them of being concerned in such theft. *Held*, that the general presumption that a wife acts under the influence and control of her husband was applicable to the present case, and that consequently the guilt of the wife must be confined to the offence of assisting her husband by dishonest possession or dishonest disposal of the stolen property under ss. 411 or 414, I.P.C. **U.B.R. (1897—1901), Vol. I, 171.**

(279)—*S. 114, ill. (e)—Crim. Pro. Code 1882, s. 509—Deposition of medical witness before committing Magistrate—Admissibility in Sessions Court—Presumption.*—Before the deposition of a medical witness given before the committing Magistrate can be admitted in the sessions trial, it must either appear in the Magistrate's record or must be proved by the evidence of witnesses, to have been taken and attested in the prisoner's presence. It should

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not be merely presumed under s. 114, Ill. (*e*), to have been so taken and attested. **9 A. 720.** [*F.*, 18 C. 129; *R.*, 10 A. 174=8 A.W.N. 11.]

(280)—*Ss. 114 (h), 133—English practice as to evidence of accomplice.*—Though, under s. 133 of the Indian Evidence Act, a conviction based merely on the uncorroborated testimony of an accomplice is not illegal, the English rule of practice requiring corroboration in material particulars should be observed also in India. **A. W. N. 1882, 13.**

(281)—*Ss. 114, 133—Evidence of accomplice—Corroboration.*—Although, as a matter of law, corroboration is not necessary to convict an accused person on the evidence of an accomplice, an accomplice should, as a rule, be presumed to be unworthy of credit, unless he is corroborated in material particulars, except where there are special circumstances in a particular case to disregard the rule. **16 P.R. 1886 Cr.**

(282)—*S. 114—Penal Code, ss. 379, 411—Presumption of law arising from possession of Evidence Act, s. 114 (a).*—The prisoner had been convicted of theft, on the ground that he had been found in possession of the stolen property, a cooking utensil, fourteen months after the theft. *Held* that the long interval between the theft and the discovery of the utensil was sufficient to dissipate the ordinary presumption against the prisoner (s. 114, Evidence Act). **A.W.N. 1881, 155.**

(283)—S.114—*See* CRIM. PRO. CODE (1898), s. 196, 7 C.L.J. 49=7 Cr.L.J. 10=35 C. 141=2 M.L.T. 500.

(284)—S. 114—*See* PENAL CODE, s. 225-B., 6 C.W.N. 845.

(285)—S. 114, ill. (*a*)—*See* PENAL CODE, ss. 379, 411, L.B.R. (1872—1892), 366.

(286)—S. 114—*See* PENAL CODE, s. 457, A. W.N. 1882, 224.

(287-288)—S. 114—*See* STOLEN PROPERTY, 6 A. 224, 3 M.L.T. 30=7 Cr. L.J. 30, 6 C.P. L.R. 29, Cr., 12 C.P.L.R. Cr. 5.

(288-*a*)—S. 114—*See* THEFT, L.B.R. (1893—1900), 507 and 279.

(289-290)—S. 114—*See* TRIAL BY JURY, Rat. Un. Cr. C. 840.

(291)—S. 114—*See* Nos. 7, 8, 127, 128, 220, *supra*, and No. 336, *infra*.

(292)—*S. 118—Competency to testify.*—Where, in a murder case, a small boy, who was an eye witness to the murder, was not examined in the Sessions Court on the ground of his youth, *held*, that the Sessions Judge, especially considering the importance of the witness, ought not to have refrained from examining him, unless, under the words of s. 118, Evidence Act, he considered that the boy was prevented from understanding the questions put to him, or from giving rational answers to those questions, by reason of tender years. **23 A. 90.**

(293)—*S. 118—Evidence of witness illegally pardoned by police, admissibility of.*—During the course of a police investigation into a case

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of house-breaking and theft, several persons were arrested, and one of whom made certain disclosures to the police and pointed out several houses which had been broken into by his accomplices. Thereupon, the police discharged him and made him a witness. At the trial he gave evidence against his accomplices, who were all convicted. *Held*, that such evidence was admissible, though he had been illegally discharged by the police, as he was never brought before the Magistrate as an accused person. **16 B. 661.** [*R.*, 19 B. 363, Rat. Un. Cr. C. 776, 100 P.L.R. 1902=12 P.R. 1902 Cr., 10 C.W.N. 962=33 C. 1353=4 Cr. L.J. 145.]

(294)—*S. 118—Police officer as witness.*—A police officer or advocate conducting a prosecution should never be sworn, unless he is called as a witness, and, if so called, he should be allowed to depose only to those facts which he knows and of which he is, in accordance with the provisions of the Evidence Act, a competent witness. **6 C.P.L.R Cr. 1.**

(295)—*S. 118—Oaths Act, 1873, ss. 5, 6 and 13—Competency to testify but inability to understand oath—Oath or affirmation, evidence recorded without administering—Admissibility of evidence so recorded against the accused.*—*Held* (*per* Greevan, A.J.C.), that, where a person is competent to testify according to the provisions of s. 118 of the Evidence Act, but is unable, owing to his tender age, to comprehend the nature of an oath or affirmation, s. 13 of the Oaths Act relieves the Court of the necessity of administering an oath or affirmation to him; and the evidence of such a person recorded without oath or affirmation may be admitted. **10 O.C. 337=7 Cr. L.J. 89.**

(296)—*S. 118—Affirmation of competent witnesses—Oaths Act, s. 13—"Omission," meaning of.*—*Held* that, a Sessions Judge, who had no doubt as to the competency of certain boy witnesses, ought to have administered an affirmation to them. The word "omission" in s. 13, Oaths Act, includes any omission and is not limited to accidental negligent omissions. **11 C.P.L.R. Cr. 16.** (11 A. 183, *Appr.*; 14 B.L.R. 294, 16 B. 359, *F.*; 10 A. 207, *not F.*; 16 M. 105, *R.*).

(297)—*Ss. 118, 133—Crim. Pro. Code, 1898, s. 342 (4)—Separate trial of co-accused—Accomplice testimony.*—Under Ss. 118 and 133, Evidence Act, an accomplice is a competent witness, and the only limitation imposed on the general rule there stated is that involved in the application of s. 342 (4), Crim. Pro. Code. If the accused and the accomplice were being tried jointly, the accomplice could not be sworn and, therefore, could not be a witness against the co-accused. But if they were being separately tried, this prohibition would not apply. Therefore, an accomplice is a competent witness against a co-accused tried separately. **U.B.R. (1906), Evidence 3=5 Cr. L.J. 300.**

(298)—S. 118—*See* ACCOMPLICE, 8 P.R. 1904 Cr.

(299)—S. 118—*See* ACT XV OF 1869, Rat. Un. Cr. C. 776.

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(300)—S. 118—*See* ACT X OF 1873, S.C. 242 Oudh. 16 M. 105=1 Weir 823, 10 A. 207, 11 A. 183, 22 W.R. Cr. 1=14 B.L.R. 295.

(301)—S. 118—*See* CRIM. PRO. CODE (1898), ss. 337, 339 and 342, 9 P.R. 1906 Cr.=4 Cr. L.J. 282.

(302)—S. 118—*See* WITNESS, 16 B. 359, 11 C.W.N. 51=4 Cr. L.J. 412, 38 P.R. 1887 Cr.

(302-*a*)—S. 118—*See* No. 20, *supra*.

(302-*b*)—S. 119—*See* No. 20, *supra*.

(303)—*S. 120—Crim. Pro. Code (1882), s. 488—Bastardy proceedings—Their nature.*—Bastardy proceedings, under s. 488, Crim. Pro. Code, are civil proceedings within the meaning of s. 120 of the Evidence Act, and the defendant thereto may give evidence on his own behalf. **16 C. 781.**

(304)—*S. 121—Scope of—Held by the Full Bench.*—The privilege given by s. 121 of the Evidence Act is the privilege of the witness, *i.e.*, of the Judge of whom the question is asked. If he waives such privilege, it does not lie in the mouth of any other person to assert it. *Per* Spankie, J.—A committing Magistrate, who is cited as a witness in the Sessions Court, cannot be compelled to answer questions as to his own conduct in Court, except under the special orders of the Court to which he is subordinate. If he does not object to answer such questions, there is no prohibition to his doing so. **3 A. 573.**

(305)—*S. 121—Exemption of judicial officers from giving evidence.*—Judicial officers are not exempted from giving evidence upon matters which they saw, when sitting as Judges, unless they arrive at such knowledge by virtue of an investigation which they were making as Judges. A Munsiff should not be called upon to depose to what took place before him in the course of a trial which he was conducting as a Munsiff. **2 Weir 777=6 M.H.C. App. 42.**

(306)—*S. 122—Letter from husband to wife taken from wife's house on search being made—Admissibility in evidence.*—A document, even though it contains a communication from a husband to a wife or *vice versa*, in the hands of third persons, is admissible in evidence; for, in producing it, there is no compulsion on, or permission to, the wife or husband to disclose any communication. S. 122 protects the individuals, and not the communication, if it can be proved without putting into the box for that purpose the husband or the wife to whom the communication was made. Where a person was tried on a charge of criminal breach of trust, a letter from him to his wife in another place which had been found by the police when searching her house under a search warrant was admitted. **22 M. 1=2 Weir 778.**

(307)—*Ss. 123, 124—Production of records not protected by the sections.*—Any officer having the custody of records, not being records of which the production may, on special grounds, be refused, is bound to produce them on

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receiving a summons to that effect. The summons should properly be addressed to the Judge or presiding officer of the Court. The Magistrate has no power to call for the records without the issue of a summons, but when the summons has been issued to the record-keeper, the production of the record should not be refused by the District Judge. **2 Weir 781.**

(307-*a*)—S. 123—*See* No. 251, *supra*.

(308)—*S. 124—Communication made to a person in his official capacity.*—S. 124 follows the English Law and makes the public officer the judge as to whether a communication made to him in his official confidence should or should not be disclosed. If he thinks that the public interest would suffer by such disclosure, he is entitled to refuse to disclose the communication. The mere fact that the publication of the communication might cause a scandal in the office will not justify a refusal to disclose it. **7 C.W.N. 246.**

(309)—*Ss. 124, 125—Refusal by Government officer to give name of informant.*—The accused was convicted of criminal breach of trust in respect of three gold bangles. The evidence went to show that the accused insured a parcel in the Post Office as containing these gold bangles, but, shortly after delivery to the addressee, the parcel was found to contain only a piece of steel. One of the witnesses deposed to having sold the steel to the accused. Accused's counsel asked the Superintendent of Post Offices the name of the person who had informed him about the sale of steel to the accused, but the Sessions Judge refused to allow the question to be put as he was of opinion that the Superintendent was protected by ss. 124 and 125 of the Indian Evidence Act, because he had evidently regarded the communication as made to him in official confidence, more especially as, at the time, the case was being investigated as an attempted fraud on the public revenue. *Held* that the Sessions Judge was wrong in disallowing the question, as neither s. 124 nor s. 125 of the I.E.A., had any application to the case. **2 Bom. L.R. 329.**

(309-*a*)—S. 124—*See* Nos. 251, 307, *supra*.

(310)—*S. 125—Section construed.*—The words, "information as to the commission of any offence," in s. 125, Evidence Act, only enact the rule which, as said by *Eyre, C.J.*, in *Hardy's case* (24 How. St. Tr. 808) has universally obtained, on account of its importance to the public for the detection of crimes, that those persons, who are the channel by means of which the detection is made, should not be unnecessarily disclosed. **Rat. Un. Cr. C. 937=Cr. Rg. 47 of 1897.**

(311)—S. 125—*See* BOM. ACT VII OF 1878, Rat. Un. Cr. C. 183.

(311-*a*)—S. 125—*See* Nos. 251, 309, *supra*.

(312)—*S. 126—Solicitor and client—Professional communication, what amounts to—Privilege.*—The law in India relating to professional communications between a solicitor and a client is the same as in England, and in

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interpreting s. 126 of the Evidence Act, the High Court may rightly refer to English cases. The use of the word "disclose" in s. 126 shows that the communication to be privileged must be of a confidential character between the solicitor and the client. It is not everything that the solicitor learns in the course of his dealings with the client that is privileged from disclosure. It must be a matter communicated to him confidentially for the purpose of obtaining his professional advice. The solicitor claims the privilege as that of his client. He must, then, state the name of the person for whom he claims the privilege. Where one client mentions the name of another client in a communication made to the solicitor in the course and for the purpose of professional employment by him, and the latter consults the solicitor afterwards on business relating to his own affairs, then, unless the name of the latter is communicated to the solicitor confidentially for the purpose of being advised by him, on the express understanding that it should not be communicated to the rest of the world, the solicitor is bound to disclose the name of the client. A solicitor is not at liberty, without his client's express consent, to disclose the matter of the employment. S. 126 protects from publicity not merely the details of the business, but also its general purport, unless it be shown *aliunde* that such business or the communication made in respect of it, fall within proviso (1) or (2). Where, in an interview between a solicitor and his client, a third person in his client's company makes a statement to him in the course and for the purpose of his professional employment, the solicitor is not privileged from disclosing the name of the person making the statement, unless the name was made the subject of a special confidence, and it was stipulated by or on behalf of his client that it was not to be disclosed. **18 B. 263.**

(313)—*S. 126—Pleader disclosing communication by client—Communication inadmissible in evidence.*—A pleader is prohibited from disclosing any communication made to him, in the course and for the purpose of his employment as such pleader by his client, without the client's express consent; any such communication volunteered by the pleader is inadmissible in evidence, even if offered upon oath. **L.B.R. (1893—1900), 358.**

(314)—*Ss. 126, 127—Mukhtear and his clerk—Privilege in respect of statement made to them by client--Crim. Pro. Code, s. 4 (n)—Pleader, definition of.*—S. 126, Evidence Act, must be construed as applying to all persons who come in within the category of "pleader" as defined in Crim. Pro. Code, s. 4 (*n*), and includes therefore, a mukhtear. Communications made to a mukhtear, when acting as pleader for a client, are privileged communications. The same is the case with communication made to his clerk. **25 C. 736=2 C.W.N. 484.**

(315)—*S. 126—Nature of consent required—Pleader and client.*—The consent required by s. 126 of the Evidence Act should be given on

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each occasion when a communication of the kind described is sought to be made admissible in evidence. A consent given to the disclosure of some privileged matters in a civil suit is not sufficient authority for the disclosure of the same matters in a criminal case arising out of the suit. **A.W.N. 1890, 172.**

(316)—S. 126—*See* PLEADER AND CLIENT, 4 Bom. L.R. 460, 5 Bom. L.R. 122.

(316-*a*)—S. 127—*See* No. 314, *supra*.

(317)—*S. 132—Incriminating questions—Objection to answer them.*—Where, on the evidence given by certain witnesses in a murder case to the effect that they assisted the accused in concealing the dead body after murder, they were prosecuted under s. 201, the only evidence being their depositions, *held*, that their conviction was not illegal, as they had omitted to object, perhaps owing to the want of legal advice, to answer the questions, on the ground that the answers would criminate them. **2 Weir 792.**

(318)—*Evidence Act, s. 132—Incriminating answers—Proof.*—Where a person is charged with an offence with which he is alleged to have incriminated himself in his deposition in a case, the fact that he was the person who gave the deposition should be proved. **2 Weir 794.**

(319)—*S. 132—Defamatory matter in the evidence of witness—Privileged statement.*—A statement containing defamatory matter against another, made by a witness in a judicial proceeding, is a privileged statement under s. 132 of the Act, for which such witness could not be proceeded against criminally. If the statement were false, he might be prosecuted for giving false evidence. **3 O.C. 80.** (11 B.L.R. P.C. 321, *Dist.*).

(320)—*S. 132—Statements made in examination in chief contradictory to those made in cross-examination—Incriminating questions put in cross-examination—Object.*—When incriminating questions are put from the Bench to a witness, who has become already entangled by self-contradictions, such questions should be put with the object of furthering the ends of justice in the judicial proceeding, in which such questions are put for elucidating the truth, and not with a view to simplify any future proceedings which may possibly be taken against the witness in another Court. The position of such a witness under s. 132 should, as a rule, be explained by the Court, before any incriminating question is put in the above circumstances. **L.B.R. (1893—1900), 91.**

(321)—*S. 132—Term "compelled" explained—Indian Companies Act (VI of 1882), ss. 162, 163—Inquiry under.*—The word "compelled" in s. 132, Evidence Act, only applies to a case where the Court has compelled a witness to answer a question, and not to a case in which the witness has not excused himself from answering the question, but gives his answer without any claim to have himself excused.

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Where the accused had made, in a previous enquiry under ss. 162, 163 of Act VI of 1882, depositions on oath, without raising any objection to answer questions put to them under s. 132 of the Evidence Act, *held*, that the deposition of each of the accused was admissible in evidence against himself, but should not be taken into consideration against the other accused persons. **16 A. 88.** [*R.*, 3 O.C. 80.]

(322)—*S. 132—Privilege of witness under—"Compelled to give," meaning and scope of the expression.—Held* by Bayley, C.J., and Parsons J. (Birdwood, J., *dissenting*).—S. 132 makes a distinction between those cases in which a witness voluntarily answers a question and those in which he is compelled to answer, and has given him a protection in the latter of those cases only. The words "be compelled to" clearly show that protection is afforded only to answers which a witness has objected to give or which he has asked to be excused from giving, and which then he has been compelled by the Court to give. *Per* Birdwood, J.—It is not only when a witness asks to be excused from answering a criminating question, and his request is refused, that he is "compelled to give" the answer within the meaning of the proviso. The compulsion is operative whether he asks to be excused or gives answers without so asking. **12 B. 440=Rat. Un. Cr. C. 360=Cr. Rg. 2 of 1888.** [*F.*, 21 C. 392; *R.*, 13 B. 376, 13 B. 600, Rat. Un. Cr. C. 776, 2 S.L.R. Cr., 25.]

(323)—*S. 132—Witness—Criminatory answer—Protection given only on witness raising objection to answer—Duty of Court when irrelevant questions put to witness—Held by the Full Bench (Kernan and Muthuswami Iyer, JJ., dissenting)*:—Where an accused person has made a statement on oath voluntarily and without compulsion on the part of the Court to which the statement is made, such a statement may be used against him on his trial on a criminal charge, assuming it to be relevant. The term "shall be compelled" in s. 132 appears to be the correlative of the term "shall be excused," and they pre-suppose the rule that every person giving evidence on any subject, before any Court or person authorised to administer oaths and affirmations, shall be bound to state the truth, and an authority competent at the time to excuse or compel compliance with this rule. They also suggest that the witness has objected to the question, and has sought and been refused excuse, and even constrained to answer. The terms of s. 132, when read with the rest of the Act, affords protection only to answers to which a witness has objected or has been constrained by the Court to give. *Per Muthuswami Iyer and Kernan, JJ.*—S. 132 abolishes the law of privilege and creates an obligation in a witness to answer every question material to the issue, whether the answer criminates him or not, and gives him a right, as correlated to that duty, to claim that the answer shall not be admitted in evidence against him in a criminal prosecution. In order to claim the benefit of

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the proviso to the section, it is not necessary that the witness should have first claimed to be excused from answering the criminating question, and must have been compelled by the Judge to answer it. [*F.*, Rat. Un. Cr. C. 360, 12 B. 440, 15 M. 63=2 Weir 794, 21 C. 392, 2 Weir 792.] The section does not in terms deal with all criminatory questions which may be addressed to a witness, but only with questions as to matters relevant to the matter in issue. Irrelevant questions should not be allowed, and it may be implied by the limitation in this section that a witness should be excused from answering questions tending to criminate as to matters which are irrelevant. **3 M. 271 =2 Weir 781.**

(324)—*S. 132—Incriminating statement made without compulsion.*—The mere subpœnaing of a witness or ordering him to go into the witness-box does not compel him to give any particular answer or to answer any particular question. The words "which a witness shall be compelled to give" in s. 132 of the Act are not a mere surplusage, but apply to pressure put upon witness after he is in the box and when he asks to be excused from answering a question. But if a person makes such a statement without any compulsion and voluntarily, it may be, if relevant, used against him in his trial on a criminal charge. **21 C. 392.** [*F.*, 9 C.W.N. 911=32 C. 756=2 C.L.J. 105; *R.*, 3 O.C. 80.]

(325)—*S. 132—Proviso, inapplicable to voluntary statements.*—The proviso to s. 132 does not apply to voluntary statements. **32 C. 756=2 C.L.J. 105=2 Cr. L. J. 459=9 C.W. N. 911.**

(326)—*S. 132, Crim. Pro. Code (1898), s. 342 (2)—Accused person calling as witnesses, persons charged with him and awaiting separate trial.*—The word "accused" in s. 342 must mean the accused then under trial and under examination by the Court. It cannot include an accused over whom the Court is exercising jurisdiction in another trial. A European British subject was charged, along with certain natives of India with conspiring to commit extortion. The former claimed to be tried by a mixed jury under s. 450, Crim. Pro. Code. The other accused then claimed to be tried separately under s. 452. The trial of the former then proceeded, and he proposed, to call as witnesses the natives who were charged with him, and who were awaiting their trial. They objected to be called. *Held* that he was entitled to call them as witnesses and to examine them on oath. **23 B. 213.** [*F.*, 4 L.B.R. 362 =9 Cr. L.J. 370; *R.*, 3 Bom. L. R. 437, 15 C.P.L.R. 112, 33 C. 1353=10 C.W.N. 962=4 Cr. L. J. 145.]

(327)—S. 132—*See* ACCUSED PERSON, 23 B. 213.

(328)—S. 132—*See* ACT XVIII OF 1879, ss. 13, 40, 6 M.L.T. 253, F.B.=19 M.L.J. 504 =3 Ind. Cas. 344.

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(329)—S. 132—*See* DEFAMATION, 32 C. 756 = 2 C.L.J. 105 = 2 Cr. L.J. 459 = 9 C.W.N. 911.

(330)—S. 132—*See* FALSE EVIDENCE, 2 C.L.R. 181, 1 Weir 153 = 3 M.H.C. App. 29.

(331 and 332)—S. 132—*See* REVISION, 2 S.L.R. 25 Cr. = 10 Cr. L.J. 237.

(332-*a*)—S. 132—*See* Nos. 222, 255, *supra*.

S. 133—*See* ACCOMPLICE.

See APPROVER.

,, CHARGE TO JURY.

(333)—*S. 133—Accomplice, why held to be untrustworthy.*—Accomplice evidence is held untrustworthy for these reasons :—(1) because an accomplice is likely to swear falsely in order to shift the guilt from himself ; (2) because an accomplice, as a participator in crime, and consequently as an immoral person, is likely to disregard the sanction of an oath, and (3) because he gives his evidence, under promise of a pardon, or in the expectation of an implied pardon, if he discloses all he knows against those with whom he acted criminally ; and this hope would lead him to favour the prosecution. *Per* Scott, J. There is often danger that, for the purpose of saving themselves rather than stating the truth, the accomplices will make out a stronger case against the prisoner and more favourable to themselves than the real truth will warrant. They do not give their evidence under an absolute certainty of impunity ; and probably some of them hope, not only to avoid prosecution, but to retain their appointments in the Government service. *Per* Jardine, J. **14 B. 115.**

(334)—*S. 133—Evidence of accomplice—Corroboration—Practice.*—Under s. 133 of the Evidence Act, a conviction is not illegal simply because it proceeds upon the uncorroborated testimony of an accomplice. But such evidence must be received with great caution, and it is the practice of the Courts to require corroboration of such evidence. **7 A. 160.**

(335)—It is the invariable practice of Courts to require corroboration by an independent witness of so much of the evidence of an accomplice as goes to identify the accused person as the offender. **4 Bom. L.R. 431.**

(336)—*Ss. 133, 114, illus. (b)—Accomplice—Evidence—Corroboration—Nature of—English and Indian Law.*—The Indian Law on the subject of the testimony of the evidence of accomplices as embodied in ss. 133 and 114, illus. (*b*), is substantially identical with the law of England. There must be corroborative evidence not only as to the identity of the persons spoken of as the accused but also as to the *corpus delicti*. Letters found in the possession of an accomplice, which, without accepting the interpretation of the accomplice, point to no guilt against the accused, cannot be treated as corroborative evidence. **Rat. Un. Cr. C. 102 = Cr. Rg. 17—1—1876.**

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(337)—The testimony of an approver ought to be corroborated in some material circumstances, such circumstances connecting and identifying the prisoner with the offence. Where the evidence of an approver implicating a number of persons in a murder was supported by the confessional statements of one of the accused persons and was also corroborated by other witnesses in material particulars, *held*, that the accused were properly convicted. *Held*, further, that the confessional statement of one of the accused could be taken into consideration against the other prisoners, although it would not be evidence in the strict sense of the word and could not be held to afford corroboration of the tainted evidence of the accomplice. **25 M. 143 = 2 Weir 800.**

(338)—*S. 133—Conviction on evidence of accomplice—Corroboration, nature of.*—A person cannot be convicted upon the evidence of witnesses, who are no better than accomplices, if their evidence is not corroborated in material respects by other independent evidence in the case. **2 C.W.N. 55.** [*D.*, 27 C. 144.]

(339)—It is only under very exceptional circumstances that a conviction based only on the uncorroborated evidence of an accomplice could be sustained.—The corroboration of an accomplice must be on a point material to the issue, it must be on some material circumstance, such circumstance connecting and identifying the accused with the offence. When the offence under s. 457 of the Indian Penal Code, with which the accused were charged, was committed about midnight, and the corroborative evidence was to the effect that the accused and the accomplice were seen together during the day proceeding together near the spot of the crime about sunset, *held*, that the corroborative evidence did not directly connect the accused with the offence, and was no corroboration of any part of the story regarding the actual crime. The accused were accordingly acquitted. **57 P.L.R. 1902.**

(340)—It is unsafe to convict on the testimony of an approver, unless he is confirmed by independent corroborative evidence not only as to the circumstances of the crime, but also as to the identity of the accused persons. The evidence of another accomplice cannot amount to sufficient corroboration. **L.B.R. (1872—1892), 322.**

(341)—*S. 133—Accomplice, evidence of—Corroboration.*—There is no rule of law that an accused person cannot be convicted on the uncorroborated evidence of an accomplice. It entirely depends on whether the evidence of the accomplice is or is not believed. **A.W.N. 1898, 28.**

(341-*a*)—S. 133—*See* Nos. 3, 7, 129, 255, 263, 266, 267, 268, 269, 270, 271, 272, 273, 274, 280, 281, 297, *supra*.

(342)—*S. 135—Order of examination of witnesses.*—The Court is very slow to interfere with the discretion of counsel as to the order

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in which witnesses should be examined. The ordinary practice is that the witnesses should be cross-examined at the conclusion of the examination-in-chief. **5 C.W.N. XV.** [*R.*, 3 L.B.R. 109 = 3 Cr. L.J. 23].

(343)—*Ss. 136 and 157—Admissibility of corroborative evidence before evidence sought to be corroborated is given—Discretion of Court.*—Ordinarily, before corroborative evidence is admissible, the evidence sought to be corroborated must have been given. The Court has no doubt a discretion to allow evidence to be given under s. 157 out of the regular order, but such discretion should be rarely used and only for very special reasons. To allow a witness to be corroborated, before he is examined, is not only inconvenient, but likely to cause the Judge or Jury to give undue weight to the hear-say statements of the corroborating witness. It is not clear that such a discretion is given by s. 136, Evidence Act. **3 L.B.R. 240 = 5 Cr. L. J. 411.**

(343-*a*)—S. 136—*See* No. 195, *supra*.

(344)—*S. 137—Witnesses called by a co-accused—Right of accused to cross-examine.*—An accused person must be allowed to cross-examine witnesses called by another co-accused for his defence, if the case of the latter is adverse to that of the former. **21 C. 401.**

(345)—*Ss. 137 and 138—Cross-examination by parties of witness called by Court—Crim. Pro. Code (1882), s. 540.*—A witness summoned and examined by the Court under s. 540 of the Code of Criminal Procedure cannot, as of right, be cross-examined either by the prosecutor or by the accused. The Court should, as a general rule, however, allow the parties to cross-examine the witness if they desire to do so. **S.C. 275 Oudh.** (12 W.R. Cr. 75 and 3 B.L.R. A.C. 145, *R.*).

(346)—Ss. 137 and 138—*See* CRIM. PRO. CODE (1898), s. 540, S.C. 275, Oudh.

(347 and 348)—Ss. 138, 167, 33—*See* CRIM. PRO. CODE (1898), ss. 352, 537, 9 A. 609.

(348-*a*)—S. 138—*See* Nos. 345, 346, *supra*.

(349)—S. 144—*See* SANCTION TO PROSECUTE, 7 C.L.J. 49 = 7 Cr. L.J. 10 = 35 C. 141 = 2 M.L.T. 500.

(350)—*S. 145—Depositions before committing Magistrate—Use in Sessions Court.*—Where the Sessions Judge wishes to use depositions taken before the committing Magistrate, he should record them as exhibits in his own Court, and not read them to the jury without reading them to the witness or exhibiting them. **Rat. Un. Cr. C. 924 = Cr. Rg. 29 of 1897.**

(351)—S. 145—*See* CRIM. PRO. CODE (1898), s. 288, Rat. Un. Cr. C. 728,

(352)—S. 145—*See* PENAL CODE, s. 193, 9 C.L.J. 378.

(353)—Ss. 145, 161—*See* CRIM. PRO. CODE (1898), ss. 162, 172, 10 C.W.N. 890 = 4 Cr. L.J. 79 = 33 C. 1023.

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(354)—*Ss. 146 and 151—Scandalous questions.*—There is nothing in the provisions of the Evidence Act to prevent the prosecution of a person for defamation, if he puts defamatory questions, not in good faith, but knowing that the imputation they convey is false and with the sole object of defaming the person questioned, although such question may be relevant as shaking the credit of the witness. **2 Weir 819.**

(354-*a*)—S. 146—*See* No. 255, *supra*.

(355)—*S. 151—Exemption of Judges from giving evidence—Competency of Magistrate to testify—Preliminary enquiry.*—It has been held in England, on grounds of public policy, that Judges of Courts of Record ought not to be compelled to give evidence of matters which have come to their knowledge judicially, and the same may be considered a sound rule in regard to the Judges of some Courts in the mofussil. But, Magistrates are not incapacitated to give evidence of matters in the course of a preliminary enquiry into a criminal charge, and which are otherwise admissible. **3 M.H.C. 372.** [*R.*, 2 Weir 777 = 6 M.H.C. App. 42].

(355-*a*)—S. 151—*See* No. 354, *supra*.

(356)—S. 152—*See* WITNESS, Rat. Un. Cr. C. 344.

(356-*a*)—S. 153—*See* No. 11, *supra*.

(357)—S. 154—*See* CRIM. PRO. CODE (1898), s. 257, 28 C. 594.

(358)—*S. 155—Statements before police officer by witness—Examination of police officer.*—It is not illegal to examine a police officer for the purpose of impeaching the credit of a witness who gives evidence in favour of an accused at his trial, having previously given a statement to the police officer different from and inconsistent with, his subsequent statement at the trial. **27 A. 469 = A.W.N. 1904, 64.**

(359)—*S. 155, cl. 3—Statements previously made by witnesses.*—Two persons complained to their employer that the accused and another person had assaulted them and that they had been forced to give up money that was in their possession. But they stated at the trial of the accused that he was not the man who assaulted them. A record made by the Police Head Constable of the complaint of one of them was filed as evidence, and a letter from their employer setting out the complaint was also filed, and in both the accused was named. Neither the Head Constable nor the employer was called, as a witness. *Held*, that the former statements made by the two persons implicating the accused could be used only under s. 155, cl. (3) of the Evidence Act, for discrediting their evidence given in the case, but, in themselves, they could not be used as substantive evidence against the accused by converting and regarding the same as the evidence given on oath by the witnesses subject to cross-examination. **26 M. 191 = 2 Weir 820.**

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(360)—*Ss. 155, 157—Former statement of witness not on oath—Value as evidence.*—A statement made by a person at an inquest can only be used to corroborate or to contradict a subsequent statement of the same person admissible as evidence. But when the subsequent statement is itself unworthy of credit, it cannot be materially strengthened by showing that the witness had previously (at the inquest) made a statement partly in agreement, and partly in direct material disagreement with it. **2 Weir 821.**

(360-*a*)—Ss. 155, 157—*See* POLICE REPORT, 17 P.R. 1886 Cr.

(361)—*Ss. 155, 159, Crim. Pro. Code, s. 162—Statement reduced to writing by police officer, use to be made of.*—A statement reduced to writing by a police officer under s. 162, Crim. Pro. Code, cannot have the effect of a deposition; but though it is not evidence, the police officer, to whom it was made, may use it to refresh his memory under s. 159 of the Evidence Act, and may be cross-examined upon it by the counsel against whose cause the testimony aided by it has been given. The person making the statement may properly be questioned about it; and, with a view to impeach his credit, the police officer himself, or any other person in whose hearing the statement was made, can be examined on the point under s. 155 of the Evidence Act. **11 B. 657.** [*F.*, 27 A. 469=A.W.N. 1905, 64; *Appr.*, 15 A. 25; *R.*, 11 B. 659. Rat. Un. Cr. C. 503, 22 B. 596, U.B.R. (1897—1901), 31, 19 A. 390=17 A.W.N. 174, F.B.

(361-*a*)—*Ss. 155, 159—Crim. Pro. Code, Act X of 1872, s. 119.*—The effect of s. 119 of the Crim. Pro. Code, is to allow police officers conducting an investigation to reduce to writing statements made by witnesses, and such writing, though it may not be used as evidence to prove the guilt of the accused, may be used under ss. 155, 159 of the Evidence Act. Where the statement is not reduced to writing, the officer may be examined to impeach the credit of a witness who made such a statement, under s. 155, and the officer may refer to the writing, if he has reduced to writing, for refreshing his memory under s. 159. **11 B.H.C. 120.** [*F.*, 11 B. 657; *R.*, 19 A. 390, F.B., 13 C.W.N. 197=5 M.L.T. 97=9 C.L.J. 199; *D.*, 8 C. 154=10 C.L.R. 51].

(362)—*S. 157—Corroborative evidence, when to be let in.*—Before corroborative evidence is admissible, the evidence sought to be corroborated must have been given. **5 C.W.N. 16.** [*R.*, 3 L.B.R. 240=5 Cr.L.J. 411].

(363)—*S. 157—Statement of witness before police—Relevancy—Sufficiency of such statement to support conviction.*—A statement made by a witness to a Chief Constable can only be used under s. 157 of the Evidence Act to corroborate the evidence of the first witness at the trial. Such a statement, standing by itself, can furnish no legal basis for a conviction. **Rat. Un. Cr. C. 508=Cr. Rg. 26 of 1890.**

Evidence Act (I of 1872)—continued.

(364)—S. 157—*See* ACCOMPLICE, 3 P.R. 1904 Cr.

(365)—S. 157—*See* CRIM. PRO. CODE (1898), s. 162, 22 B. 596.

(366)—Ss. 157 and 161—*See* CRIM. PRO. CODE, ss. 162 and 172, 13 O.C. 7.

(367)—S. 157—*See* CRIM. PRO. CODE (1898), ss. 162 and 367, 13 C.W.N. 197=5 M. L.T. 97=9 C.L.J. 198=36 C. 281=9 Cr. L.J. 452=1 Ind. Cas. 970.

(368)—S. 157—*See* UNLAWFUL ASSEMBLY, 6 M.L.T. 17.

(368-*a*)—S. 157—*See* Nos. 128, 143, 145, 155, 195, 343, 360, *supra.*

(369)—*Ss. 159 and 160—Refreshing memory.*—A witness who was present at an arbitration, and had compared the draft and fair copy minutes made by the clerk and had found the latter to be correct, was allowed to refresh his memory as to what occurred at the arbitration, by reference to the fair copy minutes made by arbitrator's clerk. **5 C.W.N. App. 16.**

(370)—A Magistrate, who took down a confession, may, while being examined as a witness, be allowed, under s. 159 or s. 160, Evidence Act, to refresh his memory by referring to his record of that confession. **16 C.P.L.R 122.** (9 C. 455, *Appr.*; 23 B. 221, 15 C. 595, 17 C. 862. 13 C.P.L.R. 107, *R.*).

(371)—Ss. 159, 160—*See* PENAL CODE, s. 124-A, 5 M.L.T. 393=32 M. 384.

(371-*a*)—S. 159—*See* No. 361, *supra.*

(371-*b*)—S. 160—*See* Nos. 369, 371, *supra.*

(372)—*S. 161—Right to inspect writing used to refresh memory—Grounds.*—The grounds upon which the opposite party is permitted to inspect a writing used to refresh the memory of a witness are threefold:—(1) to secure the full benefit of the witness's recollection as to the whole of the facts; (2) to check the use of improper documents; and (3) to compare his oral testimony with his written statement. The opposite party may look at the writing to see what kind of writing it is, in order to check the use of improper documents. But it is doubtful whether he is entitled, except for this particular purpose, to question the witness as to other and independent matters contained in the same series of writings. If the right to look at the writing is not exercised before or at the moment, when the witness used it to refresh his memory in order to answer a particular question, it cannot be retained throughout the whole of the subsequent examination of the witness. **12 C.L.R. 233.**

(372-*a*)—S. 161—*See* Nos. 353, 366, *supra.*

(373)—*S. 65—Irrelevant questions—Refusal to answer—Penal Code, s. 179.*—Under s. 165 of the Evidence Act, a Judge has power to ask any question he pleases about irrelevant facts, if he does so in order to discover or obtain proper proof of relevant facts. But where the

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question is asked with a view to criminal proceedings being taken against the witness, the witness is not legally bound to answer it, and he cannot be punished under s. 179, I.P.C., for refusing to answer. **10 B. 185.** [*R.*, 13 B. 600].

(374)—*S. 165—Examination by Court—Right to cross-examine.*—When the prisoner has examined or declined to cross-examine a witness, and the Court examines him of its own motion, the witness cannot then, without the special permission of the Court, be subjected to cross-examination. **11 B.H.C. 166.**

(375)—*S. 165—Judge's power to put irrelevant questions.*—Under s. 165, a Judge has the power of asking irrelevant questions to a witness, if he does so in order to obtain proof of relevant facts; but if he asks questions with a view to criminal proceedings being taken against him, he is not bound to answer him and cannot be punished under s. 179, I.P.C. **Cr. Rg. 14—10—1885.**

(376)—S. 165—*See* WITNESS, 5 C. 614=5 C. L.R. 364.

(376-*a*)—S. 165—*See* No. 185, *supra*.

(377)—*S. 167—Applicability of.*—The section is applicable to criminal as well as to civil cases. **1 C. 207=25 W.R. Cr. 86.** [*F.*, 9 Bom. L.R. 789=6 Cr. L.J. 164=2 M.L.T. 414].

(378)—*S. 167—Scope of.*—S. 167, Evidence Act, applies to criminal as well as to civil cases, *and to criminal cases*, whether or not the trial has been had before a jury. The expression in that section, "the Court before which such objection is raised," includes the reviewing of appellate Court. **2 B. 61.** [*R.*, 19 B. 749, 10 M.L.J. 147, 9 Bom. L.R. 789=32 B. 111=6 Cr. L.J. 164=2 M.L.T. 414].

(379)—*Per* Green, J.—S. 167, Evidence Act, applies as well to the High Court sitting as a Court of original jurisdiction as to the same Court sitting for the consideration of a reserved point. *Per* Sargent, C.J.—The provisions of s. 167 are made applicable by the clearest possible words to all judicial proceedings in or before any Court, and are, therefore, applicable to the High Court, sitting under s. 26 of the Letters Patent, "to determine the point of law reserved and pass such judgment and sentence as to this Court shall seem right." *Per* Bayley, J. (*dissenting*).—S. 167 is inapplicable to trial by jury in the Presidency towns and was never intended to alter the constitution or vary the powers of the High Court as a Court for deciding points of law reserved for its consideration. The term "decision" is inapplicable to trial by a Judge and Jury. **9 B.H.C. 358.** [*R.*, 1 C. 207, 25 W.R. 36, 2 B. 61, 19 B. 749, 10 M.L.J. 147, 32 B. 111=9 Bom. L.R. 789=6 Cr. L.J. 164=2 M.L.T. 414].

(380)—*S. 167, irrelevant evidence, admission of, in trial by jury—High Court's powers.*—The words "in any case" in s. 167, Evidence Act, are wide and include criminal trials by jury. The English law with reference to the granting of new trials when evidence has been improperly

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admitted, does not apply to India. Where part of the evidence which has been allowed to go to the jury is held to be inadmissible, it is open to the High Court in appeal either to uphold the verdict upon the remaining evidence on the record, or to quash the verdict and order a new trial. **19 B. 749.** [*F.*, Rat. Un. Cr. C. 855; *R.*, 10 M.L.J. 147 F.B., 25 M. 61=2 Weir 271, P.C.]

(381)—*S. 167—Crim. Pro. Code (1872), s. 256—Duty of Judge.*—Though s. 167 of the Evidence Act implies that the improper reception of evidence is not generally to be made a ground for the reversal of a judgment, unless it was objected to by the party prejudiced by such reception, yet, s. 256 of the Crim. Pro. Code, lays down that it is the duty of the Judge in his discretion to prevent the production of inadmissible evidence whether it is objected to by the parties or not. **11 B.H.C. 44.**

(382)—*S. 167.*—The section applies to criminal trials by jury in the High Court. **9 B.H.C. 358.**

(382-*a*)—*S. 167.*—Where no objection was raised to the reception of improper evidence in the lower Court, and the Appellate Court finds, that there is sufficient evidence, discarding the improper evidence admitted, to sustain a conviction, *held* that the Appellate Court should not interfere with the conviction. **11 B.H.C. 90.**

(383)—S. 167—*See* APPELLATE COURT, 24 M. 523.

(384)—S. 167—*See* LETTERS PATENT (BOMBAY), 1865, s. 25, 2 B. 61.

(385)—S. 167—*See* LETTERS PATENT, (BOMBAY), 1865. s. 26, 9 B.H.C. 358.

(386)—S. 167—*See* VERDICT OF JURY, 8 C. 739=12 C.L.R. 233.

(387)—S. 197—*See* Nos. 59, 69, 348, *supra*.

Evidence Act, 1872, Amendment Act.

See ACT III OF 1891.

Examination of Accused.

See ACCUSED PERSON.

See CONFESSION.

See CRIM. PRO. CODE (1898), ss. 164, 342, 364.

(1)—*Crim. Pro. Code (1882), s. 342—Nature of, provisions of.*—The provisions of s. 342 of the Crim. Pro. Code as to the examination of an accused person are imperative. **Rat. Un. Cr. C. 625=Cr. Rg. 50 of 1892.**

(2)—*Crim. Pro. Code, s. 342—Scope—Examination of accused under the section, nature of.*—The examination of the accused person for which the section provides is an examination touching the matter on which he is being tried. It does not apply to an examination in another case in which the person who is being examined is not himself an accused person. **20 A. 426.** [*R.* 10 C.W.N. 962=33 C. 1353=4 Cr. L. J. 145].

Examination of Accused—continued.

(3)—*Crim. Pro. Code (1882), s. 342—Statement of accused, how to be taken.*—In taking down the statement of an accused under s. 342, a Magistrate should record in full the questions put to, and the answers given by the accused, and the whole must be made conformable to what the accused declares to be the truth; he must certify that his examination of the accused contains a full account of the statement made by the accused. **4 Bom. L.R. 461.**

(4)—S. 342, Crim. Pro. Code, does not permit a Magistrate to submit the accused to an embarrassing and cruel series of questions intended rather to puzzle him than to elucidate the case, or to enable him to furnish an explanation to the circumstances appearing in evidence against him. **6 Bom. L.R. 94.**

(5)—*Crim. Pro. Code (1898), s. 364—Defect in the recording of a statement, how to be cured—Statement by accused to a Magistrate deputed to verify, admissibility of.*—Where, in recording the examination of the accused, which was taken on two several occasions, the Magistrate made the certificate required by s. 364, on the first page of the record only, although the record of the examination taken on the first day alone extended over two pages, and that taken on the second day was written entirely on the second page, *held* that the defect was cured by the evidence of the Magistrate. [*D.*, 9 C.L.J. 55]. Where, on the accused stating before the committing Magistrate that the deceased had fallen from a terrace and his respiration stopped and that he had buried his ornaments under a tree, another Magistrate deputed to verify these statements took the accused to the place of occurrence, and was shown a place on the roof of his house from which he said the boy had fallen, and the place where he admitted he had buried the body of the boy, *held*, that the statements made to the latter Magistrate were not admissible in evidence. **8 C.W.N. 22.** [*R.*, 4 N.L.R. 163].

(6)—*Crim. Pro. Code, s. 366—Examination of accused under, how to be used at the trial.*—The examination of an accused person, which is directed by s. 366 of the Crim Pro. Code to be given in evidence at the trial, should be put in, and read as part of the case for the prosecution before the accused person is called upon to enter on his defence. **8 W.R. Cr. Cir. 6.**

(7)—*Crim. Pro. Code (1898), s. 342—Filling up gap in prosecution evidence by questioning the accused.*—A gap in the evidence for prosecution cannot be filled up by any statement made by the accused in his examination under s. 342, Crim. Pro. Code. An omission to prove the making and publishing of an alleged libel cannot be made up by the statements made by the accused in answer to questions put to him under s. 342. **27 M. 238=2 Weir 408.** [*R.*, 29 M. 372=4 Cr. L. J. 231, 3 L.B.R. 208=4 Cr. L.J. 417].

(8)—*Capacity of accused to testify—Person arrested by police as accomplice.*—A person arrested by the police as an accomplice and sent up for trial is an accused person, and could not be examined as a witness, unless he is discharged or acquitted. **12 P.R. 1902 Cr.**

Examination of Accused—continued.

(9)—*Purpose of examination of accused—Calling accused for his defence—Omission to comply with law invalidates trial—Crim. Pro. Code, ss. 342, 289, 537.*—The terms of s. 342, Crim. Pro. Code, are imperative and require the Court to question the accused generally on the case, after the witnesses for the prosecution have been examined and before he is called upon for his defence, for the purpose of enabling him to explain any circumstances appearing in the evidence against him. But, under s. 289, the examination of the accused is optional, if there are no circumstances for the accused to explain. Again, under s. 289, if the Court considers that there is evidence that the accused committed the offence, the court must call on the accused to enter on his defence. Obviously the record must show that this requirement of the law has been fulfilled; and the substance of the accused's defence should be recorded. The omission to call upon the accused to enter on his defence is not cured by s. 537, Crim. Pro. Code, as such omission occasions a failure of justice. **2 L.B.R. 115.** (23 C. 252, *R.*)

(10)—*Act XXV of 1861, s. 205—Act X of 1872, s. 346—Attention of Magistrate.*—Under s. 205 of the Crim. Pro. Code, it is not necessary for the Magistrate to state in the body of the examination that the statement comprised every question put to the accused and every answer given by him, and that he had liberty to add to or explain his answers. Attestation at the foot of the examination is sufficient; but in case of doubt, oral evidence should be admitted to prove the regularity of the proceedings. **7 B.L.R. App. 62 =15 W.R. Cr. 68.**

(11)—*Crim. Pro. Code (1872), s. 248—Examination of accused before committing Magistrate.*—The fact that an accused person, who has been examined by the committing Magistrate, makes other and different statements in his examination before the Court of Sessions, does not make his statement before the committing Magistrate no evidence. **A.W.N. 1881, 89.**

(12)—*Crim. Pro. Code (1872), s. 250—Examination of accused person.*—A Sessions Judge should examine an accused person, whether defended or undefended, before he is called on for his defence, the terms of s. 250, being in this respect mandatory. In the event of non-response on the part of the accused, that fact should be recorded before proceeding with the trial. **A.W.N. 1881, 99.**

(13)—*Murder case—Examination of accused at commencement of inquiry.*—It is most improper in a Magistrate, if not illegal, to begin a murder case with the examination of the accused who comes fresh from the hands of the police who made the inquiry. Any confessional statements made by the accused in such examination are of little value. **A.W.N. 1882, 166.**

Examination of Accused—continued.

(14)—*Crim. Pro. Code, Act X of 1882, ss. 342, 364—Examination of accused at the commencement.*—It is improper if not actually illegal, to examine an accused person at the commencement of the inquiry or trial, often with a view to extract damaging admissions from him. **A.W.N. 1884, 106.**

(15)—*Crim. Pro. Code, ss. 205, 366, 399—Accused not properly examined—Admissibility of his statements.*—*Held* that the examination of the accused before the Magistrate, put in evidence before the Court of Sessions, not having been recorded according to the provisions of s. 205, Crim. Pro. Code, 1861, was not admissible as evidence in the case and that, considering that the evidence was insufficient to sustain a conviction, the prisoner should be acquitted under s. 399, Crim. Pro. Code. **2 B.H.C. 125.** [*Com.*, 2 B.H.C. 395 ; *R.*, 10 B.H.C. 166, F.B.]

(16)—*Crim. Pro. Code (1861)—Examination of accused not properly taken—Procedure.*—Where the alleged confession by an accused before the Magistrate was inadmissible, because not taken as prescribed in s. 205, Crim. Pro. Code, the High Court remanded the case in order that the Magistrate may take any evidence that may be forthcoming to prove the alleged confession. Where the witness says that the confession by an accused person was given freely, and was not elicited by any threat or promises, the form of the questions is immaterial, even although it assumes the prisoner's guilt. **2 B.H.C. 397.** [*R.*, 2 B.H.C. 395, 10 B.H.C. 166, F.B.]

(17)—*Crim. Pro. Code (1861), ss. 205 and 366—Examination of accused—Admissibility in evidence.*—The examination under s. 205, to be admissible as evidence under s. 366, must be taken in the form of questions and answers, and certified as required in s 205. But if it be not so taken, the Court can order the confession to be proved by the evidence of the writer of the examination, or other person who was present. But, where the evidence, exclusive of the inadmissible evidence, is sufficient to support the conviction, it may be affirmed by the High Court without remanding the case ; and the admission of such an examination by the Court of Sessions does not invalidate the trial and conviction under ss. 426, 439. [*R.*, 2 B.H.C.R. 395, 10 B.H.C. 166, F.B.] Where the confession of an accused before a Magistrate is inadmissible in evidence, not being taken as prescribed in s. 205, Crim. Pro. Code, the Sessions Judge should take any evidence forthcoming to prove the alleged confession and to certify the result of such inquiry and evidence to the High Court. **2 B.H.C. 398.** [*R.*, 10 B.H.C. 166, F.B.]

See ACCUSED PERSON, U.B.R. (1897—1901). Vol. I, 82.

See CRIM. PRO. CODE (1898), s. 209, 23 M. 636=2 Weir 253.

See CRIM. PRO. CODE (1898), ss. 242, 244, 342, 537, 2 L.B.R. 239.

See CRIM. PRO. CODE (1898), ss. 287, 289 and 342, 1 O.C. 85.

Examination of Accused—concluded.

See CRIM. PRO. CODE (1898), s. 289, S.C. 95 Oudh.

See CRIM. PRO. CODE (1898), s. 342, 13 A. 345, 1 C.L.R. 436, 7 C.W.N. 345, 6 O.C. 204.

Examination of Complainant.

See COMPLAINANT.

See CRIM. PRO. CODE (1898), s. 201, 6 Bom. L.R. 662.

See CRIM. PRO. CODE (1898), s. 353, Rat. Un. Cr. C. 24.

See PRACTICE AND PROCEDURE, U.B.R. (1897—1901), Vol. I, 67.

Examination of Witness.

See EVIDENCE.

See WITNESS.

(1)—The evidence of witnesses should invariably be recorded as soon as possible after their attendance. If, from unavoidable causes, an adjournment is indispensable, there should be no unnecessary delay. Witnesses remaining over from one day should, as a rule, be examined at the first sitting of the Court on the following day. By this means the public will be put to no inconvenience, and justice will be administered in a prompt and satisfactory manner. **4 W.R. Cr. Cir. 1.**

(2)—The examination of a medical witness, which, under s. 368, Crim. Pro. Code, 1861, the Court is directed to receive as *prima facie* evidence, should be put in and read as part of the case for the prosecution. It must be in proper form and duly attested or otherwise strictly proved. Under s. 369, the examination cannot be read as evidence, unless it is proved that the witness is dead or the Court is satisfied that for sufficient cause his attendance cannot be procured. **8 W.R. Cr. Cir. 6.**

(3)—*Crim. Pro. Code (1861), s. 195—Examination of witness.*—Under s. 195, Crim. Pro. Code, a Sessions Judge is bound to take a note of each witness's deposition as the examination proceeds. It is not a sufficient compliance with the section to merely state that a witness "deposes as last witness." **1 B.H.C. 91.**

—Refusal to examine witness of a party to dispute about immoveable property—*See* CRIM. PRO. CODE (1898), s. 145, 31 C. 685.

—Of witnesses—*See* CRIM. PRO. CODE (1898), s. 540, 6 C.W.N. 98.

Examination Papers.

See ACT XV OF 1889, ss. 3 and 4, 1 L.B.R. 133.

Excise.

Act XXI of 1856, s. 71—Information—Jurisdiction when Magistrate was also Collector.—Under s. 71 of Act XXI of 1856, forfeitures and penalties prescribed for certain offences against the provisions of the Act could be adjudged by the Magistrate only on the information of the Collector or an Abkari Officer. **15 P.R. 1870 Cr.**

S. N. DAR, B. A. LL. B.,
Vakil High Court,

Excise Acts.

See ACT X OF 1871.
„ ACT XXII OF 1881.
„ ACT XII OF 1896.
„ BEN. ACT III OF 1873.
„ BEN. ACT VII OF 1878.
„ MAD. ACT VI OF 1871.
„ PUNJ. ACT XXI OF 1856.

Excise Amendment Act.

See BEN. ACT IV OF 1881.

Excise Collector.

—Whether a Court—*See* PERJURY, 10 C.W.N. 220=3 Cr. L.J. 196.

Excise Officer.

See ACT XII OF 1896, ss. 44 (2), 48 and 57, A.W.N. 1908, 157=5 A.L.J. 444=30 A. 377=8 Cr. L.J. 5.

Excommunication.

—Threat of—*See* CRIMINAL INTIMIDATION, 8 M. 140=2 Weir 249.

See CRIMINAL TRESPASS, 4 M. 243.

See DEFAMATION, 11 Bom. L.R. 638, 1 Weir 574=6 M.H.C. App. 46.

See HOUSE TRESPASS, 1 Weir 523.

Execution.

—*Execution—Meaning—Absence of signature.*—"Execution" does not seem necessarily to involve signing a document, though the expression is commonly understood in that sense. Under the Burmese law and practice, executing instruments without signatures should be recognized by the Court. **U.B.R. (1892—1896), Vol. I, 303.**

Execution of Decree.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 6 C.L.R. 206.

See ESCAPE FROM LAWFUL CUSTODY, 1 B.H.C. Cr. 38.

See PENAL CODE, ss. 99, 186, Rat. Un. Cr. C. 380.

See PENAL CODE, s. 183, 15 B. 564.

See PENAL CODE, s. 206, 28 C. 217=5 C. W.N. 291.

See PENAL CODE, ss. 209, 210, 9 M. 101=1 Weir 183.

See PENAL CODE, s. 323, 5 Bom. L.R. 977.

Execution of order for maintenance.

See CRIM. PRO. CODE (1898), s. 488.

See MAINTENANCE.

See CRIM. PRO. CODE (1898), s. 488, U.B. R. (1897—1901), Vol. I, 111.

Execution Proceedings.

See CRIM. PRO. CODE (1898), s. 476, 10 C.L.J. 450.

Executive Order.

—of District Magistrate.

See REVISION, A.W.N. 1902, 175.

Executive, Powers of the.

—Power of Courts to question legality of executive orders under Crim. Pro. Code—*See* JURISDICTION OF CRIMINAL COURTS, 6 C. 88.

Executive Proceedings.

—*Judicial proceedings and executive proceedings distinguished.*—The essence of a judicial proceeding is a declaration of the law on the particular case which has to be arrived at as a decision of certain legal relations. The essence of an executive proceeding is an act done under such and such circumstances and enquired into when necessary with a view to determine whether in the particular case they call for or justify such act. **Rat. Un. Cr. C. 129.**

Ex parte order.

—Order in a proceeding under s. 145, Crim. Pro. Code—*See* CRIM. PRO. CODE (1898), s. 145, 6 C.W.N. 925.

Ex parte Proceedings.

See MAGISTRATE, JURISDICTION OF, 2 Weir 38=7 M.H.C. App. 43.

Expert.

See EVIDENCE.

See EVIDENCE ACT, ss. 45—47.

See CONVICTION, 136 P.L.R. 1909.

Explosives Act.

See ACT IV OF 1884.

Extortion.

See PENAL CODE, ss. 383—389.

(1)—*Penal Code, ss. 71, 170, 383—Personating a public servant and committing extortion thereby—Separate convictions and separate sentences.*—Where the evidence showed that the accused falsely personated a public servant, and through it, committed an act of extortion, *held*, that the first and second paragraphs of s. 71, I.P.C., did not apply, that the third paragraph did not apply, as the offence of personating a public servant could not be dealt with as a constituent element of the offence of extortion, and as the offence under s. 170 was complete before the latter had begun, and could not therefore merge into the offence of extortion, of which offence personation as a public servant formed no necessary ingredient, and that separate sentences should therefore be awarded, irrespective of the provision of s. 71, I.P.C., but with due regard to the provisions of s. 35, Crim. Pro. Code. **10 A. 58.** [*R.*, 1 A.L. J. 604=27 A. 294=A.W.N. 1904, 232].

(2)—*Penal Code, s. 384—Exacting payment of money from owners of trespassing cattle on threat of impounding the cattle.*—A payment taken from the owners of trespassing cattle under the influence of a threat that the cattle would be impounded, if the payment was refused, was held not to amount to an extortion because the payment was made under threat of what was a proceeding which was lawful and which did not furnish ground for a civil action. **1 Weir 438.**

Extortion--continued.

(3)—*Penal Code, s. 383—Extortion—Threat by a joint vakil to withdraw from a case, unless additional fee is paid.*—The accused, a junior vakil for the complainant, in the absence of his senior, and when his senior's instructions were simply to obtain an adjournment of the case, threatened that he would withdraw from the case unless an additional fee was paid, and, on such payment conducted the case; *held*, that the accused had not committed extortion, as the threat was not a matter giving rise to a civil action. **1 Weir 438=5 M. H.C. App. 14.**

(4)—*Penal Code, s. 384—Trespass of cattle on accused's land—Accused receiving money payment on threat of impounding the cattle.*—The complainant's sheep trespassed on the field of the accused, during the night, and caused damage to his crops. On his attempting to drive the sheep to the pound, certain mediators intervened and advised the complainant to pay for the damage, and the complainant, on payment of the sum demanded by the accused, brought back his sheep. *Held*, that the accused had not committed extortion inasmuch as the complainant was not put in fear of an injury as defined by the Penal Code, and as the accused's intention was not dishonest. **1 Weir 440.**

(5)—*Penal Code, s. 384—Absence of dishonest intention.*—Where a toll-keeper proceeded to collect the tolls from certain cartmen, in a manner which he believed to be lawful, and the cartmen unfastened the bullocks and left the cart there, *held* that the toll-keeper was not guilty of extortion, inasmuch as the element of dishonesty was entirely wanting. **1 Weir 440.**

(6)—*Penal Code, s. 384—Threat to use process of law for enforcing payment of more than one's due.*—Though to threaten to use the process of the law is perfectly lawful, to do so for the purpose of enforcing payment of more than is due is illegal and such a threat made with such an object must be held to be threat of injury sufficient to constitute the offence of extortion. The fact that the offence, with which the complainant was liable to be charged was compoundable would make no difference regarding the offence of the accused. **1 Weir 441.**

(7)—*Levying money without authority under cover of a* hookumnamah, *not extortion—Nature of the offence—Essential of extortion.*—A Deputy Inspector entrusted the Head Constable with a *hookumnamah* issued with the object of collecting certain statistical information as to rates, etc. The constable levied small sums without authority under the cover of the said *hookumnamah*, and misappropriated them. *Held*, that the constable was not guilty of extortion, but of cheating, as the merchants paid those sums more in consequence of their credulity than in consequence of any personal fear. To amount to an offence of extortion, property must be obtained by intentionally putting a person in fear of injury to

Extortion—concluded.

that person, and thereby dishonestly inducing him to part with his property. Further, the mere issue of a *hookumnamah*, however inexpedient and not unlikely to lead to extortion, is no legal ground for a conviction of abetment of cheating or of extortion. **4 W.R. Cr. 5.**

(8)—*Delivery of property by the person put in fear—Essential to extortion.*—Where a person, through fear, offers no resistance to the carrying off of his property, but does not deliver any of the property either to the prisoners or to any one else, the offence committed is robbery and not extortion. Delivery by the person put in fear is essential in order to constitute the offence of extortion. **5 W.R. Cr. 19.**

(9)—*Terror of criminal charge, a fear of injury—Threatened charge true or false immaterial.*—The terror of a criminal charge is a fear of injury within the meaning of s. 383. Extortion may be equally committed whether the charge is false or true. **7 W.R. Cr. 28.**

(10)—*Obtaining money under threat of loss of situation.*—The making use of oral or supposed influence by a member of a certain establishment to induce the other members of that establishment to give him money against their will, threatening in case of refusal the loss of their situations, is extortion within the meaning of s. 384, Penal Code. **18 W.R. Cr. 17.**

(11)—*Feigning attempt to commit offence—Penal Code, s. 387.*—The feigning of an attempt to commit suicide in order to extort money is an offence under s. 387 of the Penal Code. **1 Ind. Jur. N. S. 423.**

(12)—*Penal Code, s. 384 - Extortion, what constitutes.*—In order to constitute the offence of extortion, it is not necessary that the threat should be used, and the property received, by one and the same individual. It may be matter of arrangement that the threat should be used by some, and the property received by others; and they would be all guilty of extortion. It would not, under such circumstances, be necessary to charge the receivers with abetment, although that might be done; but then, under the provisions of the Code, the punishment would be the same as for extortion. **2 B.H.C. 394, Cr.**

(13)—*Penal Code, Act XLV of 1860, s. 383—Extortion—Fear of injury*—Bona fide *claim of right.*—Where there was no proof that any such fear of injury was caused as is contemplated in s. 383 of the Penal Code, or that payment of money was induced thereby, and it was shown that the accused might have demanded the payment under a *bona fide* claim of right, *held* that a conviction for extortion was not sustainable. **3 B.H.C. Cr. 45.**

See ABETMENT, 31 C. 710.

See JOINDER OF CHARGES, 10 C.W.N. 53 =3 Cr. L.J. 141, 132 P.L.R. 1902.

See PENAL CODE, s. 94, 14 B. 115.

See SANCTION TO PROSECUTE, 7 M.H.C. R. 182, 6 M.L.T. 128.

Extradition.

See EXTRADITION ACTS.
See CHARGE, 17 B. 369.

Extradition Acts.

See ACT I OF 1849.
„ ACT VII OF 1854.
„ ACT XI OF 1872.
„ ACT XXI OF 1879.
„ ACT XV OF 1903.

Factories Act.

See ACT XV OF 1871.
„ ACT XV OF 1881.
„ ACT XI OF 1891.

Fairways, obstruction in, Act.

See ACT XVI OF 1881.

False Certificate.

See FORGERY, 15 A. 210.

False Charge.

See PENAL CODE, ss. 182 and 211.

(1)—*Penal Code, ss. 182 and 211—Scope of the sections.*—The actual institution of criminal proceedings on a false charge is essential to the application of the latter part of s. 211; if the offence of the accused stops at making a false charge, his case falls under the first part of the section, irrespective of the fact that the false charge relates to "an offence punishable with death, transportation for life, or imprisonment for seven years or upwards." **5 A. 215.** [*F.*, 14 C. 633, 16 A. 124; *Diss.*, 20 M. 79=1 Weir 189, 2 N.L.R. 119=4 Cr. L.J. 20].

(2)—When no criminal proceeding is instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years and upwards, the accused making such charge is punishable only under the first part of the section. **5 A. 598.** [*F.*, 14 C. 633, 16 A. 124; *R.*, 22 B. 596; *Diss.*, 2 N. L.R. 119=4 Cr. L.J. 240].

(3)—S. 211 of the Penal Code is not limited to attempts at substantiating false charges in Courts of Justice; so that a false charge before the police and never intended to be prosecuted in Court is quite within the contemplation of the section. **5 C. 281.** [*F.*, 6 C. 582=8 C.L.R. 255; *R.*, 6 C. 496, 7 M. 292=1 Weir 186].

(4)—S. 182 applies to information given to a public servant. S. 211 applies to false charges of an offence involving criminal proceedings. Where a charge is found to be false by the police, a Magistrate, except in certain cases, is not competent to order, merely on a perusal of the police report, the prosecution of the person preferring the charge, summarily under s. 182. He should be tried under s. 211. When a charge is pronounced false by the police, proceedings should not be taken by the Magistrate, *suo motu*, until a reasonable interval has shown that the complainant accepts the result of the investigation, and takes no further steps. **7 C.L.R. 382.** [*F.*, 8 C.L.R. 289, 32 C. 180].

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(5)—*Penal Code, s 211—Offence of preferring false charge, what constitutes.*—To constitute the offence of preferring a false charge contemplated in s. 211, Penal Code, it is not necessary that the charge should be made before a Magistrate. It is enough, if it appear that the charge was deliberately made before an officer of police, with a view to its being brought before a Magistrate. It is also not necessary that the charge should appear to have been fully heard and dismissed. It is enough if it is not pending at the time of the trial. But an indictment for falsely charging could not be sustained, if the accusation were entertained and still remained under proper legal inquiry. **1 Weir 184=1 M. H.C. 30.** [*F.*, 1 A. 497, 1 A. 527, 4 A. 182, 7 M. 292=1 Weir 185; *R.*, 14 C. 707, F.B., 22 B. 596].

(6)—To convict a person under s. 211, Penal Code, it must be shown, not merely that he made the charge without reasonable or probable grounds, but that he knew there was no just or lawful ground for the charge. Where a person believed that a forgery had been committed, and being irritated by what he believed to be an attempt to injure him, at once instituted a charge which, on inquiry, was shown to be unfounded, *held*, that the accused had not committed an offence under s. 211, Penal Code, but was merely liable to a civil suit for damages. **1 Weir 185.**

(7)- The offence referred to in s. 211, I.P.C., consists not in the prosecution of a false complaint, but in the making of it. **1 A. 497.** [*F.*, 1 A. 527, 6 C. 582=8 C.L.R. 255, 4 A. 182, 7 M. 292=1 Weir 186; *R.*, 6 C. 496=7 C.L.R. 467, 14 C. 707, F.B., 22 B. 596.]

(8)—If a false charge had been made and if it is not pending at the time of the trial of the accused, an offence under s. 211 has been committed. **1 A. 527.** [*R.*, 6 C. 496=7 C.L.R. 467, 22 B. 596].

(9)—Where a person charges another with voluntarily causing hurt, and the charge is wilfully false, and is made with intent to injure, he is chargeable with the offence described in s. 211. **4 N.W.P. 6.**

(10)—*Penal Code, s. 211—Gist of the offence under.*—A person may in good faith institute a charge which is subsequently found to be false, or he may, with intent to cause injury to an enemy, institute criminal proceedings, believing there are just and lawful grounds for them, but in neither case does he commit an offence under s. 211, I.P.C. To render him liable to conviction for an offence under that section, it must be shown that he knew there were no just or lawful grounds for such proceeding. **3 N.W.P. 327.**

(11)—*Penal Code, s. 211—Construction.*—Per *Ranade, J.*—The word "falsely charging" used in s. 211, must be construed along with the words which speak of the "institution of proceedings." These latter words are used in a

False Charge —continued.

technical and exclusive sense, and by parity of reasoning, the same restricted sense must be given to the words which relate to a false charge. **19 B. 51.**

(12)—*Penal Code, s. 211—Meaning of the term "falsely charges."*—The word "charges" as used in the section, means something different from "gives information." The words "falsely charges" must be construed with reference to the words which speak of the institution of proceedings. The true test seems to be :—"Does the person who makes the statement which is alleged to constitute the "charge" do so with the intention and object of setting the criminal law in motion against the person against whom the statement is directed." Such object and intention may be inferred from the language of the statement and the circumstances in which it was made. Where the language of a petition made it clear that the intention of the accused was merely to bring to the knowledge of the authorities certain matters as to which he had received information, in order that there might not be a repetition of the alleged offence, and where it was found that it was not the petitioner's object or intention that the authorities should institute criminal proceedings against the person in question, *held*, that the petition did not amount to a charge within the meaning of s. 211. **26 M. 640 = 1 Weir 190.**

(13)—*Penal Code, s. 211—Institution of any charge or criminal proceeding under.*—Where the accused sent a petition to a Magistrate praying for inquiry as to whether a police officer was fit for his office and alleging that he (the accused) and others believed the officer to have connived at offences of various sorts, *held* that the accused had not instituted any charge or criminal proceeding within the meaning of s. 211 of the Penal Code. **A.W.N. 1882, 242.**

(14)—*Penal Code, s. 211—False information of civil nature.*—A false information laid before a Magistrate complaining of the infraction of a right of a civil nature, is not an offence under s. 211 of the Penal Code. **Rat. Un. Cr. C. 3.**

(15)—*Penal Code, s. 211—Prosecution under the section, when to be made—Crim. Pro. Code (1872), s. 147—Dismissal of complaint—Sanction to prosecute.*—A prosecution under s. 211 for preferring a false charge should be instituted only after an opportunity has been afforded to the complainant of producing all his evidence in support of the charge made by him. Per *Maclean, J.*—The proper principle which should guide a Magistrate is, that, if no complaint is made before him after a reasonable time has elapsed from the conclusion of a police enquiry, he would be justified in proceeding against a person who made a complaint to the police, which has been found to be false, but if a complaint is made, the complaint must be dealt with judicially. Per *Mitter, J.*—Although a Magistrate has the discretion under s. 147, Crim. Pro. Code (1872), to dismiss a complaint without examining witnesses, in

False Charge—continued.

such cases, no sanction for prosecution, under s. 211, should be granted. **8 C.L.R. 289.** [*R.*, 14 C. 707, F.B., 33 C. 1 = 10 C.W.N. 158 = 2 C.L.J. 228].

(16)—*Penal Code, s. 211—Prosecution under the section, when to be ordered.*—So far as the positive provisions of the Code go, the complainant, on appearing before the Magistrate, is entitled to demand that his examination should be taken and reduced into writing. The Magistrate is authorized by s. 146, if he sees cause to distrust the truth of the complaint, to "postpone the issuing of process or compelling the attendance of the person complained against, and to direct a previous enquiry or investigation to be made into the truth of the complaint;" and if, as the result of such enquiry, it appears to the Magistrate, that there is no sufficient ground for proceeding, he may dismiss the complaint, and thereupon, proceedings under s. 182 and s. 211 may be directed or sanctioned. In such a case, the Magistrate is not bound, before sanctioning proceedings under s. 211, to hear the witnesses in support of the accusation, in order to ascertain whether the complaint is true or unfounded. **4 C.L.R. 134.** [*Appr.*, 7 C. 208; *F.*, 8 C.L.R. 289; *R.*, 14 C. 707, F.B., 6 C. 582 = 8 C.L.R. 255].

(17)—*Penal Code, s. 211—False charge—Order for prosecution not to be made in every case of false charge.*—It is not in every case that a Magistrate considers to be false that he should direct a prosecution under s. 211 of the Code. **11 C.W.N. 125 = 4 Cr. L.J. 460 = 34 C. 42.** [*R.*, 7 P.W.R. 1908 Cr. F.B., 4 N. L.R. 140].

(18)—*S. 211, I.P.C.—False information by A, that another person has committed an offence—Opportunity of substantiating charge.*—Where a person specially complains that another man has committed an offence, and does so falsely with the object of causing injury to that person, he is guilty of making a false charge of an offence under s. 211, I.P.C., and not under s. 182. Before a person can be put upon his trial for making a false charge under s. 211, I.P.C., he must be allowed an opportunity of proving the truth of the complaint made by him; and such an opportunity should be afforded to him, if he desires to take advantage of it, not before the police, but before the Magistrate. **Cr. Rg. 65 of 1896.**

(19)—A man ought not to be tried for making a false complaint under s. 211 of the Penal Code, until he has had an opportunity of proving the truth of the complaint made by him, if he desire to take advantage of it, not before the police, but before the Magistrate. **6 C. 496 = 7 C.L.R. 467.** [*F.*, 7 C. 87, 8 A. 38 = 6 A.W.N. 93; *Appl.*, 10 M. 232, F.B.; *Concurred in*, 5 A. 36 = 5 A.W.N. 323; *Cons.*, 14 C. 707, F.B.; *Dist.*, 7 C. 208, 7 M. 292 = 1 Weir 186, Rat. Un. Cr. C. 524; *R.*, 22 B. 596].

(20)—Where a prosecution for bringing a false charge, ordered upon a police report after local enquiry, ended in a conviction, *held* that

False Charge—continued.

the prisoner should have been given an opportunity, on receipt of the police report of substantiating the charge, and that the conviction was bad. **7 C. 87=8 C.L.R. 387.** (6 C. 496, *R.*) [*R.*, 7 M. 292=1 Weir 187, 14 C. 707].

(21)—*Crim. Pro. Code (1882), s. 195—False charge to police—Conviction, before giving the complainant an opportunity to prove the truth of the charge, validity of.*—Where a complaint of theft to a police officer was referred to a Magistrate as false and the latter dismissed the complaint, after merely examining the complainant, and sanctioned the prosecution of the complainant under s. 211, Penal Code, on the faith of the police report, and the complainant was convicted by the Sessions Court, *held*, that the conviction was legal, although he was not given an opportunity to prove his case, before he was himself tried. **7 M. 292=1 Weir 185.** [*F.*, 2 Weir 181=10 M. 232, F.B.; *R.*, 14 C. 707, F.B., 22 B. 596, 28 B. 226, 33 C. 1 =10 C.W.N. 158=2 C.L.J. 228].

(22)—*I.P.C., s. 211—Prosecution for false charge—Judicial inquiry.*—A prosecutor should not be directed to be put on his trial under s. 211 of the Penal Code, without first giving him an opportunity of obtaining a judicial enquiry into the charge originally preferred by him. **8 C. 435=10 C.L.R. 46.** [*Cons.*, 14 C. 707, F.B.; *R.*, 7 M. 292=1 Weir 186, 10 M. 232, F.B.=2 Weir 183].

(23)—*Crim. Pro. Code (1898), s. 476—Prosecution for false charge under s. 211—Necessity for preliminary inquiry.*—In a prosecution for making a false charge under s. 211, I.P.C., it is not always necessary that there should be a preliminary inquiry under s. 476, Crim. Pro. Code. **6 C.W.N. 295.**

(24)—*Penal Code, s. 211—Prosecution for false charge on dismissal of complaint upon police report—Maintainability.*—Where a Magistrate dismissed a complaint upon a report by the police and without examining even the complainant, and the police thereupon prosecuted the complainant without any sanction, *held*, that the accused had not committed an offence under s. 211 inasmuch as there was no legal evidence before the Magistrate, nor was there a legal sanction for the charge. **1 Weir 188.**

(25)—*Exaggeration of facts—Prosecution for false evidence or false charge—Penal Code, ss. 193 and 211.*—If a young girl, forcibly abducted, exaggerates the force used and resistance offered, such exaggeration is not a sufficient ground for prosecuting her for intentionally giving false evidence and for making a false charge. **L.B. R. (1893—1900), 443.**

(26)—*Penal Code, s. 211—Bringing vexatious charge—No offence under the section.*—To bring a vexatious charge is not an offence under s. 211, I.P.C. **1 Bom. L.R. 11.**

(27)—*Penal Code, ss. 182, 211, offences under. —Nature and scope of the offences—Procedure.* —An offence under s. 211 of the Penal Code includes an offence under s. 182; a Magistrate

False Charge—continued.

can proceed under either section, though, in cases of a serious nature, the proper course may be to proceed under s. 211. **5 C. 184.** (8 W.R. Cr. 67, *R.*) [*F.*, 32 C. 180, *R.*, 14 C. 707, F.B].

(28)—*Penal Code, s. 211, conviction under—Necessity for making false charge to Court or Officer with jurisdiction.*—To sustain a conviction under s. 211 of the Penal Code, it is necessary that the false charge should be made to a Court or to an officer, who has powers to investigate and send up for trial. A station staff officer having neither magisterial nor police powers, s. 211 will not apply to a false charge made to him. **6 C. 620=8 C.L.R. 215.** [*D.*, 19 B. 51].

(29)—*Crim. Pro. Code (1872), s. 468—Application for sanction to prosecute for an offence under s. 211, I.P.C., by whom to be made.*—A District Magistrate, who, after examining the complainant's witnesses, dismisses the case, disbelieving the story of the prosecution, is competent to grant sanction, under s. 468 of the Code of 1872, for the prosecution of the complainant under s. 211, I.P.C. It is not the rule that the sanction could only be granted on the application by a private prosecutor. **10 C.L.R. 4.**

(30)—*Crim. Pro. Code (1898), s. 203—Proceedings under s. 211, when can be taken.*—Until a complaint is dismissed under s. 203, Crim. Pro. Code, or otherwise disposed of, no proceedings can be taken under s. 211, I.P.C., against the complainant. **3 C.W.N. 758.** [*F.*, 4 C.L.J. 88=4 Cr. L. J. 68; *R.*, 33 C. 1=10 C.W.N. 158=2 C.L.J. 228].

(31)—*Crim. Pro. Code, s. 195—Sanction to prosecute—False report by a police officer—Penal Code, s. 211.*—Where a police officer made a coloured or false report that a certain offence investigated by him was proved, *held*, that a sanction for his prosecution under s. 211, I.P.C., could not be granted, as it could not be said that the accused instituted or caused to be instituted any criminal proceeding against any person. **4 C.W.N. 347.**

(32)—*Crim. Pro. Code (1898), ss. 157 159 and 476—Complaint of trespass—Application to withdraw the complaint—Order under s. 476, validity of.*—Where a person made a complaint of criminal trespass alleging an intention to the accused, and the police, although finding that the intention alleged was not true, stated that they believed the charge of trespass, and the complainant did not desire to take further proceedings against the accused, *held*, that the Magistrate was not competent to order, under s. 476, Crim. Pro. Code, the prosecution of the complainant under s. 211, I.P.C., for making a false complaint, on taking evidence, as there was no judicial proceedings. **4 C.W.N. 351.**

(33)—*Penal Code, s. 182—Writing false anonymous petition to Collector.*—A person, writing an anonymous petition to a Collector, cannot be convicted under s. 182, Penal Code,

False Charge—continued.

unless it is proved that he knew the contents of the petition which he wrote and that the information contained in it was false. It must, further, be shown that it was he who sent the petition to the Collector. **1 Weir 121.**

(34)—*Penal Code (Act XLV of 1860), s. 211—False charge, making of—Petition to Deputy Commissioner.*—Where the accused submitted a petition to the Deputy Commissioner while he was on tour, making certain complaints against a manager of the Court of Wards, and the accused was convicted of an offence under s. 211 of the Indian Penal Code for making a false charge against such manager, *held*, that, the petition submitted by the accused not being a complaint within the meaning of s. 4, clause (*h*), Crim. Pro. Code, and there being no institution of criminal proceedings, the conviction was illegal. **109 P.L.R. 1904.**

(35)—*Penal Code, ss. 211, 182—Complaint, when it can form subject of charge under—Accused filing complaint under, before the disposal of original complaint against him—Conviction under—Effect.*—A complaint must be disposed of in one way or another, before it can form the subject of a charge under s. 211, or, at the least, the responsibility of instituting proceedings under s. 182 must be assumed by the police themselves. So, it is not open to any accused person to file a complaint against his accusers under s. 211 before that pending against himself has been disposed of. And if, before final orders have been passed upon the original complaint, a Magistrate accepts a complaint against the accusers under s. 211 and convicts them thereon, the conviction is bad and ought to be set aside. **3 S.L.R. 189 Cr.**

(36)—*Penal Code, ss. 182, 211—Making false charges to police.*—Where a person prefers a false complaint of theft before the police knowing it to be false, the offence properly falls under s. 211 of the Penal Code and not under s. 182. **A.W.N. 1885, 95.**

(37)—A false charge of murder made to the police comes under the first paragraph of s. 211, if no criminal proceedings have been instituted thereupon. **16 A. 124.** [*R.*, 22 B. 596, 24 A. 368; *Diss.*, 20 M. 79=1 Weir 189, 2 N.L.R. 129=2 Cr. L. J. 240].

(38)—Where a person falsely informs the police, not only that he had been robbed, but also that a specified individual committed that offence, *held* that he was liable to be charged with an offence under s. 211, I P.C., and not under s. 182, I.P.C. **7 B. 184.** [*R.*, 22 B. 596].

(39)—The latter part of s. 211 is confined to cases in which criminal proceedings have been instituted, and it does not apply to false charges merely. By the earlier part of the section, the distinction is drawn between criminal proceedings instituted and false charges alone. Where the accused made a charge before the police, which he did not, afterwards, press before the Magistrate, *held*, that the only offence he had committed was one under the earlier part of the section. **14 C. 633.** [*F.*, 7 C.W.N. 556; *R.*, 22 B. 596; *Expl. & R.*, 32 C. 180; *Diss.*, 20 M. 79=1 Weir 189; *Overruled*, 17 C. 574, F.B.].

(40) A person who makes a false complaint to the police may be proceeded against under s. 211 of the Penal Code, and it is not competent to a Magistrate to refuse to entertain the case on the ground that the accused had not been afforded an opportunity of proving his original complaint. **Rat. Un. Cr. C. 524=Cr. Rg. 55 of 1890.** (6 C. 496, 6 C. 582, *R.*).

(41) *Penal Code, s. 211—False charge of dacoity made to a police officer.*—There is nothing to limit the words "the institution of criminal proceedings" to the bringing of a charge before a Magistrate or to action by the Magistrate or police against the person charged. When a charge of a cognisable offence is made to the police against a specified person, criminal proceedings within the meaning of the section have been instituted just as much as if the charge had been made before the Magistrate. Where a false charge of dacoity was made against certain persons to a police Station House Officer, who referred the charge to the Magistrate as false and the Magistrate ordered the charge to be dismissed as false without taking any action against the accused, *held*, that the offence came under the latter part of s. 211 and amounted to "institution of criminal proceedings." **20 M. 79 =1 Weir 188=7 M. L.J. 16.** [*R.*, 4 Cr. L.J. 240=2 N.L.R. 119].

(42)—*Penal Code, ss. 182, 211—False charge to police of cognisable offence—Punishment.*—When a false charge is made to the police of a cognisable offence, the offence committed by a person making the false charge falls within the meaning of s. 211. **5 C.W.N. 727.** [*R.*, 4 C.L.J. 88=4 Cr. L.J. 68; *Cons.*, 32 C. 180].

(43)—Giving false information to the police that a certain person has committed a cognizable offence, punishable with death, transportation for life or imprisonment for seven years or upwards, comes within the concluding part of s. 211 of the Code. When such an offence is committed, the punishment indicated in the latter part of s. 211 ought, generally, to be awarded. Having regard to the circumstances of the particular case, the Judicial Commissioner of Nagpur refused to interfere with the sentence that had been passed. **2 N. L.R. 119=4 Cr. L.J. 240.**

(44)—*Penal Code, s. 211—Person answering questions put by police officer under s. 161, Crim. Pro. Code.*—A person, who answers questions put to him by a police officer making an investigation under s. 161, Crim. Pro. Code, does not institute, or cause to be instituted, criminal proceedings within the meaning of s. 211, Penal Code, nor does he thereby charge any person within the meaning of that section. **1 Weir 193.**

(45)—*Penal Code, s. 211—Statement to police of mere suspicion.*—Where a statement is made

False Charge—continued.

to the police of a suspicion that a particular person had committed an offence, *held*, that the information to the police would not, if the statement was false, amount to a false charge, and it would amount only to providing the police with a possible clue for investigating the matter which they might or might not follow up as they considered fit. **8 C.L.R. 233.** [*R.*, 14 C. 707, F.B.].

(46)—*Penal Code, s. 211—Preferring false charge to the police—Statement of accused not reduced to writing under s. 154, Crim. Pro. Code (1898).*—Where a person who made a false charge to the police by stating that certain of the prosecuting witnesses had stolen his goats, and the police officer to whom the statement had been made did not reduce it to writing, in accordance with the requirements of s. 154, Crim. Pro. Code, *held*, that the accused intended to set the criminal law in motion against the persons against whom the charge was made, and that the fact that the statement was not reduced to writing in accordance with the requirements of s. 154, Crim. Pro. Code, did not prevent the statement made from being a false charge. **27 M. 127=1 Weir 192.**

(47)—*Penal Code, ss. 182, 211—False charge of theft both to police and Magistrate.*—Cases may arise when the conduct of a person may fall under both the ss. 182 and 211, I.P.C. Where the accused charged another with theft at a police station, and subsequently brought a formal charge of theft before a Magistrate, and, enquiries being held both by the police and the Magistrate, the charge of theft was not established, *held* that the case came both under s. 182 and under s. 211, I.P.C. But the accused distinctly brought himself within the first part of s. 211. I.P.C., and showed a determination and persistence in his accusation which, when it was found to be untrue, rendered his conduct far too serious to be adequately met by prosecution under and by the punishment provided in s. 182, I.P.C. **A.W.N. 1886, 259.**

(48)—*Penal Code, s. 211—False complaint to the police—Complaint to Magistrate, if necessary to constitute offence under s. 211—Opportunity to substantiate complaint not given—Effect.*—When one person complains that another has committed an offence, and such complaint is shown to have been falsely made with the object of injuring that other person, the offence falls under s. 211, and not under s. 182. To constitute an offence under the first part of s. 211, it is not necessary that the complaint should have been made to a Magistrate; it is enough if it is made to the police authorities. and relates to a cognizable offence, and action is taken thereupon by the police authorities. The fact that no opportunity was allowed to the accused by the Magistrate to whom the accused had presented a complaint, to substantiate the charge before he ordered the complaint to be struck off, although such a course is very desirable in the ends of justice, is not a circumstance which invalidates a commitment duly made; a conviction otherwise good cannot

False Charge—continued.

be set aside on account of such omission. The trial before the committing Magistrate and in the Sessions Court offered ample opportunity to substantiate his complaint, and the omission is not one which has prejudiced the interests of the accused. **22 B. 596.** [*R.*, 33 C. 1=10 C.W.N. 158=2 C.L.J. 228].

(49)—*Penal Code, ss. 161 and 211—Crim. Pro. Code, ss. 195 and 439—Complaint to the Inspector-General, Police—Ss. 5 and 36 of Act V of 1861—Investigation by District Superintendent of Police—Its dismissal—Sanction to prosecute—Revision.*—H.D. sent to the Inspector-General of Police a few specific charges of bribery against the Sub-Inspector of Police and asked for investigation.—The Inspector-General, who is a Magistrate under s. 5 of Act V of 1861 and is empowered by s. 36 of the Act to enquire into and determine as a Magistrate any charge against a police officer above the rank of a constable, ordered the District Superintendent of Police to investigate, and that officer forwarded the result of his investigation to the District Magistrate. *Held*, that a false charge of an offence, preferred to a person empowered to order investigation by the police, though not followed by further proceedings in any Court, brings the matter of the charge within the 1st Part of s. 211, I.P.C. **9 P.W.R. Cr. 1908=7 Cr. L.J. 291.**

(50)—*Penal Code, s. 211—False charge—Jurisdiction of Magistrate—Commitment to Court of Sessions.*—Where the offence consists in the giving of false information to the police, and the case does not go further than a police enquiry, the offence falls within the first paragraph of s. 211, Penal Code. Where the Magistrate commits the accused for trial to the Court of Sessions, only on the ground that the offence charged falls within the second paragragh of that section, and does not say that the fine or sentence which he can impose will not be adequate to meet the ends of justice, the commitment is bad in law. **6 A.L.J. 989.**

(51)—*Penal Code, s. 211—Ss. 161, 162, Crim. Pro. Code—Statement under s. 162, not forming basis of prosecution for false charge—To whom false charge must be made.*—When a statement is made under s. 162, Crim. Pro. Code, in answer to questions put by a police officer making an investigation under s. 161, Crim. Pro. Code, such statement cannot be made the basis of a prosecution for an offence under s. 211, I.P.C. False charge must be made to a Court or to an officer who has powers to investigate and sent up for trial. Accusing a person of the commission of an offence or giving information against him to a person other than an official cannot be treated as a charge under s. 211, I.P.C. A village munsiff has no power to make any investigation in cases of dacoity. When a village munsiff, on information of an alleged dacoity given to him, sends a report to the police, who, on investigation, reject it as false, the informant cannot be held to have instituted any criminal proceedings under s. 211, I.P.C., nor can he be said

False Charge—continued.

to have made any false charge within the meaning of that section. **31 M. 506=9 Cr. L. J. 77=18 M.L.J. 573.**

(52)—*Penal Code, ss. 211, 182—False charge—Institution of criminal proceedings—Whether statement before Village Magistrate is a "charge"—Crim. Pro. Code (Act V of 1898), ss. 45, 154, 157, 161, 162 and 191.*—S, the accused, made a statement before the Village Magistrate that certain persons committed dacoity in his house. It was reduced into writing by the Village Magistrate, who submitted the statement with a report of his own to the Sub-Magistrate, and sent another to the Station-House officer requesting him to enquire into the case. The police referred the charge as false, and the Sub-Magistrate agreeing with the police struck the case off the file. The accused was charged under s. 211, I.P.C., for instituting false criminal proceedings or a false charge in regard to the information or a complaint of dacoity which he laid before the Village Magistrate, and committed to the Sessions. The question was whether the facts alleged amounted to an offence under s. 211, I.P.C. *Held* (Per *Benson and Munro, JJ., Sankaran Nair, J., dissenting*), that the commitment was right. The complaint to the Village Magistrate was a "charge" of dacoity and was also the institution of criminal proceedings against the persons named, within the meaning of s. 211, I.P.C. A "false charge" in s. 211 must not be understood in any restricted or technical sense, but in its ordinary meaning of a false accusation made to any authority bound by law to investigate it or to take steps in regard to it with a view to investigation of other proceedings; and the institution of criminal proceeding includes the setting of the criminal law in motion. Under s. 45, Crim. Pro. Code, the Village Magistrate is bound to "forthwith communicate to the nearest Magistrate or officer in charge of the police station, whichever is the nearer, any information which he may obtain respecting" certain grave offences. When a person gives information or makes his complaint to the Village Magistrate, he sets the criminal law in motion, just as effectually as an information given under s. 154, Crim. Pro. Code, or a complaint made under s. 191, Crim. Pro. Code, for the village headman is bound by law to pass on the information or complaint to those officers. *Obiter*.—If a man makes a complaint to one of the persons having a legal obligation under s. 45, Crim. Pro. Code, to report to the police or Magistrate, and does this with the intention of setting the criminal law in motion, he will come not only within the terms of s. 211, I.P.C., but within the mischief which the law desired to meet. Per *Sankaran Nair, J.* (*contra*):—The commitment must be quashed. The Village Magistrate, and not the accused, having been the first informant of the Station-House Officer, and the information being in writing, the statement taken from the accused cannot be regarded as one *legally* made under s. 154, but was one really made under ss. 161 and 162, Crim. Pro. Code. To hold that it is a statement under s. 154 would be to deny the protection afforded by law to a person making a statement to the police under ss. 161, 162, Crim. Pro. Code. The statement before the Village Magistrate does not come within s. 211, I.P.C. A false charge made to a person who has no magisterial or police authority does not come within s. 211, I.P.C. The statement before the Village Magistrate is not the first step in a proceeding, which in the ordinary course will result in a conviction of the accused. The Village Magistrate cannot enquire into the case, cannot place the accused before a Magistrate for trial, and cannot do anything to the prejudice of the accused on that statement. A criminal proceeding can be instituted only in the King's Court or before any person appointed by the King for that purpose, and the persons named in s. 45, Crim. Pro. Code, are not constituted authorities before whom criminal proceeding may be instituted, for the sole reason that they have to communicate any information they might receive about the offence. (It was admitted that the facts will constitute an offence under s. 182, I.P.C.). **5 M.L.T. 269, F.B.=9 Cr. L.J. 170=32 M. 258.**

(53)—*Penal Code, ss. 182 and 211—False charge of theft to Village Magistrate.*—A false charge of theft of a tree made to a Village Magistrate is an offence under s. 182, though it does not amount to an offence under s. 211, Penal Code, inasmuch as the Magisterial powers of a Village Magistrate are confined to the case of petty thefts only. **1 Weir 122.**

(54)—*Penal Code, ss. 182 and 211—False charge to police for self-protection—Offence under s. 211, if triable by Second Class Magistrate—Procedure.*—A man is presumed in law to intend the ordinary and natural consequences of his acts, and when he falsely charges another before the police with the commission of an offence, knowing the charge to be false, there can be no doubt but that he is guilty of an offence punishable both under s. 182 and s. 211, Penal Code, even though his primary object may have been to protect himself than to injure the persons falsely charged. An offence under s. 211, Penal Code, is not triable by a Second Class Magistrate. He should, therefore, forward the complaint to a Magistrate having jurisdiction. **1 Weir 120.**

(55)—*Penal Code, s. 211—False charge—Report of police officer—Enquiry.*—Where a state of facts is brought to the notice of a Magistrate by a police report, which affords ground for supposing that an offence has been committed under s. 211 of the Penal Code, he has jurisdiction to enquire into or try the charge himself, or send it for enquiry or trial to one of his subordinates. **14 C. 707, F.B.**

(56)—*Penal Code, s. 211—False charges made to police—Institution of criminal proceedings.*—A man, setting the criminal law in motion by making a false charge to the police of a cognisable offence institutes criminal proceedings within the meaning of s. 211 of the Penal

False Charge—continued.

Code, and, if the offence fall within the description in the latter part of the section, he is liable to the punishment there provided. **17 C. 574.** [*F.*, 20 M. 79=1 Weir 189, 5 C.W.N. 727, 2 N.L.R. 119; *R.*, 19 B. 51, 22 B. 596; *D.*, 32 C. 180, *Diss.*; 10 A. 124].

(57)—*Penal Code, ss. 182, 211—Charge of unnatural offence to police and subsequently to a Magistrate—Discharge—Prosecution under s. 211.*—Where a person preferred to the police a charge of an unnatural offence and subsequently preferred the same charge to a Magistrate who inquired into the case and discharged the person complained against, the prosecution of the complainant should be under s. 211 and not under s. 182 of the Penal Code. **A.W.N. 1882, 178.**

(58)—*Penal Code, s. 211—Charge before police reported false—Petition to Magistrate impugning the police report—Magistrate's order to complainant to show cause against his prosecution under the section, legality of.*—The police, after the investigation of a charge, under s. 436, I. P. C., laid before them by petitioner, reported the same to be false. Petitioner then presented a petition to the Sub-Divisional Magistrate, impugning the police report and praying for trial of the persons charged. Without examining the petitioner and disposing of his complaint, the Magistrate directed him to show cause why he should not be prosecuted under s. 211, I.P.C., and, in result, ordered his prosecution. *Held*, that the petition presented to the Magistrate was a complaint and must have been dealt with as such, before a prosecution, under s. 211 of the I.P.C., could be instituted against petitioner, and that the order for his prosecution under the section was, therefore, bad and should be set aside. **33 C. 1=10 C.W.N. 158=2 C.L.J. 228.**

(59)—*Crim. Pro. Code (1872), ss. 146, 147—Penal Code, s. 211—Prosecution for preferring a false charge.*—Where a Magistrate dismissed a complaint as false, after examining the complainant and after directing an enquiry by the police, and, under s. 471, Crim. Pro. Code (1872) after making a preliminary enquiry, committed him to the Sessions on charges of an offence under s. 211, I.P.C., *held*, that there was nothing illegal in the procedure of the Magistrate, as there was nothing in law which required that a complainant should have an opportunity of substantiating his complaint, by being allowed to produce evidence before the Magistrate, before the latter could take steps against him under s. 471, Crim. Pro. Code. **4 A. 182.** [*R.*, 14 C. 707, F.B.]

(60)—*Crim. Pro. Code (1872), s. 471—Dismissal of complaint—Order for prosecution under s. 211, I.P.C., without preliminary enquiry.*—Where a Magistrate ordered a prosecution for a false complaint, after dismissal of the complaint under s. 471, Crim. Pro. Code, but took upon himself to direct the institution of a prosecution acting under s. 471, without making such preliminary enquiry as might be necessary,

False Charge—continued.

held, that he was bound to give the complainant an opportunity of showing that there were no grounds for instituting such a prosecution. **2 C.L.R. 315.** [*D.*, 7 C. 208].

(61)—*Penal Code, s. 182—Prosecution under the section, on rejection of complaint with reference to police report—Prosecution by whom to be instituted.*—Where a complaint made to a police officer was reported by him to the Magistrate to be false, and the Magistrate rejected the complaint with reference to the police report, and afterwards, the accused, on the sanction of the police officer concerned, prosecuted the complainant under s. 182, *held*, that his conviction was wrong, because the Magistrate ought to have sifted, for himself, the original complaint, before the complainant was prosecuted. The application of s. 182 and the institution of prosecution for offences under that section are limited to the public servant against whom the offence has been committed or his official superior. The provisions of s. 182 should not be enforced at the instance of private persons. **5 A. 36.** [*Overruled*, 8 A. 382; *Diss.*, 13 C. 270].

(62)—*Penal Code, ss. 182, 211—Complaint to Magistrate—Prosecution of complainant for preferring false charge before disposal of complaint.*—Where a woman, who made a complaint of rape to the police, was prosecuted under s. 182, I.P.C., on the police having reported the charge to be false, and, in the meantime, the woman repeated the complaint before the Magistrate, *held*, that the Magistrate should have stopped the proceedings against her under s. 182, until her complaint to him had been disposed of, and that her conviction should, therefore, be set aside. **5 A. 387.** [*R.*, 14 C. 707.]

(63)—*Crim. Pro. Code (1882), s. 195—Sanction to prosecute—Complaint thrown out—Opportunity to complainant to prove his case.*—Sanction under s. 195 should not be given, until the complainant has been afforded an opportunity of proving his case, which has been thrown out merely on the report of the police. **8 A. 38.** [*F.*, A.W.N. 1907, 268=6 Cr. L. J. 340; *R.*, 14 C. 707, F.B., A.W.N. 1907, 195=4 A.L.J. 471=29 A. 587=6 Cr. L.J. 42, A.W.N. 1907, 288=6 Cr. L.J. 396=30 A. 52=4 A.L.J. 790; *Diss.*, 2 P.R. 1907 Cr.=18 P.W R. 1907 Cr. 49 P.L.R. 1907=5 Cr L.J. 491=6 Cr. L.J. 258].

(64)—*Penal Code, ss. 182, 211—Prosecution by private person—Crim. Pro. Code (1882), s. 195—Specific false charge.*—A prosecution under s. 182, I.P.C., may be instituted by a private person, provided that he first obtains the sanction of the public officer to whom the false information was given or of his official superior. Where a specific false charge is made, the proper section for proceedings to be adopted under, is s. 211. **8 A. 382.**

(65)—*Penal Code, s. 211—Opportunity to prove complaint—Commitment.*—The fact that the accused had no opportunity given to him

False Charge—continued.

to substantiate the complaint he made, is not a bar to his commitment for trial under s. 211 of the Penal Code. **A.W.N. 1882.** (1 A. 497, 1 M.H.C. 30, *R*).

(66)—*Commitment for false charge, under s. 211 of the Penal Code on police report—Legality.*—A commitment for trial for false charge (s. 211 of the Penal Code) is sustainable, though based on a police report, the complaint by the accused not having been judicially enquired into. **6 C. 582=8 C.L.R. 255.** [*R.*, Rat. Un. Cr. C. 524, 28 B. 226; *Cons.*, 14 C. 707].

(67)—*Penal Code, s. 211—Accused charging another with assault—Offence of abetment of assault established—False charge, conviction for, maintainability of.*—The accused charged another with having assaulted him and knocked out his tooth. The accused was charged under s. 211, I.P.C., after the dismissal of this complaint. The Judge found that, although the person charged with assaulting him did not himself assault the accused, he had instigated his servants to do so, and was present at the occurrence. *Held* that, under the circumstances, the complaint brought by the accused could not be said to have been false. **A.W.N. 1883, 39.**

(68)—*Penal Code, s. 211—Plea of guilty—Admission of false charge without admission of malicious intent.*—The accused were convicted, without trial, as on a plea of guilty, of an offence punishable under s. 211, I.P.C. When called on to plead in the Sessions Court, she said :—" I admit presenting the petition, and even that it is untrue, but I did so under the influence of " certain persons," or, words to that effect." *Held*, that this was not a plea of a guilty of the offence defined in the section. The woman should have been tried on the questions whether her intention in presenting the petition was malicious, or to obtain an enquiry in good faith into circumstances which she then believed to require enquiry; whether, when she moved the Magistrate, she knew that the charge she made was false, and that there was no just or lawful ground for such proceeding or charge or whether she was misled or influenced by other people into a *bona fide*, though erroneous, belief on these subjects. **A.W.N. 1886, 66.**

(69)—*Penal Code, s. 211—Statement at trial by prisoner—Record of plea—Crim. Pro. Code (Act X of 1872), s. 237—Essential for offence under s. 211.*—A conviction for false charge under s. 211 of the Penal Code, based on the statement at the trial by the prisoner that he made the false complaint unthinkingly, there being no record of the prisoner's plea as required by s. 237 of the Crim. Pro. Code, nor a compliance with other requirements, is bad. The prisoner's statement does not amount to a plea of guilty. Moreover, the intention to injure another is essential for an offence under s. 211, I.P.C. **7 C. 96=8 C.L.R. 471.** [*Appl.*, 10 M. 232=2 Weir 183, F.B.].

False Charge—continued.

(70)—*Separate convictions under s. 182, Penal Code, for one false statement—Illegality.*—Where an accused person was charged with having given a false information to a public servant, in which he mentioned the names of two persons, in whose houses he informed that stolen property would be found, *held*, the statement being one, he could be charged only with having made one false statement and could not be tried for and convicted of two distinct offences under s. 182 of the Penal Code. **13 C. 270.**

(71)—*Penal Code, ss. 182 and 211—Prosecution for false charge to police—Crim. Pro. Code (1898), s. 195—Sanction to prosecute.*—A prosecution for a false charge may be under s. 182 or s. 211. If the false charge is of a serious offence, the proper course is to proceed under s. 211; otherwise, it is enough if the sanction be for the prosecution for an offence under s. 182. **32 C. 180.** [*F.*, 4 C.L.J. 88].

(72)—*Penal Code, s. 211—Prosecution for false complaint before the examination of all witnesses for complainant—Validity.*—An order for the prosecution of the complainant before the examination of all the witnesses cited by him, is bad in law. **2 C.L.R. 389.** [*D.*, 7 C. 208].

(73)—*Crim. Pro. Code, s. 476—Order for prosecution—Indian Penal Code, s. 211—False charge, laying of—Charge laid before the police—Police report, directing charge as false—Judicial inquiry, order directing—Procedure.*—A criminal proceeding was instituted by a person before the police who reported the case to be false, and, the matter coming on before a Magistrate empowered to dispose of police reports, he made an order making over the case to another Magistrate, for judicial inquiry. This Magistrate, after holding a judicial inquiry as directed, submitted a report, upon which the other Magistrate made an order to the following effect, *viz* :—" The complainant's charge has been established to be false and hence no process shall be issued against the accused and the complainant shall be proceeded against under s. 211, Indian Penal Code;" and, upon prosecution, the complainant was convicted under s. 211 of the Penal Code: *Held*, that the offence of instituting a false complaint, not having been committed before the Magistrate who ordered the prosecution of the petitioner, or brought to his notice in the course of judicial proceedings, the prosecution of the petitioner was bad and contrary to law and the proceedings must be quashed. *Held*, also, that the proper course, in such a case, should have been to direct the police to lodge a complaint. **7 C.L.J. 371=7 Cr. L.J. 338.**

(74)—*Proof—Penal Code, s. 211.*—Where the accused informed the police that he had been informed, by certain residents of the village, that there was a suspicion that the complainant had committed an offence, and there was no proof that the accused was on inimical terms with the complainant, *held*, that the accused was not guilty under s. 211, I.P.C. **12 P.R. 1905 Cr.**

False Charge—continued.

(75)—To establish an offence under s. 211, I.P.C., it must be affirmatively proved that the accused had falsely charged and that there was no just or lawful ground for such charge. A conviction cannot be made by a reference to the record of a former case. **26 P.R. 1900 Cr.**

(76)—To establish an offence under s. 211, I.P.C., it must be proved that the accused had falsely charged the complainant, without any just or lawful grounds for that charge. Evidence of the actual falsity of the charge, recklessness in acting upon information without testing it or scrutinising its source and actual motive may also be adduced. **29 P.R. 1894 Cr.**

(77)—*Quære.*—Whether the provisions of s. 211, I.P.C., as to the institution of criminal proceedings are restricted to criminal proceedings in a Court. **26 P.R. 1888 Cr.** (17 P.R. 1884 and 3 P.R. 1888, Cr. *R*).

(78)—*Penal Code, s. 211—Institution of criminal proceedings.*—Where a false charge before a Magistrate is merely sent for police enquiry, without the taking of any further proceedings in any Court, the false charge does not come within the second clause of s. 211, I.P.C. **3 P.R. 1888 Cr.** (17 P.R. 1884, No. 1099 of 1883, *Diss*).

(79)—*Prosecution, when to be instituted—Penal Code, s. 211.*—A Magistrate should not issue process or sanction a prosecution without ascertaining whether the charge instituted by the accused had terminated in a regular manner, although all the evidence offered by the accused has not been accepted by the Magistrate. A Magistrate, if he has taken action inadvertently, should stay proceedings, in order to give the accused the opportunity he desires. **28 P.R. 1886 Cr.**

(80)—*Gist of the offence—Penal Code, s. 211.*—To constitute an offence under the section, it is necessary to show not merely that the criminal proceedings against the complainant have failed, but that the charge was in fact false and that the accused brought it with the knowledge that there was no just or lawful ground for the charge, and with the intention to injure the complainant. **1 P.R. 1886 Cr.**

(81)—*False charge of murder—Penal Code, s. 211.*—Where the accused made a false charge of murder against the complainant at a police station, and set the police in motion on that charge, although the police, after enquiry, found the charge to be false, *held*, that the accused was guilty under s. 211, I.P.C., and that as the false charge was one of murder, he was punishable under the latter part of the section. **17 P.R. 1884 Cr.** (*Diss.*, 3 P.R. 1888; *R.*, 26 P.R. 1888 Cr.)

(82)—*Penal Code, s. 211—Gist of the offence.*—To constitute the offence of "falsely charging a person with having committed an offence," under s. 211, I.P.C., something more is necessary than to falsely impute against a person that he has committed the offence. The charge

False Charge—continued.

contemplated in the section means a charge made in order to the institution of criminal proceedings. **14 P.R. 1879 Cr.**

(83)—*False charge—Penal Code, s. 211.*—Where, on the accused representing to the police that a burglary had been committed and that he suspected the complainant, the complainant's premises were searched and some property belonging to the accused was found there, but the Magistrate discharged the complainant, holding that the accused had placed the property where it was discovered, *held*, that these facts were sufficient to convict the accused under s. 211, I.P.C. **14 P.R. 1872 Cr.**

(84)—*Police officers liable to be convicted for.*—S. 211 of the Penal Code is not limited in its application to private individuals alone. A police-officer, who maliciously commences criminal proceedings against any person or charges such person with an offence or causes him to be charged falsely, not only commits the offence under s. 211 but commits it in a very aggravated manner. **11 W.R. Cr. 2.**

(85)—*Complaint to police is instituting a criminal proceeding.*—Preferring a complaint to the police in respect of an offence which they are competent to deal with and thereby setting the police in motion is instituting a criminal proceeding within the meaning of s. 211 of the Penal Code. **5 W.R. Cr. 32.**

(86)—*Charge made to police—Is instituting a criminal proceeding—ss. 182 and 211 distinguished.*—S. 182 clearly refers to informations of which that given in ill. (*b*) is an instance. S. 211 on the other hand clearly applies to the present case (*viz.*) of a person who, with intent to cause injury to another person, institutes a criminal proceeding against that person on a false charge of an offence punishable with death, namely, of having caused the death of a child by poisoning it, knowing that there is no just or lawful ground for such a proceeding. **8 W.R. Cr. 67.**

(87)—*Statement to a police officer by a person interested or having official responsibility and application for search of the house—Offence of false charge.*—If a man, especially one interested in the matter, or having a certain official responsibility, says to a police officer, "A tells me that X has committed a certain offence, and B and C confirm the statement, and I accordingly suspect X" and follows that statement by an application to have X's house searched, he has in truth preferred a charge against X. **19 W.R. Cr. 5.**

(88)—*Charge on insufficient grounds.*—It is not enough for a charge under s. 211, Penal Code, that a person to whom a wrong has been done, or who conceives that a wrong has been done to him makes a charge or complaint upon evidence, or a statement which is not or ought not to be sufficient to satisfy a reasonable mind. However rashly he may act in receiving and believing such statement, if in fact and truth, he does not know, at the time he makes the complaint, that there are no just and lawful

False Charge—continued.

grounds for making the complaint, he cannot be convicted of making a false charge under the above section. **6 W.R. Cr. 15.**

(89)—*Accused burning his own house and making a false charge against the complainant—Separate convictions under ss. 195 and 211, Penal Code, illegal.*—Where a man burns his own house and charges another with the offence of doing so, he should be convicted and sentenced under s. 211 (and not under s. 195) of the Penal Code. Separate convictions under s. 195 and under s. 211, Penal Code, are illegal where the first offence is committed only in furtherance of the second, (*viz.*) for being used as evidence in the false complaint which the accused brought against the complainant. **8 W.R.Cr. 65.**

(90)—*S. 211, Penal Code, capable of being split up into two separate offences—Prisoner not justifying himself in the first instance before prosecution makes out a distinct case against him—Facts consistent with guilt as well as innocence—Presumption of innocence - Deposition in a former case relevant only to contradict—In summing up, Judge to avoid all unnecessary discussion and argument—Judge to point out weakness of case—Whole diary, not mere extracts, to be admitted in evidence.*—Under s. 211, Penal Code, instituting a criminal proceeding may be treated as an offence in itself, apart from "falsely charging" a person with having committed an offence. Where a person is put on his trial, as for a criminal offence, it is for the prosecution to make out a distinct case against him, not for the prisoner in the first instance to justify himself and show that he had just and lawful grounds. Where the facts are as consistent with the prisoner's innocence as with his guilt, innocence must be presumed. The depositions of a witness in a former case are not evidence in a subsequent case except when, at the trial in the subsequent case, the witness was expressly examined as to his former deposition and it was put in to contradict him. Judges in charging juries should avoid all extraneous and unnecessary discussion and argument, and should confine themselves as directed by s. 379, Crim. Pro. Code (1861), to a mere summing up of the evidence on both sides, showing how the law applies to it. He should also point out to the jury the extraordinary weakness of the case as presented to them by the prosecution, and the fact that so many of the witnesses who ought to have been called were not called. When certain portions of a police diary are admitted in evidence against the prisoner, he has a perfect right to place before the jury any other portions which explain those which were admitted. The whole diary and not mere extracts or garbled portions of it must be used. **8 W.R. Cr. 87.**

(91)—*Penal Code, s. 211—Knowledge by accused of offence*—To establish a charge under s. 211 of the Penal Code, it is necessary to show that the accused knew or had reason to believe that an offence had been committed. **1 Ind. Jur. O.S. 123.**

False Charge—continued.

(92)—*Penal Code, s. 211—False charge of refusal to give stamped receipt for money paid.*—Where a person preferred a false charge against another of refusing to give him a stamped receipt for money paid to him, *held* that the act of the accused did not fall under s. 211, I.P.C., as there was no charge of any offence. **1 B.H.C. 92.**

(93)—*Penal Code, Act XLV of 1860, s. 211—Proof of information acted upon.*—In a case under s. 211 for preferring a false charge with knowledge of its falsity, the Judge should be satisfied not only that the facts, on being informed of which the accused preferred the charge, were false, but also that he did not believe the information or knew it to be false. **3 B.H.C. Cr. 16.** [*R.*, 22 B. 596].

(94)—*Charge of theft reported false—Institution of proceedings under s. 211—Subsequent renewal of charge—Conviction with decision on the charge—Proper procedure.*—A charge of theft made by the appellant before the police having been reported to be false, the Magistrate instituted proceedings under s. 211, Penal Code. Immediately after, the appellant appeared before the Court and renewed the charge. The Magistrate, without passing any judicial decision thereon, convicted him. *Held*, on appeal, that the Magistrate's procedure was wrong and that the proper procedure under the circumstances of the case was, first to enquire into the charge of theft and pass orders thereon before proceeding to enquire into the offence of false charge. **16 W.R. Cr. 67.**

(95)—*Actual information made at the* thannah *to be given in evidence and form part of the record—Trial not invalidated if prisoner not materially prejudiced*—Where the charge is one of instituting a false charge of an offence with intent to injure the actual information or charge which the prisoner made at the *thannah* ought to be given in evidence and made part of the sessions record. A trial is not vitiated by this short-coming if the prisoner is not materially prejudiced thereby. **23 W.R. Cr. 32.**

(96)—*Penal Code, s. 211—Conviction under the section—Nature of false charge to be mentioned in finding and calendar.*—A Magistrate, in convicting a person under s. 211, I.P.C., for preferring a false charge, should state the nature of the false charge in the finding and enter it in the calendar. **1 B.H.C. 87.** [*R.*, 22 B. 596].

(97)—*Procedure before framing charge.*—The procedure before framing a charge, under s. 211 of the Penal Code, of the offence of making a false charge with intent to injure considered. **8 B.L.R. App. 11.** 16 W.R. Cr. 44.

See ABETMENT, 9 B.L.R. App. 16 and 18 W.R. Cr. 28.

See COMPENSATION, 7 Bom. L.R. 998=3 Cr. L.J. 88, 10 Bom. L.R. 1056=9 Cr. L.J. 186.

False Charge—concluded.

—Order for prosecution of complainant for making false charge—Necessity for examination and dismissal of complaint—*See* COMPLAINT, 27 C. 921.

See COMPOUNDING OFFENCE, 11 C. 79.

See CONVICTION, 4 C.L.R. 338.

—Threat to bring false charge—*See* CRIMINAL INTIMIDATION, 1 Weir 623.

See CRIM. PRO. CODE (1898), s. 198, Colm. Dig. Cr. 28 of 1875.

See CRIM. PRO. CODE (1898), s. 203, 4 C.L.R. 413.

See SANCTION TO PROSECUTE, 7 C. 208=8 C.L.R. 267, 6 C. 584=8 C.L.R. 265, 3 C.W.N. 33, Rat. Un. Cr. C. 704, 2 P.W.R. 1909, Cr.=9 Cr. L.J. 152=37 P.L.R. 1909=1 Ind. Cas. 93.

False Complaint.

See FALSE CHARGE.

(1)—*False prosecution story, effect of.*—If the prosecution story, taken as a whole, is false the accused is entitled to an acquittal. **6 C.W.N. 380.**

(2)—*Crim. Pro. Code (1872), s. 209 (s. 250 of the Code of 1898)—False Complaint, whether vexatious.*—A false complaint is also a vexatious complaint. **2 Weir 313.**

See COMPENSATION, 13 C. 304.

See COMPLAINT, 3 N.W.P. 272.

—Compensation, when can be awarded for—"False" and "frivolous" and "vexatious" complaint—*See* CRIM. PRO. CODE (1898), s. 250, 28 C. 251.

—Preferring—Dismissal of complaint—Order for compensation, validity of—*See* DISMISSAL OF COMPLAINT, 28 C. 251.

False Defence.

Duty of Court.—Although a false defence necessarily affects the credit to be attached to the accused's case, the Court is not saved the trouble of weighing the evidence and of arriving at a right conclusion. **22 P.R. 1868 Cr.**

False alibi.—A false defence of *alibi*, although not sufficient evidence of the accused's guilty, may add probability to the suspicion of guilty. **57 P.R. 1866 Cr.**

False Document.

See FORGERY.

See PENAL CODE, ss. 464 to 467.

(1)—*Penal Code, s. 464—When false description would make document a forgery.*—It would be going too far to hold that, whenever the executant of a document attaches a false description to his name, he comes within the purview of s. 464, I.P.C. But a false description may make a document a forgery, when it is found that the accused, by giving such a false description, intended to make out or wanted it to be believed that it was not he that was executing the document, but a fictitious person. **4 M.L.T. 463 Cr.**

False Document—concluded.

(2)—*Penal Code, ss. 463, 471—False document prepared with the object of securing a situation.*—Along with an application for employment in the police force, the accused produced two certificates, known to him to be false. One of them was a wholly fabricated document, whilst the other was altered by several additions made subsequent to the issue of the certificate. *Held* that the accused was punishable under s. 471, I.P.C., for using a forged document. **22 B. 768.**

(3)—*Penal Code, s. 464—"False document," what constitutes.*—The making of a document, untrue in certain particulars, is not, necessarily, the making of a false document within the meaning of the Code. To constitute such a document a false document, it must be shown that it was made with such an intention as is implied in the term "fraudulently" or in the term "dishonestly." A mere intention to deceive is not sufficient. **1 Weir 542.**

See CHARGE, 6 W. R. Cr. 20.

False Entry.

See FORGERY.

Penal Code, s. 477-A—"Fraudulently," meaning of—False entries made for concealing fraud previously committed.—Certain sums of money were received into a Munsiff's Court for payment into Government treasury but they were never paid. The accused, an accountant in the Munsiff's Court, did not enter these sums in the Chalan Register. But after the commencement of an inquiry into the matter, he, for the purpose of concealing the non-payment, made false entries in the Chalan Register showing that these sums had been paid to the credit of the Collector. *Held*, Per GEIDT, J.—That inasmuch as the accused, in making the false entries, was in reality furthering the fraud which had been committed upon the Government, he acted fraudulently and was, therefore, guilty under s. 477-A, I.P.C. Per *Woodroffe, J.*—That even if the intention with which the false entries were made was to conceal a fraudulent or dishonest act previously committed, the intention would be to defraud and the case would fall within s. 477-A of the I.P.C. **12 C.W.N. 581=7 Cr. L.J. 378=35 C. 450.**

False Evidence.

See FALSE STATEMENT.

See PENAL CODE, ss. 191 to 200.

See PERJURY.

(1)—*Penal Code, ss. 191—193—Offence of giving false evidence—Witness, not sworn or affirmed.*—The offence of giving false evidence may be committed, although the person giving evidence has been neither sworn nor affirmed. **19 C. 355.**

(2)—*Penal Code, s. 191—False verification in a written statement—Civ. Pro. Code (1882), ss. 51, 151.*—A person filing a written statement is bound by law to state the truth, and if he

False Evidence—continued.

makes a statement which is false to his knowledge or belief, or which he believes not to be true, he is guilty of giving false evidence within the meaning of s. 191 of the Penal Code. **6 A. 626.** [*F.*, 1 Weir 174 ; *cited*, 27 P.R. 1894 Cr.].

(3)—*Penal Code, ss. 193 and 199—False statements in a written statement by defendant.*—A written statement is not a declaration, within the meaning of s. 199, Penal Code, which a Court of Justice or any public servant or any other person is bound or authorised by law to receive as evidence of any fact. Therefore, a defendant, who makes a false statement in his written statement, is not liable to be convicted under s. 199, but might be convicted of giving false evidence under s. 193, Penal Code. **1 Weir 154.**

(4)—A defendant, being bound to verify his written statement, is bound to make a true statement, and, therefore, if he makes a statement which he knows to be false, he is punishable for giving false evidence within the meaning of s. 191, Penal Code. **1 Weir 174.**

(5)—*Proof of intention.*—In order to support a charge of giving false evidence, it is not necessary that there should be proof of corrupt intention. It is sufficient that there is proof of intention and, if the statement was false and known to the accused to be false, it may be presumed that in making it the accused intentionally gave false evidence. **3 N.W.P. 133.**

(6)—*Penal Code, s. 191—Charge not to be based on statement not containing the substance of all that witness said.*—A charge of perjury should not be based upon a statement which does not contain the substance of all that the witness said, but only of what was thought relevant by the Court which took down the statement. It is essential to consider, not the form of the statement alleged to be false, but its meaning which is to be gathered not merely from the words selected for the purpose of framing the charge, but also from any other statements which are to be found in the deposition of the accused which may reasonably be construed to affect the meaning of the selected words. **2 J.G. 38.**

(7)—*Penal Code, ss. 191, 194—Preliminary inquiry.*—Where a person gave false evidence in a preliminary inquiry, the result of which could only be a commitment to the Sessions, he cannot be convicted under s. 194. **Rat. Un. Cr. C. 80=Cr. Rg. 22—1—1874.**

(8)—*Penal Code, s. 193—"Judicial proceeding," defined—Solemn affirmation.*—A "judicial proceeding" is nothing more or less than a step taken by the Court in the course of the administration of justice in connection with a pending case. Where a witness to prove the service of summonses was, at the beginning of the case, solemnly affirmed before the presiding Judge once for all to speak the truth in all cases coming before the Court on that day for hearing, the fair construction of that would be that he was affirmed to tell the truth in each

False Evidence—continued.

and every case in which he had been concerned, and respecting which the Court should, on that day, question him. **2 M.H.C. 43.**

(9)—*Penal Code, ss. 191 and 193—False statement made to police officer investigating a case—Conditions necessary to convict the accused—Crim. Pro. Code, s. 161.*—Before a person can be held guilty, under s. 193 of the Penal Code, for a false statement made before an investigating police officer, it is necessary, having regard to the provisions of s. 161 of Crim. Pro. Code, that it should be shown, by evidence, that the statement was made in answer to questions put by such officer. The fact that the record of the statement is headed : "On being questioned, said" would be no evidence of the fact that the accused was questioned, and, in answer to the question, the statement was made. But that fact must be proved by oral evidence. Without such proof the person cannot be convicted under s. 193, even if the statement be proved to be false. Further, the prosecution should establish that the police officer was making an investigation under ch. XIV of the Crim. Pro. Code. **16 C. 349.** [*Applied*, Rat. Un. Cr. C. 488 ; *D.*, U.B.R. (1892—1896), 195 Cr.]

(10)—*Penal Code, ss. 191, 193—False statement upon oath before police patel—Bombay Act VIII of 1867, s. 13.*—A person making a false statement upon oath before a police patel, acting under s. 13 of Bombay Act VIII of 1867, gives false evidence within the definition in s. 191, I.P.C., and is liable to punishment under s. 193. **4 B. 479.**

(11)—*Penal Code, s. 193—False evidence in police investigation—Crim. Pro. Code (1882), ss. 155, 161.*—A person under examination in the course of a police investigation under ch. XIV is bound, by s. 161, Crim. Pro. Code, to answer truly all questions put to him, unless the answer to any question has a tendency to expose him to a criminal charge, or to a penalty or forfeiture. If knowingly he answers falsely, he commits an offence under s. 193, I.P.C., *viz.*, of giving false evidence in a stage of a judicial proceeding. **8 B. 216.** [*Diss.*, 11 B. 659].

(12)—*Crim. Pro. Code (Act X of 1872), ss. 118 and 119—Investigations by the police under—Legal obligation to speak truth—Penal Code, s. 191.*—In police investigations under ss. 118 and 119 of the Crim. Pro. Code (of 1872), the persons giving information are under no legal obligation to state the truth, such as is contemplated in s. 191 of the Penal Code. **7 C. 121=8 C.L.R. 300, F.B.** [*Not F.*, 10 C. 405 ; *Appl.*, 23 M. 544=1 Weir 112.]

(13)—*False statement to police officer—Crim. Pro. Code (1882), s. 161.*—A witness, making a false statement to a police officer, in reply to a question which he is bound by s. 161 to answer, would be guilty of intentionally giving false evidence. The law in 7 C. 121 has been altered by s. 161 of the Crim. Pro. Code of 1882. **10 C. 405.**

False Evidence—continued.

(14)—*Crim. Pro. Code (1898), s. 161—Examination of witnesses by the police—Refusal to answer questions—Obligation to speak the truth—Penal Code, ss. 176, 179 and 187.*—Under the law as is laid down in the Crim. Pro. Code of 1898, a person who is examined under s. 161 of the Code is not "legally bound to state the truth." The legal obligation to speak the truth, when so examined, no doubt existed under the Code of 1882; but the effect of the omission of the word "truly" in the Code of 1898 has been to do away with this legal obligation. Therefore, a person, who is examined under s. 161 of the Code of 1898, by a police officer making an investigation under Ch. XIV of the Code, and who refuses to answer questions put to him, cannot be punished under ss. 176, 179 and 187 of the Penal Code. **23 M. 544=1 Weir 112.**

(15)—*Crim. Pro. Code (1882), ss. 55 (c), 156, 161—Arrest and investigation by police officer in cognizable case—Contradictory statements by witness during investigation and before Court—Penal Code, s. 193.*—Where, in a cognizable case, the police officer arrested a person charged under s. 55 (c) Crim. Pro. Code, 1882, and held an investigation in which the accused, a witness, made certain material statements, which he subsequently contradicted when examined as a witness in Court, *held* that, as the case in which the statement of the witness was taken came within s. 156, Crim. Pro. Code, 1882, and as, therefore, the witness was bound to tell the truth in the investigation before the police officer, he was properly convicted under s. 193, I.P.C., for making contradictory statements in the investigation by the police officer and before the Court. **A.W.N. 1893, 124.**

(16)—*Agreement not to prosecute for giving false evidence—Validity.*— It is essential to the well-being of society that persons who commit offences which are of a public nature, and which are punishable as crimes, should be brought to justice. Therefore. a Court cannot take cognizance of a bargain to abstain from the prosecution of a person for such an offence as that of wilfully giving false evidence. **3 N.W.P. 166.**

(17)—*Charge of giving false evidence—What it should contain.*—A man who is called upon to answer to a charge of giving false evidence should know exactly what is the false evidence imputed to him. **3 N.W.P. 314.**

(18)—*Fabricating false evidence—Giving false evidence—False statements in verification.*—Although the verification of plaints containing false statements is punishable according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence. still it is not quite the same thing as giving false evidence **3 N.W.P 314.**

(19)—*Penal Code, ss. 191 and 193—Materiality of subject-matter of statement, whether essential to constitute the offence of giving false evidence—English and Indian Law.*—The

False Evidence—continued.

materiality of the subject-matter of the statement is not, according to the Indian Penal Code, a substantial part of the offence of giving false evidence. An indictment omitting the allegation of such materiality may be sufficient, if it alleges the substance of the offence. In this respect the Indian Law differs from the English Law inasmuch as, according to the latter, it is necessary to aver that the subject of the false statement was material to the result of the inquiry. But to constitute an offence under ss. 197, 198, 199 and 200, materiality is essential to the offence because the word "material" is used in those sections. The distinction appears to be this. When the act giving rise to the indictment occurs out of Court, then materiality is made essential to the offence, and must be, accordingly, averred in the indictment. But when the act occurs in the face of the Court, then materiality is not made essential and need not, therefore, be averred. **1 Weir 146=1 M.H.C. 38.**

(20)—*Penal Code, Act XLV of 1860, ss. 191, 193—False evidence—Materiality—Intention.*—Ss. 191 and 193 of the Penal Code require that the evidence should be intentionally false to the knowledge of the person giving it. Materiality may not be essential to the offence of giving false evidence, but it must be taken into consideration in arriving at the intention of the accused. **Rat Un. Cr. C. 2.**

(21)—*Penal Code, s. 193—Fabricating false evidence—What must be established to sustain a conviction for—Application for partition by four co-sharers—Verification by all co-sharers (including one deceased).*—In order to sustain a conviction for fabricating false evidence, it must be established that the accused made a document containing a false statement, that he intended that false statement should appear in evidence in a proceeding taken before a public servant, and that that false evidence might cause any person, who in such proceeding was to form an opinion on the evidence, to entertain an erroneous opinion touching any point mentioned in the result of the proceeding. After an application for partition had been presented by certain co-sharers, a second application was presented on behalf of four other co-sharers, asking that their shares should be partitioned and formed into a separate *patti*. The application was signed by the pleader only, but purported to be verified by the four co-sharers, and their pleader's *vakalathnama* authorising him to present the application also purported to be signed by all the four. As a matter of fact, one of the co-sharers was dead, and his name was signed, both on the *vakalathnama* and in the verification of the application by his brother, the accused. The accused was tried for the offence of fabricating false evidence in respect of both documents. *Held*, that he was not liable to be convicted at all, as the law did not require the verification of the petition. **2 A.L.J. 203=A.W.N. 1905, 52.**

(22)—For a conviction under s. 193, I.P.C., it is a material element that the false evidence

False Evidence—continued.

should be given so as to cause the person who, in such proceedings, is to form an opinion on the evidence, to entertain an erroneous opinion touching any point material to the result of such proceedings. **A.W.N. 1903, 68.** [*R.*, 26 A. 509=1 A.L.J. 236=A.W.N. 1904, 115, 2 A.L.J. 836=3 Cr. L.J. 45.]

(23)—*Penal Code, s. 193—Essential ingredient of the offence under—Contradictory statements in cross-examination.*—The essential ingredient in the constitution of an offence under s. 193 is the intention of the person. [*R.*, A.W.N. 1903, 68.] Where a person is charged with having made contradictory statements in a cross-examination, the Magistrate will be exercising a proper discretion, if he takes into consideration the fact that the statement has been made in the course of cross-examination, when possibly he may have been either confused, or under some mistake regarding the question put to him. **3 C.W.N. 81.**

(24)—*Penal Code, ss. 192, 193—Fabricating false evidence—Necessity of finding the intention.*—In order to convict a person of fabricating false evidence under s. 193, I.P.C., it is necessary to find that the person intended that the fabrication may appear in evidence in a judicial proceeding or in a proceeding taken by law before a public servant as such or before an arbitrator. The mere fact that the accused, by falsely representing to the marriage registrar that a marriage had been solemnised, induced the registrar to make a false entry of the registration of the marriage, will not make the accused liable to be convicted under s. 193 in the absence of proof of the intention mentioned above. **11 C.W.N. 911=6 Cr. L.J. 162.**

(25)—*Penal Code, ss. 192, 196—Fabricating false evidence and using evidence known to be false—Fabricating false evidence for use before Registrar or in a suit.*—Under s 192, a false document is not fabricated evidence unless there was, at the time of making it, an intention that it should appear in evidence. S. 196 must be read with ss. 191 and 192, Penal Code, and can only apply to the use of evidence which is false evidence within the meaning of s. 191, or fabricated evidence within the meaning of s. 192. Where a person brought a suit on a registered bond, and, at the trial, he sought to support his claim by a letter fabricated at the time of the registration of the bond, for the purpose of its being used, either before the Registrar, or in the ultimate suit, held, that the accused was guilty under s. 196, Penal Code. **7 M. 289=1 Weir 177.**

(26)—*Penal Code, s. 193—What must be proved to sustain a conviction under.*—In order to convict a person under s. 193, the prosecution should prove that the statements made by the accused were false, and were made by him knowing them to be false. **2 C.L.J. 101=2 Cr. L.J. 455.**

(27)—*Penal Code, s. 193—Setting aside of a certain tenure by Court—Deposit of money re such tenure.*—Where, after the setting aside of a *mokurruri* tenure by a Civil Court, the

False Evidence—continued.

accused deposited money in Court, and put in a petition stating that the deposit was in respect of the *mokurruri* tenure, *held* that he could not be convicted of fabricating false evidence. **10 C.L.R. 433.**

(28)—*Penal Code, s. 193—False statement in recital of title to a property.*—Where a person made a false statement in the recital of title to a property in a document, and the statement was not admissible in evidence against the person or persons against whose interest such statement was made, *held*, that he could not be convicted under s. 193, for fabricating false evidence. **2 C.L.J. 46=2 Cr. L.J. 383.**

(29)—*Penal Code, ss 196, 471—Alteration of copy of jamabandi.*—Where alterations were made in the copy of the jamabandi, and those alterations were not only false, but material to the result of a rent suit then pending, in which the document was used, the alterations changing the identity of the tenant, the amount of rent and the period of his tenancy, *held* that the copy of the jamabandi was fabricated false evidence. **A.W.N. 1887, 285.**

(30)—*Penal Code, s. 193—Irrelevant and foolish statement.*—It is wrong to lie, but tell a foolish and irrelevant falsehood would not always or necessarily amount to giving false evidence in a judicial proceeding. **A.W.N. 1888, 218.**

(31)—*Penal Code s. 193—Accused person, fabricating a document for his defence.*—If an accused person in a criminal case fabricates a document for the purpose of making it appear to be what it is not and causes it to be produced in his defence to the charge, *held*, that he is guilty of an offence under s. 193 of Penal Code. **A.W.N. 1890, 96.**

(32)—*Penal Code, s. 193—Crim. Pro. Code (1882), s. 164—Statement made on oath before Magistrate.*—A charge under s. 193, I. P. C., can be framed as regards a statement under s. 164, Crim. Pro. Code, 1882, made on oath before a Magistrate. **16 M. 421=1 Weir 175.**

(33)—*Penal Code, s. 193—Perjury—Crim. Pro. Code (Act V of 1898), s. 476, enquiry under, if judicial proceeding.*—An enquiry under s. 476, Crim. Pro. Code, is a judicial proceeding, and a witness giving false evidence in the course of such an enquiry is guilty of an offence under s. 193 of the Penal Code. **14 C.W.N. 132=5 Ind. Cas. 62.**

(34)—*Crim. Pro. Code, Act X of 1882, s. 512—Penal Code, s. 193—Evidence given in absence of accused—Judicial proceeding.*—Where a Magistrate, professing to act under s. 512 of the Crim. Pro. Code, recorded a deposition in the absence of the accused while there was no proof that the accused had absconded or that there was no immediate prospect of arresting him, *held*, this was not a judicial proceeding within the meaning of s. 4 of the Crim. Pro. Code, and that the witness cannot be prosecuted under s. 193 for giving false evidence. **A.W.N. 1890, 100.** [*F.*, A.W.N. 1896, 182].

False Evidence—continued.

(35)—*Penal Code, s. 193—Crim. Pro. Code, Act V of 1898, s. 164—Judicial proceeding—Contradictory statements.*—A statement made by an accused person under s. 164 of the Crim. Pro. Code is not a statement made in the course of a judicial proceeding within the meaning of s. 193 of the Penal Code, but may come under the second part of the section if made on oath. (11 B. 702, *R.*). Where a person is alleged to have made the statement above mentioned and a contradictory statement when giving evidence before a Sessions Judge, *held*, that the proper procedure was to frame a charge about the contradictory statements, in the manner described in illustration (*b*) to s. 236 of the Crim. Pro. Code, and try the accused on this charge. **A.W.N. 1899, 39.** [*R.*, 28 B. 533 =6 Bom. L.R. 379].

(36)—*Penal Code, s. 193—Crim. Pro. Code, Act V of 1898, ss. 157, 159, 202—Applicability of, to enquiries made by Magistrate on police report—Further enquiry by Magistrate if a judicial proceeding.*—Neither s. 159 nor s. 202 of the Crim. Pro. Code, applies to an enquiry made by a Magistrate to whom the police have submitted a report of the commission of an offence and of the results of an enquiry. The Magistrate has no jurisdiction to make further enquiry, and such enquiry is not a judicial proceeding so as to render a person giving evidence therein liable under s. 193 of the Penal Code. **A.W.N. 1899, 87.** [*F.*, 32 A. 30=6 A. L.J. 963=10 Cr. L.J. 424].

(37)—*Penal Code, ss. 193, 199—False statement in a judicial proceeding—Proof of oath having been administered on the Holy Gospels to a Christian convert, necessity of—False statement in declaration.*—In order to constitute the offence of giving false evidence in a judicial proceeding, it must be proved that the prisoner, at the time he made the false statement, was under a legal obligation as a witness to state the truth. To constitute that obligation in the case of a witness in a judicial proceeding, who professes the Christian faith, the sanction of an oath on the Holy Gospels is an absolute requirement of the law. Act V of 1840 (Act X of 1873), s. 6 which gives to the affirmation made by a prisoner the same legal effect as an oath, applies only to persons who are Hindus and Mahomedans by religion as well as by birth. Therefore, a Hindu convert to Christianity who is merely affirmed, but has not taken an oath on the Holy Gospels, is not under a legal obligation to speak the truth, [*R.*, 16 B. 359]. It is intended by s.199 to make the penalty attached to the offence of giving false evidence applicable to declarations which, although not compellable, have, on being made the same effect as the compulsory declarations referred to in ss. 51 and 191. The 'declaration' in the section means any statement of facts in the form simply of a declaration which, for the purpose of proof of the fact declared to, has by itself all the legal force of evidence given on

False Evidence—continued.

oath or the solemn affirmation substituted for an oath, that is, a declaration receivable in lieu of personal testimony. **1 Weir 159=4 M. H.C. 185.**

(38)—*Penal Code, s. 193—Number of false statements in the same deposition.*—The making of any number of false statements in the same deposition is one aggregate case of giving false evidence, and charges of false evidence cannot be multiplied according to the number of false statements contained in the deposition. They are merely instances of the offence. Testing it by the law of evidence, the whole deposition must be looked at, if desired, and one part qualified by the other. **1 Weir 160=6 M.H.C. App. 27.**

(39)—*Penal Code, ss. 191 and 193—Contradictory statement—What must be proved to establish an offence under s. 191.*—In order to establish the offence of having intentionally given false evidence by reason of two contradictory statements, it is necessary to prove that both the statements are such that a charge of giving intentionally false evidence might be made in regard to either of them or in regard to both of them in the alternative. **27 C. 455=4 C.W.N. 249.**

(40)—*Penal Code, s. 193—Perjury—Contradictory statements—Form of charge—Crim. Pro. Code, 1882, Sch. V, Form No. XXVIII (4)—Applicability of English decisions.*—Under the law of British India, it is not necessary that a charge of perjury under s. 193, based on two contradictory statements on oath, should allege which of them is false, but it is sufficient (unless some satisfactory explanation of the contradiction should be established) to warrant a conviction, to show that an accused person has made one statement upon oath at one time, and a directly contradictory statement at another. But every possible presumption in favour of a reconciliation of the two statements should be made, and it must be found that they are absolutely irreconcilable, before a conviction can be had upon the ground that one of them is necessarily false. [*R.*, 26 M. 55 =1 Weir 167, 6 Bom. L.R. 279=28 B. 533.] In the interpretation of the law of India relating to the offence of perjury, the English cases upon it are irrelevant, as the Indian Legislature has intentionally declined to follow the law of England upon that point. **7 A. 44.** [*R.*, 26 M. 55=1 Weir 167].

(41)—*Penal Code, s. 193—Contradictory statements in a proceeding under s. 164, Crim. Pro. Code before a third-class Magistrate and in the trial of the case before a first-class Magistrate.*—Where a witness in a case of theft made one statement before a third-class Magistrate under s. 164, and a diametrically opposite statement before a first-class Magistrate who tried the case, *held* that the accused was liable to be convicted at least under the second paragraph of s. 193, and

False Evidence—continued.

that the case reported in 11 B. 702 did not apply, as the Magistrate who recorded the statement under s. 164 had himself authority, inasmuch as the case was one of theft only, to complete the trial. **22 A. 115.** [*F.*, A.W.N. 1908, 73=7 Cr. L.J. 302].

(42)—*Contradictory statements in judicial proceeding and in investigation under Ch. XIV, Crim. Pro. Code—Alternative charges.*—A person cannot be charged in the alternative, with intentionally giving false evidence in a stage of a judicial proceeding before a Magistrate, or with intentionally giving false evidence before a police officer making an investigation under Ch. XIV, Crim. Pro. Code. Still less can he be convicted on such an alternative charge. Where there is no other evidence before the Magistrate but such contradictory statements made by the accused, separate charges could not be framed. **18 B. 377, F.B.** [*R.*, 2 Weir 300, 26 M. 55=1 Weir 169; *D.*, 6 Bom. L.R. 379=28 B. 533].

(43)—*Crim. Pro. Code, s. 161—Alternative charges—False statement before an investigating police officer and before a Magistrate on oath—Penal Code, s. 193—Contradictory statements.*—Where a person was charged in the alternative with making a false statement to a police officer investigating under s. 161, Crim. Pro. Code, or with making a false statement before the Magistrate on solemn affirmation, the charge being based on the irreconcilability of the two statements, *held*, that a conviction in the alternative could not be sustained, inasmuch as the accused was not bound by law to tell the truth when questioned by a police officer. **23 M. 54, Foot-note=1 Weir 166.** [*R.*, 23 M. 544].

(44)—*Contradictory depositions—Crim. Pro. Code (1861), s. 352--Alternative finding.*--Where a person was convicted of having given false evidence, solely on the ground that his deposition in the Sessions Court differed from the one given by him before the Magistrate, *held* that, if this circumstance justified a conviction at all, the finding should have been an alternative one as specified in s. 352 of the Crim. Pro. Code. **Rat. Un. Cr. C. 26=Cr. Rg. 20—10—1869.**

(45)—*Penal Code, s. 193—Contradictory statements on oath or solemn affirmation—Alternative finding—English and Indian Law.*—According to the English Law, since the decision in *King* v. *Haris*, 5 Barn. and Ald. 296, mere proof of contradictory statements on oath, without proving which of those statements is false, is insufficient to support a conviction on a charge of perjury. But, in India, satisfactory proof of contradictory statements on oath or solemn affirmation is sufficient to justify an alternative finding of an offence under s. 193, Penal Code. **1 Weir 156=4 M.H.C. 51.** [*R.*, 1 Weir 161=6 M.H.C, 342, 21 W.R. 72, 7 A. 44, 2 Weir 299, 26 M. 55=1 Weir 166].

(46)—*Penal Code, s. 193—False evidence—Proof—Contradictory statements on oath and not on oath.*—To establish the offence of giving

False Evidence—continued.

false evidence, direct proof of the falsity of the statement on which the perjury is assigned is essential, except in the case of two or more contradictory statements on oath. But, as legitimate evidence for this purpose, the law makes no distinction between the testimony of the witness directly falsifying such statements, and the contradictory statement of the person charged, although not made on oath. Such a statement, when satisfactorily proved, is quite as good evidence in proof of the charge as the criminatory statement of a person charged with any other offence and on precisely the same ground, *viz.*, that it is an admission of the accused person inconsistent with his innocence. A good conviction may take place on proof of two contradictory statements without confirmatory evidence as to the falsity of either, when both are on oath and made the subject of separate charges. But, when only one of them is on oath, a charge of perjury is not maintainable upon proof of one such statement, not on oath, or more than one if proved by a single witness, unless supported by confirmatory evidence tending to show the falsity of the statement charged. With respect to the kind of confirmatory proof required, no general rule can be laid down. In each case, it must be considered whether the particular evidence offered is sufficient to induce a belief in the truth of the contradictory statement or direct testimony. But there is no doubt that, in every case of perjury, repeated contradictory statements, whether on oath or not on oath, or statements inconsistent with the proof of what is alleged in the charge to be false when proved by different witnesses, are good confirmatory proof. **1 Weir 161=6 M.H.C. 342.**

(47)—*Contradictory statements to police and to Magistrate—Conviction in the alternative for false information or false evidence—Statements taken down in writing by police inadmissible—Police officer not subordinate to Magistrate—Discharge of accused—Further enquiry—Reference to High Court—Crim. Pro. Code (1898), ss. 161, 195, 162, 236 and 437.*—False statements made before the police under s. 161, Crim. Pro. Code, are not now punishable under s. 193, Penal Code. A person, though bound to answer all questions (with certain exceptions) relating to the case under investigation which may be put by a police officer, is not, under s. 161, Crim. Pro. Code, 1898, bound to answer those questions truly. He does not thereby commit the offence of giving false evidence, even if he makes false statements. By the provisions of s. 162 of the Crim. Pro. Code, no statement taken down in writing in the course of an investigation by a police officer is admissible in evidence. A Township Magistrate has no power under s. 195, Crim. Pro. Code, to sanction the prosecution of an accused for an offence under s. 182, I.P.C. A police sergeant is not subordinate to the Magistrate in the sense intended by s. 195, Crim. Pro. Code. Although police officers in a district are generally subordinate to the District Magistrate, yet, the subordination contemplated by s. 195, Crim. Pro. Code,

False Evidence—continued.

is not such subordination, but is the subordination to some superior officer of police. (27 C. 452, *F.*). A conviction in the alternative under s. 193 or s. 182, Penal Code, is not sustainable on the ground that, where one statement has been on oath and a contradictory statement has been made before the police, the accused must be either guilty under s. 195, Penal Code, of giving false evidence in Court, or under s. 182, Penal Code, of giving false information. S. 236, Crim. Pro. Code, does not apply to a state of facts in which it is doubtful what are the acts or series of acts that are proved, but to a state of facts in which it is doubtful which of several sections is applicable. The doubt is not as to facts but as to a matter of law. If there is sufficient evidence to prove a charge under s. 193 or s. 182, Penal Code, the District Magistrate has the power under s. 437, Crim. Pro. Code, to order further enquiry which will, in the natural course, be followed by charge and trial in case an offence is found to be *prima facie* established. It is not necessary to refer every case in which further enquiry is necessary to the High Court. The words 'further enquiry' may not include in their actual meaning *charge* and *trial;* but, if it appears on the further enquiry that a charge should be drawn up and the accused should be tried, then the trial will properly follow just as if the case had been newly instituted. **1 L.B.R. 101.** (1 L.B.R. 9, 21 C. 955, 23 C. 174, 11 P.R. 1887 Cr., 43 P.R. 1887 Cr., 14 B. 124, *R.*)

(48)—*Alternative charges of false evidence—Crim. Pro. Code (1882), ss. 161, 235, 236—Examinations before police officer and before Magistrate—I.P.C., s. 72—Punishment.*—An alternative charge framed according to Sch. V, No. XXVIII, s. (2), cl. (4), is not proper where a person is accused of making contradictory statements when examined by a police officer under s. 161, Crim. Pro. Code, 1882, and subsequently when examined by a Magistrate or a Court of Session. In such a case, if the two statements are regarded as so connected together as to form parts of one and the same transaction, s. 235 of the Code should be applied to them. If they are regarded as unconnected, and it is doubtful whether the earlier or the later statement constituted the offence, s. 236 should be applied. Separate heads of a charge, therefore, should be framed, imputing to the accused falsehood on each of the occasions on which he made the contradictory statements. If each of the statements is found to be false, conviction should follow on both heads of the charge. If a conviction is justified only on one or other of the heads, and it is uncertain on which of the two occasions falsehood was uttered, then, s. 72 of the I.P.C. directly applies. The judgment should, in that case, be framed in the alternative, and punishment inflicted for the less serious of the two offences. **Rat. Un. Cr. C. 336 = Cr. Rg. 26 of 1887.** [*R.*, Rat. Un. Cr. C. 488, 518, 503, 18 B. 379].

(49)—*Penal Code, ss. 193, 72—Alternative charge of false evidence.*—Where the accused

False Evidence—continued.

was charged in the alternative with having given false evidence either before the Chief Constable in a Police investigation or before the Magistrate in a criminal trial; *held* that, if the statement before the Police Constable was false, then, the offence committed by the accused was one punishable under the latter part of s. 193. If the statement made at the trial was false, the offence was punishable under the latter part of s. 193. As the two statements did not fall under the same enactment, a charge in the alternative was bad in law. The alleged offences being distinct, there must be separate charges under s. 233. Although there was no evidence to prove either offence, yet, as the two statements were so contradictory that one of them must be false, the provisions of s. 72, I.P.C., would apply to the case and justify a conviction in the alternative, as the accused did not appear to have been prejudiced by the irregularity in the charge. **Rat. Un. Cr. C. 401 = Cr. Rg. 62 of 1888.**

(50)—*Penal Code, s. 193—Perjury assigned upon distinct allegation—Proof.*—Where the perjury is assigned upon a distinct allegation, the evidence of its falsity must be regularly taken in the case in which it is tried. If the whole proof consists of two conflicting statements, an alternative charge and finding are the regular course. **1 Weir 165.**

(51)—*Penal Code, s. 193—Perjury—Inconsistent statements.*—The petitioner was convicted of an offence under s. 193, I.P.C., for having made two inconsistent statements. On appeal the conviction was upheld, the appellate Court finding that the first statement was the false one; the statement was to the effect that the petitioner saw the accused in the case in which he gave evidence striking blows. In that case the accused was convicted, having been found to have caused hurt. *Held*, that the conviction must be set aside for it could not be said that the statement, for making which the petitioner was convicted by the appellate Court, was intentionally false.

Held, further, that for the same reason and also for the reason that, according to the appellate Court, the petitioner reverted to the truth in his second statement, a conviction on the alternative charge was not proper. **71 P.L.R. 1904.** (21 P.R. 1901 Cr., *F.*)

(52)—*Evidence Act, s. 132—Incriminating questions—Duty of Magistrate—Penal Code, s. 191.*—Where an incriminating question is put to a witness, the Magistrate should explain to him his position, and should advise him of his right, as otherwise, he may be induced, through ignorance of the state of the law, to deny the truth for fear of penal consequences. If without such warning, he speaks untruth, the offence he has committed, namely, of intentionally giving false evidence, does not deserve punishment. **2 C.L.R. 181.**

(53)—*Penal Code, s. 193—Crim. Pro. Code (1882), s. 161—Incriminating questions—Contradictory statements—Alternative charge.*—A

False Evidence—continued.

witness is not bound, under s. 161 of the Crim, Pro. Code, to answer truly incriminating questions. An alternative charge under s. 193 of the Penal Code cannot be permitted in respect of contradictory statements, one of which is made to the Police and another to a Magistrate. **Rat. Un. Cr. C. 518=Cr. Rg. 40 of 1890.**

(54)—*Penal Code, ss. 191 and 193—Incriminating false statement—Evidence Act, II of 1885, s. 32 (s. 132 of Act I of 1872).*—A person making an incriminating statement, which is at the same time false. is not protected from prosecution under s. 193, Penal Code, though he cannot be made subject to any other kind of prosecution. **1 Weir 153=3 M.H.C. App. 29.**

(55)—*Giving false evidence in the same proceeding—Separate trials of accused—Alternative charge—Contradictory statements.*—Where four persons were charged with having given false evidence in the same proceeding, and the Sessions Judge while professing to try each accused separately, heard the witnesses only once, *held*, the procedure was improper, as it was substantially trying all the prisoners together. [*R.*, 2 Weir 304.] In order to sustain any conviction for giving false evidence upon an alternative charge, when no evidence is offered to prove the falsity of either statement in particular, it must be clear that the two statements are contradictory. **10 C. 405.**

(56)—*Contradictory statements in single deposition—Alternative charge and conviction—Crim. Pro. Code (1882), ss. 233 and 554.*—A conviction upon an alternative charge of having given false evidence, consisting of contradictory statements in *a single* deposition, is good though there may be no finding as to which of the statements was false (*per Wilson and Tottenham, JJ., Norris, J., dissenting*). *Semble.*—The decision in 12 W.R. Cr. 11 would merely serve as a guide to the discretion of Courts in framing charges and dealing with them ; but it does not, and was not intended to affect the law applicable to the matter—Per *Wilson, J.* **10 C. 937.** [*Cons.*, 26 M. 55=1 Weir 167].

(57)—*Penal Code, s. 193—Conviction on alternative charges of giving false evidence.*—Where a person was convicted on alternative charges of giving false evidence in a judicial proceeding, *viz.*, the statement made to the Sub-Magistrate and its subsequent retraction before the Sessions Judge, and was sentenced to seven years' imprisonment, the High Court, pointing out that the mode of convicting on alternative charges was open to abuse in the hands of the police, reduced the sentence to six months. **1 Weir 164.**

(58)—*Form of charge in commitments for giving false evidence.*—In commitments for giving false evidence under ss. 193, 194 and 195 of the Penal Code, the committing officer should invariably insert in the charge the particular statements to which perjury is assigned. **5 W.R. Cr. Cir. 22.**

False Evidence—continued.

(59)—*Penal Code, ss. 193, 511—Fabricating false evidence—False endorsement on a stamped paper.*—Where the accused, in order to injure the complainant, who had deposed against him in a civil suit, induced another person to personate the complainant and to purchase a stamped paper, and in consequence of such personation, the stamp vendor made the usual endorsements on the stamp paper in the name of the complainant, *held*, that, inasmuch as the intention of the accused was to use the falsely endorsed stamp paper in a judicial proceeding, he was guilty of the offence of fabricating false evidence, and the other person was guilty of abetting the same. **2 A. 105.** [*F.*, 25 A. 75=A.W.N. 1902, 196].

(60)—*Penal Code, s. 192—False entry by police officer in a special diary—Fabricating false evidence.*—The offence of farbricating false evidence cannot be committed in respect of a document which is not admissible in evidence. A special diary kept by a police officer is not a document, which is capable of being used in evidence. Therefore, the offence of fabricating false evidence cannot be committed in respect of it. **21 A. 159.** [*R.*, P.L.R. 1900, 63 Cr.].

(61)—*Examination of complainant—Judicial proceedings—Penal Code, s. 193.*—The examination of a complainant in reference to his complaint is an investigation directed by law, and is, therefore, a stage in a judicial proceeding. It follows that, if in the course of such examination, false evidence is intentionally given by him. he is legally chargeable with the offence described in s. 193, I.P.C. **4 N.W.P. 6.**

(62)—*Penal Code, s. 193—Accused setting fire to his own house to procure conviction of another.*—Where the accused himself set fire to the thatch of his own house in order to procure the conviction of a certain person, but the act was committed in a most public manner and not in a way calculated to lead to the conviction of that person, *held*, that he was not guilty of an offence under s. 193, I.P.C. **5 N.W.P. 188.**

(63)—*Inquiry under the Legal Practitioners' Act—False statement of the accused person made after being solemnly affirmed—Nature of enquiry under the Legal Practitioners' Act—Judicial proceeding—Penal Code, ss. 181 and 193.*—Where a pleader is called upon, in an enquiry under the Legal Practitioners' Act, to explain his conduct, it is not competent to the Court conducting the enquiry to take a statement from him on solemn affirmation. He is not, therefore, in such proceeding legally bound an oath to speak the truth, and, if he states what is false, does not render himself amenable to the charge of making a false statement under s. 181, and giving false evidence under s. 193, Penal Code. An enquiry under the Legal Practitioners' Act is a judicial proceeding, and false statements on solemn affirmation made by the witnesses therein, should be charged as offences under s. 193, Penal Code, and the persons so charged should be tried separately. **6 M. 252=1 Weir 116.**

False Evidence—continued.

(64)—*Offence of abetment of offence committed before Magistrate—Jurisdiction.*—A Magistrate is not competent to convict a person of abetting the giving of false evidence in a judicial proceeding before himself. **7 M.H.C. App. 28.**

(65)—*Penal Code, ss. 193, 511—Abetting fabrication of false evidence.*—The accused had an ejectment case against a person, which was decided against him. After this, he took his servant to a certain place and there purchased an eight annas stamp paper in the name of the defendant in the ejectment suit, the servant personating him. The stamp paper was subsequently found in the possession of the accused, who had locked it up in a chest in his house. *Held*, that the accused was properly convicted of the offence of abetting the fabrication of false evidence. **25 A. 75.** (2 A 105, *F.*).

(66)—*Penal Code, ss. 192, 193, 218, 471—Public servant in charge of records framing incorrect ones.*—Where a clerk of a Municipality in charge of its records, being required to produce certain documents, and being unable to find them, forged and produced certain documents purporting to be those required, *held*, that he could not be convicted under s. 218, as it was not any part of his duty to prepare or frame any record, but only to keep them safe, when given into his custody, nor could he be convicted under s. 471, as the documents were not made with the intent specified in that section. *Held*, also, that, as there was grave reason to suppose that the papers had been fabricated by the accused, and as, if this was done with the intention stated in s. 192, he would be guilty of an offence under s. 193, he should be retried for an offence under that section. **5 A. 553.** [*R.*, U.B.R. (1892—1896), Vol. I, 279].

(67)—A public servant who does that which, if done to save another from legal punishment, would bring the public servant within s. 218, has equally committed the offence, if the person whom he intends to save from legal punishment is himself. **19 A. 305.**

(68)—*Penal Code, ss. 192, 218—Public servant framing an incorrect record to screen himself from punishment under the Police Act.*—Where a police officer suppressed two reports which had been entrusted to him to be forwarded by post to another police station, and interpolated in his diary that the document had been forwarded, thereby to conceal his conduct and to cause it to appear, in the event of his prosecution under the Police Act, that he had forwarded the document in due course, *held*, that he could not be convicted under s. 192, I.P.C., inasmuch as the evidence fabricated must be admissible in evidence to constitute the offence under s. 192, and as the entry in the diary would not have been admissible in evidence on his behalf, in a prosecution under s. 29, Police Act, though it might have been used against him, which was not his intention; *held*, further, that the accused could not be convicted under s. 218, I.P.C., as his object was to screen

False Evidence—continued.

himself, whilst the intention mentioned in that section had reference to other persons. **6 A. 42.** [*F.*, U.B.R. (1897—1901), Vol. I, 356; *R.*, 13 B. 384, 14 A. 354, 21 A. 159=A.W.N. 1899, 5; *Overruled*, 19 A. 305].

(69)—*Penal Code, ss. 193, 199—Charge under s. 199 on false petition bearing no signature of the petitioner—Deposition on oath.*—A petition not bearing the petitioner's signature cannot be made the foundation of a charge and conviction under s. 199, as it is not a declaration made and subscribed by the petitioner, or one which a Court of justice is bound or authorized by law to receive as evidence of any fact. But the deposition on oath supporting such a petition, if it is proved to be false, justifies a charge under s. 193. **7 C.L.R. 536.**

(70)—*Penal Code, ss. 193, 403—Removal of property under false assumption—Claim of title.*—Where a person, after making an opening in the wall of his own house, in order to create the appearance of burglary by strangers, broke open a box containing jewels, and carried them off, believing himself to be entitled thereto, though there was some dispute about them, *held*, that he could not be convicted of criminal misappropriation, nor of fabricating false evidence, as it did not appear that any charge had been laid by the accused against any one in respect of the removal of the contents of the box. **10 C.L.R. 187.**

(71)—*Penal Code, ss. 107, 218—Abetment of framing incorrect record by public servant.*—Where the accused made certain false abstracts and read them over to another, a public servant, charged with the preparation of a certain record, and thereby an incorrect record was prepared, *held*, that, although the accused could not be held to have committed the offence described in s. 218, I.P.C., he was guilty of abetment of such offence and not the less so, because the person charged with the preparation of the record had no guilty knowledge or intention in the matter. **7 N.W.P. 134.**

(72)—*Penal Code, ss. 204, 218—Suppression by police officer of a report of an offence and substitution of another report.*—Where a police officer in charge of a *thana* substituted for a true report of two dacoities, a false report of the commission of a totally different offence to which the complainant's signature was fraudulently obtained, *held*, that he was guilty of offences under ss. 204, 218, I.P.C. **20 A. 307.**

(73)—*Crim. Pro. Code (1882), s. 477—Offence of giving false evidence committed before District and Sessions Judge in his capacity as Civil Court—His competency to try the case—Penal Code, ss. 191, 193.*—On the death of an employee in the Telegraph Department, a person claiming as his sole heir, wrote a letter to the Telegraph authorities demanding the payment of money due to the deceased in the hands of the Telegraph authorities. This letter was sent to the District Judge for verification and orders. One of the witnesses for the claimant deposed on oath verifying the claimant's claim. The Judge

False Evidence—continued.

being of opinion that the evidence was false, tried and convicted him, for giving false evidence, in his capacity as Sessions Judge. *Held*, that, as the reference to the Judge for verification, and the subsequent action in regard thereto did not constitute a judicial proceeding, and as there was no authority for administering an oath to the accused, his conviction under s. 193 was bad. *Held*, further, that the Sessions Judge had no jurisdiction to try the case under s. 477, Crim. Pro. Code, as the alleged perjury was committed before him, as a Civil Court, and not as a Court of Sessions. **6 A. 103.** [*R.*, 14 A. 354].

(74)—*Crim. Pro. Code (1882), ss. 161, 164, 364—Applicability of ss. 191 and 193, I.P.C., to proceedings under s. 161—Mode of recording statements under s. 161—Attestation.*—Where a witness makes statement to a police officer investigating a case, he is bound under s. 161, Crim. Pro. Code, to answer truly all the questions relating to the case put to him by such officer. S. 193, I.P.C., applies to answers so given, because he is, within the meaning of s. 191, I.P.C., legally bound by an express provision of law to speak the truth to the officer. Ss. 164 and 364 do not apply to an examination under s. 161, Crim. Pro. Code. The test as to whether a case comes within paragraph 2 of s. 161 of the Code is—was a question put to the person by the police officer, and what was stated by such person in answer to that question. It is not necessary that the police officer should, at the completion of each sentence by the person whom he is examining, stop him and ask a fresh question. There is nothing illegal in police officers obtaining the signatures of witnesses to a statement under s. 161, but there is nothing to compel them to sign them. **15 A. 11.**

(75)—*Crim. Pro. Code, ss. 195, 337, 339—Evidence of accused illegally pardoned—Subsequent retraction—False evidence—Penal Code, ss. 193, 457.*—If the case against the accused is not of the kind contemplated in s. 337, Crim. Pro. Code, it is not competent to the Magistrate making the preliminary enquiry to tender a pardon to one of the accused, or to examine him as a witness. If the accused subsequently retracts the statement made by him, he cannot be prosecuted under s. 193, I.P.C., for giving false evidence, if there is nothing to prove that the subsequent evidence is by itself false. But if the pardon has been legally tendered, proper sanction will be necessary for the prosecution on each branch of the alternative charges. **10 B. 190.** [*R.*, 16 B. 661, 23 B. 213, 52 P.L.R. 1902, 100 P.L.R. 1902=12 P.R. 1902 Cr.].

(76&77)—*Civ. Pro. Code, s. 258—Fraudulent execution of satisfied decree—Satisfaction not recorded—Penal Code, ss. 191, 193, 199, 210, 406—Execution application containing false averments.*—The words "any Court," in the last paragraph of s. 258 of the Code of Civil Procedure, 1882, have no application to a Criminal Court investigating a charge under s. 210, I.P.C. It is not the intention of the Legislature, by enacting s. 258, Civ. Pro. Code, to bar any criminal remedy which an injured judgment-debtor may have against a fraudulent decree-holder, whether by a prosecution under ss. 193, 210, 406, or any other section of the Penal Code. A decree-holder is bound, by s. 235, Civ. Pro. Code, to make a declaration, in his verified application for execution of the decree, as to any adjustment made after the decree, that is, any matter not done through the Court, as well as any agreement through the Court. Intentional omission to state in the application any such adjustment is an offence punishable under s. 193, I.P.C., and not under s. 199, I.P.C. [*Appl.*, 11 B. 599; *R.*, 11 B. 6 U.B.R. (1897-1901), 278]. It is doubtful whether s. 199, I.P.C., applies to an execution application containing false averments, inasmuch as s. 193 already provides for such averments. Nor is there, apparently, any express provision of law which binds or authorizes the Court to receive a verified application as "evidence of any fact" although, for the purposes of ss. 191, 193, a false averment in such application is regarded as false evidence. **10 B. 288.**

(78)—*Crim. Pro. Code (1882), ss. 164, 288—Evidence before Magistrate not having jurisdiction—Powers of police officer.*—There is no provision in the Crim. Pro. Code, empowering a police officer to require a witness to go to a Magistrate not having jurisdiction over the offence, to have his statement taken under s. 164. Such a statement cannot be used as evidence at the trial, nor, if false, be treated as false evidence in a judicial proceeding. **Rat. Un. Cr. C. 468=Cr. Rg. 26 of 1889.** (7 B.H.C. 56, 11 B. 72, *R.*).

(79)—*Penal Code, ss. 193, 196—Crim. Pro. Code, s. 233—False evidence by several persons—Trial.*—Where several persons are charged with giving false evidence in the same proceeding, each of them should be separately tried. **4 A. 293.** [*R.*, 10 C. 405].

(80)—In all cases of giving false evidence, where more than one person is implicated, separate charges should be drawn up and separate trials held. **A.W.N. 1881, 83.**

(81)—Where more persons than one are charged under s. 193, for giving false evidence, each act of giving false evidence being a separate offence, a separate charge must be necessarily framed against each prisoner and a separate trial must be held on each charge. **1 Weir 161=2 Weir 271=3 M.H.C. App. 32.** [*F.*, L.B.R. (1872—1892), 129, 2 Weir 304].

(82)—*Manner in which cases of false evidence should be tried—Evidence Act, s. 91—Certified copy of deposition alone admissible—Crim. Pro. Code (1898), s. 223.*—Where the false evidence is alleged to have been given in a deposition in a case in which the law requires the evidence to be taken down in writing, as, for instance, in trials regulated for this purpose by s. 356 or s. 357, Crim. Pro. Code, a certified copy of the deposition must be placed on

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the record as evidence. Oral evidence of the substance of a deposition is excluded by s. 91 of the Evidence Act. But the mere production of a certified copy is not sufficient to show that the accused is the person who made the statement. On this point there must be the oral evidence of some one who heard the deposition given. Evidence as to the falsity of some statement in the deposition must then be taken. After the close of the case for the prosecution, the accused must be examined under s. 342, Crim. Pro. Code, and must be asked whether he gave the evidence which he is said to have given. If the Court considers that a *prima facie* case is made out, the charge should then be framed; and in the charge should be set out in direct narration the actual words alleged to constitute the false statement and not a paraphrase. **1 L.B.R. 268.** (17 W.R. Cr. 32, *F.*).

(83)—*Prosecution for giving false evidence—Courts entitled to give sanction—Crim. Pro. Code (1882), s. 468.*—The only Court that could give sanction to any criminal proceeding under s. 468 of the Crim. Pro. Code is either the Court before which the alleged offence took place or the Court to which such Court is subordinate. **6 C. 440=7 C.L.R. 330.** [*Dist.*, 8 C. 570].

(84)—*Crim. Pro. Code (1898), s. 197—Inquiry before granting sanction to prosecute under s. 197—Offence of giving false evidence committed in such enquiry.*—There is no provision in the Crim. Pro. Code or the Indian Penal Code indicating how the Government, or some officer empowered in that behalf by the Government, is to inform itself whether or not to grant sanction. In the absence of any provision of law authorising the officer conducting such enquiry to hold a judicial enquiry, such enquiry is not a judicial enquiry and there is no authority in him to administer an oath, the enquiry being merely a departmental enquiry. Therefore, a person who gives false evidence is not liable to be punished under s. 193, Penal Code. **23 M. 223=1 Weir 152.**

(85)—*Penal Code, s. 193—Judicial proceeding—Sanction to prosecute—Crim. Pro. Code (1898), ss. 200, 254 and 537—Right to cross-examine after the evidence of the prosecution—Evidence Act, 1872, s. 80.*—The accused were convicted under s. 193, Indian Penal Code, for giving false evidence before Commissioners appointed under Act XXXVII of 1850. *Held*, that inasmuch as the sentences passed were within the limit provided by the second part of s. 193, Indian Penal Code, it was immaterial to consider whether the enquiry by the Commissioners was a stage of a judicial proceeding. *Held*, also, that the Commissioners were not *functi officio* when they granted sanction to prosecute. *Held, also*, that the failure of the Magistrate to examine under s. 200, Crim. Pro. Code, the complainant, who was a Government Advocate, did not prejudice the petitioners and was covered by s. 537 of the Crim. Pro. Code. *Held, also*, that the trying Magistrate acted in accordance with s. 254, Crim. Pro. Code, in charging the accused at an early stage of the proceedings, which had the effect of preventing the recall of witnesses for the prosecution for cross-examination; the accused had no further right to cross-examine the witnesses for the prosecution after the completion of the evidence for the prosecution. *Held*, also, that s. 80, Evidence Act, 1872, was applicable to the depositions of the accused persons made before the Commissioners. **P.L.R. 1900, 63 Cr.**

(86)—*Penal Code, ss. 181 and 193—Offence under s. 193—Conviction under s. 181.*—A conviction under s. *181* is good, though the offence falls under s. 193, Penal Code. **4 M. H.C. App. 18.**

(87)—*Penal Code, s. 193—Conviction based on conflicting statements—Procedure.*—Although where a person makes on solemn affirmation or on oath, in the course of a judicial proceeding, two statements which are palpably inconsistent, it is not essential to the validity of the conviction to show which of them is true, yet, it is desirable in such cases, with a view to the due estimation of the gravity of the offence, that the Court should have before it some evidence as to the object with which the offence has been committed, that is, in what respect the alleged false statement bore on the matter under enquiry. **1 Weir 165.**

(88)—*Statements made before Revenue officers—Witness speaking falsely, whether liable to be prosecuted—Indian Oaths Act, s. 4—Lower Burma Land and Revenue Act, s. 57 (c).*—By s. 4 of the Indian Oaths Act, 1873, all persons having by law authority to receive evidence are authorized to administer oaths and affirmations in discharge of the duties, or in exercise of the powers, imposed or conferred on them by law. A Revenue Officer empowered under s. 57, clause (*c*), of the Land and Revenue Act, being a person having by law authority to receive evidence, has, therefore, also authority to administer oaths and affirmations, and that authority is conferred by the Oaths Act. Any person who volunteers or is required to make a statement before a Revenue Officer empowered under s. 57, clause (*c*) of the Land and Revenue Act, when acting in the discharge of a duty or in the exercise of a power imposed or conferred by law, is a witness, and, in making such a statement, he is giving evidence. Any person so examined is bound by the express provisions of the law to state the truth on the subject on which he is examined; and this obligation is not affected by the omission of the person so examined to take an oath or make an affirmation. When holding an enquiry, a Revenue Officer cannot be said to be acting in discharge of a duty imposed, or in exercise of a power conferred, by the law, unless he is required or authorized by some specific provision of the law, or, by necessary implication, from some specific provision of the law, to hold an enquiry. **2 L.B.R. 272.**

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(89)—*Proof that accused knew statement to be false—Penal Code, s. 193.*—To support a charge of giving false evidence under s. 193, it must be shown that the accused intentionally made a particular statement false to his own knowledge. **7 B.L.R. Ap. 66=16 W.R. Cr. 47.**

(90)—*Judicial proceeding, statement made in —Penal Code, s. 193—Form of charge.*—It is essential, in order to sustain a charge under s. 193 of the Penal Code, that it should be proved that there was a judicial proceeding, and that the false statement alleged to have been made in the course of that proceeding was actually made. **1 B.L.R. A. Cr. 13; 10 W.R. Cr. 37.**

(91)—*Crim. Pro. Code (1872), ss. 473, 471 —Jurisdiction of Magistrate—Giving false evidence.*—A witness charged with having given false evidence in a criminal proceeding before a Magistrate of the first class was tried and convicted of that charge by that Magistrate, and the conviction was confirmed on appeal by the Sessions Judge. *Held* that the jurisdiction of the Magistrate was not barred by the operation of s. 473, Act X of 1872, the giving of a false evidence in the presence of a Court not being an offence committed in contempt of the authority of the Court within the meaning of that section. The Magistrate's jurisdiction in such a case was, however, held barred by s. 471 of the Code, the Magistrate being bound under that section either to commit or to send the case for enquiry to another Magistrate. **22 W.R. Cr. 49.**

(92)—*Proof of deposition alleged to be false to be given.*—In a case of false evidence, the prosecution must prove that the deposition alleged to contain the false statement was made before it is shown that it is false. **7 W. R. Cr. 13.**

(93)—*Requisites for a legal conviction for giving false evidence—Examination of accused as directed by law—Attestation of record by Magistrate—When abettor is liable to be punished as principal—Circumstances constituting abetment to be first made out.*—Before incriminating a person upon his own statement under examination, it is necessary to see that such a statement has been deliberately made and recorded, that, after being recorded, it has been shown or read to the accused, so that he might be assured that his words have been correctly taken down, and that the examination has been attested by the signature of the Magistrate following a certificate to be given under his hand. It is only an examination as directed by law, not any irregular paper substituted by a Magistrate for the examination in proper form, that is admissible in evidence at the trial. In cases where an abettor is to be punished as the principal, it is necessary, first, to make out the circumstances which constitute the abetment, so that, "if absent," he would have been liable to be punished as an abettor, and then to show that he was also present when the offence was committed. **7 W.R. Cr. 49.** 23 W.R. Cr. 28.

False Evidence—continued.

(94)—*Requisites for conviction of giving false evidence Relying for conviction on mere medical theories against facts positively proved improper—Criminal fact to be ascertained before fixing the criminal.*—In trying a prisoner charged with giving false evidence, it is improper to rely on the mere theories of medical men or skilled witnesses of any sort against facts positively proved, as the evidence of medical men or other skilled witness, however eminent, is ordinarily a mere matter of opinion. The true rule is that no man can be convicted of giving false evidence except on proof of facts which, if accepted as true, show not merely that it is incredible but that it is impossible that the statements of the party accused made on oath can be true. **11 W.R. Cr. 25.**

(95)—*Provisions of s. 191, Penal Code, very general—Criminal intention to be established—Superintendent of Police requesting a Magistrate to issue a warrant in a suit to him by the Magistrate—Sufficiency of sanction—Object of sanction required by s. 169, Crim. Pro. Code.*—The words of s. 191, Penal Code, are very general, and do not contain any limitation that the false statement made shall have any bearing upon the matter in issue. It is sufficient to bring a case within that section, if the false evidence is intentionally given, that is to say, if the person making the statement makes it advisedly, knowing it to be false, and with the intention of deceiving the Court, and of leading it to be supposed that that which he states is true. Where a Magistrate had himself considered the case forwarded to him by the Deputy Magistrate before he passed it to the Superintendent of Police and the Superintendent of Police had requested the Magistrate to issue a warrant, *held* that the issue of a warrant is a sufficient sanction under s. 169 on the part of the Magistrate. The object of the sanction required by s. 169, Code of Criminal Procedure, is to ensure that the prosecution should be instituted after due consideration on the part of a Court to which such Court is subordinate. **16 W.R. Cr. 37.**

(96)—*Statement untrue to the prisoner's knowledge and made upon oath though, immaterial to the case—Perjury.*—By the Penal law of the country, a statement untrue to the prisoner's knowledge, made upon oath in the course of a judicial proceeding, amounts to perjury, notwithstanding the fact that the statement itself is immaterial to the matter before the Court. **19 W.R. Cr. 69.**

(97)—*Offence under the Penal Code not to be treated as professional misconduct—Proper Court to direct prosecution for giving false evidence—Crim. Pro. Code (1861), s. 169—Specific charge.*—S. 169, Crim. Pro. Code, which gives a Judge, not sitting in appeal, any original jurisdiction does not empower him to entertain a charge for giving false evidence before another Court. The only Court which can direct prosecution for giving false evidence is the Court before which the false evidence was given. In a prosecution under the Legal Practitioners,

False Evidence—continued.

Act, it is against law and justice to take evidence after the expiration of the time allowed by the Act to a vakil to prepare his defence and in his absence. A prosecution for giving false evidence must be on some specific charge of making some particular and specific false statements, each of which must be proved by some direct and distinct evidence. **W.R. 1864, 15.**

(98)—*Enquiry to trace out the writer of an anonymous letter containing charge of murder without reference to its truth or otherwise not a stage of judicial proceeding.*—Where an Assistant Magistrate made an enquiry for the purpose of tracing out the writer of an anonymous letter addressed to him charging certain persons with murder, but without reference to the truth or otherwise of the charge of murder. *Held* that the enquiry regarding it is not, in any sense of the term a stage of a judicial proceeding which might terminate in a judgment and in which the giving of false evidence is punishable under s. 193, Penal Code. **5 W.R. Cr. 72.**

(99)—*Evidence upon oath without jurisdiction not forming the subject of prosecution for.*—A plaintiff in a Munsif's Court petitioned the Judge complaining that the Munsif had unreasonably refused to examine his witnesses and had dismissed his suit. The Judge having found the charge, after examining the petitioner upon solemn affirmation, not proved, ordered criminal proceedings to be instituted against the petitioner for giving false evidence. *Held* that he had no power to examine the petitioner upon cath in such a case and that the oath made and the evidence given *coram non judice* could not form the subject of a prosecution under s. 193, Penal Code. **W.R. 1864 Cr. 15.**

(100)—*False evidence not given in Court of justice but made to a police officer making investigation under s. 119, Crim. Pro. Code—Abetment of offence of giving false evidence, essentials of—Trial by jury—Power of High Court to go into facts—S. 330, Penal Code, scope of,*—It is not necessary under s. 194, Penal Code, that the false evidence which is given should be evidence given in a Court. A police officer making an investigation, under s. 119, Crim. Pro. Code, being authorized to examine orally any person supposed to be acquainted with the facts and circumstances of the case, and such person being bound to answer all questions put to him by such officer, a false statement made to him would amount to a complete offence of giving false evidence as defined by s. 391, taking into consideration the provisions of s. 118, of Crim. Pro. Code. In order to convict a person of abetting the commission of an offence, it is not enough to prove that he has taken part in those steps of the transaction which are innocent, but, in some way or other, it is absolutely necessary to connect him with those steps of the transaction which are criminal. Further, there can be no offence of the abetment of giving false evidence, unless it is proved that the abettors not only intended

False Evidence—continued.

that those statements should be made, but intended that those statements should be made falsely. In a trial by jury, the High Court has no power whatever to go into the facts of the case in order to see whether or not the conviction was right, that standing entirely upon the verdict of the jury. The Court has only to consider the facts, in order to see whether the Judge has done his duty in laying the case before the jury for their consideration. A charge under s. 330, Penal Code, can be made, even if the supposed offence has not been committed. The offence which that section intended to describe is that of inducing a person by hurt to make a statement, or a confession, having reference to an offence or misconduct; and whether that offence or misconduct has been committed is wholly immaterial. **20 W.R. Cr. 41.**

(101)—*Statement made in judicial proceeding before Magistrate—Accused to be committed to Sessions—Magistrate not to convict him under s. 181, Penal Code.*—Where a person made a false statement in a stage of judicial proceeding before a Magistrate, he should not be convicted under s. 181, Penal Code, but should be committed to the Sessions under s. 193, Penal Code. **11 W.R. Cr. 24.**

(102)—*False statement made in a proceeding not judicial—Prosecution for giving false evidence sustainable.*—A person may be convicted of the offence of giving false evidence even if the case in which the false evidence was given was not a judicial one, such as a case pending before the Collector acting in his fiscal capacity under Regulation XIX of 1814. But to support a charge, it is essential to show that the false statement was one made under the sanction of the law whether upon oath, or on a declaration which the law allows to be substituted for an oath in matters not judicial. **14 W.R. Cr. 24.**

(103)—*Making false return of service of summons—Offence punishable under s. 193, Penal Code.*—Intention is an essential ingredient in the offence contemplated by s. 218, Penal Code. The offence of making a false return of service of summons being an offence punishable under s. 193 and consequently cognizable by the Court of Session alone the conviction under s. 181 is wrong. **8 W.R. Cr. 27.**

(104)—*False statement made before Registrar—Criminal prosecution under Registration Act (XX of 1866).*—A Sub-Registrar is competent for any purpose contemplated by the Act to examine any person, and any statement made by such person before any officer in any proceedings or enquiries under the Act, if intentionally false, renders such person liable to a criminal prosecution. **6 W.R. Cr. 81.**

(105)—*Making false statement in document not requiring verification, not an offence under s. 193—Prosecution to point out exact words and exact offences—Document tendered in evidence in a Civil Court to be proved in a Criminal Court before admission.*—A Judge should not merely

False Evidence—continued.

give a general sanction to a prosecution for giving false evidence and for false verification without pointing out the exact words upon which the prosecution is based. He should point out the exact offences which he thinks the Magistrate should take notice of and investigate. The verification of the application filed in the Civil Court, in which it was stated that the applicant did not sign an alleged deed of compromise, does not subject him to punishment for giving false evidence. Such an application falls, not within s. 120 of Act VIII of 1859, but under s. 209 of the Act which does not require that such applications shall be verified. **9 W.R. Cr. 58.**

(106) –*Putting forward a person knowing him to be some one else—Abetment of false evidence.*—In this case, one C falsely represented himself to be U and the writer of a document signed by U. Another person T, knowing that C was not U and had not written that document, adduced C as U and as the writer of that document. *Held* that the offence of T was that of abetting the offence of C and ought to have been convicted on a charge of abetting the giving of the false evidence. **8 W.R. Cr. 5.**

(107)*—Framing incorrect record—Public servant making false entry—Penal Code, s. 218.*—Where a Police Superintendent called for a report from a constable, on the information that a theft had been committed and not reported owing to the constable's negligence, and the constable produced a false report to the effect that no theft had been committed and no information given to him, *held* he was not guilty under s. 218 of the Penal Code. **3 Agra Cr. 1.**

(108)—*Verification of statement in suit for rent—Act X of 1859, s. 37.*—The plaintiff brought a suit for rent claimed to be due for three years; he failed to prove his claim, and the suit was dismissed for want of evidence. He afterwards sued to recover rent for one of the same years, and recovered the amount. The Judge, on appeal, reversed the decree, and made an order remitting the case to the Deputy Collector to enquire, under Act X of 1859, s. 37, whether the plaintiff had committed perjury in the first suit, the plaint in which was verified by his agent. S. 37 of the Act requires that the statement of claim shall be verified by the plaintiff or his agent, and enacts that, if the statement shall contain any averment, which the person making the verification shall know or believe to be false, such person shall be subject to punishment, according to the law for the time being in force for the punishment of giving or fabricating false evidence. *Held* that there was no foundation for the order, the averment having been made by the agent, and not by the plaintiff; and besides, there was no evidence that it was untrue, there having been no finding in the first suit that the rent was not due. **Marsh 72=W.R., F.B., 24=1 Ind. Jur. O.S. 79=1 Hay, 235.**

False Evidence—continued.

(109)—*Fabrication of false evidence—Penal Code, ss. 193 and 120—Illegal concealment to fabricate evidence.*—The term "fabrication" in s. 193 of the Penal Code refers to the fabrication of false documentary evidence to be used in a suit, so that, to convict under this section, it is essential to aver and prove that the fabricated documents were intended for that purpose. The illegal concealment, by act or omission, contemplated by s. 120 of the Code, has reference to the existence of a design on the part of third persons to fabricate evidence. **1 Ind. Jur. O.S. 105.**

(110)—*Subornation of perjury--Penal Code, s. 196.*—The provision of the Penal Code (s. 196) against using false evidence is not ordinarily intended to apply to subornation of perjury. To establish an offence under s. 196, it must be shown that the accused made some use of the false evidence after it was in existence. **1 Ind. Jur. O.S. 122.**

(111)—*Statement unintentionally causing conviction for murder—Penal Code, ss. 193, 194—Power of Sessions Judge.*—A Sessions Judge has no power to commit a man for having given false evidence before the Magistrate, but he can commit him for having given false evidence in his own Court. In the trial of a prisoner for murder, a witness stated on oath before the Sessions Court that another had committed the murder, whereas, before the Magistrate, he had stated, as was the fact, that the prisoner had committed the murder. *Held* that such witness was guilty under s. 193, I.P.C., and not under s. 194 of the Penal Code, as he did not know that he would cause a conviction for murder. **3 B.L.R. A. Cr. 35.**

(112)—*Statement in application for new trial—Penal Code, ss. 191, 192—Verification of a document as a plaint.*—A. made an application for a new trial under s. 21 of Act XI of 1865. He filed a memorandum of his grounds verified as a plaint, and therein knowingly made a false statement. *Held* (Glover, J., *dissenting*) that he had not thereby committed an offence under s. 191 or s. 192 of the Penal Code. **2 B.L.R. A. Cr. 1=10 W.R. Cr. 31.**

(113)—*Fabricating false evidence—Intention essential ingredient in offence.*—Intention is an essential ingredient in the offence contemplated by s. 218, Penal Code. **8 W.R. Cr. 27.**

(114)—*Fabricating false evidence—False entry in chowkidaree attendance—Book--Intention too remote.*—A *Chowkidar*, charged with the preparation of a *chowkidaree* attendance book, made a false entry therein with intent to injure the Sub-Inspector. The *Chowkidar* was charged of an offence under s. 218. *Held* that the intention of the *Chowkidar* in making the incorrect entry being too remote, he cannot be charged under s. 218, Penal Code. **19 W.R. Cr. 40.**

(115)—*Charge to show particular matter in respect of which accused is put upon his trial—Mere fact of contradiction insufficient for a conviction under s. 193—Circumstances and*

False Evidence—continued.

intention of contradictory statement to be considered.—Where a person was put on his trial for giving false evidence, the charge should show on the face of it the particular matter in respect of which the charge is made, and no more of the deposition should be referred to than was necessary in order to show the particular contradictions or false statements in respect to which the offence of giving false evidence was charged. The mere fact that a person has made a statement which contradicts a previous statement is not itself necessarily sufficient to bring him within s. 193, Penal Code. The circumstances under, and the intention with, which the particular statement relied on by the prosecution is made, must, in each case, be considered before it can be held that the offence has been committed. **9 W.R. Cr. 25 ; 9 W.R. Cr. 52.**

(116)—*One statement before the Civil Court and a contradictory statement before Magistrate—Commitment on an alternative charge strictly legal—Sanction of Civil Court necessary under s. 169, Crim. Pro. Code, 1861.*—The accused in this case made one statement before the Magistrate and a directly different statement before the Civil Court. The Magistrate committed him on an alternative charge having, so far as regards the statement made before the Civil Court, first obtained the sanction of that Court to the institution of the charge. *Held* that, under s. 169, Crim. Pro. Code, the procedure of the Magistrate was strictly legal. **8 W.R. Cr. 79.**

(117)—*Scope of commitment by Sessions Court—S. 172, Crim. Pro. Code, 1861—Contradictory statements—Proof.*—A Court of Session can, under s. 172, Crim. Pro. Code, 1861, commit only for offences committed before itself. If a person is accused of making two contradictory statements, direct evidence is necessary to prove that both the statements were made, and an enquiry must be held as to which statement is untrue, and whether the accused wilfully made the statement alleged to be false, knowing it to be such. Norman, J, notwithstanding the Full Bench decision in 6 W.R. Cr. 65=B.L.R. Sup. Vol., 521, doubted the correctness of a conviction for perjury upon alternative statements. **3 B.L.R.A. Cr. 36=12 W.R. Cr. 31.**

(118)—*Legality of conviction.*—The prisoner, who, as a witness in a former case, had made one statement before the Magistrate and a contrary one before the Sessions Judge, was tried and convicted of having either given false evidence before the Judge or given false evidence before the Magistrate. *Held* (Norman and Campbell, JJ., *doubting*), the conviction was right. *Held*, also, (Campbell, J., *dissenting*) the evidence taken before the Judge was admissible on the charge of giving false evidence before the Magistrate. **B.L.R. Sup. Vol., 521 =6 W.R. Cr. 65.**

(119)—*Plea of guilty on one charge, Effect of.*—Where a prisoner is charged separately for having given false evidence with regard to two

False Evidence—continued.

statements directly opposed to each other, a plea of guilty on one of the charges does not involve an acquittal on the other. A Sessions Court is bound to take evidence and try a charge before it can acquit a prisoner of that charge. **8 B.L.R. Ap. 25.**

(120)—*Statements inconsistent with previous one—Penal Code, s. 193.*—The statement made by a witness before the Magistrate was opposed to the statement made by him before the Sessions Court. On a charge of perjury being made, *held* that a statement made by the accused before one Court was no evidence of the falsity of a contrary statement before another Court to support a conviction of giving false evidence. *Held*, also, that neither the Judge nor Jury had any right to assume that an explanation could not have been given consistent with both the statements. **4 B.L.R. A. Cr. 4=12 W.R. Cr. 66.**

(121)—*Statement inconsistent with previous one—Crim. Pro. Code (Act XXV of 1861), s. 172.*—Where a witness makes a statement before the Sessions Court which contradicts that made by him before the committing officer, and no evidence is given to show which statement is true, it cannot, under s. 172, Act XXV of 1861, be said that an offence has been committed under the cognisance of the Sessions Court. A Judge's duty in dealing with the contradictory statements of a witness discussed. **4 B.L.R. A. Cr. 9=12 W.R Cr. 69.**

(122)—*Crim. Pro. Code (Act X of 1872), s. 455, Sch. III—Penal Code (Act XLV of 1860), s. 193.*—Where a person was convicted of giving false evidence upon an alternative charge in the form given in Sch. III of the Crim. Pro. Code, *held* by the majority of the Court (Jackson and Phear. JJ., *dissenting*) that the conviction was good, notwithstanding that the jury had not distinctly found which of the two statements was false. *Held* (*per* Jackson, J.,) that such a charge was bad, and further that an alternative finding upon such charge was invalid. *Held per* Phear, J., that, although a person may be lawfully tried upon such a charge, still the Court or jury must, for a conviction, find specially which branch of the alternative was true. **13 B.L.R. F.B. 324=21 W.R. 72.** (*Contra*) 13 B.L.R. 325 note=11 W.R. Cr. 37, 12 W.R. Cr. 11.

(123)—*To support alternative charge proof to be given of the truth of each branch of charge—When alternative charge justified—Deposition given in Hindustani taken down in English—Proper deposition—Endorsement by Magistrate, evidence of its truth and correctness of translation.*—To support a finding upon an alternative charge of perjury, there must be legal evidence of the truth of each branch of the charge. The only justification for the alternative charge is that, on the evidence, it is uncertain which branch of the charge is true. Under the Crim. Pro. Code, the Magistrate has authority to take down in English what the witness says in Hindustani, and the deposition in this form is a proper deposition within the

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provisions of the Crim. Pro. Code, even though the person who takes down in English what the prisoner says in Hindustani is not examined as a witness and the prisoner has no opportunity afforded to him for cross-examining him under s. 80, Evidence Act. The endorsement or memorandum made at the foot of the deposition and signed by the Magistrate can be taken as evidence of the facts stated in it and as affording some evidence that the translation is correct. **22 W.R. Cr. 2.**

(123-*a*)—*Penal Code, s. 193—False evidence—Contradictory statements—Alternative charges.*—A person making two contradictory statements may be convicted of giving false evidence, even in the absence of an alternative charge, if there is evidence to show which statement is false. **5 B.H.C. Cr. 49.**

(124)—*Witness retracting statements before the Sessions Court*—Locus penitentiæ *for witness*—(Per *Seton-Karr and Steer, JJ*).—*Held*, that there ought to be a *locus penitentiæ* for witnesses who have deposed falsely for retracting their false statements. *Jackson, J.*, (*dissenting*). It is eminently unsafe that a witness, deposing on facts of vital importance, should be in any degree encouraged to depose falsely by the contemplation of his *locus penitentiæ* at the trial. **W.R. 1864 Cr. 10.**

(125)—*Proof of charge—Uncorroborated evidence of single witness insufficient.*—In a case of giving false evidence, the strictest and most accurate proof is necessary, and the testimony of a single witness unsupported by corroborative evidence is insufficient to convict a person charged with giving false evidence. **5 W.R. Cr. 77.** (5 W.R. Cr. 23, *F.*)

(126)—*Perjury in its nature essentially personal—Specific charge to be made out against the accused—When grouped, the Sessions Judge to find the particular charge against each.—Conviction on the bare testimony of one witness illegal.*—Perjury is in its nature essentially personal, dependent on the actual words uttered, and the motives which dictated the utterance. The accused person is entitled to have the specific charge made against him tried quite independently of a like charge against another person, and disembarrassed of the prejudice which cannot fail to be caused in his own case by the mere fact of its being united with another or others for the purpose of trial. Where charges made against different persons are grouped together for the purpose of trial, the Sessions Judge must find judicially whether all, or, if not all, which of the particular charges of perjury is made out against each prisoner. **9 W.R. Cr. 66.**

(127)—*Conviction on the bare testimony of single witness legal when falsity of the statement is not in question.*—The evidence of one witness in cases of perjury is sufficient to establish the *factum* of the statement which is charged as being false. The measure of punishment is a matter entirely in the discretion of the Court. **14 W.R. Cr. 53.** (5 W.R. Cr. 23, *Expl.*)

False Evidence—continued.

(128)—*Testimony of single witness—Comparison of signatures one kind of corroboration.*—Comparison of signatures is one kind of corroboration sufficient to justify a conviction on the bare testimony of a single witness in a case of false evidence. **5 W.R. Cr. 98.**

(129)—*Proof of charge—Uncorroborated evidence of single witness—Penal Code (Act XLV of 1860), s. 193.*—A person cannot be convicted in the mofussil of giving false evidence upon the uncorroborated evidence of a single witness. **B.L.R. Sup. Vol. 417=1 Ind. Jur. N.S. 83 =5 W.R. Cr. 23**; 5 W.R. Cr. 77.

(130)—The offence of intentionally giving false evidence (s. 193, Penal Code), not being triable exclusively by the Sessions Court, is not one in which the Sessions Judge can convict. **21 W.R. Cr. 37.**

(131)—*Penal Code, s. 193—Contradictory statements.*—Where the contradiction alleged to exist in two statements made by an interested and ignorant witness was only in details and where the latter statement was found to be a reversion to the truth from an original false statement, *held*, that, under such circumstances, a prosecution for perjury could not be ordered. **21 P.R. 1901 Cr.** (3 P.R. 1899 Cr., *R.*)

(132)—*Contradictory statements—Finding as to which is false, necessity for.*—Where a person is charged with an offence under s. 193, I.P.C., in having made two contradictory statements, it is necessary, in order to properly adjudicate the punishment, to enter into the circumstances of the case, the object with which the perjury is committed, and if possible, to determine which of the two statements was false. In cases where it is doubtful which of two contradictory statements is false, the accused must be given the benefit of the doubt and the punishment should be awarded to that statement which involves the least guilt. **3 P.R. 1899 Cr.**

(133)—*Sanction to prosecute—False verification of written statement.*—A person, who verifies, in a form which substantially conforms to the requirements of s. 52, Civ. Pro. Code, 1882, a written statement, which contains a statement which he does not know or believe to be true comes within the definition of s. 191, I.P.C., either as a person who is legally bound by an express provision of the law to state the truth, or as a person bound by law to make a declaration that the facts stated are true to his knowledge. But the Chief Court cancelled the sanction for the prosecution of the accused, doubting whether he could be rightly convicted upon an informal attestation which was capable of being construed as a mere certificate that the writing correctly represented his answer to the suit. **27 P.R. 1894 Cr.** (6 A. 626, *R.*).

(134)—*Making true entries corresponding to a forged document.*—A *patwari* making entries corresponding to a document, which is known to him to be forged, cannot be convicted of an

False Evidence—continued.

offence under s. 193, I.P.C., as the entries are true entries, although the original document may be forged, and therefore false. **26 P. R. 1890 Cr.**

(135)—*Document containing false documents.*—Where the lessees made and signed a *kabuliyat* with the intention of causing it to be believed that an agreement to let, therein recited, had been made by the agent of the land-owner and with her assent, *held*, that the act of the accused did not amount to fabricating false evidence within the meaning of s. 193, I.P.C., nor was the document a false document. **16 P.R. 1894 Cr.**

(136)—*Record prepared under Civ. Pro. Code, admissibility of when not read over to witness.*—When the record prepared under s. 182, Civ. Pro. Code, is proved or admitted to be genuine, it is not liable to be excluded as evidence, merely because it was not duly read over to the witness in the civil suit. **25 P. R. 1890 Cr.**

(137)—*Alternative charge—Finding as to which of two statements is false, when becomes necessary.*—Although an alternative charge, in a case of false evidence based upon contradictory statements, is justifiable only when the prosecution is unable to prove which of the two is false, yet, such proof becomes important in awarding punishment, *e.g.*, false evidence given in a Court deserves greater punishment than a false statement made before the police. **27 P.R. 1890 Cr.**

(138)—*Contradictory statements—Charge, form of.*—A charge in the alternative form, as prescribed by Form No. XXVIII (4) of Sch. V to the Crim. Pro. Code, 1882, is a lawful charge under s. 193, I.P.C., and a person can be convicted under the section, without determining which of the two contradictory statements is false. **32 P.R. 1888 Cr.**

(139)—*Sanction to prosecute—Power of Court to which a case has been remanded—S. 643, Civ. Pro. Code, 1882.*—The powers conferred by s. 643, Civ. Pro. Code, 1882, cannot be exercised by the Court to which a case has been remanded. **30 P.R. 1888.**

(140)—*Defective record of proceedings—Admissibility—Proof* aliunde—*Evidence Act, s. 91.*—Where, in a case of giving false evidence, the record of the Court in which the false statement was made was defective in that there was no signature of the Magistrate at the foot of the deposition of one of the witnesses charged with giving false evidence, and there was nothing to show that the deposition had been read over to the witnesses, as required by s. 360, Crim. Pro. Code 1882, *held*, that the record, as such, was primary evidence and its value was not destroyed by the above defects, and that proof *aliunde* could be given to show that the evidence was duly taken and was read over to the witnesses, as such evidence was not secondary evidence within the meaning of s. 91. **54 P.R. 1887 Cr.** (21 P.R. 1881 Cr., *R.*).

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(141)—*Penal Code, s. 194—Gist of the offences.*—The intention or knowledge required by s. 194, I.P.C., cannot be held to exist when the proceedings in which the evidence is given is one in which such a conviction is not legally possible. *Quære*:—Whether a person giving false evidence before a Magistrate, holding a preliminary enquiry in a case of murder, could be punished under s. 194, I.P.C., although he may be punishable under s. 193, I.P.C. **32 P. R. 1886 Cr.**

(142)—*Contradictory statement—Alternative finding.*—A person, charged with giving false evidence in having made contradictory statements before the Magistrate or the Sessions Judge, can be convicted in the alternative without distinctly finding which of the statements made hy him is false. **20 P.R. 1883 Cr.**

(143)—*Fabrication of false evidence by accused in a criminal case.*—The fabrication of false evidence by an accused to be used in his defence in a criminal case is an offence punishable under s. 193, Penal Code. **10 P.R. 1880 Cr.**

(144)—*Proceedings held without jurisdiction—Penal Code, s. 193.*—A Court, having no jurisdiction to entertain a particular suit, has no jurisdiction to administer an oath or affirmation to the defendant. A defendant under such circumstances is not, therefore, punishable for giving false evidence. **32 P.R. 1879 Cr.**

(145)—*Civil Court sending witness without enquiry to a Magistrate for being prosecuted for giving false evidence—Conviction by Magistrate sitting as Court of Sessions—Crim. Pro. Code (1861), s. 173—Act VIII of 1869, s. 445-A.*—Where a Civil Court sent a witness, whom he considered to have deposed falsely, to a Magistrate to be dealt with according to law, and the Magistrate sitting as a Court of Sessions convicted the accused, *held* that the conviction should be quashed, as the provisions of s. 173, Crim. Pro. Code 1861, and that the provisions of s. 445-A, Act VIII of 1869, had not been complied with. **11 P.R. 1870 Cr.**

(146)—*Enquiry by Magistrate not authorised under s. 273, Crim. Pro. Code, 1861.*—A false statement made by a witness in an enquiry by a subordinate Magistrate, who had not been authorised, under s. 273, Crim. Pro. Code, 1861, to make the enquiry, was held not to be punishable under s. 193, I.P.C. **24 P.R. 1870 Cr.**

(147)—*Acquittal by letting false evidence—Second trial under s. 196, I.P.C.*—A person, who has obtained an acquittal by letting in false evidence, is liable again to be prosecuted under s. 196, I.P.C. **35 P.R. 1870 Cr.**

(148)—*Charge—Penal Code, s. 193.*—A charge under s. 193 should specify the proceedings in which the alleged false evidence was given, and should contain the exact words alleged to be false as definitely and specifically as possible. **36 P.R. 1869 Cr.**

False Evidence—continued.

(149)—*Penal Code, ss. 193, 116, 511—Attempt to abet commission of offence of intentionally giving false evidence.*—Sanction to prosecute under s. 193, I.P.C., is not required when the offence is not committed in relation to a particular proceeding in any particular Court. In a matter relating to a private personal quarrel, it is hardly necessary to take into consideration the duties of the parties as public officers (under s. 23 of the Police Act). If the actual abetment of the offence is not committed, the case false under s. 116, I.P.C. If the abetment itself is an offence, an attempt to commit abetment is also an offence. **U.B.R. (1892—1896), Vol. I, 191.**

(150)—*Penal Code, s. 193—Intentional giving of false evidence.*—In the case of a conviction under the above section, it is necessary that there should be some direct evidence to corroborate the fact that the accused intentionally gave false evidence in the case referred to. The sanction given for a prosecution under the above section should be expressed in a plain and precise form. **U.B.R. (1892—1896), Vol. I, 187.** (11 B.H.C. 237, *R.*)

(151)—False evidence given to the Police. **U.B.R. (1892—1896), Vol. I, 195.**

(152)—*Crim. Pro. Code (1872), ss. 435, 436, 471, 472, 473—Contempt of Court—False evidence—Jurisdiction.*—Every attempt to pervert the proceedings of a Court to an improper end is a contempt of its authority, and giving false evidence is such an attempt. The offence, therefore, if committed before a Magistrate, cannot be tried by him. **10 B.H.C. 73.** [*F.*, 1 B. 311 and 339].

(153)—*False evidence in judicial proceeding—Latter annulled—Effect.*—The accused was convicted of having given false evidence in the trial of Vinayak Divakar (See 8 B.H.C.R. C.C. 32). The conviction of Vinayak Divakar was annulled by the High Court. *Held* that this conviction should also be annulled. **8 B.H.C. Cr. 37.**

(154)—*Penal Code, s. 193—Conviction under s. 181—Legality.*—When the facts proved constitute giving false evidence in a judicial proceeding a conviction by a Full Power Magistrate under s. 181 is illegal. **8 B.H.C. Cr. 22, N.** [*F.*, 8 B.H.C. Cr. 21].

(155)—*Penal Code, ss. 193, 416—Witness deposing in another's name.*—Where a person deposes in a stage of judicial proceeding falsely representing that he is another person, he is guilty of an offence under s. 193, I.P.C., but not guilty of the offence of false personation under s. 416, I.P.C. **1 B.H.C. 89.**

(156)—*Penal Code, s. 193—False statement made to Forest officer.*—A false statement made to a Forest officer, who was not empowered to hold an investigation or take any evidence in any matter at all, and whose functions are purely ministerial, would not be punishable under s. 193. **12 B.H.C. 1.**

False Evidence—continued.

(157)—*False statement — Crim. Pro. Code (1882), s. 161.*—A false statement in answer to a general opening question recorded under s. 161, Crim. Pro. Code, makes the person making the statement, liable to be punished under s. 191, I.P.C. **7 P.R. 1896 Cr.**

See ABETMENT, 20 W.R. Cr. 41.

See ACT IX OF 1869, s. 19, 5 M.H.C. 326.

See ACT X OF 1873, 16 M. 421=1 Weir 175, 19 M. 375=2 Weir 680=6 M.L.J. 195, 27 C. 455=4 C.W.N. 249.

—False statement before Registrar—Irregularities in proceedings—*See* ACT III OF 1877, ss. 72 and 73, 10 C. 604.

See ACT III OF 1877, s. 82, 18 W.R. Cr. 15=5 B.L.R. Ap. 89.

See ACT III OF 1877, s. 82, 20 C. 719.

See ACT XVIII OF 1879, 6 M. 252=1 Weir 116.

See BEN. ACT VIII OF 1885, s. 95, 20 C. 724.

—Fabricating false evidence—*See* ATTEMPT, 4 N.W.P. 133.

See CONFESSION, 11 B. 702, F.B.

See CONVICTION, 4 C.L.R. 338.

See CRIM. PRO. CODE (1898), ss. 4, 195, 487, 20 M. 383=2 Weir 613.

See CRIM. PRO. CODE (1898), ss. 144, 435 and 476, 19 M. 18=2 Weir 591.

See CRIM. PRO. CODE (1898), ss. 195, 476, 3 Bom. L.R. 185.

See CRIM. PRO. CODE (1898), ss. 195, 476, 487, 14 A. 354.

See CRIM. PRO. CODE (1898), ss. 214, 477, 487, 1 B. 311.

See CRIM. PRO. CODE (1898), s. 282, 19 M. 375=2 Weir 680=6 M.L.J. 195.

See CRIM. PRO. CODE (1898), s. 233, 2 Weir 299, 2 Weir 300.

See CRIM. PRO. CODE (1898), s. 236, 60 P.L.R. 1903.

See CRIM. PRO. CODE (1898), ss. 255 and 342, 3 L.B R. 208=4 Cr. L.J. 471.

See CRIM. PRO. CODE (1898), ss. 337 and 339, 8 Bom. L.R. 740=4 Cr. L.J. 346=30 B. 611.

See CRIM. PRO. CODE (1898), ss. 476, 477, 5 C.W.N. 630.

See CRIM. PRO. CODE (1898), ss. 481, 482, 195, 476, 1 A. 625 F.B.

See DEPOSITION, L.B.R. (1893—1900), 21.

See FALSE CHARGE, L.B.R. (1893—1900), 443.

See FORGERY, 4 L.B.R. 45=6 Cr. L.J. 283, 8 A. 653.

False Evidence—concluded.

See SANCTION TO PROSECUTE, 6 A. 105, 22 B. 936, 26 C. 786, 7 C.L.J. 169=7 Cr. L. J. 196, Rat. Un. Cr. C. 118, 2 L.B.R. 302, 9 C.L.J. 690=13 C.W.N. 942=10 Cr. L.J. 150 =36 C. 808=2 Ind. Cas. 697.

See WITNESS, 4 M. 227=2 Weir 584.

False Information.

See PENAL CODE, ss. 182, 211.

(1)—*Penal Code, s. 182—False information to the police.*—S. 182 of the Code must be read as a whole, and, taken as a whole, it applies to those cases in which the police are induced, upon the informations supplied to them, to do or omit to do something which might affect some third person, and which they would not have done if they had known the true state of things. Where a person falsely informs the police that he was robbed, without mentioning any specific person on whom he has suspicion, such conduct, although extremely wrong, does not come within the meaning of the section, or does not amount to anything more than a hoax for which no punishment is provided in the Code. **14 C. 314.** [*Commented upon*, Rat. Un. Cr. C. 564; *Diss.*, 13 B. 506, 13 A. 351=11 A.W.N. 109, 1 Weir 118].

(2)—*Penal Code, s. 197—False notice of transfer of survey numbers.*—A person signed a notice of transfer of survey numbers, in the character of his father who was dead; and the declaration to this notice was signed by the accused, who confirmed the assumed character. *Held*, that the accused could not be convicted of giving false information to a public servant. **Rat. Un. Cr. C. 182.**

(3)—*Penal Code, s. 182—Gist of the offence.*—For a conviction under the section, it must be proved positively that the accused gave the information by the production of the written complaint as far as possible and that he knew or believed it to be false. The accused is entitled to an acquittal on showing that he had reasonable grounds for believing the information to be true, and he is not bound to show that the information was in fact true. **35 P.R. 1890 Cr.**

(4)—To constitute an offence under s. 182, I.P.C., there must be positive knowledge or belief that the information given was false. It is not sufficient to prove that the accused had reason to believe it to be false, or that he did not believe it to be true. **32 P.R. 1884 Cr.**

(5)—*False statement in petition of appeal—Penal Code, s. 182.*—An appellant making a false statement in his petition of appeal was held not to be liable to be punished under s. 182, I.P.C., although the object was to induce the Court to send for the record of the case, and although the Court did in fact send for the record of the case, as it could not be said that the Court was induced to do what it ought not to have done. **41 P.R. 1881 Cr.** (34 P.R. 1879 Cr., *R.*).

(6)—*Penal Code, s. 201—Denial of knowledge of offence, in which accused had taken part.*—

False Information—concluded.

Where the accused denied all knowledge of an offence in which he really took part, he could not be convicted under s. 201, I.P.C., for giving false information respecting an offence. **4 P.R. 1877 Cr.**

(7)—*Police falsely informed of complainant being in possession of stolen property--Penal Code, ss. 182, 211.*—Where the accused, falsely and with intent to injure, informed the police that the complainant had stolen property in the house, and the police, thereupon, searched the house, and found the information to be false, *held*, that the accused was guilty of an offence under s. 211, I.P.C., and not under s. 182, I.P.C. **16 P R. 1876 Cr., F.B.**

(8)—*Penal Code, s. 177—Memorandum of appeal.*—To make a false representation in a memorandum of appeal is not an offence under s. 177, I.P.C., as such a memorandum is not required by law to be in writing. **17 P.R. 1879 Cr.**

(9)—*Penal Code, s. 182.*—Where the accused presented a plaint and requested the Judge to hear the case in his own Court, and not to transfer it to the Tahsildar for disposal, alleging that the defendant would be favoured if the case was so transferred, *held*, that the act of the accused did not amount to an offence punishable under s. 182, I.P.C. **34 P.R. 1879 Cr.**

See ACT I OF 1894, ss. 9 and 10, 27 C. 985 =5 C.W.N. 131.

See PENAL CODE, s. 177, 13 C.W.N. 191= 5 M.L.T. 93.

See PENAL CODE, ss. 177, 182, Rat. Un. Cr. C. 76.

See PROSECUTION, 27 C. 985=5 C.W.N. 131.

False Measure.

See PENAL CODE, ss. 264 to 267.

See WEIGHTS AND MEASURES.

False Personation.

See CHEATING.

See PENAL CODE, ss. 205, 416 and 419.

(1)—*Penal Code, s. 205—Offence under the section, what constitutes.*—An offence under s. 205 is committed even though the individual personated consents to the personation. Any fraudulent gift or benefit to the offender is not a necessary element of the offence. **1 Weir 182=1 M.H.C. 450.** [*R.*, 5 Bom. L.R. 138].

(2)—*Penal Code, s. 205—Offence under the section, what constitutes.*—To constitute the offence of false personation under s. 205, it is not enough to show the assumption of a fictitious name. It must also appear that the assumed name was used as a means of falsely representing some other individual. It is not an uncommon thing for men to pass under names not their own for the purpose of disguise, in some instances from blameless and in other instances indifferent or bad motives, "incog."

False Personation—continued.

as the disguise is often termed in the former, and "with" or under an "alias" in the latter instances. But whatever the motive, the use of an assumed name without more is not a criminal offence. It only becomes a crime when connected by proof with some other act or piece of conduct; and the gist of the offence of false personation under s. 205, is the feigning to be another known person. There are sections of the Penal Code, *viz.*, ss 140, 170, 171 and 415, under which the false assumption of appearance or character may be an offence, though no individual is meant to be represented, or only an imaginary person. **1 Weir 182=4 M.H.C. 18.**

(3)—*Cheating by personation and inducing delivery of property—Penal Code, s. 420.*—A person, who going to an opium shop with another man's ticket, and explicitly or by implication representing himself to be that person, induces the shop-keeper to deliver to him a certain quantity of opium, commits the offence of cheating by personation, and where opium is actually delivered in consequence of the cheating, he should be convicted under s. 420, Penal Code. **1 L.B.R. 356.**

(4)—*Personation before Registrar—Registration Act (XX of 1866), ss. 93 and 94—Penal Code, s. 419.*—A vendor proceeded in company with three persons to Dacca to register her deed of sale. Falling ill on the way, the three companions went to the Registrar's Office; one of them there personated the vendor, and got registry of the deed. She was convicted of cheating by false personation, and the other two of abetting that offence. *Held*, on revision, that, as there was no intention apparent on the part of the accused to injure or defraud any one, the convictions should have been under ss. 93 and 94 of Act XX of 1866, and not under s. 419 of the Penal Code. **2 B. L.R. A. Cr. 25.** 11 W.R. Cr. 24.

(5)—*Penal Code, s. 205—Personating imaginary person.*—Under s. 205 of the Penal Code, it is criminal to personate an imaginary person. **1 Ind. Jur. O.S. 123.**

(6)—*Assumption of name and character of the person personated, necessary—Intention of falsely personating to be sufficiently established in cases of.*—It is necessary to a conviction for false personation under s. 205, Penal Code, that the accused should have assumed the name and character of the person whom he personates. Where the accused merely presented a true petition signed by, and proceeding from, another person, assigning a very good and true reason for doing so, and the moment he was called on by the only legal authority, the Court, whose duty it was to entertain the petition, to say if he was or was not the person, he at once admitted he was not, and explained why he had presented a petition bearing that person's name and emanating from him. *Held* that there was no intention to falsely personate such person. **8 W.R. Cr. 80.**

See ACT XX OF 1866, 11 W.R. Cr. 24=2 B.L.R. A. Cr. 25, 7 W.R. Cr. 99.

False Personation—concluded.

—Abetment of—*See* ACT III OF 1877, 7 W R. Cr. 99, 5 Bom. L.R. 138.

See EXTORTION, 10 A. 58.

See PENAL CODE, s. 170, 9 Bom.L.R. 222 =5 Cr. L.J. 211.

Sec REVISION, 9 Bom. L.R. 706=6 Cr. L. J. 70.

See SANCTION TO PROSECUTE, 4 M.L.J. 189.

False Pretence.

See CHEATING, 2 C.L.J. 524=3 Cr. L.J. 160.

False Receipt.

—*Penal Code, ss. 463 and 471—Forgery and using a forged document—Dishonest or fraudulent intention, necessity of proving—False receipt—Preparation or use, if an offence.*—Where the accused, a Tahsildar of an estate, prepared a false receipt acknowledging on the part of his employer the receipt of certain papers, and it was proved that some of those papers were in the office of the estate but as to the rest, the prosecution failed to prove that they were not also in the office of the estate. *Held*, that the accused could not be convicted of an offence under s. 471, I.P.C., as the prosecution had failed to prove any dishonest or fraudulent intention, on the part of the accused, in making use of the receipt. The preparation of a false receipt acknowledging on the part of a certain person the receipt of certain documents, after having made over those documents to that person, does not amount to an offence under s. 463, I.P.C., nor does the use of such a receipt constitute an offence under s. 471, I.P.C. **12 C.W.N. 1113=8 C.L.J. 317.**

False Record.

—Sanction to prosecute—Village Magistrate fabricating record of criminal case—*See* SANCTION TO PROSECUTE, 4 M.L.T. 473=32 M. 255=9 Cr. L.J. 89=3 Ind. Cas. 387.

False Statement.

See FALSE EVIDENCE.

See PENAL CODE, ss. 191—200.

See PERJURY.

(1)—*Contradictory statements in the same deposition.*—Where contradictory statements are made in the course of a single deposition at one and the same time, it will be improper to hold such contradiction to be an offence, simply by reason of the fact that there is a contradiction. **2 Weir 169.**

(2)—*Crim. Pro. Code, s. 239—False statement, charge of, against several persons.*—When several persons are charged with making false statements, they should be charged and tried separately. **2 Weir 304.**

See ACT III OF 1877, ss. 34 (*b*) and 82 (*a*), 1 Weir 884.

False Statement—concluded.

—False statement in an enquiry before Deputy Collector. *See* ACT I OF 1879, s. 51, 5 A. 17.

—In balance-sheet before winding up of a Company—*See* ACT VI OF 1882, s. 215, 16 A. 88.

—False statement as to consideration—*See* PENAL CODE, s. 423, 25 A. 31.

False Weight.

See PENAL CODE, ss. 264 to 267.

See WEIGHTS AND MEASURES.

Falsification.

See CRIMINAL MISAPPROPRIATION, 6 Bom. L.R. 94.

See PENAL CODE, s. 477-A, 6 Bom. L.R. 553.

Fatal Accidents Act.

See ACT XIII OF 1855.

Female Infanticide Prevention Act.

See ACT VIII OF 1870.

Ferries Act.

See BUR. ACT II OF 1873.

See BUR. ACT II OF 1898.

Ferries (Northern India) Act.

See ACT XVII OF 1878.

Ferries amending Bengal Regulation VI of 1819.

See BEN. ACT I OF 1866.

Ferry.

See FERRIES ACTS.

(1)—*North India Ferries Act XVII of 1878 and Act III of 1886, s. 13—Notification by Government under s. 4—Prohibited limits for private ferries—Construction.*—S. 13 of the Ferries Act XVII of 1878 lays down that a private ferry should not ply for hire within two miles of the limits of a public ferry. But a notification issued by the Local Government under s. 4 of the Act, in laying down the limits of public ferries, gave very wide limits to some and narrow limits to others. Side by side with these limits, the prohibited areas for private ferries in regard to the limits of each public ferry were also given and such areas were, in the case of public ferries with very wide limits, those limits only, while in the case of other ferries, it was the statutory distance of two miles. On a charge against a private ferryman for plying in contravention of the Act into a space within two miles of the limits of a public ferry with very wide limits as above, *held* the statutory prohibition of two miles did not under the Notification above referred to, apply to the case of public ferries with wide limits in whose case the Notification restricted the prohibited area. **A.W.N. 1905, 262.**

(2)—*Suit to re-open a ferry—Bengal Act I of 1866, s. 2.*—Where a suit was brought to re-open a ferry which had formerly belonged to the

Ferry—concluded.

Government and which had been included in a settlement which the plaintiff had obtained of a certain estate from the Government, but another public ferry had since been opened under the direction of a Magistrate within two miles of the place where the plaintiff now sought to re-open his own ferry. *Held* that the suit was not maintainable as being against the provisions of s. 2, Act I of 1866. **15 W.R. 132.**

(3)—*Management of—Bengal Regulation VI of 1819, s. 13, cl. 2.*—Clause 2, s. 13 of Regulation VI of 1819, only applies where there has been an accident. Where the Magistrate thinks that a ferry is improperly kept and is in a dangerous condition, he should proceed under s. 4. **7 W.R. Cr. 32.**

See ACT XVII OF 1878, ss. 13 and 26, A.W.N. 1905, 262=3 Cr. L.J. 50.

See CRIMINAL TRESPASS, 1 A. 527.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 3 C.W.N. 148, 26 C. 188=3 C.W.N. 49.

See PENAL CODE, s. 304-A, 16 A. 472.

Finding.

See ALTERNATIVE FINDING.

—*When High Court can alter lower Court's finding.*—The High Court is empowered to alter a finding of the Court below and to convict the accused for an offence which the facts established by the prosecution properly constitute. **13 C.P.L.R. Cr. 125.**

—*Crim. Pro. Code, s. 289—Finding of "not proven."*—There is no legal warrant for a finding of "not proven." In such cases, the Judge should enter a judgment of acquittal before discharging the prisoner. **2 Weir 381.**

See CRIM. PRO. CODE (1898), s. 289, S.C. 274, Oudh.

See JUDGMENT, 6 M.H.C. App. 47.

See SESSIONS COURT, JURISDICTION OF, Colm. Dig. Cr. 29 of 1876.

Fine.

See IMPRISONMENT.

See PENAL CODE, ss. 63 to 70.

See SENTENCE.

(1)—*Fine imposed on several—Order as to one reversed—Effect.*—Where the fine imposed on several accused persons jointly has been recovered from one of them and the order fining that person is reversed in appeal, the liability to pay the fine, of all and each of the others, revives. **Rat. Un. Cr. C. 90.**

(2)—*Penal Code, s. 63—Excessive fine on poor persons—Legality.*—The intention of the framers of the Penal Code was that fines inflicted should not be disproportionate to all possible means of the criminals. A Magistrate should not be influenced by the consideration that the criminals, though poor, are backed up by influential persons. **Rat. Un. Cr. C. 556=Cr. Rg. 34 of 1891.**

Fine—continued.

(3)—*Penal Code, s. 70—Realization of fine after death of person fined—Distress of joint moveable property and immoveable property—Crim. Pro. Code (1882), s. 386.*—Where a person fined, under the Penal Code, dies before the realization of the fine, the fine can be realized by attachment and sale of moveable property belonging solely to the deceased. It cannot be realized by attachment and sale of joint moveable property, nor can it be enforced by distress of immoveable property. The only remedy in such a case is by a suit. **20 C. 478.**

(4)—*Order for payment of a daily fine.*—An order for payment of a daily fine is illegal, inasmuch as it is an adjudication in respect of an offence which has not been committed when such order is passed. **27 C. 565.** [*F.*, A.W.N. 1902, 70=24 A. 309; *Expl.*, 7 C.W.N. 853].

(5)—All fines judicially ordered by Magisterial authorities should be shown in the statement of fines which must not be confined to convictions under the Penal Code, but should also include fines under all special or local laws. The only fines to be excluded are those inflicted under the sentence of a Sessions Judge and those under s. 270, Crim. Pro. Code, 1861, amendment Act VIII of 1869, which, being imposed in cases of complaints dismissed as frivolous and vexatious, would be out of place. **13 W.R. Cr. Cir. 2.**

(6)—*Register of fines.*—Sessions Judges and Magistrates need not examine the vernacular registers of fines in their offices. **18 W.R. Cr. Cir. 11.**

(7)—*Cattle Trespass Act, I of 1871, s. 22—Fine in addition to compensation.*—S. 22 does not provide for a fine in addition to compensation. **1 Weir 710=7 M.H.C. App. 24.**

(8)—*Not to be awarded as compensation—Crim. Pro. Code (1861), Ch. XIV—Record of proceedings in cases under Ch. XV, Crim. Pro. Code.*—Inflicting a fine and awarding the same as compensation in a case which falls under the provisions of Ch. XIV of the Code, is illegal. In a case falling under Ch. XV, the statement of the complainant, the evidence of the witnesses, and the reply of the accused, should be recorded. **3 W.R. Cr. 60.**

(9)—*Offence under a special Act—Act XXI of 1856—Power of Magistrate to impose a fine exceeding Rs. 1,000—Crim. Pro. Code (1861), s. 22.*—A Magistrate is competent to impose of fine exceeding Rs. 1,000 for an offence under a special Act, such as the Excise Act, XXI of 1856, even though he is not authorized to do so by s. 22, Crim. Pro. Code, 1861. **7 W.R. Cr. 29.**

(10)—*Omission to give notice to party against whom order is made—Order to repair fence.*—A party ought not to be fined for not repairing a fence without an information against him and a hearing. **23 W.R. Cr. 63.**

(11)—*Fine for continuing offence—Beng. Act VI of 1866.*—A was convicted before a Justice of the Peace for using a warehouse, etc., in

Fine—continued.

the town of Calcutta for the keeping and storing of jute other than jute screwed for shipment, without a license, and for the said offence was fined Rs. 300, and adjudged to pay a further fine of Rs. 25 for every day after the conviction on which the offence was continued. *Held* that the conviction was bad. **1 B.L.R. O. Cr. 41=18 W.R. Cr. 44 note.** 9 B.L.R. Ap. 35=18 W.R. Cr. 44.

(12)—*Power of Court to dispose of fine.*—The Court had no power to dispose of fines inflicted upon prisoners; such power existed in the Government alone. **1 Hyde 282.**

(13)—*Power of High Court to award fine to prosecutor on conviction for felony—Felony.*—The High Court had power to award, by way of satisfaction to a prosecutor, the whole or any portion of a fine imposed upon conviction of a felony before the Court, in the exercise of its original criminal jurisdiction. **2 Ind. Jur. N.S. 190.**

(14)—*Amount of—Crim. Pro. Code (1861), s. 63—Fines inflicted by Magistrates—Magistrate not bound to enforce attendance of witness when not served with summons.*—The description of fine which it was the object of s. 63, Crim. Pro. Code, 1861, to prohibit was a fine which it would be impossible or very difficult for the accused person to pay, or wholly disproportioned to the character of the offence. *Quære.*—Whether s. 63 has any application to fines inflicted by a Magistrate—A Magistrate is not bound under s. 191, Crim. Pro. Code, to enforce the attendance of the witness, by warrant except upon proof of the service of summons. **7 W.R. Cr. 37.**

(15)—*Order directing to pay a part of fine to witness—Proof of loss to be given.*—An order, directing the payment to a witness of a portion of the fine levied on the accused, in the absence of any proof that the witness has suffered any loss owing to the conduct of the accused, is illegal. **9 W.R. Cr. 58.**

(16)—*Order for part of fine to Ameen—Deputation to restore land-marks—Jurisdiction of Magistrate.*—The Joint Magistrate is not competent to direct, under s. 44, Crim. Pro. Code, 1861, that a portion of the fine inflicted under s. 434 of the Penal Code be paid to an ameen, for the purpose of paying the expense of his deputation to restore the land marks which had been destroyed by the opposite party. **6 W.R. Cr. 93.**

(17)—*Order for payment of Municipal taxes out of fine—Power of Deputy Magistrate to question legality of attachment by Civil Court.*—A Deputy Magistrate has no authority to order arrears of Municipal tax due by a person to be paid out of a fine levied on him. The legality or formality of the mode of attachment, allowed by a Civil Court, is not a matter for the Deputy Magistrate's consideration. **8 W.R. Cr. 17.**

(18)—*Levy of fine by distress and sale—Power restricted to Court that imposed it—"Court," meaning of.*—In every case in which an

Fine—concluded.

offender is sentenced to fine, the Court which sentences the offender is competent to issue a warrant for the levy of the amount by distress and sale. But this power is restricted to the Court which sentences the offender. The successor in office of a Judge or Magistrate is competent to levy a fine imposed by his predecessor, the word "Court" not being restricted to the particular individual who held the office. **9 W.R. Cr. 50.**

(19)—*Liability for fine after imprisonment in default—Distress and sale of moveable property whether ordered or not by the officer inflicting fine.—Held*, by the majority of the Court, (Seton-Karr, J., *dissenting*) that an offender who has undergone the full term of imprisonment to which he was sentenced in default of the payment of a fine, is still liable to have the amount levied by distress and sale of any moveable property belonging to him, which may be found within the jurisdiction of the Magistrate of the District, whether the Officer who inflicted the fine issued any special directions on the subject or not. **3 W.R. Cr. 62.**

(20)—*Prospective fine.*—The imposition of a prospective fine is illegal. **11 O.C. 122=7 Cr. L. J. 454.**

See ACT XXVI OF 1850, 7 B.H.C. Cr. 55.

See ACT XVIII OF 1854, s. 34, 6 M.H.C. App. 37.

See ACT XXIX OF 1867, 9 W.R. Cr. 62 and 64 Cr.

See ACT I OF 1871, ss. 21, 22, 2 C.L.R. 507.

See ACT IX OF 1890, 17 C.P.L.R. 32, 18 B. 440, 20 M. 385=1 Weir 871.

See BEN. ACT III OF 1899, ss. 449, 450, 452, 579, 11 C.W.N. 30=4 Cr. L.J. 408=34 C. 341.

See BOM. ACT VI OF 1873, s. 84, 18 B. 400.

—Prospective punishment for continuing offence—*See* BOM. ACT III OF 1888, ss. 471, 472, 22 B. 766.

See BUR. ACT III OF 1898, ss. 180 (1), 195. 4 L.B.R. 44=6 Cr. L.J. 281.

—Daily fine—Legality of—*See* U. P. ACT I OF 1900, 11 O.C. 121-B=8 Cr. L.J. 226.

—Recovery of—Attachment—*See* ATTACHMENT, L.B.R. (1872—1892), 332.

See COMPENSATION, 22 C. 139, 5 C.W.N. 214, 12 M. 352=2 Weir 719.

—Imprisonment in default of payment of fine—*See* CONVICTION, 4 B.H.C. Cr. 37.

—Legality of inflicting a sentence of, in case of persons not able to withstand full whipping—*See* CRIM. PRO. CODE (1898), s. 395, U.B.R. (1892—1896), Vol. I, 45.

See PLEADER, 7 B.H.C.A.C.J. 102.

Fines by Magistrates Act.

See ACT II OF 1839.

Finger Impressions.

See EVIDENCE.

See EVIDENCE ACT, s. 45.

See EXPERT.

—*Crim. Pro. Code, s. 511—Modes of proving previous conviction—Proof of identity of accused by finger-impressions—Their evidentiary value—Limitations of expert-evidence—Evidence Act, ss. 45, 74 and 78.*—The manner, in which a previous conviction may be proved, is not limited to the method laid down in s. 511, Crim. Pro. Code. Any relevant evidence, upon which a Court can properly base a finding, that the accused before it was, on some previous occasion, convicted for an offence, will do, as well as the methods indicated in s. 511. The papillary ridges on the bulls of the fingers and thumbs, by means of which the finger impressions are made, while proved to be almost beyond change from birth to death, are never wholly repeated in the case of the fingers of any other person, and they, therefore, furnish a surer test of identity, than any other comparable bodily feature. Where two prints, made on different occasions, resemble one another in the *minutæ* and contain no points of disagreement, an irresistible conclusion arises that they were made by the same finger. The evidence of identification is thus both positive and negative, and confirmation from other source is superfluous. Under s. 45, Evidence Act, as amended by Act V of 1899, expert evidence may be given on finger-impressions; while s. 73 has been applied to them with necessary modifications, so as to permit of comparison being made for arriving at a finding on the basis of their decipherment. An expert may give his opinion on the point on which he is called upon to give his evidence. But he cannot go on and assert his mere opinion or belief, as if it were a *fact* within his knowledge. In this respect, an expert witness is in a different position from a direct witness of fact. The value of *ordinary or non-expert* oral evidence mainly rests on the *credibility* of the witness—his inclination and capacity, for telling the truth: the value of *expert* evidence rests on the *skill* of the witness—the extent of his competency for forming a reliable opinion. A document called "a finger-impression slip" without authoritative signature or certificate of any kind, showing it to be an authorised record of police acts, cannot be regarded as a public document, within the meaning of s. 74, Evidence Act. Even if it is assumed that it is such a public document, it is nevertheless necessary under s. 78 (1) of the Evidence Act to prove it. The mere production of it does not prove it. And for evidential purposes, such a document is no better than a blank paper with the accused's finger-impressions upon it. **3 N.L.R. 1=5 Cr. L.J. 220.**

Fire Works.

See ACT XI OF 1878, s. 19 (*a*), 1 Weir 655 and 656.

First-class Magistrate.

See MAGISTRATES, JURISDICTION OF.

See CRIM. PRO. CODE (1898), ss. 10, 12, 32 M. 303.

See SANCTION TO PROSECUTE, Rat. Un. Cr. C. 511.

First Information Report.

First Offender.

See CRIM. PRO. CODE (1898), s. 562.

See RELEASE ON PROBATION OF GOOD CONDUCT.

See SECURITY FOR GOOD BEHAVIOUR, 4 L.B.R. 12=6 Cr. L.J. 123.

Fisheries Act.

See ACT IV OF 1897.

See BOM. ACT XXXV OF 1850.

See BUR. ACT VII OF 1875.

Fisheries (Private) Protection Act.

See BEN. ACT II OF 1889.

Fisheries Act (Public).

See BOM. ACT II OF 1868.

Fishery.

See CRIM. PRO. CODE (1898), s. 147, 23 C. 55.

—Attempting to fish in a tank over which the owner has no right of fishery—*See* CRIMINAL TRESPASS, 1 Weir 519.

—Fishing in a public tank—*See* CRIMINAL TRESPASS, 1 Weir 520.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 23 C. 557, 13 C. 179, 12 C. 539.

See MISCHIEF, 28 A. 204=A.W.N. 1905, 255=2 A.L.J. 826, 15 C. 388.

See RIOTING, 26 C. 574.

See THEFT, 15 C. 390 note, 15 C. 392, 15 C. 402, 5 M. 390=1 Weir 385, 10 B. 193.

—Removal of fish from an ordinary open irrigation tank—*See* THEFT, 24 M. 81=1 Weir 385.

Fœtus.

—Concealment of birth of, Seven months old—*See* PENAL CODE, s. 318, 1 Weir 334, 1 Weir 333.

Footpath.

—Enclosing a—*See* CRIMINAL TRESPASS, 1 Weir 514=6 M.H.C. App. 26.

Foreign Court, Jurisdiction of.

See CONFESSION, 12 A. 595.

—Confessions made before a Court outside British India—*See* CRIM. PRO. CODE (1898), s. 164, 2 Weir 125.

Foreigners Act.

See ACT III OF 1864.

Foreign Jurisdiction and Extradition Act.

See ACT XXI OF 1879.

Foreign Recruiting Act.

See ACT IV OF 1874.

Foreign States, Offences in, Act.

See ACT I OF 1849.

Foreign Territory, Offences committed in.

See CRIM. PRO. CODE (1898), s. 188.

See NATIVE STATE.

(1)—*Offence committed in Native State—Jurisdiction.*—A British Magistrate has no jurisdiction to try a person who is a resident of a Native State, for an offence committed in that State. **2 Bom. L.R. 337.**

(2)—*Offence committed outside British India—Mohurbhunj—Jurisdiction of High Court.*—The High Court cannot interfere, either in appeal or revision, with a sentence, passed by the Superintendent of Tributary mehals, with respect to offences committed in Mohurbhunj, situated out of British India. **9 C. 288.**

(3)—*Offences committed in foreign states—Jurisdiction.*—Persons committing the offence of theft in a foreign territory and bringing the property so stolen into British territory cannot be convicted in the British Courts for theft, because the *forum delicti* does not lie in British territory; they cannot be convicted of receiving stolen property, for they cannot be both thieves and receivers, nor can they be convicted of retaining stolen property, because the law to be applied in the British Courts is the Penal Code, and to establish the offence of retaining stolen property, it is necessary first to show that the property was stolen, according to the law of the *forum*, the Penal Code, which has no operation in foreign territory, and against the provisions of which, therefore, no offence could have been committed. But the offence of mischief is an independent offence having no necessary relation back to the original criminal act committed in a foreign country. If after the taking of the property, the accused persons entered British territory, they might then commit mischief in respect of it. **2 Weir 145.**

(4)—*Crim. Pro. Code (1898), s. 188—Offence committed outside British India.*—Where an offence is committed outside British India, a commitment made without the Political Agent's certificate, as required by s. 188, is *ultra vires* and all proceedings taken by the Judge on such commitment are wholly void. **2 Weir 148.**

(5)—*Offence committed in—Trial by British Court illegal, Crim. Pro. Code (1882), s. 67.*—An accused, who is not a British subject, committed an offence of theft in a Native State and carried the stolen property into British territory, where the British Police pursued and captured him and was tried by a British Court and convicted; *held* that the conviction was illegal and that s. 67, Crim. Pro. Code, 1882, did not apply. **Colm. Dig. Cr. 94 of 1877.**

See CHARGE, Rat. Un. Cr. C. 33.

Foreign Territory, Offences committed in—concluded.

See CRIM. PRO. CODE (1898), ss. 170, 188, 8 Bom. L.R. 513=4 Cr. L.J. 54.

See ENTICING AWAY MARRIED WOMAN, 21 P.L.R. 1902, F.B.

See JURISDICTION OF CRIMINAL COURT, 2 A. 218 F.B., 19 B. 105, 6 C. 307=7 C.L.J. 411, 5 M. 23=1 Weir 1, 13 M. 423=2 Weir 147, 6 M.H.C. App. 3, 9 A. 523.

See PENAL CODE, ss. 1, 2, 75, 1 Weir 40.

See PENAL CODE, ss. 392, 411, A.W.N. 1906, 52=3 A.L.J. 146=3 Cr. L.J. 247=28 A. 372.

—Person sentenced in—Sentence by a Magistrate in British India—*See* SENTENCE, 20 M. 444=2 Weir 452.

See THEFT, 10 B. 186.

See WRONGFUL CONFINEMENT, 19 B. 72.

Forest.

—Cutting bark from trees in Government forest—*See* THEFT, 1 Weir 411.

Forest Act.

See ACT VII OF 1865.

See ACT VII OF 1878.

See BUR. ACT XIX OF 1881.

See MAD. ACT V OF 1882.

Forest Officer, Jurisdiction of.

—Sub-Assistant Conservator of Forests—Seizure and detention of timber—Want of a valid pass—*See* ACT VII OF 1878, ss. 54, 73, 15 B. 229.

Forfeiture Act.

See ACT XXV OF 1857.

Forfeiture of Bond.

(1)—*Bond, forfeiture of—Notice to appear on a certain day—Proceedings taken on the following day.*—Where a person is ordered to be present on a certain day before a Magistrate to show cause why his bond should not be forfeited and he fails to be present on that day, the proceedings taken by the Magistrate on the subsequent day are not thereby alone vitiated. **2 Bom. L.R. 589.**

(2)—*Crim. Pro. Code, Act X of 1882, s. 514—Forfeiture of bond—Conditions—Evidence of breach of peace by others.*—A bond for security to keep the peace cannot be declared to be forfeited for a breach of the peace committed by the servants of the obligor. The record of a case to which the obligor was not a party but only his servants were, and which was not tried by the Magistrate who had called for the bond, is no evidence against the obligor regarding his liability to forfeiture, in the absence of anything to show that he was privy to the acts of his servants. **A.W.N. 1891, 183.**

Forfeiture of Property.

See CONFISCATION.

See PENAL CODE, ss. 61, 62.

See SENTENCE.

(1)—*Crim. Pro. Code (1861), s. 44—Power to seize property.*—A Magistrate has no power to seize the property of a person convicted of theft, unless he has been sentenced to pay a fine. **4 M.H.C. App. 28.**

(2)—*Penal Code, s. 61—Forfeiture of property.*—The Court set aside a sentence of forfeiture of property passed against the accused with the remark that the act of the accused was entirely his own arising out of his own bad conduct. His behaviour and act would probably be disapproved of and discouraged by his heirs and relatives, and under such circumstances it would be a hardship to deprive the family of their right of inheritance to his property, and no good effect would be produced by the forfeiture. **P.L.R. 1900, 35 Cr=23 P. R. 1900 Cr.**

(3)—*Beng. Reg. XI of 1796—Forfeiture against some members of joint Hindu family.*—Under Reg. XI of 1796, the Governor-General in Council could pronounce an order of confiscation in cases of persons charged with offences of a criminal nature, who should abscond or conceal themselves so as not to be found upon process issued against them. After the issuing of the attachment by the Court and the subsequent declaration of forfeiture, everything previous to the attachment must be presumed to have been regularly and legally done, unless such presumptions were rebutted by sufficient evidence. Where a forfeiture under Reg. XI of 1796 was declared against three or four brothers constituting a joint undivided Hindu family, *held*, that the forfeiture did not enure for the benefit of the fourth brother, nor did it affect the rights of the fourth brother, who was entitled to his fourth share in all the ancestral property of the family, and that the widow of the ancestor was also entitled to maintenance. **7 W.R. P.C, 47=4 M.I.A. 246.**

(4)—*Attachment against forfeited property—Act XXV of 1857—Priority to Government.*—Judgment-creditors having *bona fide* attachments upon property at the time that the property of their debtors became forfeited to the Government under Act XXV of 1857 are entitled in priority to the Government. **Marsh 259=2 Hay 117.**

(5)—*Right of decree-holder.*—A decree-holder is not entitled to have his decree satisfied by sale of the judgment-debtor's properties which have been confiscated by the Government for rebellion, unless he can show that they were attached in execution of his decree before confiscation. An attachment cannot be presumed to have existed or continued from the fact that there was a proclamation of sale before confiscation. **2 Hay 562.**

(6)—*Withholding of payment of annuity—Act IX of 1859, s. 18.*—The plaintiff joined with the rebels and took a leading part with them.

Forfeiture of Property—continued.

A reward was set upon him as a rebel leader, and after a time he was captured. No formal proceedings were taken under ss. 2 and 7 of Act XXV of 1857 for adjudicating his property (which consisted of little more than an annuity) to be forfeited. The property charged with the annuity was in the hands of the Collector as the manager under the Court of Wards. The annuity was withheld, and was no longer regarded as a charge on the estate, but was treated as merged. *Held* that the mere withdrawal of the payment of annuity by those who had the management of the estate, which was charged with the payment, would be an illegal act in no way affecting the plaintiff's right; but as the withholding of the payment was under the authority and direction of the official who was authorized to make attachment of rebels' property, it was with reference to the nature of the property equivalent to an attachment of seizure, and could not be questioned except under the provisions of s. 18 of Act IX of 1859, notwithstanding there had been no adjudication of forfeiture. **3 Agra 281.**

(7)—*Forfeiture of share in joint Hindu family property—Mitakshara Law—Act XXV of 1857, s. 3.*—B. S, the father of the plaintiff and in possession of immoveable property subject to the Mitakshara law inherited from his ancestor, was, on the 10th December, 1857, after proceedings taken under Act XXV of 1857, declared to be a rebel, and it was ordered that all his property should be confiscated to the Government. On the 10th April, 1858, B.S., was arrested, and being tried and convicted under a charge of rebellion was sentenced to death. The sentence was carried out on the 21st April, and an order was made on that day for the confiscation of his property. In a suit instituted by the plaintiff to recover the property, *held* that B.S. had such an interest in it as made it the subject of forfeiture under s. 3, Act XXV of 1857, and the plaintiff, therefore, did not, on the death of B.S., become entitled to his estate. **13 B.L.R. 445=22 W.R. 17 Cr.**

(8)—*Charges on forfeited property—Debts and liabilities.*—General debts and liabilities are not charges against property forfeited upon a conviction for felony. **1 Ind. Jur. O.S. 86.**

(9)—*Seizure and attachment of property of rebel—Suit to establish right to property seized and attached to be brought within one year—"Seizure," meaning of—Act XXV of 1857—Act IX of 1859.*—There is nothing, either in Act XXV of 1857 or Act IX of 1859, which renders it incumbent on the party aggrieved to bring a suit at all. If he does bring a suit, it must be brought within one year of the attachment or seizure complained of. By seizure is meant such a taking possession of the property forfeited as is referred to in s. 7 of Act XXV of 1867, *i.e.*, an actual transfer of possession from the former proprietors to the Collector or vendee. Procedure in regard to seizure and

Forfeiture of Property—continued.

attachment of property under Act XXV of 1857 and the law in regard to the adjudication of claims clearly laid down. **14 W.R. 114.**

(10)—*Confiscation—Absconding offender—Ben. Reg. XI of 1796, Sale under—Construction of Regulation.*—Regulation XI of 1796, being a highly penal statute, should be construed strictly. As it makes no express provision for the case of joint proprietors of land, or persons jointly holding a sudder farm of land, in the absence of clear words indicating such an intention, it cannot be assumed that the legislature intended to authorise the confiscation of the property of any person other than the delinquent. A sale under Reg. XI of 1796 does not extinguish under-tenures or incumbrances created by the delinquent or those through whom he claims. **7 W.R.P.C. 18=11 M.I.A. 223.**

(11)—*Retrospective effect of forfeiture after conviction—Attachment in execution—Act XI of 1857, s. 1—Penal Code, s. 121.*—In execution of a decree against the defendant, the plaintiff, on 17th July, 1871, attached certain property in Calcutta belonging to the defendant. On 26th July, 1871, the defendant was convicted, under s. 1 of Act XI of 1857 and also under s. 121 of the Penal Code, of abetting the waging of war against the Queen, and sentenced to transportation for life and the forfeiture of all his property. The offence for which he was convicted was committed in September 1861. *Held* that the forfeiture took effect from the date of the commission of the offence, and, therefore, any attachment subsequently made was invalid. **8 B.L.R. 83=17 W.R. 80 Cr.**

(12)—*Forfeiture of land subject to rent—Act XXV of 1857—Right to arrears of rent due at time of forfeiture.*—Where land forfeited to Government by a conviction of the owner of an offence within Act XXV of 1857 is subject to the payment of rent, the person entitled to the rent is not entitled to recover the arrears due at the time of the forfeiture, either from the heirs of the owner or from the Government; but the Government is liable for the rent which may subsequently accrue. **Marsh 308=2 Hay 226.**

(13)—*Queen's Proclamation, Effect of—Conviction for rebellion—Act XI of 1857, s. 1—Remission of punishment.*—Where N and M were convicted of rebellion under Act XI of 1857, s. 1, and sentenced, the former to be transported for life and to have all his property confiscated, and the latter to have all his property confiscated, the sentence of confiscation was held to be absolute, and not to depend upon the amount of punishment, and the fact of the punishment being remitted by the Governor-General does not restore the property. The Government having left the property of the convicts in the hands of the Administrator-General as administrator to the estate of the convicts' father whence it was derived, in whose hands it was allowed to accumulate pending a separate litigation in respect of that estate, while it asserted its right by

Forfeiture of Property—continued.

virtue of the confiscation to the other property of the convicts, the title to which was undisputed, it was held that the Government had sufficiently declared and acted upon its intention to enforce the confiscation. The Queen's Proclamation of amnesty (November 1858), coming after the conviction and confiscation, had not the effect of revesting in the convicts the property confiscated. *Held*, also, that the property in question, being Government paper, was liable to confiscation; and lastly, that N's widow was not entitled to maintenance out of the property confiscated by the State. **2 Ind. Jur. N.S. 124.**

(14)—*Confiscation by Independent Chief—Cognizance by English Courts—Proof of confiscation.*—Where the Chief of an Independent State, exercising the sovereign power of that state within its territories, confiscates property within those territories, the confiscation must be respected by English Courts of Justice. The fact of such confiscation, if disputed, must be ascertained by the Court in the same manner as are all other facts which are in issue between parties. **14 W.R. 218.**

(15)—*Order of forfeiture to be reserved for offences of the most atrocious kind or committed under aggravated circumstances.*—The Sessions Judge who convicted and sentenced a Zemindar to transportation for wrongfully keeping in confinement a kidnapped person, ordered, under s. 62, Penal Code, that the rents and profits of the estate of the prisoner should be forfeited to the Government during the period of his transportation. *Held* that this was a punishment of which the infliction should be reserved for offences of the most atrocious kind or for offences committed under the most aggravated circumstances. **12 W.R. Cr. 17.**

(16)—*Offences for which forfeiture may be enforced—Penal Code, s. 62.*—S. 62, Penal Code, which provides for forfeitures, limits them to cases when the parties shall have been transported or sentenced to imprisonment for at least seven years. **8 W.R. Cr. 35.**

(17)—*Procedure in forfeiture—Crim. Pro. Code (1861), ss 131 and 132 to be followed.*—The procedure prescribed in ss. 131 and 132 of the Crim. Pro. Code, 1861, must be adopted before an order for the confiscation of property is made. **9 W.R. Cr. 13.**

(18)—*Order of forfeiture substantially legal—Error in procedure not material to the case—Order not to be disturbed.*—An order of forfeiture made under s. 184, Crim. Pro. Code, if substantially legal, cannot be disturbed for a mere error in procedure. **8 W.R. Cr. 61.**

See ACT XXV OF 1857, 3 Agra 281, 13 B. L.R. 445=22 W.R. 17, Marsh 259=2 Hay 117.

See ACT X OF 1858, 2 Agra 324.

See CRIM. PRO. CODE (1898), s. 121, 2 Weir 57.

Forfeiture of Property—concluded.

See CRIM. PRO. CODE (1898), s. 514, 15 P. L.R. 1904.

See CRIM. PRO. CODE (1898), s. 545, Rat. Un. Cr. C. 146.

Forgery.

See FALSE DOCUMENT.

See PENAL CODE, ss. 463 to 471.

(1)—*Penal Code, s. 465—Forgery—Definition*—"*Fraudulently.*"—One P, the wife of A, left her husband's house. A put in a petition at the Police Station asking that a search might be made for the missing woman, and he also employed a pleader, one Ali Zohad, to assist him in discovering the whereabouts of P. Ali Hasan, the son of Ali Zohad, and a clerk employed in the office of District Superintendent of Police, forged two orders purporting to be orders of the District Superintendent of Police, the first intimating that the woman P was with one S, the wife of Ghisu, weaver, and that the Sub-Inspector should be directed to hand her over to the petitioner A, and the second directing the Sub-Inspector of Kydganj to hand the woman over to the petitioner. *Held*, that, in fabricating these two documents, Ali Hasan had acted fraudulently and had committed the offence punishable under s. 465 of the Indian Penal Code. **A.W.N. 1906, 48 =3 A.L.J. 149=3 Cr. L.J. 249=28 A. 358.**

(2)—*Penal Code, s. 464—False document—What is a.*—In order that a document should be a false document within the meaning of s. 464, Penal Code, it must appear that it was made with the intention of inducing the belief that such document was made by or by the authority of one who did not make it or give such authority. **12 M. 114=1 Weir 539.** [*F.*, Rat. Un. Cr. C. 595].

(3)—*Penal Code, ss. 474, 116—False document—Dishonest and fraudulent intention.*—Where a document purporting to be executed by one, M, regarding certain properties, was made in the presence of the accused appellants, and the documents were recovered from their possession, and the accused were convicted, it was contended in appeal that the properties comprised in the document belonged to the accused by virtue of certain other documents, which had been executed in M's name *benamee* for the accused, that the document was therefere intended to confirm their title to property which already belonged to them, and there was therefore no dishonest or fraudulent intention. *Held*, that the document was clearly fraudulent and a forgery, inasmuch as the intention of the accused was to confirm their alleged title to the property, and enable them to deal with it, the detriment of any person dealing with them in regard to the property. **6 M.L.T. 266.**

(4)—*Penal Code, s. 463—Forgery, essentials of.*—The definition of the offence of forgery in s. 463, Penal Code, declares the offence to be completed when any false document or false

Forgery—continued.

part of a document is made with certain specified intents. The questions are, " (1) Is the document false? (2) Was it made by the accused? (3) Was it made with intent to defraud?" If all these questions are answered in the affirmative, the accused is guilty. It is not necessary to a trial or conviction of forgery that there should have been an uttering, or putting off, of the forged instrument. **1 Weir 538.**

(5)—*Penal Code, ss. 465, 467—Forgery—Proof—Similarity of hand-writing.*—Where it is sought to convict a clerk employed in an office of forgery, upon the supposed similarity between his handwriting and that of some fragmentary piece of writing upon which the charge is based, the prosecution should make an attempt to show that the accused is the only man in the office who could have written the forged documents. **2 A.L.J. 444=2 Cr. L.J. 353.**

(6)—*Penal Code, s. 464—Forgery of the name of fictitious person—Intention to defraud, proof of.*—In order to sustain a charge of forgery, it is wholly immaterial whether the name forged is that of a fictitious person or of a real person. It is as much a forgery in the one case as in the other, provided that the fictitious name is assumed for the purpose of fraud. An intention to defraud is an essential ingredient of the offence of forgery, but it is sufficient to show that there was an intention to defraud generally. Whether there was any intention to defraud or not is a question of fact to be determined with reference to the special circumstances of each case. **13 M. 27=1 Weir 545.**

(7)—*Penal Code, s. 465—Intention to cause injury or damage—False document.*—In a case falling under the above section, there must be proof of an intention to cause injury as defined in s. 44, I.P.C., or, an intention to cause damage, in addition to the fact that the document was a false one. To constitute a false document, it must be proved that it was made "fraudulently or dishonestly." **U. B. R. (1892—1896), Vol. I, 286.**

(8)—*Penal Code, s. 464—When false description would make document a forgery.*—It would be going too far to hold that, whenever the executant of a document attaches a false description to his name, he comes within the purview of s. 464, I.P.C. But a false description may make a document a forgery, when it is found that the accused, by giving such a false description, intended to make out or wanted it to be believed that it was not he that was executing the document, but a fictitious person. **4 M.L.T. 463 Cr.=32 M. 90=9 Cr. L.J. 85.**

(9)—*Alteration of official report to screen one's negligence.*—When the accused altered an office report, with a view to screen his own negligence in having lost a portion of a record, the alteration purporting to throw upon another officer the responsibility for the missing document, *held*, that he was not guilty of forgery. **2 N.W.P. 11.** [*F.*, 5 A. 221].

Forgery—continued.

(10)—*Penal Code, s. 465—Writing a document on a paper bearing a stamp of later date.*—The mere fact that a document was written on a paper which bore a small embossed stamp with a figure denoting a later date would not be conclusive evidence that the paper was not made at an earlier date, and would not be sufficient to support a charge of forgery. **1 Weir 540.**

(11)—*Penal Code, s. 466—Forgery of Marriage Register.*—Forging a document purporting to be a Register of Marriage, falls under s. 466, although the Register is a private one, and is not kept by a public servant, as such. **1 Weir 541.**

(12)—*Penal Code, s. 467—Valuable security—What constitutes forgery.*—A document which purports to be one whereby the tenants acknowledge themselves liable to pay enhanced rent, is, on the face of it, a valuable security within the meaning of s. 467, I.P.C. It must not be assumed that in order to constitute forgery, it is necessary that the instrument which is fabricated should be perfectly valid for the purpose for which it was intended. **A.W.N. 1883, 59.**

(13)—To constitute the offence of forgery, as defined in s. 463, it will not be enough to prove that the accused knew that, by making the false document, he might injure the complainant, but it must also be proved that such was his intention. **10 C.L.R. 184.**

(14)—*Penal Code, s. 467—Unregistered sale-deed—Valuable security—Forgery.*—An unregistered sale-deed is a valuable security within the meaning of s. 467 of the Penal Code, and the forgery of such a deed is punishable under that section. **Rat. Un. Cr. C. 467=Cr. Rg. 25 of 1889.** (7 M.H.C. App. 26, *R.*)

(15)—*Penal Code, ss. 464, 467, 474—Forgery of valuable security.*—To justify a conviction under s. 467, the accused should be shown to have made a false document; it is an essential ingredient for the making of a false document that it should be made dishonestly or fraudulently and with one of the intents set out in s. 463. The prosecution must give some evidence from which the dishonesty of the transaction and some or one of the intents set out in s. 463, can be legitimately inferred. **6 C.W.N. 382.**

(16)—*Absence of dishonest or fraudulent intention.*—A person who, without any dishonest or fraudulent intention, signs for another expressing that the signature was by his pen, although the latter could sign for himself, does not thereby commit the offence of forgery. **2 J. G. 11.**

(17)—*Penal Code, ss. 23, 463 to 471—Forgery—Using forged document.*—It is not an essential ingredient of the offence of forgery or using as genuine a forged document, as defined in ss. 463 to 471, that there should be an intention to deprive another of property. **25 C. 512=1 C.W.N. 255 F.B.**

Forgery—continued.

(18)—*Using forged document—"Fraudulently," meaning of—Penal Code, ss. 463 and 471.*—Deprivation of property, actual or intended, is not a necessary ingredient in the offence of fraudulently using, as genuine, a document which the accused knew or had reason to believe to be false. **L.B.R. (1893—1900), 437.** (19 C. 380, *Diss.*; 15 A. 210, *F.*)

(19)—*Penal Code, s. 474—Charge under, what is necessary to support a—Possession of forged title deeds, no evidence of guilt.*—To support a charge under s. 474, I.P.C., it is necessary for the prosecution to prove (1) that the documents are forged; (2) that the accused knew them to be forged; (3) that he intended that they should be fraudulently or dishonestly used as genuine and (4) that each of the documents is in the description given in s. 466 or s. 467, I.P.C. The mere fact that the purchaser of an estate is in possession of title-deeds, some of which are shown to be forgeries is no evidence of his guilt. **Cr. Rg. 25 of 1895.**

(20)—*Penal Code, ss. 192, 196, 464, 470 and 471—Correction of a mistake in a registered sale deed.*—Where the vendee of a plot of land altered the number by which the land was described in the registered sale-deed, thereby giving the correct number of the land (the land being identifiable even without the proper number as the deed described the four boundaries of the property sold), and used the deed so altered as evidence in a civil suit, *held*, that the alteration could not be called 'forgery' within the meaning of s. 463, nor could the sale-deed after the alteration be designated "a forged document," as contemplated by s. 470, the most important element of the offence, *viz.*, wrongful loss or wrongful gain or the intent to defraud being totally wanting in the case; nor could it be held that in producing the sale-deed in the Civil Courts, the accused had fraudulently or dishonestly used as genuine a document which they knew to be a "forged document" within the contemplation of the law. [*R.*, 5 A. 221; *D.*, 11 M. 411=1 Weir 549]. The correction of a mistake in a document cannot be taken to be "a false entry" or "false statement." *Held*, that the accused could not be convicted under s. 196. **5 A. 217.**

(21)—*Penal Code, ss. 24, 25, 471—Fraudulently using a forged document as genuine—Use of forged receipts in place of lost genuine ones.*—Upon the application of the creditor of a Police Constable, the District Superintendent of Police ordered a deduction of Rs. 2 in the pay of the constable, until the debt was satisfied. The constable produced before his Police Inspector to whom the order had been forwarded a receipt for the whole amount due from him, *viz.*, Rs. 18. But it was found that the receipt was given for Rs. 8 only and that the accused had changed the figure 8 into the figures 18, but the amount of the sum paid was stated to be in words Rs. 8 only. *Held*, he could not be convicted under s. 471, I.P.C., as the real intent in so altering the receipt was to induce his superior to refrain from doing the illegal act of stopping the payment of a portion of his salary without a proper attachment by a Civil Court, and as it could not be held that he contemplated setting up the altered receipt to defeat his creditor's claim. **7 A. 403.** [*R.*, U. B.R. (1892—1896), 279].

(22)—Where the accused was found to have used four forged receipts for the payment of rent fabricated in lieu of genuine receipts which had been lost, *held*, that the accused had not acted dishonestly or fraudulently, and that he was not, therefore, guilty of an offence under s. 471. **7 A. 459.** [*Diss.*, 5 C.W.N. 897].

(23)—*Penal Code, ss. 24, 25, 465—False entry for concealing previous criminal breach of trust.*—Where a clerk, who had committed criminal breach of trust, made false entries in the challan book in order to conceal such offence, the falsification of the challan book does not constitute the offence of forgery. **5 A. 221.** [*R.*, U.B.R. (1892—1896), 279, 8 P.L.R. 1904; *D.*, 11 M. 411=1 Weir 549; *Diss.*, 22 C. 313, 35 C. 450=12 C.W.N. 581=7 Cr. L.J. 378].

(24)—*Penal Code, ss. 218 and 465—Forgery for purpose of concealing previous fraud—Public servant furnishing false reports.*—A sum of Rs.500 payable to a particular person through the Civil Court had been fraudulently withdrawn from the treasury by means of forged cheques. and these payments were duly entered by the Treasury Accountant on the right hand page for "details of repayment" of the Revenue Deposit Register. After the withdrawal, but before the discovery of such withdrawal, the representative of the payee applied for payment. The accused, the Treasury Accountant, sent two false reports that the money was in deposit, and that it was about to be transferred to the Civil Court. After the sending of the first report, the Treasury Officer ordered the transfer of the amount to the Civil Court, and a cheque was drawn. The signature of the cheque by the Treasury officer was delayed. Meanwhile, the accused altered the cheque in such a manner as to relate to a deposit, made subsequently, to the credit of another person. The accused was tried and convicted of forgery of the cheque and of an offence under s. 218, I.P.C. *Held*, that, as regards the charge under s. 465, the accused did not intend to cause wrongful loss to the second payee by delaying the payment, but merely to conceal his previous fraudulent withdrawal of the first payee's amount, and that the accused had not committed an offence under s. 465, as he could not be said to have acted dishonestly or fraudulently within the meaning of ss. 24. 25, I.P.C. [*R.*, 15 A. 210; *Diss.*, 22 C. 313, 35 C. 450=12 C.W.N. 581=7 Cr. L.J. 378]. The accused while making the two false reports, assumed to make them in due course, as part of his duty, and held out the reports as reports which were made by the proper officer. Therefore, the accused should be presumed to have made these reports because it was his business to do so as a public servant within the meaning of s. 218, I.P.C. **8 A. 653.** [*R.*, 19 A. 305].

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(25)—The falsification of office records made in order to conceal previous acts of fraud or negligence, does not amount to forgery, as no one would be defrauded or injured thereby. **6 N.W.P. 56.** [*F.*, 5 A. 221].

(26)—*Penal Code, ss. 25, 463 and 464—Making a false document to conceal a previous fraudulent act--Forgery-Fraudulently, meaning of.*—It is not necessary for the purpose of constituting the offence of forgery, that the false document should be made with the intention of committing a fraud or dishonesty in future. If the intention with which a false document is made be to conceal a fraudulent or dishonest act which has been previously committed, the intention cannot be any other than an intention to commit fraud, and therefore the making of such false document amounts to forgery. [*R.*, 8 P.L.R. 1904] The word "fraudulently" in s. 464 does not mean the same thing as "dishonestly." It must be taken to mean, as defined in s. 25 of the Code, "with intent to defraud." **22 C. 313.** (13 B. 515, *note, F.*) [*R.*, 18 A.W.N. 197=21 A. 113, L.B.R. (1893-1900), 266, 5 C.W.N. 897, 1 Weir 538-A=28 M. 90].

(27)—*Crim. Pro. Code (1882), s. 195—Forgery before Sub-Registrar—Registration Act—Sanction—Court.*—A Sub-Registrar acting under the Registration Act is not a Judge and is, therefore, not a Court. The proceedings held before him are not judicial proceedings. His sanction is not therefore necessary for a prosecution for forgery in respect of a forged document presented for registration in his office. **12 B. 36.** [*Diss.*, 15 M. 138 F.B.; *R.*, 12 M. 201, 3 S.L.R. 66].

(28)—Where a Government officer falsified a public record for the purpose of concealing a previous act of negligence, which did not amount to fraud, *held*, that he was not guilty of the offence of forgery. **4 B. 657.** [*R.*, Rat. Un. Cr. C. 595].

(29)—*Penal Code, ss. 463,464,470,471, 23,24, 25 and 29—"Claim," scope of the word—False certificate of attendance in the first year course of law lectures for the purpose of attending the second year course.*—The word "claim" in s. 463, is not limited to a claim to property. A written certificate is "property" within the meaning of s. 463, I.P.C. It is not necessary, to constitute forgery under s. 463 that the "property" with which it is intended that the false document shall cause a person to part, should be in existence at the time when the false document was made. [*R.*, 25 C. 512=1 C.W.N. 255, F.B.=L.B.R. (1893—1900), 437, 1 Weir 538-A=28 M. 90, 19 B. 717, Rat. Un. Cr. C. 761, 21 B. 517.] Where, for the purpose of attending the second year law class of a College, the accused produced a false certificate from the Principal of another College to the effect that he had attended the required number of lectures of the first year law class, and thereby joined the second year course in the former College

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without paying the fees for the first year course and, after attending the second year course, got a consolidated certificate for the two years by presenting again the false certificate to the Principal, for the purpose of enabling him to become a candidate for the Calcutta Pleadership examination, *held*, that the certificate was a "false document" within the meaning of s. 463, that he had committed forgery, and that he, on both occasions when he presented the false certificate, had committed an offence under s. 471, I.P.C. **15 A. 210.** [*R.*, 2 P.R. 1895 Cr., 22 B. 768, 21 A. 113=18 A.W.N. 197, 32 P.L.R. 1907=1 P.R. 1907 Cr., 28 A. 358=A.W.N. 1906, 48=3 A.L.J. 149=3 Cr. L.J. 249, 4 L.B.R. 315].

(30)—*Penal Code, s. 463—Forgery, when the offence of, is committed—Substitution of one page for another in the service roll.*—Where there is an intent to deceive and by means of the deceit to obtain an advantage, there is fraud, and if a document is fabricated with such intent, it is forgery. Where in the character and service roll of the accused, a constable, which was in his custody, a certain page was substituted for some other page containing remarks unfavourably to the accused, the intention being to deceive the superior officers of the accused, and by means of such deception to secure his advancement in the service, and thus to gain an advantage for him at the sacrifice of others, *held*, that the entry amounted to a forgery, but, as it was not shown that the forgery was committed by the accused himself, that he was rightly convicted of the abetment of the offence. **21 A. 113.** [*R.*, 10 P.R. 1902 Cr.=75 P.L.R. 1902, 28 M. 90, 32 P.L.R. 1907=1 P.R. 1907 Cr., 4 L.B.R. 315].

(31)—*Penal Code, ss. 466, 471—Separate sentences for forgery and for using forged documents as genuine, validity of.*—S. 471, which provides for punishment for using a forged document as genuine, is directed against some person other than a person proved to be the actual forger. The section is useful as an alternative charge when it is not certain whether the accused person is himself the forger of the document or has merely used it as genuine. But, a forger cannot be punished both for forging a document and for using it as genuine. **23 A. 84.**

(32)—*Forgery committed for the purpose of defending oneself.*—The fabrication of a false document, or the use of such document by an accused person for the sole purpose of defending himself, does not fall within the range of the sections dealing with forgery. **25 A. 31.**

(33)—*Ss. 466 and 471—Using as genuine a forged document—Copies of a forged original.*—Where a person, knowing or having reason to believe that the entries in certain village *khasras* were forged, took copies of those *khasras* and used them as evidence in his favour in a civil suit, it was *held* that he might be properly convicted of fraudulently or dishonestly using as genuine the *khasras*, which he knew, or had

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reason to believe, to be forged, and punished under s. 471 read with s. 466. **A.W.N. 1906, 71=3 A.L.J. 190=3 Cr. L.J. 255=28 A. 402.**

(34)—*Penal Code, ss. 464, 471—Using a forged document—False certificate of age.*—The accused, in order to induce a Collector to give him an appointment, made use of a certificate in which his age had been recorded as 23 years, but which had been altered so as to state it has only 20 years. The Counsel for the accused argued that there was no dishonesty within the meaning of s. 24, I.P.C., inasmuch as the accused, if he had got the employment at all, would have got only his wages for work done. *Held*, in annulling the acquittal, that, if however the alteration was made fraudulently, that will suffice for the purpose of s. 464, I.P.C., as shown by ill. (*k*), which shows that the mere fabrication of a false certificate of character raises the presumption of fraud. With regard to the operation of s. 471, ill. (*k*) to s. 464 is equally applicable to the one section as to the other. **13 B. 515, note.** [*F.*, L.B.R. (1893—1900), 266].

(35)—*Penal Code, ss. 468 and 471—Production of a forged certificate for procuring an employment in the Railway Department.*—An accused person produced a certificate purporting to be signed by the Traffic Manager, Great Indian Peninsula Railway, for procuring an employment in the office of the District Traffic Superintendent, Oudh and Rohilkhand Railway, and the officer, entertaining some doubt as to the genuineness of the certificate, retained it to be sent to Bombay for verification and asked him to put in a written application, which he did attaching another different certificate. In the application, reference was made to this certificate and not to the one first produced, which was a forgery; *held* that, looking at what the accused did and what his intention was at the time when he produced the forged certificate, he used that document within the meaning of s. 471, I.P.C., and was properly convicted under that section. **5 O.C. 232.**

(36)—*Penal Code, s. 468—Forging of firm's name by partner.*—A person is guilty of the offence of forgery if he forges a document in the name of the firm of which he is a partner, since the fraud is not against himself alone, but is against the other partners. **6 Bom. L.R. 553.**

(37)—*Penal Code, s. 463—Forgery—Sending incorrect copy of diary to superior officer—Proof.*—A person cannot be convicted of forgery in sending an incorrect copy of his diary to a superior officer, in that it did not contain some words interpolated in the original and subsequently struck through with the pen, unless it was proved that the interpolations were in the original and not struck through when the copy was made. **Rat. Un. Cr. C. 12.**

(38)—*Crim. Pro. Code (1872), s. 469—Penal Code, ss. 463, 466—Forgery of public registers—Sanction.*—An offence under s. 466 of the Penal Code of having forged a Register kept by

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a public servant which was given in evidence, falls within the terms of s. 463 of the Penal Code; and a complaint of such offence cannot be entertained without the sanction of the Court in which the document was given in evidence, as required by s. 469 of the Crim. Pro. Code. **Rat. Un. Cr. C. 83.**

(39)—*Penal Code, s. 466—Forgery—True copy of false entry in public register.*—A person who is bound to prepare and give a true copy cannot be convicted of forgery, merely because the original entry in the death register of which he prepared a true copy, was a false one to his knowledge or belief, so long as it is not proved that he had anytning to do with the original entry. **Rat. Un. Cr. C. 583=Cr. Rg. 42 of 1891.**

(40)—*Forgery — Character of proof.*—In a prosecution for forgery, it is not enough to show that the genuineness of the document is improbable, but it should be proved for a certainty that it is forged. **Rat. Un. Cr. C. 917.**

(41)—*Alteration of date of document to bring it within time for registration—Offence committed.*—The alteration of the date of a document, for the purpose of bringing it within time for being registered, in the absence of anything to show that it was done "dishonestly or fraudulently" within the meaning of cl. 2, s. 464 of the Penal Code, would not amount to the offence of forgery, but to that of fabricating false evidence under s. 192. **6 C. 482.** [*R.*, U.B.R. (1892—1896), Vol. I, 279].

(42)—*Fraudulent use of forged document—Intention, nature of, to support conviction.*—The use of a forged document for the purpose of supporting one's title to property is clearly fraudulent, even in the absence of any necessity for such a use. [*R.*, 5 C.W.N. 897, 32 P. L.R. 1907=1 P.R. 1907 Cr.; *D.*, U.B.R. (1892—1896), Vol. I, 279.] A general intention to defraud without the intention of causing wrongful gain to one person or wrongful loss to another, would, if proved, be sufficient to support a conviction. **9 C. 53=11 C.L.R. 169.** [*R.*, 13 B. 506, 5 C.W.N. 897.]

(43)—Sannad *conferring title of dignity—No valuable security—Using such (forged) document as genuine—"Intent to defraud."*—A *Sannad* conferring a title of dignity on a person is not a valuable security within the meaning of the Penal Code; and a person found guilty of using such a document, knowing it not to be genuine, does not intend to cause "wrongful gain" or "wrongful loss" to any one, his intention not constituting "an intention to defraud," so that a conviction under ss. 464 and 471 of the Penal Code under the circumstances would not be tenable. **10 C. 584.** [*F.*, Rat. Un. Cr. C. 627; *R.*, 19 C. 380; *D.*, 22 B. 768; *R.*, 15 A. 210, U.B.R. (1892—1896), Vol. I, 279].

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(44)—*Penal Code, s. 464—Fabrication of endorsements on application, and letter—Forgery to screen another forgery—Intention.*—Where an applicant for a post was found to have fabricated a favourable endorsement on his application as if it had been made by the Sub-Divisional Officer and another letter purporting to be from the Collector to the Sub-Divisional Officer appointing him for the vacant post, held, he was rightly convicted of an offence under s. 464, Penal Code, with respect to such acts. But where the Sub-Divisional Officer posted a letter to the Collector to ascertain if he really appointed the accused and the accused wrote a letter to the Post Master, purporting to be written by the Sub-Divisional Officer, asking him to stop the despatch of that letter, held, he could not be convicted of forgery with respect to it, as it could not be said that he falsely made it either dishonestly or fraudulently within the meaning of s. 464; for, the intention with which the accused made the false document was evidently to screen himself from detection of the fraud which he had already committed. **13 C. 349.** [*F.*, L.B.R. (1893—1900), 266, 22 B. 768; *D.*, Rat. Un. Cr. C. 627].

(45)—*Penal Code, s. 466—Making a false document to deceive Court of justice—Intention of the accused.*— A person making a false document, at the request of another for the purpose, and with the intention, that such document should be used for deceiving a Court of justice, is guilty of forgery, although the person who engages him to commit the forgery has no intention to use the document for that purpose, but intends only to trap the accused. **14 C. 513.** [*D.*, U.B.R. (1892—1896), Vol. I, 279].

(46)—*Penal Code, ss. 415, 471, 24 and 25—Using a forged certificate for obtaining permission to appear for examination--Cheating.*—A private student applying for permission to appear for entrance examination of the Calcutta University sent with his application a certificate, as required by the rules of the University, purporting to be signed by the Headmaster of a Government High School, which the accused knew to be forged. The Registrar sent the receipt granting permission to present himself at the examination. The accused actually did present himself at the examination being permitted to do so by the Registrar. But the Registrar had discovered and was aware that the signature was not genuine, prior to the sending of the receipt. *Held*, that the primary intention of the accused was, by falsely inducing the Registrar to believe that the certificate was signed by the Headmaster of a Government School under public management, to be permitted to sit for the entrance examination, and that such intention could not be held to be fraudulent or dishonest within the meaning of ss. 24 and 25 of the Code and that, therefore, the accused was not guilty of an offence under s. 471 of the Code, nor was he guilty of cheating. **19 C. 380.** [*Overruled*, L.B.R. (1893—1900), 437=25 C. 512=1 C.W.N. 255, F.B.; *F.*, Rat. Un. Cr. C. 627; *Diss.*, 15 A. 210=13 A.W.N. 96, 1 Weir 538-A=28 M. 90; *D.*, 22 B. 768; *R.*, U.B.R. (1892—1896), Vol. I, 279, 2 P.R. 1898 Cr.].

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(47)—*Penal Code, ss. 467, 109, 114--Abetment of forgery—Valuable security—Unregistered document.*—A person taking an active part in the preparation of a document, but no part in the forgery of the name of the executant, does not commit forgery, but simply abets the offence. An unregistered document, in respect of which forgery has been committed, although it may not be a valuable security until registration is completed, is, nevertheless, one which "purports" to be a valuable security within the meaning of s. 467 of the Code. **25 C. 207=1 C.W.N. 681.**

(48)—*Penal Code, s. 471--Forgery—Dishonestly and fraudulently using as genuine a forged document—Filing document, but not tendering it in evidence—User.*—Appeal against a conviction under s. 471, I.P.C., for fraudulently or dishonestly using as genuine, documents, which the accused knew or had reasons to believe to be forged. The case against the accused was that he used two rent receipts, which he must have known to be forged, in a proceeding, which was instituted as one under s. 144, Crim. Pro. Code, and was subsequently altered into one under s. 145. What happened was that he, with another party to the case, produced the receipts in question, and they were entered in a list, which was filed with the statement made on behalf of the third party. They were at once denounced as forgeries and were never tendered in evidence. There was no attempt made to assert their genuine character, after they had once been impugned, and none to use them as evidence. *Held* that this did not, on the facts before the Court, constitute any user within the meaning of s. 471, I.P.C. **35 C. 820.**

(49)—*Penal Code, ss. 465, 471, 477-A—Forgery—Falsification of accounts—Fraudulent intent necessary—Crim. Pro. Code, s. 360—Necessity for reading over depositions in the presence of the accused or his pleader—Practice.*—Where the first accused, a postmaster, misappropriated the sale proceeds of 4 sacks of waste paper forms without crediting the same in the account books, and subsequently, on an enquiry being set on foot, he and the second accused, the treasurer, prepared new account books, with a view to showing that the sum which had been misappropriated was in fact received on a particular date, whereas the proper account books did not show that the sum was paid; *held*, that, for offences under ss. 465, 471 and 477-A, there has to be an intent to commit fraud. *Held*, also, that, as the entry was a statement of the true position of affairs, and not made to conceal liability and present an untrue state of affairs, the intent to defraud had not been made out. The real purpose was not to defraud, but to remove evidences of a crime. S. 360, Crim. Pro. Code, is mandatory and not merely directory. Depositions of witnesses should be read over to them, in

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the presence of the accused or his pleader as required by s. 360. A custom to the contrary cannot alter the plain words of the Act. **36 C. 955.**

(50)—*Penal Code, s. 466—Scope of section.*—S. 466 is not intended to apply to cases of persons, whose duty it is to make entries in a public book, and who knowingly make a false entry, but to cases where a certificate or other document is forged by some unauthorized person with a view to make it appear that it was duly issued by a public officer. The former case is provided for by s. 192. **7 C.L.R. 356.**

(51)—*Fraudulently and dishonestly using a forged receipt does not amount to forgery—Penal Code, s. 471—Stay of trial in such cases.*—Fraudulently and dishonestly using a forged receipt as an acquittance for money does not amount to forgery, although under s. 471, Penal Code, it renders the offender liable to the punishment for that offence. When cases of this nature are sent by Civil Courts to the criminal authorities for investigation, the latter must proceed with them. **1 W.R. Cr. Letters, 10.**

(52)—*Attempt to commit and abetment of forgery—Making draft of intended false document to be used by another.*—Where an accused person conspired with another person to prepare a document, purporting to be a valuable security, which he knew would be a false document, and must have known was to be used for purposes of fraud, and he prepared to that end a draft which he was about to copy on a stamp of sufficiently early date procured for that purpose and, in order to complete the instrument, he applied to a person to supply the Telugu date corresponding with an English date which it was intended the forgery should bear, *held*, that the facts as proved would support a conviction for an abetment by conspiracy to commit the offence of forgery, the acts done being done to facilitate the commission of the offence, but would not support a conviction for an attempt to commit forgery. **3 M. 4=1 Weir 543.** [*R.*, Rat. Un. Cr. C. 470].

(53)—*Penal Code, s. 471—Debtor forging release to screen himself from liability to pay the debt—Fabrication of receipt for concealing embezzlement made by Postmaster.*—A debtor, who forges a release to screen himself from liability to pay the debt, cannot be said not to be guilty of forgery, because he intended by the forgery to cover a dishonest purpose. [*F.*, 1 Weir 554]. Where a Postmaster embezzled the amount of a money-order, and at the same time fabricated a false receipt which purported to be marked by the payee of the money-order, *held*, that the accused was guilty of forgery under s. 471, Penal Code. **11 M. 411=1 Weir 549.** [*F.*, 22 C. 313; *R.*, 8 P.L.R. 1904].

(54)—*Penal Code, ss. 465, 471—Forgery—Forged document used as genuine—Certificate for admission for University Examination.*—A private candidate, who was required to produce certificate, as to his good character and as

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to his having completed the 20th year, from the Headmaster of a recognised school, with his application for admission to the Matriculation Examination, concocted a certificate, forging therein his Headmaster's signature. *Held* by the Full Bench (Subramania Aiyar and Davis, JJ., *dissenting*) that the candidate was guilty of forgery. *Per* Sir Arnold White, C.J.—A document, false in fact, when concocted to commit fraud, though the other elements of intent referred to in s. 463, are wanting, completes the offence of forgery. Wrongful loss to the University and wrongful gain to the accused are not necessary, under s. 24, Penal Code. A false document made to support a claim or title, such as the one to be admitted to an examination, is one made to support a 'claim' within the meaning of s. 463 of the Penal Code. *Per* Benson, J.—The act amounted to fraud, when the accused intended to get a benefit to himself by means of the deceit and of the injury which must result to the University and thereby to the public. *Per* Subrahmania Aiyar, J.—The document was not made fraudulently under ss. 463 and 464. The deception must, in order to be indictable, have involved loss or risk of loss to an individual or to the public. The mere fact that an advantage has been secured by the accused is not enough. *Per* Davies, J.—Under s. 464, it had not been proved that the accused had either of the intents, specified in s. 464, to make it a false document. Mere intention to deceive does not show an intention to defraud or to cause wrongful gain or wrongful loss. The object of the accused was to appear for the examination—not a thing of value, if he failed; if he passed, he gets a diploma, not on account of the false document he made, but on the strength of his own merits. **28 M. 90, F.B.** [*F.*, 28 A. 358=A.W.N. 1906, 48=3 Cr. L.J. 249=3 A.L.J. 149; *R.*, 1 P.R. 1907 Cr.=32 P.L.R. 1907].

(55)—*Fabricated entry in Government service book—False document—Fraudulent intention—Penal Code, ss. 463, 464, 466 and 25.*—The document, the fraudulent use of which was abetted by the appellant, was an entry fabricated in a Government "service book," to which the forged signature of a public servant had been also added, the purport of the entry being that the appellant had resigned the service of the Government from illness, whereas he was dismissed on conviction of a criminal offence. The object with which that entry was fabricated, and the use to which it was put by the appellant, or by his brother in pursuance of the conspiracy in which the appellant had joined, was to deceive the Deputy Commissioner, and to induce the Deputy Commissioner to bestow upon the appellant an appointment under the Government, which would not have been bestowed if the facts had not been falsely stated in this fabricated entry. *Held* that such intention and use were fraudulent within the meaning of s. 25, Penal Code, and that the appellant was rightly convicted under ss. 463, 464, 466, I.P.C. **L.B.R. (1893—1900), 266.** (13 C. 349; 22 C. 313, 13 B. 506, 13 B. 515, *F.*).

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(56)—*Penal Code, ss. 192 and 464—Son's signing father's signature under father's authority—Fabricating false evidence—False document—Intention.*—Where a petition presented to a Deputy Commissioner purported to be signed by two persons, but was presented by one of them, and when the Commissioner asked where the other signatory was, the son of that person appeared and said that he was the signatory's son and had signed his father's name, *held* that the son had not committed the offence of fabricating false evidence, on the grounds, (1) that the petition did not contain any false statement and (2) that there was no intention that it should appear in evidence in any proceeding. Nor was the petition a false document within the meaning of s. 464, I.P.C., inasmuch as the accused did not write his father's name fraudulently or dishonestly, but with his father's authority. Hence the act did not amount to forgery. **4 L.B.R. 45=6 Cr. L.J. 283.**

(57)—*Requisites for offence—Penal Code, s. 29—False document.*—To constitute the offence of forgery, the simple making of a false document is sufficient. It is not necessary that the document should be published or made in the name of a really existing person. **2 B.L.R. A. Cr. 12=10 W.R. Cr. 61.**

(58)—*Deed of divorce, a valuable security—Using a forged deed of divorce offence under s. 471, Penal Code.*—A deed of divorce is a "valuable security" within the meaning of s 30 of the Penal Code. The presenting of a forged document of such a nature for registration and obtaining its registration would be "using" within s. 471 of that Code. **11 W.R. Cr. 15.**

(59)—*Forgery of copy of document—Penal Code, s. 463.*—The forgery of the copy of a document for the purpose of the same being used in evidence comes within the definition of forgery as contained in s. 463 of the Penal Code. **W.R., F.B. 71, Marsh 270=2 Hay 236.**

(60)—*False entries in account book—Penal Code, s. 464.*—The prisoner made certain entries in his ledger, which consisted of rough loose sheets, showing that certain sums of money had been repaid to the prosecutor, which, in fact, had not been repaid. *Held*, that the prisoner was guilty of forgery under s. 464 of the Penal Code. **1 Ind. Jur. N.S. 46.**

(61)—*Penal Code, s. 465.*—Clear proof is required in a case of forgery. It should be clearly shown upon whom the fraud was committed. To constitute fraud, there must be some right against which it is directed, or something which can be injured. There must be a possibility of some person being not only deceived but injured by the forgery. An attempt made to evade illegal exaction cannot ordinarily amount to dishonesty or fraud. The fabrication of a document to support a complaint already made or to escape the consequences of having made it does not necessarily amount to forgery. Taking a false document

Forgery—continued.

does not consist in writing it without doing anything towards its execution. **U.B.R. (1892—1896), Vol. I, 279.** (6 C. 482, 9 C. 53, 10 C. 584, 14 C. 513, 19 C. 380, 5 A. 221, 553, 7 A. 403, *R.*)

(62)—*Using forged document—Production of copy of document—Evidence given before Civil Court when inadmissible in evidence—Improper admission of evidence when a ground for revival of conviction.*—A person may be convicted of using a genuine a document which he knew to be forged, though he, in the first instance, produced only a copy of a copy of it. Where a Civil Court authorising a criminal prosecution in cases of offences against public justice, instead of availing itself of the powers given in s. 173 of Act II of 1855, to complete the investigation itself and to commit the parties for trial before the Court of Session, simply refers the proceedings, and leaves it to the Magistrate to commit or not as he thinks proper, the depositions taken before the Civil Court are not admissible in evidence, as depositions taken before the Magistrate are in certain cases under s. 369, Crim. Pro. Code. But by s. 57, Act II of 1855, the improper admission of such evidence is not of itself a ground for the reversal of the Session's Judge's sentence, when, independently of that evidence, there is sufficient evidence to justify the decision. **6 W.R. Cr. 41.**

(63)—*Attempting to use fabricated evidence—Knowledge of forgery—Intention to use fabricated evidence.*—Where the accused produced as evidence an account book, one page of which had been fraudulently abstracted and another substituted for it, and took considerable pains to conceal the alteration, *held* that the accused was not guilty of the offence of attempting to use as genuine fabricated evidence, unless he knew of the forgery, and intended to use the forged evidence for the purpose of affecting the decision on the point at issue when the book was tendered, namely, whether or no it contained any entry of a certain money transaction. **7 W.R. Cr. 23.**

(64)—*Making a false document—That accused himself made the document to be proved—Intention, proof of.*—In order to convict a person for forgery under the Penal Code, it must be proved that the accused himself made a part of the document, with the intention of causing it to be believed that such part of a document was made by the authority of a person, by whose authority he knew that it was made. **10 W.R. Cr. 7.**

(65)—*Unauthorised use of name as agent—Giving* vakalatnamah *in name of decree-holders without their authority.*—The signing of a *vakalatnamah* in the name of his fellow decree-holders without their authority to do so, and delivering it to a vakeel with instructions to file a petition stating that the debt had been satisfied, and praying that the case may be struck off the file, is forgery within the meaning of s. 463 of the Penal Code. **6 W.R. Cr. 78.**

Forgery—continued.

(66)—*Antedating a document, abetment of—Penal Code, ss. 463 and 464.*—The accused who appealed to the Commissioner from the order of an Assessor under Act XXI of 1867, applied for a copy of the order of the Assessor, to enable him to file the appeal. On being asked to file the proper stamp paper, the accused did so, but after the period allowed for appeal had elapsed. On appeal, he averred that he filed the stamp paper before time and fraudulently obtained a certificate to that effect, which was antedated. *Held*, that he was guilty of having abetted the commission of the forgery of a document within s. 463 and s. 464, Penal Code. **10 W.R. Cr. 23.**

(67)—*Making a false document—Proof of deception—Penal Code, s. 464.*—Before convicting a person for the offence of making a false document under s. 464, Penal Code, it must be shown that some sort of deception was practised by him so as to prevent a person from knowing the nature of the document. **9 W.R. Cr. 20.**

(68)—*Ignorance of contents of documents—False endorsements—Proof of deception—Penal Code, s. 464.*—Before the accused, a mohurrir in a Registry office, charged with making false endorsements on the backs of three documents which were admittedly signed by the District Registrar, could be convicted of forgery within the meaning of part 3 of s. 464, Penal Code, it must be shown that the Registrar was, in consequence of the deception practised upon him by the accused, led to believe that the deeds had been duly copied into the books and signed the endorsement on that understanding. A mohurrir, a part of whose duty was, under Bengal Act IX of 1862, to receive the fees paid by parties bringing deeds for registry, is a public servant. **20 W.R. Cr. 49.**

(69)—*Misrepresentation in document by false description—Nature of the offence—Cheating not a Sessions case—Order of commitment bad in form if offence not specified.*—A misrepresentation by a false description of one's position in life is distinctly provided for under the head of cheating. Consequently, a document purporting to have been signed by a person as *putwaree* at a time when he was not a *putwaree* is not a forgery within s. 464, Penal Code. A trial for the offence of cheating is not a Sessions case within the meaning of s. 296, Crim. Pro. Code, 1872, having regard to the first portion of the definition of "Sessions case" in s. 4 of the Code of 1872, which must be understood as if the word "only" followed the words "triable by a Court of Session." An order of commitment by a Sessions Judge under s. 296 of the Code of Criminal Procedure, 1872, must specify on the face of the proceedings the offence for which the parties are to be committed for trial to the Sessions. **21 W.R. Cr. 41.**

(70)—*Document with illegible seal and signature—Using forged document—Penal Code, ss. 466 and 471.*—A person may be convicted for the offence of using as genuine a forged document purporting to be made by a public servant

Forgery—continued.

in his official capacity, even when the seal and the signature thereon are illegible. **5 W.R. Cr. 96.**

(71)—*Alteration of collectorate* chellaun *after being presented to the Collector—Penal Code, s. 467.*—Any fraudulent alteration of a Collectorate *chellaun* after it has been presented to the Collector, compared in his office and marked, signed and registered by the Collector's officers appointed for that purpose, is a forgery of a document described in s. 467, Penal Code. **W. R. 1864 Cr. 22.**

(71-*a*)—*Penal Code, ss. 467, 471—Forgery of copy of document.*—Where the accused was convicted under s. 467, of having forged a document purporting to give authority for the delivery of moveable property, and under s. 471, of having used as genuine a forged document, the document alleged to have been forged being only a copy of an order given by the *Mamlatdar*, *held* that the convictions either under s. 467, or s. 471, was not sustainable as the document, being only a copy and unauthenticated, would not, if genuine, be a document which would give authority to deliver moveable property. The conviction was annulled, leaving it to the Magistrate, if so advised, to put the accused on his trial on some other charge. **5 B.H.C. 56.**

(72)—*Falsification of document with intent to deceive—Penal Code, s. 468.*—*Held* that, where a person's object was to deceive his employer by falsifying account-books which were in his custody, such deception being likely to cause damage to his employer, he was rightly convicted under s. 468, Penal Code, of forgery with intent to cheat, instead of under s. 465, Penal Code, of simple forgery. **18 W.R. Cr. 46.**

(73)—*Fraudulent using of document—Penal Code, s. 471.*—There must be a fraudulent and dishonest using of a document as genuine before a conviction can be had under s. 471, Penal Code. **8 W.R. Cr. 81.**

(74)—*Using document knowing it to be forged—Penal Code, s. 471.*—To support a conviction for an offence under s. 471 of the Penal Code, there must be the using of a document by a person who knows, or has reason to believe, that it is forged. **17 W.R. Cr. 32.**

(75)—*False alteration of a police diary—Penal Code, s. 471.*—The false alteration of a police diary by a Head Constable amounts to the forgery of a document made by a public servant in his official capacity. **11 W.R. Cr. 44.**

(76)—*Possession of counterfeit seals and forged documents—Absence of satisfactory explanation—Inference of intention to commit forgery reasonable—Penal Code, ss. 472 and 473.*—Where an accused person, found in possession of counterfeit seals and forged documents, was unable to give satisfactory information as to how he became possessed of them, *held* that it might be reasonably inferred that the accused kept them with an intention to use them fraudulently. **2 W.R. Cr. 5.**

Forgery—continued.

(77)—*Several seals of different descriptions found in the possession of the accused—Complete and separate offence committed in respect of each seal.*—Where several seals of different descriptions were found to be in the possession of the accused with intent to commit forgery, *held* that, under s. 473 of the Penal Code, there was a complete and separate offence committed in respect of every seal found, and that the prisoners could be legally convicted of a separate offence in regard to each seal, unless it appeared that several such seals were in their possession for the purpose of committing one particular forgery. **13 W.R. Cr 16.**

(78)—*Conviction under s. 466 read with s. 109, I.P.C.—Subsequent conviction under s. 471—Validity.*—A conviction, under s. 471, Penal Code, of a person convicted in respect of the same document under s. 466 read with s. 109, Penal Code, is not sustainable. **26 P.R. 1901 Cr.** (23 A. 84, *R.*).

(79)—*Finding of forged document—Penal Code, s. 471—Sanction—Crim. Pro. Code (1882), ss. 195, 476.*—It is competent to a Court to proceed, under s. 476, Crim. Pro. Code, against a party who has filed a document, which appears to the Court to be forged, in the suit pending before it, whether such document has been actually put in evidence or not. **12 P.R. 1897 Cr.** (15 M. 224, *not Appl.*).

(80)—*Tampering with public register—Penal Code, s. 466.*—Tampering with a public register either by a public servant or by a private person so as to amount to forgery is an offence punishable under s. 466, I.P.C. **13 P.R. 1895 Cr.**

(81)—*Penal Code, ss. 464, 468—Fraudulent entry in an account book.*—The complainant, to whom a certain amount was due from the accused's minor nephew, being illiterate, had that amount entered in his account book by another person. Subsequently, the accused asked for the account book and wrote in it an antedated entry bearing his own signature that he had paid the amount due to the complainant from his minor nephew. *Held*, that the accused was not guilty of the offence of forgery. **12 P.R. 1895 Cr.**

(82)—*Alteration in a document in order to support a claim that is otherwise just—Penal Code, ss. 25, 464, 471.*—The deliberate tampering with a document to support a claim in a Court, however just that claim may be, is a fraud both upon the Court and the opposite party, and no less a fraud though done to counteract another fraud. **6 P.R. 1895 Cr.**

(83)—*False certificate for purposes of employment in Government service—Penal Code, ss. 25, 474.*—The making of a false certificate with intent to procure an employment in Government service is fraudulent within the meaning of s. 25, I.P.C., and the certificate is a forged document intended to be used fraudulently within the meaning of s. 474, I.P.C. **2 P.R. 1895 Cr.** (19 C. 380 and 15 A. 210, *R.*).

Forgery—concluded.

(84)—*Fraudulently using a forged document—Penal Code, s. 471.*—Although a false document used in a case was not necessary for the purpose of the suit, *yet*, the person using it was held to be guilty of an offence under s. 471, I.P.C. **16 P.R. 1885 Cr.**

(85)—*False valuable securities, execution of—Penal Code, ss. 463, 465.*—Though a genuine valuable security may be withheld from the person entitled to it by an act of fraud, the act of executing false valuable securities to render inoperative such genuine valuable securities is no less a forgery. In such cases, fraud is committed for the purpose of counteracting fraud, and the person making the false document cannot make use of such defence to a charge of forgery. **4 P.R. 1885 Cr.**

(86)—*Alteration of a date in a bond—Penal Code, ss. 464, 465, 467.*—The alteration of a date in a bond is an alteration in a material part thereof, within the meaning of s. 464, I.P.C., although the alteration is not made for the purpose of saving limitation. **14 P.R. 1881 Cr.**

(87)—*False document prepared for concealing a previous offence—Penal Code, s. 468.*—Where the accused falsely or incorrectly read out to an Octroi Inspector the contents of an invoice so as make the value appear to be less than it actually was, and afterwards altered the invoice so as to make it correspond with what he had dictated to the darogha, *held*, that, as the alteration was made after the offence of cheating was complete, and for the purpose of saving himself or concealing the offence of cheating, the accused was not liable to be punished for forgery under s. 468, I.P.C. **15 P.R. 1876 Cr.**

—Abetment of—*See* ABETMENT, A.W.N. 1887, 95.

See CHARGE TO JURY, 8 C.L.R. 542.

—Admission to University examinations on false personation, and signing answer papers in another's name—*See* CHEATING, 12 M. 151 = 1 Weir 480.

See CHEATING. 1 P.R. 1907 Cr. = 32 P.L.R. 1907.

See CRIMINAL PROCEEDINGS, 16 B. 729, 18 B. 581.

See FALSE EVIDENCE, 5 A. 553.

—Suit in Court of Small Causes referred to an arbitrator—Fabrication of evidence, forgery and using forged document before such arbitrator—Sanction of Court of Small Causes—*See* SANCTION TO PROSECUTE, 17 M.L.J. 420 = 6 Cr. L.J. 331 = 2 M.L.T. 496.

See SANCTION TO PROSECUTE, 12 B. 36, 29 C. 887 = 7 C.W.N. 12.

Forgery (Bengal) Act.

See ACT I OF 1848.

Forty-five Degrees Rule.

See BEN. ACT III OF 1899, ss. 449 (1), 451, 574, 13 C.W.N. 74 = 9 Cr. L.J. 302.

Fraud.

(1)—*Fraud defined.*—By fraud is meant an intention to deceive; whether it be from an expectation of advantage to the party himself, or from ill-will towards the other, is immaterial. **13 B. 515 note.** [*R.*, 28 M. 90=1 Weir 538-A, 4 L.B.R. 315].

(2)—*Fraud—Creditor obtaining assignment of unattached property to defraud other creditors.*—A creditor commits no fraud who anticipates other creditors and obtains a discharge of his debt by the assignment of any property which has not already been attached by another creditor. **Rat. Un. Cr. C. 110.**

See CHEATING, 2 C.L.J. 524=3 Cr. L.J. 160.

See PENAL CODE, ss. 24, 471, 5 C.W.N. 897.

See PENAL CODE, ss. 417, 468, 511, 25 M. 726=1 Weir 481=12 M.L.J. 68.

See PENAL CODE, s. 477-A, 1 Weir 554.

Fraudulent Intent.

—Meaning of—*See* FORGERY, 22 C. 313.

See PENAL CODE, ss. 265, 266, U.B.R. 1908, 3rd Qr., Penal Code, 17=9 Cr. L.J. 415.

See PENAL CODE, s. 415, 32 C. 775=9 C.W.N. 807=2 Cr. L.J. 368=1 C.L.J. 469.

Fresh Complaint.

See CRIM. PRO. CODE (1898), s. 203.

—*Crim. Pro. Code, ss. 259, 253, 203—Discharge of accused—Jurisdiction to re-entertain fresh complaint.*—A Magistrate, who has discharged an accused person under s. 259, can re-entertain a fresh complaint on the same facts. No distinction could be drawn between an order under s. 203 and an order made under s. 253 or s. 259. **4 M.L.T. 140=8 Cr.L.J. 208.**

See DISMISSAL OF COMPLAINT, 26 P.W.R. 1908 Cr.=8 Cr. L.J. 249.

Fresh Evidence.

See REVIEW, Rat. Un. Cr. C. 458.

See REVISION, Rat. Un. Cr. C. 461.

Fresh Trial.

—*Crim. Pro. Code (1898), ss. 348, 350.*—The trial of a case transferred to the District Magistrate should be commenced *de novo*. The mere acquiescence of the accused will not cure the irregularity. Criminal proceedings substantially bad in themselves will not be cured by any waiver or consent on the part of the prisoner. **15 C.P.L.R. Cr. 66.**

See ACT I OF 1849, s. 9, 5 M.H.C. App. 13.

See ACT X OF 1875, s. 147, 1 C. 356.

See CRIM. PRO. CODE (1898), ss. 203, 350, 7 C.P.L.R. Cr. 36.

—Conviction in absence of charge—New trial, power of appellate Court to order—*See* CRIM. PRO. CODE (1898), ss. 232, 423, 28 C. 63=5 C.W.N. 819.

Fresh Trial—concluded.

See CRIM. PRO. CODE (1898), ss. 256 and 526, 7 C.L.J. 240=7 Cr. L.J. 213.

See CRIM. PRO. CODE (1898), ss. 346, 532, 12 C.W.N. 136.

See CRIM. PRO. CODE (1898), s. 349, Rat. Un. Cr. C. 130.

See CRIM. PRO. CODE (1898), s. 350, 13 C.W.N. 550.

—Withdrawal of case partly tried from one Magistrate to another—*See* CRIM. PRO. CODE (1898), ss. 528 and 537, 6 O.C. 192.

Fugitive Foreign Offenders Act.

See ACT VII OF 1854.

Full Bench.

(1)—*Crim. Pro. Code (1872), ss. 288, 297—Opinions of Division Court on a preliminary question of jurisdiction—Jurisdiction of Full Bench.*—Where, a Division Bench of the High Court ordered a Magistrate, who refused to try a case on the ground of want of jurisdiction, to make the enquiry, holding that he had jurisdiction, and the case came before the Full Bench, for the confirmation of the sentence of death passed on the accused by the Sessions Judge, to whom the case was committed by the Magistrate, *held*, per *Stuart, C.J., Spankie and Oldfield, JJ.*, that the Full Bench was not precluded, by the order of the Division Bench, from considering whether the conviction was by a Court of competent jurisdiction, in determining whether such sentence should be confirmed. **2 A. 218, F.B.**

(2)—*Appointment of Full Bench—Reasons.*—The fact that the majority of a Full Bench, which finally decides a point of difficulty, are numerically fewer than the Judges who have previously decided the point the other way, is no reason for appointing another Full Bench. Per *Garth, C.J.* **8 C. 985=11 C.L.R. 241.** [*R.*, 9 C. 288, 16 C. 667].

Full Owner.

See CRIM. PRO. CODE (1898), ss. 87, 88, 19 P.W.R. 1908, F.B.

Furlough.

See MAGISTRATE, JURISDICTION OF, 2 C. 117.

Further Enquiry.

See CRIM. PRO. CODE (1898), ss. 203, 437.

See REVISION.

(1)—*Crim. Pro. Code (1882), s. 437—"Further enquiry," nature of, under.*—S. 437 contemplates a further enquiry, *i.e.*, an enquiry upon further materials or further evidence, not a re-hearing of the matter upon the same evidence, which was before the Magistrate, who held the first enquiry. **12 C. 522.** [*Diss.*, 9 A. 52=6 A.W.N. 281, F.B.]

(2)—*Crim. Pro. Code (1882), s. 437—"Further enquiry," meaning of the Expression.*—The term "further enquiry" means, in its

Further Enquiry—continued.

primary significance, an enquiry in addition to that which has already been held, not the re-taking of the same evidence, which would be a fresh enquiry or re-trial, but the taking of additional evidence. In s. 437, the term is used in its ordinary meaning. **8 M. 336.** [*F.*, 12 C. 522; *overruled.*, 14 M. 334=2 Weir 557].

(3)—The expression "further inquiry" signifies as well a fresh consideration of the effect of evidence already recorded as a supplemental inquiry upon fresh evidence. **14 M. 334=1 M.L.J. 343=2 Weir 557, F.B.**

(4)—*Crim. Pro. Code (1882), ss. 436 and 437—"Further enquiry," meaning of—Power of Sessions Judge and District Magistrate to order further inquiry.*—The term "further enquiry" means an enquiry before the Magistrate preliminary to trial, which regularly results in a charge or a discharge, and does not include trial. The term "further enquiry" and "fresh enquiry" are used as meaning the same thing. But, further enquiry includes not merely the taking of the evidence, but the consideration of that evidence and the conclusion to charge or discharge of the accused. Therefore, after an enquiry by a subordinate Magistrate and discharge of the accused, a Sessions Judge or the Magistrate, as the case may be, has jurisdiction, under s. 437 of Crim. Pro. Code, to order a re-hearing, upon the same materials which were before the subordinate Magistrate, *i.e.* when no further evidence is forthcoming. This wide jurisdiction to set aside an order of discharge cannot be properly exercised without having and assigning solid and sufficient reasons for doing so. [*F.*, 5 C.P.L.R. 20, 2 Weir 557=14 M. 334, 14 P.R. 1891 Cr., 1 L.B.R. 9, 32 P.L.R. 1901, 2 Bom. L.R. 586, 2 P.R. 1901 Cr., 3 L.B.R. 97, F.B.; *R.*, 63 P.R. 1887 Cr., 13 B. 376, 14 P.R. 1891 Cr., 6 C.P.L.R. 11 Cr., L.B.R. (1893—1900), 169, P.L.R. 1900, 31 Cr., 14 C.P.L.R. 161; *D.*, 2 C.L J. 622] In a case triable only by the Sessions Court, to which s. 436 applies, if the Sessions Judge or District Magistrate is satisfied that, on the evidence, there is clear case for a committal, and that there is no reason for desiring a further consideration by the Magistrate, it would be, ordinarily, his duty to direct a committal under s. 436 and not to order a further enquiry under s. 437. In a case not triable only by the Court of Sessions, it would, ordinarily, be his duty, under the above circumstances, to refer the case to the High Court, which can make a suitable order, and not to direct further enquiry by a Magistrate. **15 C. 608.** [*R.*, 1 L.B.R. 9, 1 L.B.R. 100, 1 L.B.R. 311; *Diss.*, 3 L.B.R. 97, F.B].

(5)—Further enquiry, under s. 437, Crim. Pro. Code, 1898, does not in all cases mean a taking of additional evidence, but may be a re-hearing and reconsideration of the evidence already taken. **2 P.R. 1901 Cr.** (15 C. 608, 8 P.R. 1900 Cr. *F.*)

(6)—*Crim. Pro. Code (1882), ss. 252, 253 and 437—Order for further enquiry, effect of.*—The effect of an order for further enquiry under

Further Enquiry—continued.

s. 437 is to set aside a previous order of discharge and leave the enquiry before the Magistrate open, as it was before the order, to further evidence under s. 252 and to decision under s. 253 and subsequent sections of Ch. XXI of the Code of 1882. Where, after discharge of an accused person of the charge of rioting, the Sessions Judge ordered further enquiry, *held*, that the Magistrate, on the offence of rioting not being proved, was competent to try the accused for the minor offence of assault. **7 M. 454=2 Weir 551.** [*F.*, 4 L.B.R. 42; *R.*, 8 M. 336, 3 Bom. L.R. 675].

(7)—*Crim. Pro. Code (1882), s. 437—Further enquiry, when could be ordered and by whom to be made.*—S. 437 of the Crim. Pro. Code contemplates that the Court of Sessions shall simply direct the Magistrate of the District, either himself or by one of his subordinates, to make further enquiry. When further enquiry is into the effect of the evidence already on the record or the testimony of the witnesses already examined, it will usually be desirable that the fresh consideration of the complaint should be entrusted to a different Magistrate from the one who has already formed an opinion on the case. When the further enquiry involves the taking and weighing of additional evidence, the function will generally be best performed by the same Magistrate who made the previous enquiry; though peculiar and prejudiced views, or even the possibility of them, may make it more desirable to bring a fresh mind to bear on the facts. The power of ordering further enquiry should be used sparingly and with great circumspection. **Rat. Un. Cr. C. 328=Cr. Rg. 19 of 1887.**

(8)—The power to order further enquiry should be exercised sparingly and with great caution, and only in those cases where further evidence is forthcoming on the part of the prosecutor; it is undesirable to use such powers with the view that another Magistrate should hear and decide the matter on the same evidence. **24 P.R. 1903 Cr.** (21 A. 107, 16 B. 661, *R.*; 27 C. 662, *Diss.*)

(9)—*Held*, that a case may be sent to the lower Court for further enquiry under s. 437, Crim. Pro. Code, even though there may be no further evidence which can be produced on behalf of the prosecution. **P.L.R. 1900 Cr. 33.**

(10)—*Crim. Pro. Code (1882), ss. 403 and 437 Further enquiry, by whom to be made—Charges of theft and mischief—Acquittal on the latter charge—Order for further enquiry—Validity.*—The further enquiry allowed under s. 437 should ordinarily be conducted by the Magistrate who first enquired into the case. Where a person, charged with theft and mischief in respect of the boughs or loppings cut from a tree, which was claimed by the complainant, was tried by the Magistrate on a charge of mischief and acquitted under s. 245, on the ground that the accused had title to the tree as against the complainant, and the District Magistrate on an application from the complainant directed further

Further Enquiry—continued.

enquiry to be made by another Magistrate, which order was interpreted by the Sessions Judge, on a reference being made, as an order for further enquiry into the charge of theft only, *held*, that the District Magistrate's order was not a proper one and a new trial on a charge of theft was not maintainable, inasmuch as the finding in the trial for mischief, that the accused proved a good title to the tree as against the complainant, would also be a bar to the conviction of the accused for theft on the complaint laid by the complainant. **8 M. 296=2 Weir 554.** [*R.*, 1 Bom. L.R. 15, 3 M.L.T. 230=18 M.L.J. 57 ; *Commented on*, 10 B. 131].

(11)—*Crim. Pro. Code (1882), s. 437—"Further enquiry" by whom to be made—Order on insufficient grounds—When the District Magistrate could order for further enquiry.*—The "further enquiry" should ordinarily be held by the Magistrate who made the original enquiry, inasmuch as the section does not contemplate that the evidence already taken should be re-taken. Although an order for further enquiry is issued on insufficient grounds, if it has been duly carried out and further evidence has been forthcoming, the proceedings, including the order, should be upheld. A District Magistrate has no power, under s. 437, to direct the re-opening of proceedings, merely because, in his judgment, a subordinate Magistrate has not rightly appreciated the credit due to the witnesses. He should direct a "further enquiry" only where he is satisfied that such an enquiry is possible, that is to say, that further evidence is forthcoming either because the witnesses already examined have not been fully examined or because there are other witnesses who might have been examined. **8 M. 336.** [*R.*, 10 B. 131, 5 C.P.L.R. 20, 3 M.L.T. 230=18 M.L.J. 57 ; *Overruled*, 14 M. 334=2 Weir 557 ; *Diss.*, 6 A.W.N. 281=9 A. 52].

(12)—*Crim. Pro. Code (1882), s. 438—Order for further enquiry by Sessions Judge—Examination of monthly criminal returns of Magistrate.*—A Sessions Judge has no power to order further enquiry in a case where he has sent for the records, on examining the monthly criminal returns of the Magistrate. **Rat. Un. Cr. C. 407=Cr. Rg. 71 of 1888.**

(13)—*Crim. Pro. Code (1882), ss. 350, 437—Conviction upon the same evidence on which accused was discharged previously—Validity.*—Where, in a further enquiry by the District Magistrate in a case where the Deputy Magistrate discharged the accused, the former convicted the accused person practically upon evidence which was not recorded in the course of the "further enquiry" before himself, but upon evidence which was recorded by the Deputy Magistrate, *held*, that the conviction based substantially upon such evidence was improper, as, upon such evidence, the Deputy Magistrate had discharged him, rejecting the evidence. **6 A. 367.** [*R.*, 8 M. 336; *Commented on*, 10 B. 131; *Overruled*, 9 A. 52=6 A. W.N. 281, F.B.].

Further Enquiry—continued.

(14)—*Crim. Pro. Code (1882), s. 437—Omission to consider necessary evidence—Effect of further enquiry.*—The accused, an Abkari Inspector, in order to prevent a witness being tutored, told his peon, according to his own admission in the case in which the witness had deposed, to bring the witness to his office tent, and detained him there during the night. On the following morning, he sent him in charge of the peon to the Court, where he gave a deposition and was allowed to go. The Magistrate, without taking the admission of the accused in the previous case into consideration, discharged the accused on his plea that the complainant had voluntarily gone to his tent to have his statements reduced to writing, that he consented to stop there during the night, and that, of his own accord, he went with the peon to the Magistrate's Court on the following morning. On an application by the complainant to the Sessions Judge for further enquiry, on the ground that the Magistrate had not taken into consideration the accused's statement in the previous case, the Judge refused to order further enquiry as the accused acted without malice. *Held* by the High Court, in revision, that the further enquiry should be ordered, as the accused made certain admissions in the previous case, the effect of which had not been considered in dealing with the present complaint, the deposition in that case being given under circumstances which would permit its admission as evidence against the accused. *Held*, further, that malice was not an ingredient of the offence of wrongful confinement. In the further enquiry ordered under s. 437, the accused may meet the case for prosecution by producing rebutting evidence. The Magistrate may also take evidence which he has omitted to take. **13 B. 376.**

(15)—*Crim. Pro. Code (1898), ss. 435 and 437—Accused discharged by the Sub-Magistrate—Jurisdiction of Sessions Judge to direct a further enquiry on the ground of misappreciation of evidence.*—Where the accused who were charged with theft were discharged by the Sub-Magistrate, but the Sessions Judge held that, on the evidence, the accused persons should not have been discharged, set aside the order of discharge and directed a further enquiry. *Held*, that, reading ss. 435 and 437 together, the Sessions Judge had jurisdiction to direct a further inquiry, if he considered the order of discharge incorrect, illegal, or improper, or on the ground of misappreciation of evidence, if, in his opinion, misappreciation of evidence has led to the passing of an incorrect or improper order of discharge. No restrictions are placed by the sections upon the grounds on which a Sessions Judge may order further inquiry. **5 M.L.T. 356=32 M. 214=3 Ind. Cas. 488.**

(16)—*Crim. Pro. Code (1898), ss. 435 and 439—Revisional powers of District Magistrates—Further enquiry on the ground of incorrect appreciation of evidence.*—Where an accused, charged of having framed a false record, was discharged by the Deputy Magistrate, but the

Further Enquiry—continued.

District Magistrate on revision set aside the order on the ground that the Deputy Magistrate did not correctly appreciate the evidence, and ordered a further enquiry, *held*, that the District Magistrate had jurisdiction to pass the order. **6 M.L.T. 157.**

(17)—*Crim. Pro. Code (1898), ss. 157, 159, 476—Police report after investigation that an offence has been committed—Further enquiry of Magistrate—Order for prosecution of witnesses examined in the Magistrate's enquiry—Penal Code, s. 193.*—Where a Deputy Magistrate held a magisterial enquiry into a case, after the police had made an investigation at the direction of the District Magistrate, and subsequently ordered the prosecution for perjury of the witnesses examined before him, *held*, that the enquiry held by the Deputy Magistrate was without legal sanction, and that the orders for prosecution were consequently without jurisdiction. **6 A.L.J. 963.**

(18)—*Case referred to second class Magistrate by District Magistrate—Power of Sub-Divisional Magistrate to withdraw case—Further enquiry—Crim. Pro. Code (1882), s. 437.*—A Sub-Divisional Magistrate cannot properly withdraw a case specifically referred to by his superior, the District Magistrate, nor can the latter properly insist on repeated further enquiries without fresh evidence. **Rat. Un. Cr. C. 315=Cr. Rg. 1 of 1887.**

(19)—*Power of District Magistrate to order further enquiry—"Accused" and "discharged," meaning of—Crim. Pro. Code (1898), ss. 437, 119.*—The terms of s. 437 of the Code are sufficiently wide to enable a District Magistrate to order a further enquiry into the case of a person discharged under s. 119 of the Code, and there is no sufficient ground for holding that they apply, in the case of a discharge, only to a discharge from the charge of an offence. An accused person is a person over whom a criminal Court is exercising jurisdiction. **2 L.B.R. 80.** (4 C.L.R. 452, 16 B. 661, 23 C. 493, 21 A. 107, 24 A. 148, 24 C. 395, *R.*)

(20)—*Crim. Pro. Code (1898), s. 437—District Magistrate ordering further enquiry—Direction to record evidence and to return the record to the District Magistrate—Legality of the order.*—A District Magistrate, revising a case under s. 437 of the Crim. Pro. Code, has no power to direct the trying Magistrate to simply take down the evidence, and return the records to him. A prosecution lawfully revived must be dealt with in accordance with law, in the same way in which a prosecution originally instituted is dealt with. **4 L.B.R. 42=6 Cr.L. J. 279.**

(21)—*Crim. Pro. Code (Act V of 1898), ss. 253 (2) and 437—Discharge of accused by District Magistrate without giving complainant opportunity to substantiate charge—Further enquiry by Sessions Judge.*—The accused were chalanned for the offence of mischief by fire under s. 436, Penal Code, to the District Magistrate, who, without calling upon the complainant or his witnesses or the accused to appear, and only on reading the chalan, passed an order discharging the accused under s. 253 (2), Crim. Pro. Code. The complainant was not informed of the order of discharge till after a very long time. On his being informed, he made an application for revision to the Sessions Judge, which was dismissed on the ground that, after so long a delay, it would be inexpedient to re-open the case. *Held*, that the orders of the District Magistrate and the Sessions Judge were contrary to law. **68 P.L.R. 1902.**

(22)—*I.P.C. s. 379, Crim. Pro. Code (1898), s. 437—Discharge by Magistrate in a case of theft—Further enquiry by Sessions Judge—Revision.*—Where a Magistrate, in a case under s. 379, Indian Penal Code, after recording all the evidence, discharged the accused, and the Sessions Judge ordered further enquiry under s. 437, Crim. Pro. Code, the Chief Court, on revision, set aside the order of the Sessions Judge with the observation that the accused was tried fully and carefully, and, for all practical purposes, acquitted. He was technically "discharged," but the enquiry was complete. **P.L.R. 1900 31 Cr.**

(23)—*Crim. Pro. Code (1898), s. 437.—"Further enquiry," power of District Magistrate to direct--'Retrial.'*—All that a District Magistrate can do under s. 437, of the Code, is to order a 'further enquiry' and not a 'retrial'. The use of the word 'retrial' may probably prejudice the accused with a subordinate Court. **11 P.L. R. 1905.**

(24)—*Crim. Pro. Code (1898), s. 437—Discharge by District Magistrate empowered under s. 30—Power of Sessions Judge to order further enquiry.*—Where a District Magistrate empowered under s. 30, Crim. Pro. Code, discharged an accused person, the Sessions Judge was held to be competent to order a further enquiry. **15 P.R. 1904 Cr.**

(25)—*Crim. Pro. Code (1898), s. 437—Jurisdiction of District Magistrate to make further enquiry into the case of an accused discharged by him—Committal to Sessions Court—Sessions Judge's order discharging the accused and holding the District Magistrate's order to be illegal—Validity.*—When a District Magistrate has dismissed a complaint against an accused person under s. 203, Crim. Pro. Code, or has passed an order of discharge, he is empowered by s. 437 to direct a further enquiry into the case when, in the interests of justice, it is necessary to do so. Where the District Magistrate directed further enquiry into the case of the accused after he had discharged him, and the accused was committed to the Court of Session and the Sessions Judge, holding that the order of the District Magistrate was *ultra vires*, discharged the accused, *held*, that the order of the Sessions Judge was not justified under the provisions of s. 215 of the Crim. Pro. Code and the District Magistrate was competent to order a further enquiry. **50 P.L.R. 1902=9 P.R. 1902 Cr.**

Further Enquiry—continued.

(26)—*Crim. Pro. Code (1898) ss. 119, 209, 253, 259, 437—Order of 'discharge under s. 119' —Jurisdiction of District Magistrate to direct 'further enquiry' under s. 437—Scope and applicability of s. 437—'Discharge'—Meaning.*—Where a Magistrate, after hearing the evidence adduced on behalf of an accused person, 'discharges' him under s. 119, Crim. Pro. Code, *held*, that a District Magistrate has no jurisdiction to order further enquiry under s. 437 of the Code. S. 437, Crim. Pro. Code, undoubtedly applies to disposals under ss. 253 and 259 and possibly to a disposal under s. 209 also. But the discharge under s. 119 is a different matter. The jurisdiction given by s. 437 should not be applied to cases under Ch. VIII, at any rate, where before making an order under s. 119, the Magistrate has called on the person, into whose conduct the inquiry is made, to establish his defence. The term 'discharge' may have two meanings and s. 119 indicates that its meaning in that section is non-technical. The 'discharge' of s. 119 is merely 'a permission to depart.' **6 M.L.T. 133.**

(27)—*Crim. Pro. Code (1882), s. 437—District Magistrate—Further enquiry—Jurisdiction.*—It is competent to a District Magistrate, under s. 437 of the Crim. Pro. Code, to order further enquiry in a case, though he may have declined to do so on a previous occasion in the same matter. **Rat. Un. Cr. C. 522=Cr. Rg. 17—9—1890=Cr. Rg. 48 of 1890.**

(28)—*Crim. Pro. Code (1882), ss. 435, 437—Power of District Magistrate to direct further enquiry in a case of acquittal by a first-class Magistrate.*—A first-class Magistrate is not "inferior" to a District Magistrate, within the meaning of s. 435, Crim. Pro. Code; and hence the latter is not competent to call for the record of a case from the former or to direct further enquiry to be held when the former has discharged an accused person. **7 A. 134.** [*Diss.*, 12 C. 473, F.B.]

(29)—*Crim. Pro. Code (1898), s. 437—Improper discharge of accused—Power of District Magistrate to order further enquiry—Further enquiry, meaning of.*—In cases of improper discharge by inferior Courts, the power of the District Magistrate is co-extensive with the power of the High Court. He should not refer the case to the High Court, merely because he doubts the legality of the order of discharge. The expression "further enquiry" in the above section of the Code does not imply that additional evidence must be forthcoming. **14 C.P.L.R. 161.** (15 C. 609, 10 B. 131, 9 A. 52, 14 M. 334, *R.*).

(30)—*Further enquiry, power of District Magistrate, to direct—Crim. Pro. Code (1882), s. 437.*—A District Magistrate is not competent to direct, under s. 437 of the Crim. Pro. Code, a further enquiry to be made by a subordinate Magistrate, into a matter finally disposed of by an order discharging the accused, by a first class Magistrate. **10 C. 268.** [*F.*, 10 C. 551, 7 A. 134=4 A.W.N. 286; *Overruled*, 12 C. 473, F.B.; *Diss.*, 8 M. 18, F.B.=2 Weir 540, 9 B. 100].

Further Enquiry—continued.

(31)—*Crim. Pro. Code (1898), s. 437—Further enquiry in case of discharge of accused person on the ground of matter in dispute being of a civil nature.*—The District Magistrate is not authorised to order further enquiry under s. 437, in a case where the lower Court has found that the essence of the matter was in reality one to be fought out in a Civil Court. **1 Bom. L.R. 852.**

(32)—*Crim. Pro. Code (1898), ss. 202, 203 and 437—Dismissal of complaint—Further inquiry ordered without notice to accused——Notice to accused, if necessary.*—The Magistrate before whom a complaint was laid, after issuing notice to the accused, dismissed it under s. 203 of the Code of Criminal Procedure. The District Magistrate, however, ordered further enquiry, but issued no notice to the accused to show cause. The case was made over to another Magistrate for further enquiry. *Held*, that no notice was necessary, the proceedings having reached no further stage than they did. It is impossible to lay down a general rule that in every case the Magistrate exercises a wrong discretion, if he orders further enquiry without notice being sent to the accused. The safer and more convenient course is to send such notice. **5 A.L.J. 74=A.W.N. 1908, 45=7 Cr. L.J. 157.**

(33)—S. 437, Crim. Pro. Code, 1898, does not require the issue of notice to the person discharged as a condition precedent to further enquiry. **3 Bom. L.R. 703.** [*R.*, 6 Bom. L.R. 856].

(34)—The Crim. Pro. Code does not expressly require that notice to an accused person is necessary before an order under s. 437 can be passed; but as a matter of discretion, it is proper that such notice should be given, especially, where further enquiry directed is for the purpose of reconsidering the evidence already given. **5 Bom. L.R. 877.**

(35)—Notice should be given to the accused before passing an order for further enquiry under s. 437, Crim. Pro. Code, 1882. **2 C.W.N. 196.**

(36)—Although no notice to an accused person is necessary before ordering a further inquiry, under s. 437, Crim. Pro. Code, 1882, yet a Court would not be exercising a proper discretion, if it does not give the accused an opportunity, by service of a notice, to show cause against such an order being made. **3 C.W.N. 249.** [*F.*, 13 C.P.L.R. 189].

(37)—The power conferred by s. 437, Crim. Pro. Code, 1898, to direct a further enquiry should be used sparingly and with great caution. Though it is not illegal to make an order under the section without notice to the accused, it is always desirable that notice should be given. **11 C.W.N. 173=5 Cr.L.J. 16.** [*R.*, 31 M. 133=3 M.L.T. 230=18 M.L.J. 57].

(38)—Before passing an order for further enquiry under s. 437, Cirm. Pro. Code, 1898, it is ordinarily proper, though not legally

Further Enquiry—continued.

necessary, that the accused should be called upon to show cause why such order should not be made. **2 P.R. 1901 Cr. =32 P.L.R. 1901.**

(39)—*Crim. Pro. Code (1898), s. 437—Order of District Magistrate, directing further enquiry without notice to accused—Order giving no reasons—Effect of.—Held*, that, though it is not, as a matter of law, obligatory on the District Magistrate to issue a notice upon the accused before directing a further enquiry under s. 437, Crim. Pro. Code, such notice should, ordinarily, in the exercise of a wise discretion, be issued, before any order prejudicial to him is passed. *Held*, also, that, though it is not desirable that the District Magistrate should make a detailed examination of the evidence or give elaborate reasons for ordering a further enquiry, yet it is desirable that he should give sufficient reasons to show that the order is a proper one. **3 S.L.R. 7 Cr. =9 Cr. L.J. 446 =1 Ind. Cas. 938.**

(40)—*Crim. Pro. Code, s. 437—Power of Sessions Judge in revision—Further enquiry—Reasons for ordering further enquiry.*—A case came before a Township Magistrate. He discharged the accused, after recording the evidence and examining the accused, under s. 209 of the Crim. Pro. Code. On a petition by complainant to the Sessions Judge, he directed the District Magistrate, by himself or by a special power Magistrate subordinate to him to hold further enquiry. The accused was convicted by a senior Magistrate. On his appeal, it was contended for the accused that the Sessions Judge's order was bad, because it directed the further enquiry to be made by a Magistrate other than the one, who discharged the accused, and because the Sessions Judge did not give reasons. *Held*, that the Sessions Judge's order was a legal and proper one and the words " I have translated and considered the whole of the evidence on the record, and the conclusion to which I have come is that there must be further inquiry " contained ample reasons for the order. **4 L.B.R. 233 =7 Cr. L.J. 493.**

(41)—*Crim. Pro. Code (1898), ss. 202, 203, 437 and 439—Notice—Dismissal of complaint—Order of further enquiry without notice to the accused.—Held*, that no notice to the accused person is necessary where the Court of revision acting under s. 437, Crim. Pro. Code, 1898, directs further enquiry to be made into any complaint which has been dismissed under s. 203 or sub-s. 3 of s. 204 of the said Code. **11 P.W.R. 1908 Cr. =7 Cr. L.J. 347.**

(42)—*Improper discharge of accused—Reference to High Court—Notice to accused not absolutely necessary—Crim. Pro. Code (1898), s. 437.*—In cases of improper discharge, when there is really no *further enquiry* that can be properly directed, the proper course is to refer the matter to the High Court. In cases in which *further enquiry* of any kind can be ordered, a reference to the High Court would be unnecessary. The service of a notice to show cause is not absolutely necessary in point

Further Enquiry—continued.

of law, but it is a general principle that an order to the prejudice of an accused person shall not be made without his having an opportunity of contesting it, and a Magistrate, who neglects to give such notice or opportunity, does not exercise a proper discretion. **1 L.B.R. 100.** (1 L.B.R. 9, *Commented on*). [*Overruled by* 3 L.B.R. 97].

(43)—*Crim.Pro.Code(1898), ss. 203, 437—Order for further enquiry without notice to the accused—Construction of order for further enquiry.*—No order should be passed against an accused person without his getting an opportunity of being heard. On a rule issued only upon the District Magistrate to show cause why further enquiry should not be directed into a complaint against the accused, which had been dismissed under s. 203, the accused is entitled to be heard. [*Diss.*, 5 A.L.J. 74 =A.W.N. 1908, 45 =7 Cr. L.J. 157.] Where, on the dismissal of the complaints of two rival parties under s. 203, Crim. Pro. Code, the Sessions Judge, on the application of both parties under s. 437, Crim. Pro. Code, ordered that further enquiry should be held in both the cases and directed that, if one of them be found false, the other case should be tried, *held*, that the Sessions Judge's order contemplated that the cases should be decided after a regular trial, and not dealt with under s. 203, Crim. Pro. Code. **11 C.W.N. 316 =5 Cr. L.J. 112.**

(44)—*Crim. Pro. Code (1898), s. 437—Further enquiry, after discharge of accused person—Notice to the accused person, whether necessary—Reasons for the order for further enquiry.*—As a matter of law, it is not obligatory on a District Magistrate to serve a notice on the accused person, before ordering a re-trial under s.437, Crim.Pro.Code, 1898, but, according to the general principles of criminal jurisdiction, no order prejudically affecting the accused person should be passed without giving him an opportunity of being heard. It is not ordinarily desirable that a District Magistrate, in ordering a further enquiry, under s. 437 of the Code, should make a detailed examination of the evidence and give elaborate reasons, because that might prejudice the trial afterwards ; but it is desirable that he should give enough in the shape of reasons to show that his order is proper. **32 C. 1090.**

(45)—*Crim. Pro. Code (1898), s. 437—Order of discharge—Powers of Sessions Judge to order further enquiry—Proper grounds for—Interference by High Court.*—Where an order by a Magistrate is an order of discharge in substance, though not in form, it is open to a Sessions Judge, upon a motion being made to him by the complainant, to make an order for further enquiry. Where the order of the Sessions Judge for further enquiry does not state any proper grounds, it is liable to be set aside by the High Court. **8 C.W.N. 456.** [*D.*, 4 L.B.R. 233].

(46)—*Crim. Pro. Code (1898), s. 437—Further enquiry—Grounds for ordering—Perusal of evidence—Statement of reasons.*—It is the

Further Enquiry—continued.

duty of the Judge, before directing a further enquiry against a person who has been discharged, to peruse the evidence and state the grounds which induce him to make the order. **13 C.W.N. 76=9 Cr.L.J. 303.**

(47)—*Crim. Pro. Code (1882), s. 437—Order for further enquiry—Notice, omission to give—Effect— Order refusing further enquiry—Power of successor to direct further enquiry.*—The omission to give notice to the accused, before ordering a further enquiry is fatal to the validity of the order. [*R.*, U.B.R. (1897—1900), 100 Cr.] Where a District Magistrate has refused to direct a further enquiry, it is not competent to a successor in office, in the face of his predecessor's order, to direct a further enquiry. In such a case, the Sessions Judge is the proper officer to do so. **4 C.W.N. 100.**

(48)—*Crim. Pro. Code (1898), s. 437—Order for further enquiry by Sessions Judge without giving notice to the accused—Validity—Omission to give notice, effect of—Revision by High Court.*—An order for the further enquiry by a Sessions Judge made on the application by the complainant without giving notice to the accused so as to give him an opportunity of showing cause why an order to his prejudice should not be made, is an improper order, although it may not be an illegal order. It is clearly competent to the High Court to revise such an order. It cannot be laid down, as a general proposition, that the omission to give notice has in itself rendered an order under the section bad. But in a case which presented no difficulty in connection with giving notice and in which there was no reason why the general rule should not be followed, the High Court will set aside the order, if made without notice. **26 M. 41=2 Weir 564.** [*R.*, 2 Weir 692].

(49)—*Crim. Pro. Code (1898), ss. 202, 203, 437 and 439—Dismissal of complaint by Presidency Magistrate—Power of High Court to direct further enquiry—Charter Act, s. 15.*—The powers of the High Court, under s. 203, to interfere with orders of a Presidency Magistrate, are limited. Where a Presidency Magistrate dismisses a complaint under s. 203, the High Court cannot direct a further enquiry under s. 437, nor can they interfere under s. 439, although the order of the Magistrate, dismissing the complaint, might not be quite proper. They can only act under s. 15 of the Charter Act, but the question of propriety or impropriety of the order does not strictly come within the authority vested by s. 15 of the Charter Act. **33 C. 1282=5 Cr. L.J. 83.** [*F.*, 6 C.L J. 705].

(50)—*Crim. Pro. Code (1898), ss. 435, 439—Presidency Magistrate—Discharge, order of—Interference in revision, by High Court.*—The High Court has power under s. 439 of the Code to order a further inquiry in a case, in which a Presidency Magistrate has discharged an accused person. **13 C.W.N. 1221.**

(51)—*Crim. Pro. Code (1872), ss. 147, 298 Dismissal of complaint—Further enquiry.*

Further Enquiry—continued.

When a complaint is dismissed under s. 147 of Crim. Pro. Code, it is competent to the District Magistrate, under s. 298, to order further enquiry and refer the case to the same or some other Magistrate subordinate to him under s. 147. **Rat. Un. Cr. C. 89.**

(52)—*Crim. Pro. Code (1898), ss. 203 and 437—Dismissal of complaint under s. 203—Order for further enquiry—Service of notice, whether necessary.*—It is not necessary that a notice should be issued before an order can be properly passed under s. 437 directing further enquiry into a matter which has terminated in a summary order of dismissal of complaint under s. 203, in the absence of any person except the complainant. Where, on a complaint made against certain persons, the Magistrate proceeded against only one of them and convicted him under s. 404, and subsequently the complainant appeared before the Magistrate and asked that process might issue against the others which was refused by the Magistrate, *held*, that the order was to all intents and purposes an order under s. 203, and the Sessions Judge was, therefore, competent to consider under s. 437 and no notice was necessary to the parties before the Sessions Judge could act. **29 C. 457=6 C.W.N. 638.**

(53)—*Crim. Pro. Code, ss. 253 and 437—Discharge of accused after full enquiry—Powers of appellate Court to direct further enquiry.*—An accused person discharged after full enquiry by a competent Court is entitled to the benefit of that discharge, unless some further evidence is disclosed. The law allows a further enquiry, only when there has not been a full enquiry and where further evidence is disclosed. Where a Deputy Magistrate discharged the accused under s. 253, after full enquiry, *held* that the Sessions Judge would not be competent to order a further enquiry, on the ground that the evidence recorded was sufficient for the conviction of the accused, unless some further evidence was disclosed. **10 C. 1027.** [*F.*, 12 C. 522, 8 M. 336; *R.*, L.B.R. (1893—1900), 169, 1900 P. L.R. 31 Cr. ; *Diss.*, 10 B. 131, 6 A.W.N. 281=9 A. 52. F.B.]

(54)—*Crim. Pro. Code (1882), s. 437—Further enquiry—Power of Sessions Judge to interfere with order passed by District Magistrate.*—Both the District Magistrate and the Session Judge are competent, under s. 437, to order a further enquiry, but when a further enquiry has been refused by one of these officers, it should not be ordered by the other ; if the Sessons Judge is of opinion that the order of the District Magistrate was wrong, it is open to him to refer the matter to the High Court, but he has no jurisdiction himself to review an order made by the District Magistrate under the section. **22 C. 573.** [*R.*, 4 O.C. 119; *D.*, 2 M.L.T. 24=5 Cr. L.J. 132=17 M.L.J. 153].

(55)—*Crim. Pro. Code (1898), ss. 253, 367, 369, 403 and 437—Discharge of accused person in warrant case—Power of Magistrate to reissue warrant upon accused in respect of same*

Further Enquiry—continued.

offence—Order for further enquiry, whether necessary.—Held by the Full Bench (Ghose, J. *dissenting*).—A Magistrate in a warrant case, having passed an order of discharge, is competent to take fresh proceedings and issue process against the accused in respect of the same offence without an order for further enquiry under s. 437. *Per Ghose*, J.—The Legislature intended that an order of discharge, when once made by a Magistrate, can only be altered and the prosecution revived, by an order of a superior Court. But, in the present case, the order of discharge was no bar to the revival of the same complaint as it did not amount to a judgment within the meaning of ss. 367 or 369, there having been no judicial investigation by the Magistrate into the merits of the complaint. **29 C. 726=6 C.W.N. 633, F.B.** [*F.*, 1 N.L.R. 18, 2 Weir 325-A=28 M. 310, 16 M.L.J. 79 =1 M.L.T. 31 ; =29 M. 126 ; *R.*, 2 L.B.R. 27, 6 O.C. 262, U.B.R. 1904, 2nd Qr., Crim. Pro., 19, A.W.N. 1906, 245=29 A. 7=3 A.L.J. 562, U.B.R. 1906, 2nd Qr., Crim. Pro., 49, 9 Bom. L.R. 250; *Diss.*, 2 Weir 247-A=28 M. 255].

(56)—*Crim. Pro. Code (1898), s. 437—Further enquiry—Power of Magistrate to direct further enquiry into offences forming component parts of an offence of which accused was acquitted.*—Where the petitioner was charged with being a member of an unlawful assembly with the common object of assaulting the complainant and with having assaulted the complainant in prosecution of that common object, and, after trial professedly under s. 147, I.P.C., was acquitted, *held*, that he cannot be re-tried for an offence under s. 323, I.P.C., until the order of acquittal had been set aside; nor could an order for further enquiry in regard to an offence under s. 342, I.P.C., be made inasmuch as the whole occurrence had already formed the subject of a trial which had resulted in an acquittal. **5 C.W.N. 72.**

(57)—*Crim. Pro. Code (1898), ss. 202, 203, 422—Order for further enquiry, refusal of, by the High Court—Subsequent order by the Sessions Judge on fresh materials—Propriety of.*—A refusal by the High Court to order for further enquiry is no bar to the Sessions Judge's order for further enquiry, if fresh evidence has been brought to light and the order of the Sessions Judge is made upon materials totally different from that which were before the High Court. **7 C.W.N. 80.**

(58)—*Crim. Pro. Code (1882), ss. 436 and 437—Further enquiry—Power of District Magistrate to suggest a committal to Sessions.*—Under s. 437, Crim. Pro. Code, the District Magistrate has power to make further enquiry himself or to direct the Sub-Magistrate to make further enquiry, but, if he chooses the latter course he has no legal authority to fetter the Sub-Magistrate in the exercise of his judicial discretion and to suggest a committal to the Sessions. **15 M. 39=2 Weir 542.** [*R.*, 3 M.L.T. 230=31 M. 133=7 Cr. L. J. 267=18 M.L.J. 57].

Further Enquiry—continued.

(59)—*Crim. Pro. Code (1898), s. 437—Person called upon to furnish security under s. 107, and discharged under s. 119, if an accused person—Order for further enquiry.*—A person discharged under s. 119, Crim. Pro. Code, is an accused person within the meaning of s. 437, Crim. Pro. Code. Therefore, an order for further enquiry can be made in the case of a person called upon to furnish security, and discharged by the Magistrate under s. 119, Crim. Pro. Code. **33 P.R. 1905 Cr=149 P.L.R. 1905.** (20 C. 729, 24 C. 395, *D.*)

(60)—The person proceeded against under Ch. VIII, Crim. Pro. Code, is not an accused person within the meaning of s. 437. Therefore, s. 437 does not authorise an order for further enquiry to be made in a case under s. 107, Crim. Pro. Code, in which the person proceeded against has been discharged under s. 119. **42 P.R. 1905 Cr.** (27 C. 662, *F.*; 21 A. 107, *not F.*).

(61)—*Practice and procedure of Chief Court in admitting applications for—Crim. Pro. Code, s. 437—Concurrent powers of Sessions Judge and District Magistrate under.*—The power conferred by s. 437 of the Crim. Pro. Code to order further enquiry into the case of an accused person who has been discharged is exercised by the Sessions Judge and District Magistrate concurrently with the Chief Court. The general rule of practice is that the Chief Court will not interfere, when there are other remedies available, until those remedies have been exhausted. When there is really no further enquiry that can properly be directed, but when what was sought was a reconsideration of the evidence on the record, the proper course was for the Sessions Judge or Magistrate to refer the matter to the High Court. In such a case the proper course for a person aggrieved is to bring his application directly to the Chief Court. Where further enquiry is desired, the Court will not ordinarily admit applications for the exercise of the power conferred by that section, unless the applicant has, in the first instance, moved the Sessions Judge or District Magistrate. **2 L.B.R. 306.** (2 L.B.R. 165, 1 L.B.R. 100 and 311, *R*).

(62)—*Crim. Pro. Code (1872), ss. 521, 528—Penal Code, s. 188.*—Where a Magistrate, who had made an order under s. 521, Crim. Pro. Code, 1872, subsequently directed further enquiry to be made, it was held that he must be considered to have abandoned his proceedings under s. 528, and that he should have proceeded under s. 528 instead of finding the party charged under s. 188 of the Penal Code. **21 W.R. Cr. 86.**

See BOM. ACT IV OF 1887, ss. 6, 7 and 11, 1 S.L.R. 67 Cr.=8 Cr. L.J. 185.

See COMMITMENT TO SESSIONS COURT, 4 M.H.C. App. 30.

See COMPLAINT, 4 C.W.N. 242, 11 O.C. 261.

See CRIM. PRO. CODE (1898), ss. 209, 436, 24 M. 136=2 Weir 544.

Further Enquiry—concluded.

See CRIM. PRO. CODE (1898), *s.* 428, 5 A. 217.

—District Magistrate's powers to direct—*See* DISTRICT MAGISTRATE, L.B.R. (1893—1900), 135.

—Discharge of accused—Further enquiry, whether includes, charge and trial. *See* FALSE EVIDENCE, 1 L.B.R. 101.

See HIGH COURT, JURISDICTION OF, 26 C. 746=3 C.W.N. 598.

See HIGH COURT, SUPERINTENDENCE AND POWERS OF, 5 M.L.T. 233, F.B.=9 Cr. L.J. 192=19 M.L.J. 157=32 M. 220=1 Ind. Cas. 228.

—Power of District Magistrate to order—*See* MAGISTRATE, JURISDICTION OF, 18 C. 75.

See MAGISTRATE JURISDICTION OF, 10 C. 551.

See NOTICE, 6 A. 367.

See NUISANCE UNDER CRIM. PRO. CODE, 24 C. 395=1 C.W.N. 217.

See SANCTION TO PROSECUTE, 12 C.W.N. 822=8 C.L.J. 73=8 Cr. L. J. 51.

See SECURITY FOR GOOD BEHAVIOUR, 33 C. 8=3 Cr. L.J. 243, 21 A. 107.

See SESSIONS JUDGE, JURISDICTIONOF, 3 N.W.P. 90.

Gambling.

See BETTING.

See COCK-FIGHTING.

See GAMING.

(1)—*Gaming defined.*—Gaming or Gambling is defined by Wharton in his Law Lexicon as the "art or practice of playing and following up any game, particularly those of chance." A game is defined by Johnson as "sport of any kind—a single match at play—a solemn contest;" and by the Imperial Dictionary "to game" is defined—"to use cards, dice, billiards, or other instruments, according to certain rules, with a view to win money or other things waged upon the issue of the contest." Thus both lexicographers make a contest an essential element, and an active participation of certain persons is also necessary. A bet cannot, for the purposes of the Criminal Law be treated as a game. Under the Indian law, mere betting is not punishable. **13 B. 681.** [*Doubted.* 31 C. 542, 8 C.W.N. 458].

(2)—*Penal Code, s. 294-A—Gambling whether prohibited in mofussil—Money lent for gambling, whether recoverable.*—Except by s. 294-A, which refers to lotteries, gambling is not prohibited by law in the mofussil of this Presidency. Money given for the purpose of gambling is, therefore, recoverable. **7 M. 301.** [*R.*, 9 C.P.L.R. 17, L.B.R. (1893-1900), 60, U.B.R. (1897—1901), 322].

Gambling—continued.

(3)—*Penal Code, ss. 141 and 143—Assembly for the purpose of gambling.*—Persons assembling for the purpose of gambling are not members of an unlawful assembly. **1 Weir 53.**

(4)—*Cards playing in private house.*—Playing cards in a private house is not an offence punishable by law. **L.B.R. (1872—1892), 57, 59.**

(5)—*Allowing gambling in one's house and lending money to gamble, if offence.*—It is not *per se* an offence for any man to allow gambling to be carried on in his house, whether openly or secretly, or even to lend money to people to gamble in his house. **U.B.R. (1897—1901), Vol. I, 224.**

(6)—*Gambling Act (IV of 1887), ss. 4, 5, 6, 7—Presumption under s. 7—Evidence Act, ss. 11 and 54—Held by Chandavarkar and Aston, JJ. (Jacob, J., dissenting),* that the presumption created by s. 7 at Bombay Act, IV of 1887, can be applied to cases falling under s. 5 as well as to those falling under s. 4 of the Act. Where a long interval elapses between the issue of a warrant under s. 6 and its execution, the applicability of s. 7 of the Act is not by that alone taken away. *Held by Jacob, J., dissenting*:—The presumption created by s. 7 is sufficient for the purposes of s. 7. It is also sufficient for the purposes of s. 4 (*a*) so far as regards the fact that the house, etc., is so used, but it is not alone sufficient for the purpose of showing that the house was so kept or used by any specific person. Per *Chandavarkar and Aston, JJ. (Jacob, J., dissenting)*:—In a trial for the offence of keeping a common gaming house under s. 4, evidence that the accused had been previously convicted of the same offence is admissible to show guilty knowledge or intention. Per *Jacob, J., dissenting*:—In a trial for an offence under s. 4 (*a*) the evidence that the accused was previously convicted of a similar offence cannot be let in either under s. 54 or under s. 11 of the Evidence Act. **28 B. 129=5 Bom. L.R. 805.**

(7)—*Lottery tickets, instruments of gaming Act III of 1867, ss. 1 and 4.*—Lottery tickets, by reference to which it is to be decided whether the holder or purchaser wins the whole, or any part, of any stakes, are instruments of gaming within the first and fourth sections of Act III of 1867, and they are instruments of gaming of a nature similar to cards. **12 W.R. Cr. 34.**

(8)—*Gambling Act, III of 1867, s. 6—Finding of cowries in a house—Common gaming house.*—The mere finding of cowries in a house would not raise the presumption that the house was used as a common gaming house; but evidence that cowries were used in a particular house as a means whereby to carry on gaming would bring the house within s. 6 of the Act. It entirely depends upon the use to which cowries are put. If they are used for the purposes of gaming, as they frequently are in this country, they are, when they are shown to be so used, as much instruments of gaming as dice. **A.W.N. 1897, 117.**

Gambling—concluded.

(9)—*Gambling Act, III of 1867, s. 3—Owner of house also a gambler—Effect.*—The fact that the owner of a house is also one of the gamblers is no reason why he should not be regarded as keeping a "common gambling house" within the meaning of s. 3 of Act III of 1867. **A.W.N. 1905, 106 (N) = 27 A. 568 (N).** [*R.*, 27 A. 567 = A.W.N. 1905, 106].

(10)—*Gambling Act, III of 1867, ss. 3, 6—Search-warrant—Misdescription of house—Effect.*—A search warrant issued under Act III of 1867 described the house by its correct number, but as being in a wrong *mohalla* adjoining the one in which it was really situated. There was evidence that the house searched was the house about which information had been received. *Held* that the misdescription did not vitiate the warrant so as to prevent the presumption referred to in s. 6 of the Act being applied to the case. **A.W.N. 1905, 105 = 2 Cr. L.J. 243.**

(11)—*Gambling Act, III of 1867, s. 13—Gambling*—Chabutra *of private house—Public place.*—The *chabutra* of a private house is not a public street, place, or thoroughfare. **A.W. N. 1887, 75.**

(12)—*Application of—Seizure of money found on person of gambler.*—The Gambling Act of 1867 does not draw a distinction between moneys found on the person of the gambler and those found in the gaming house. **7 A.L. J. 404.**

(13)—*Gambling Act, III of 1867, s. 13—Public place—Meaning.*—Gambling in a part of a grove distant from the foot-path passing through it and commonly used as a public way, is not gambling in a public place within the meaning of s. 13 of Act III of 1867. **A.W. N. 1904, 92.**

(14)—*All gambling not illegal—Burma Gambling Act, s. 17.*—The fact that all gambling is not illegal must not be lost sight of in proceedings under s. 17, Burma Gambling Act, under which the essential condition is that the accused earns his livelihood wholly or in part by unlawful gambling. **1 L.B.R. 71.** (23 C. 621, *F.*)

See ACT III OF 1867, 2 N.W.P. 289, 2 N.W.P. 476, 3 N.W.P. 1, 3 N.W.P. 134, 18 A. 23, 19 A. 311 = 17 A.W.N. 117, 12 W.R. Cr. 34, 6 C.P.L.R. 17 Cr., L.B.R. (1872—1892), 155.

See BEN. ACT II OF 1867, 21 W.R. Cr. 23, 4 C. 659, 4 C. 710, 25 C. 432.

—In arrack shop—*See* MAD. ACT I OF 1886, s. 64, 1 Weir 647.

See CRIM. PRO. CODE, s. 109, L.B.R. (1872—1892), 246.

See PENAL CODE, ss. 109, 290, 14 M. 364 = 1 Weir 241.

See PENAL CODE, s. 290, 1 Weir 240, 1 Weir 239, 1 Weir 242, L.B.R. (1872—1892), 279.

Gambling Acts.

See ACT III OF 1867.
See BEN. ACT II OF 1867.
See BOM. ACT III OF 1866.
See BOM. ACT IV OF 1887.
See BOM. ACT I OF 1890.
See BUR. ACT XVI OF 1884.
See BUR. ACT I OF 1899.

Game.

See BOM. ACT IV OF 1887, 4 Bom. L.R. 297.

Gaming.

See BETTING.
See COCK-FIGHTING.
See COIN.
See GAMBLING.
See GAMBLING ACTS.

(1)—"*Gaming*" *in Bombay Act, I of 1890, includes wagering.*—Gaming, by the provisions of Bombay Act, I of 1890, includes wagering. **17 B. 184.**

(2)—*Distinction between gaming and betting.*—The difference between gaming and betting depends on the nature of the event on which the bet is made. If the event is brought about solely for the purpose of being betted about, betting on it is gaming, otherwise it is not. The popular and not the scientific or the historical meaning of the terms is to be considered. **31 C. 542 = 8 C.W.N. 458.**

(3)—*Crim. Pro. Code (Act V of 1898), ss. 435, 439—Revision—Gaming in one room—Adjacent room found to contain articles of gaming—Conviction of persons sitting in the latter room—Legality.*—Where certain persons were actually gaming in a room, and certain others were sitting in another room, the things found wherein showed that it was part of the gaming house, and where the persons sitting in the latter room were convicted, *held*, that the conviction was right and ought not to be interfered with in revision. **7 M.L.T. 189.**

See BEN. ACT IV OF 1866, ss. 46 and 72, 4 C.L.J. 92 = 4 Cr. L.J. 71.

Ganjam and Vizagapatam Agency Tracts Act.

See MAD. ACT XXIV OF 1839.

Garo Hills Act.

See ACT XXII OF 1869.

Gas Companies Act.

See BOM. ACT V OF 1863.

General Clauses Act.

See ACT I OF 1868.
See ACT I OF 1887.
See ACT X OF 1897.
See BEN. ACT I OF 1899.
See BOM. ACT III OF 1866.
See BOM. ACT I OF 1904.

General Exception.

See BURDEN OF PROOF, Rat. Un. Cr. C. 820.

See PENAL CODE, s. 300, excep. 1, 14 C.P. L.R. 188.

General Repute.

See EVIDENCE.

See EVIDENCE ACT, ss. 52—55.

—Evidence of general repute in security proceedings—*See* CRIM. PRO. CODE (1898), ss. 107 and 117, 25 A. 273, Crim. Pro. Code (1898), s. 110, 1 A.L.J. 616, 27 C. 993=5 C.W. N. 29, 5 C.W.N. 249, 29 C. 779, A.W.N. 1904, 140, 1 A.L.J. 611.

—What is—*See* CRIM. PRO. CODE (1898), s. 117 (3), A.W.N. 1903, 181.

General Stamps Act.

See ACT XVIII OF 1869.

Ghosha Woman.

See PARDANASHIN WOMAN.

Gift.

See U.B.R. (1892—1896), Vol. I, 303.

Good Faith.

See BONA FIDES.

See PENAL CODE, ss. 24, 378, 4 Bom. L.R. 936.

Government.

—*Wrongful dismissal of public servant, suit against Government for—Contract of service—Public servant—Payment of monthly wages.*—A suit for wrongful dismissal by one of its servants will lie against the Government. In a suit by a subordinate officer in the Public Works Department for wrongful dismissal against the Government, in which it was admitted that there was no time of service fixed, and in which the plaintiff put in a memorandum of agreement between himself and the Government, stipulating that he should give six months' notice of his intention to leave the service of the Government, *held* that the hiring was indefinite; and that, although the plaintiff had bound himself to give six months' notice prior to leaving their service, there was no corresponding obligation on the Government to give notice before dismissing him. The Government, however, would not be allowed to exercise this power capriciously, or to the damage of the servant. An indefinite hiring in India does not mean a hiring for a year. The mere payment of wages monthly is not enough to show that a hiring is a monthly hiring. **7 B.L.R. 688.**

—Powers under the Arms Act—*See* ACT XI OF 1878, ss. 4 and 27. L.B.R. (1893-1900), 416.

—Questions of ownership between Government and private persons—*See* JURISDICTION OF CIVIL COURTS, 28 M. 304=2 Cr. L.J. 754.

Government—concluded.

—Powers of—*See* JURISDICTION OF CRIMINAL COURTS, 7 C. 523=9 C.L.R. 93.

See PENAL CODE, s. 124, 22 B. 152, F.B.

See PENAL CODE, s. 124-A, 20 A. 55, F.B., 22 B. 112, 19 C. 35.

—Right of Government to oppose—*See* SANCTION TO PROSECUTE, 2 Weir 193.

Government Forest Act.

See ACT VII OF 1865.

Government Pleader.

(1)—*Duty of Government Pleader conducting prosecution—Discrepancies of witnesses.*—It is the duty of the Government Pleader or other officer who conducts a prosecution before the Court of Session to point out to the Court any glaring discrepancy between the evidence given by a witness before the Court of Session and that previously recorded by the committing officer. **20 W.R. Cr. 38.**

(2)—*Access of, to the decisions in criminal cases.*—All Zillah Judges and Judicial Commissioners should allow the Government Pleaders, in their several districts, to have access to their decisions in all criminal cases in which medical evidence is taken. **12 W.R. Cr. Cir. 7.**

Government Prosecutor.

See PUBLIC SERVANT, 3 C. 497.

Governor-General in Council.

—Power to appoint acting Judge of High Court—*See* ST. 24 AND 25 VIC., ss. 7 and 16, 16 A. 136, F.B.

Grain.

—Maintenance, payment of, in grain—*See* MAINTENANCE, 2 Weir 626, 2 Weir 627.

Grave and Sudden Provocation.

See CULPABLE HOMICIDE.

See CULPABLE HOMICIDE NOT AMOUNTING TO MURDER.

See MURDER.

—*Death caused under—Culpable homicide not amounting to murder—Burden of proof of—Evidence Act, s. 105—Crim. Pro. Code (1882), s. 287.*—The burden of proving the existence of circumstances bringing the case of the accused with certain exceptions is thrown upon the accused. This fact does not prevent a statement of an accused person tendered by the prosecution and "read as evidence" under s. 287, Crim. Pro. Code, from being taken into consideration by the Court which decides whether this burden is discharged. In dealing with a confession, the proper course is to take into consideration the statement as a whole. Though an accused may have exceeded the right of self-defence in intentionally killing another person, the act may be culpable homicide not amounting to murder, if he is deprived of the power of self-control through grave and sudden provocation. **L.B R. (1893—1900), 207.**

Grievous Hurt.

See CULPABLE HOMICIDE.

See HURT.

See MURDER.

See PENAL CODE, ss. 320—326.

(1)—*Gist of the offence.*—To establish an offence under s. 325, I.P.C., it is necessary to prove that the grievous hurt was caused by the accused and was caused voluntarily. **21 P.R. 1889 Cr.**

(1-*a*)—*Proof of offence—Opinion of medical officer not evidence—Penal Code, s. 320—Crim. Pro. Code (1861), ss. 368 and 370.*—Before a person can be convicted of causing grievous hurt under s. 325 of the Penal Code, it must be proved that hurt, described in s. 320 of the Penal Code as grievous hurt, has been caused. The letter of a medical officer expressing an opinion is not evidence under ss. 368 and 370, Crim. Pro. Code. **12 W.R. Cr. 25.**

(2)—*Requisites for offence—Sessions trials—Comment on conduct of police officers.*—To make out the offence of voluntarily causing grievous hurt under s. 325, Penal Code, there must be some specific hurt, voluntarily inflicted, and coming within some of the eight kinds enumerated in s. 320. For the purposes of a judgment in Sessions trials, the testimony or conduct of police-officers concerned should be scrutinized and commented on in the same degree as those of other material witnesses, and not further. **23 W.R. Cr. 65.**

(3)—*Joint attack by several persons resulting in serious injury—Assault—Sessions Judge not authorized in interference with cases triable by Subordinate Courts.*—When the result of a joint attack by several persons on one party is fracture of the arm of the party assaulted, the offence committed is grievous hurt, and not assault; and as the attack was made in furtherance of a common object, all are equally guilty of the same offence. A Sessions Judge has no authority to interfere and direct a commitment in the case of a conviction for assault under s. 352, or of hurt under s. 323 of the Penal Code, both of them being offences triable by the Subordinate Court. **5 W.R. Cr. 12.**

(4)—*Want of intention, likelihood, or knowledge that injury is likely to cause death—Nature of offence.*—When there is neither intention, knowledge, nor likelihood that the injury inflicted in an assault will or can cause death, the offence is not culpable homicide not amounting to murder, but grievous hurt. **2 W.R. Cr. 39.**

(5)—*Grievous hurt in commission of lurking house trespass—Penal Code, ss. 324, 457 and 460.*—A prisoner, who, at the time of committing lurking house trespass by night, voluntarily attempts to cause grievous hurt to the owner of the house, who tries to capture him, is punishable under s. 460, and not under ss. 457 and 324 of the Penal Code. **2 W.R. Cr. 52.**

Grievous Hurt—continued.

(6)—*Robbery attended with death—Want of intention to cause death—Conviction for grievous hurt in committing robbery proper.*—Where, in a case of robbery attended with death, there was no intention to cause death or such bodily injury as was likely to cause death, the proper conviction would be for voluntarily causing grievous hurt in committing robbery and not for voluntarily causing hurt in committing robbery. **6 W.R. Cr. 16.**

(7)—*Beating a man found committing theft—Effect of, original assault to be considered.*—In this case, the deceased was caught in the act of theft and was being beaten and cuffed by all the prisoners, when one of the witnesses for the prosecution threatened to call the *chaukidar* on which they released their captive. Two days after, he was found drowned. *Held* that there was no evidence to support a charge of grievous hurt. All suppositions or presumptions consequent on a man's body being drowned must be put aside and the nature of the original assault alone considered. **2 W.R. Cr. 48.**

(8)—*Grievous hurt on grave and sudden provocation—Intention immaterial—Penal Code, s. 335.*—The word "voluntary" being omitted in s. 335, Penal Code, causing grievous hurt on grave and sudden provocation is punishable under s. 355, Penal Code, without any intention or knowledge of the likelihood of causing such hurt. **4 W.R. Cr. 21.** 4 W.R. Cr. 23.

(9)—*Serious disability for 20 days.*—A disability for 20 days constitutes grievous hurt. **1 W.R. Cr. 9.**

(10)—*Penal Code, s. 326—Grievous hurt with an instrument for cutting—Compoundable offence.*—A person cutting his wife's nose and ears with a razor and her *gut* with a pair of scissors, is guilty of the offence of voluntarily causing grievous hurt with an instrument of cutting and the offence is not, therefore, compoundable. **19 P.R. 1902 Cr.**

(11)—*Penal Code, ss. 394, 397—Commission of grievous hurt in course of robbery.*—S. 394 provides for punishment for voluntarily causing hurt of either description in committing or attempting to commit robbery. S. 397 is merely a rider to s. 394 in cases in which hurt committed is grievous hurt. **16 P.R. 1901 Cr.** (21 A. 263, *F.*)

(12)—*Penal Code, s. 397—Causing grievous hurt in the section, meaning of.*—It is sufficient to constitute "causing grievous hurt" under s. 397, if hurt, amounting to grievous hurt, was caused by an act, in itself an offence, done in furtherance of an intention to rob and at the time of committing robbery. It is immaterial whether the hurt which he intended to cause or knew himself to be likely to cause was or was not grievous hurt. **6 P.R. 1901 Cr.**

(13)—*Penal Code, ss. 309, 325—Accused emasculating himself—Grievous hurt not committed.*—The conviction of an accused person,

Grievous Hurt—continued.

who emasculated himself, under s. 309, Penal Code, was held to be illegal, and that he could not be convicted of causing grievous hurt to himself under s. 325, I.P.C. **22 P.R. 1878 Cr.**

(14)—*Causing grievous hurt during house-breaking—Penal Code, ss. 459, 460.*—To support a conviction under s. 459 or under s. 460, the hurt or grievous hurt must be caused during the time that the house-breaking is being committed. **17 P.R. 1876 Cr.**

(15)—*Punishment—Accused being a man of bad character.*—The mere fact that the accused, who has been convicted of grievous hurt, is a man of bad character would not justify an enhanced punishment. **19 P.R. 1873 Cr.**

(16)—*Penal Code, ss. 299, 300, 304-A, 325—Death caused by hurt, without any of the intentions specified in ss. 299, 300.*—Where the accused gave a blow to the deceased which caused his death, without any intention to kill, or to inflict bodily injury likely to cause death, or with the knowledge that death must be the probable result, he was neither guilty of murder nor of an offence under s. 304-A, but was merely guilty of voluntarily causing grievous hurt. **3 A. 776.** [*R.*, 4 A.W.N. 289, U.B.R. (1892—1896), 215, 1 L.B.R. 233].

(17)—*Penal Code, ss. 302, 304, 325, 328 and 329—Administration of* dhatura *for the purpose of facilitating robbery—Death of person to whom* dhatura *is so administered—Offence not murder, but only causing grievous hurt.*—Where, for the purpose of facilitating robbery, *dhatura* was administered by two persons to certain travellers, in consequence of which one of the travellers died and others were made seriously ill, it was *held* that, in respect of the traveller who died, the offence committed was that punishable under s. 325 of the Code, *viz.*, grievous hurt; and in respect of the travellers who did not die, the offence committed was that defined by s. 328 of the Code. **A.W.N. 1908, 243=4 M.L.T. 402=8 Cr. L.J. 383.**

(18)—*Penal Code, s. 338—Operation for cataract—Failure of operation—Negligence.*—When an accused, in good faith, performed an operation upon a woman, with her consent, for cataract, according to the recognized method of Indian eye surgery, the result of which was that she lost her eyesight, *held*, that he was not guilty of an offence, under s. 338 of the Indian Penal Code. **5 A.L.J. 155=A.W.N. 1908, 91.**

(19)—*Penal Code, ss. 110, 149, 300—Intention of some members of unlawful assembly—Common object.*—The common object of an unlawful assembly being to beat a person, two of the members struck him with dangerous weapons and two others only with their hands. There being no proof that the latter two knew of the use by the former of the dangerous weapons or of their murderous intention, *held*, that s. 110 of the Penal Code applied and that they could be convicted only of grievous hurt. **Rat. Un. Cr. C. 14.**

Grievous Hurt—continued.

(20)—*Penal Code, s. 390—Theft—Hurt committed in escaping—Robbery.*—Where hurt caused is committed not for one of the purposes specified in s. 390, I.P.C., but to avoid capture when surprised, the theft is not converted into robbery. The charge and conviction should be for theft and hurt or grievous hurt. **Rat. Un. Cr. C. 65=Cr. Rg. 27—6—1872.**

(21)—*Penal Code, ss. 149 and 325—Acquittal for the offence of rioting—Conviction for abetment of grievous hurt, when maintainable.*—When accused persons are acquitted of rioting, they cannot be properly convicted of grievous hurt, under s. 325, by the application of s. 149 of the Penal Code, when it is not found that those persons, or any one of them were members of an unlawful assembly, in prosecution of the common object of which grievous hurt was caused by any other member of the same assembly, or that the offence was such as each member of that assembly knew to be likely to be committed in the prosecution of that object. **27 C. 566=4 C.W.N. 546.**

(22)—*Penal Code, s. 326—Grievous hurt—Essence of offence—Jury—Verdict of "guilty but not voluntarily," meaning of s. 338, conviction under—Causing grievous hurt by rash and negligent act—Crim. Pro. Code, ss. 237 and 238.*—To constitute an offence under s. 326 of the Penal Code, the act must have been done "voluntarily." That is the very essence of the offence. When an accused person was charged with committing offences under ss. 304 and 326 of the Penal Code and tried before a jury, and the latter found him not guilty under s. 304, but returned a verdict of "guilty but not voluntarily" under s. 326, and the Judge, without asking the jury to explain the verdict, discharged them and then convicted and sentenced the accused under s. 338 of the Penal Code; *held*, that the verdict on the charge under s. 326 was in effect verdict of "not guilty" and the accused was entitled to an acquittal. **12 C.W.N. 530=7 Cr. L.J. 362.**

(23)—*Conviction for grievous hurt to specify under which of the categories specified in s. 320, I.P.C., the conviction is made.*—Where the conviction is for causing grievous hurt, the record must show under which of the categories of "grievous hurt," specified in s. 320, Penal Code, the offence falls. **1 W.R. Cr. Letters, 5.**

(24)—*Penal Code, ss. 34, 392, 394, 395 and 397—No evidence whether accused actually committed grievous hurt.*—The punishment provided by s. 397 can be inflicted only on the person actually causing grievous hurt, and not on a person who might be liable for grievous hurt committed by another only in virtue of s. 34, Penal Code. S. 397 does not create a substantive offence, and a Court, therefore, should not frame a charge under that section, but under s. 392 read with s. 397, or s. 395 read with s. 397, as the case may be. **3 O.C. 263.** (A.W.N. 1899, 186, *F.* and A.W.N. 1899, 76, *not F.*)

Grievous Hurt—concluded.

(25)—*Penal Code, s. 397—Causing fracture of arm by striking blows.*—The accused fractured one of the arms of one Mussammat Jowalo by striking one or two blows with a stick, and thereby causing her to fall to the ground, his object being to steal the pony on which she was riding. After she had fallen to the ground, he attempted to mount and ride off on the pony, and was only prevented from doing so by the girth of the pony's saddle breaking. *Held* that s. 397, Penal Code, was applicable to the circumstances of the case, whether the fracture of the arm was caused by a blow or fall to the ground, inasmuch as the accused caused the fracture by an act done in furtherance of his intention to steal the pony, and that the act was in itself an offence. It was immaterial whether the hurt which the accused intended to cause or knew himself to be likely to cause was or was not grievous hurt. **79 P.L.R. 1901.**

(26)—*Penal Code, s. 320, cl. (8)—Injured person under medical treatment for 20 days—Juvenile offender, fine alone inappropriate for.*—In order that hurt may be grievous hurt under s. 320, cl. (8) of the Penal Code, it is necessary that it should endanger life, or cause the sufferer to be, for 20 days, in severe bodily pain or unable to follow his ordinary pursuits. The mere fact that an injured person is under medical treatment for twenty days does not necessarily show that he has suffered grievous hurt. A fine is not a suitable punishment in the case of juvenile offenders. **1 L.B.R. 221.**

(27)—*Charge of the offence of murder against one person—Distinct offence of grievous hurt against another--Whether joinder of the charges and single trial legal—See* **10 P.R. 1906 Cr.= 4 Cr. L.J. 285.**

(28)—*Offence of, if compoundable.*—The offence of voluntarily causing grievous hurt cannot legally be compounded. **1 B. 417.**

(29)—*Grievous hurt--Jurisdiction.*—An accused person charged with the offence of grievous hurt should be committed for trial to the Sessions Court. **1 B.H.C. 101.**

See ASSAULT, 4 L.B.R. 271.

See COMPOUNDING OFFENCE, A.W.N. 1884, 13.

See CONVICTION, Rat. Un. Cr. C. 413 = Cr. Rg. 79 of 1888.

See CRIM. PRO. CODE (1898), ss. 170, 188, 8 Bom. L.R. 513 = 4 Cr. L.J. 54.

See DACOITY, 3 O.C. 263.

See MAGISTRATE, JURISDICTION OF, Rat. Un. Cr. C. 476.

See PENAL CODE, s. 38, A.W.N. 1882, 23.

See PENAL CODE, ss. 459, 460, 8 A. 649.

See RIOTING, 3 N.W.P. 174.

See SENTENCE, 6 A. 121, 7 A. 29, 7 A. 414, 7 A. 757, F.B., 9 A. 645, 8 C.W.N. 344, 16 C. 725.

Growing Crops.

See CRIM. PRO. CODE (1898), s. 336, 2 Weir 444.

Guarantee.

See COMPOUNDING OFFENCE, 11 B. 566.

Guardians and Wards Act.

See ACT VIII OF 1890.

Guardianship.

See KIDNAPPING.

—Compromise by lawful guardian—*See* COMPROMISE, 2 Weir 630.

—and custody of child—*See* MAINTENANCE, 4 C. 374.

—of illegitimate child—*See* PENAL CODE, s. 361, 8 C. 971.

Guilty Intention.

See INTENTION.

See PENAL CODE, ss. 28 and 231, 4 A.L.J. 776 = A.W.N. 1907, 289 = 3 M.L.T. 56 = 30 A. 93.

Gunpowder.

See ACT XI OF 1878, s. 19 (*a*), 1 Weir 656.

Habeas Corpus, Writ of.

(1)—*Power of High Court to issue writ into the mofussil*—Habeas Corpus *Act, 31 Car. II, cl. 2—Reg. III of 1818—Warrant of arrest of Governor-General in Council.*—On an application to the High Court to issue a writ of *habeas corpus* to the Superintendent (a European British Subject) of the Alipore Jail, *held* that the Supreme Court had power to issue writs of *habeas corpus* to persons in the mofussil, and that the same power is continued to the High Court. As the person against whom the writ was applied for had acted under the written order of the Governor-General in Council, the Court would not direct the writ to issue. **6 B. L.R. 392.**

(2)—*Mahomedan law—Husband and wife—Custody of, wife.*—On an application for a writ of *habeas corpus* to bring before the Court M, a female infant, who was alleged to be in the unlawful custody of S, a Mahomedan, it was stated that M's father was a Jew by birth, who had embraced the Mahomedan faith many years ago, but had since returned to the Jewish persuasion; that her mother was a Mahomedan woman; that she was detained by S, on the allegation that she was married to him, but that the alleged marriage was invalid by reason of the want of consent of her father; and that she was of the age of about nine years, and had not attained puberty: and a writ was thereupon granted. The return stated that M, being then about ten years of age, was married with the consent of her mother to S; that, after the marriage, M and her mother had lived with S until her mother, at the instigation of the father, had left the house of S, taking M with her; that S had thereupon instituted a charge against the father and mother for enticing away and

Habeas Corpus, Writ of—continued.

detaining M, on which the Police Magistrate considered the marriage proved, and ordered her to be delivered into the custody of S. The High Court refused to consider the custody illegal, and ordered the writ to be quashed, as the mother's consent was sufficient under the circumstances. **13 B.L.R. 160.** (5 B.L.R. 557, *Dist.*)

(3)—*Affidavit to controvert return—Amendment of return—Custody of minor—56 Geo. III, C. 100.*—The return to the writ of *habeas corpus* must be taken to be true, and cannot be controverted by affidavit. In England, 56 Geo. III, c. 10, s. 4, allows affidavits to be used to controvert the return in criminal matters, but that statute does not apply to this country. The return to a writ of *habeas corpus* can, however, be amended. A girl under sixteen years of age has not such a discretion as enables her, by giving her consent, to protect any one from the criminal consequences of inducing her to leave the protection of a lawful guardian ; but where the return to writ of *habeas corpus* stated that the girl was above the age of sixteen (though her mother stated her to be of the age of thirteen years and nine months), the Court held that she was of years of discretion to choose for herself under whose protection she would remain. **5 B.L.R. 418.** (5 B.L.R. 557, *contra*).

(4)—*Held* that the return to a writ of *habeas corpus* was not necessarily conclusive and did not preclude enquiry into the truth of the matters alleged therein, although 56 Geo. III, c. 100, did not apply to this country. Where a husband applied that his wife, 11 years old, might be delivered over into his custody, the Court, for the reason that she had not attained the age of puberty and that her dower had not been paid, refused to order her to be taken from the custody of her mother. **5 B.L.R. 557.**

(5)—*Return to writ—Custody of prisoner in jail—Return by Sheriff.*—The Sheriff need not specify in his return on a *habeas corpus* that the prisoner has been continuously in his custody, and a prisoner who has not been transferred by the Sheriff to the custody of the jailor by a separate warrant, and is brought upon the writs by the Sheriff, is to be considered as in the custody of the Sheriff. **Bourke, O.C. 28.**

(6)—*Accused becoming insane during criminal trial—Detention in lunatic asylum after regaining sanity.*—An accused person, having become insane during his trial, was placed in a lunatic asylum and was detained there after becoming sane. *Held* that such detention was not illegal, and he was not entitled to his discharge, but should be made over to the authorities for continuation of his trial. **1 Hyde, 173.**

(7)—Assuming the power of the Judge of a High Court to issue a writ of *habeas corpus*, and assuming the right of appeal against an order refusing such writ, where it appeared

Habeas Corpus, Writ of—concluded.

that the prisoner was in custody under a warrant in the form prescribed by Reg. III of 1818, the detention was held to be legal. The detention, to be legal, need only be covered by an actually existing warrant of the Governor-General in Council in the form prescribed, without regard to the lawfulness of the arrest. **6 B.L.R. 459.**

See ACT III OF 1864, 18 B. 636.

See ACT VIII OF 1890, 16 B. 307.

—Refusal to issue writ of—*See* APPEAL, 29 C. 286=6 C.W.N. 254, F.B.

See LETTERS PATENT, 1865 (BOM.), cl. 15, 14 B. 555.

Habitual Offender.

See CRIM. PRO. CODE (1898), ss. 106—122.

See EVIDENCE.

See SECURITY FOR GOOD BEHAVIOUR.

See SECURITY PROCEEDINGS.

See SECURITY TO KEEP THE PEACE.

(1)—*Crim. Pro. Code, ss. 110 and 118—Order under s. 118, when can be made.*—In an enquiry whether the defendant is a habitual offender, evidence of acts of misconduct committed by him years ago is admissible in evidence as indicating the formation of the habit, but such evidence, unless supplemented by evidence of misconduct committed within a year or so before the institution of the proceeding under s. 110, cannot justify the making of an order under s. 118. When the person against whom proceedings under s. 110 are instituted, is a well known citizen of the city, his fellow citizens, though not living in his immediate neighbourhood, are competent witnesses to prove his general repute. **11 C.W.N. 789=6 Cr. L.J. 1.**

(2)—*Evidence of general repute—Special police diaries, right to inspect—Statements as to character in official documents—Statements made to police during investigation—Crim. Pro. Code (1898), s. 110.*—In a security for good behaviour case, one of the police officers examined for the prosecution deposed that almost all the accused had been suspected and named in a number of theft and burglary cases and offered in evidence an extract from the special diaries containing a list of those cases. *Held*, that the fact that the police officers, while investigating some cases, were told that the accused were suspected of having committed or had committed the offence under investigation, could not be proved by the special diaries, and, if they were relevant, could only be proved by the police officers themselves to whom the information was given ; the accused, therefore, had no right of cross-examining the police witnesses after inspecting the special diaries, the list submitted by the police officer and all reference to it in the evidence must be excluded from consideration. The words "*evidence of general repute*" mean, with reference to a man's character, evidence as to his general character founded on the general opinion of the

Habitual Offender—concluded.

neighbourhood in which he lives. Evidence as to his general disposition based on the opinion of the particular witness—such opinion being the result of the witness's personal experience and observation, will also be evidence as to his character. But the evidence need not show that such general opinion is based on the personal knowledge of the man by his neighbours generally, nor does it show that such general opinion has been publicly expressed by his neighbours. Again, the evidence of the police officers as to the character of the accused, who do not speak from personal experience and observation or depose as to what the neighbours of the accused generally thought of the accused, but give evidence as to what some of their neighbours said of them or as to what was said of them in official papers was not admissible. **5 O.C. 203.**

(3)—*Who is a.*—A person can scarcely be called an habitual thief, where there is only one previous conviction against him. **L.B.R. (1872—1892), 291.**

(4)—In this case, the accused was found guilty of stealing two bullocks from underneath the house of the complainant and sentenced to seven years' rigorous imprisonment. *Held* that the sentence was out of all proportion to the character of the offence committed. *Held*, further, that, as there was only one previous conviction charged against the accused, he could not be treated as an habitual offender. **L.B.R. (1872—1892), 291.**

(5)—*Solitary confinement ordinarily reserved for—Punishment, assessment of.*—Ordinarily, solitary confinement should be reserved for habitual offenders and for the punishment of offenders who have acted in a cruel and brutal manner. In assessing the punishment in any particular case, the Court should consider what is the heaviest sentence provided by the Legislature for the punishment of the gravest offence of the kind and the punishment awarded in the case under trial should be in proportion to the gravity of the offence as shown by the special circumstances of the case. **L.B.R (1893—1900), 364.**

(6)—*Crim. Pro. Code, Act X of 1872, s. 315—Previous conviction—Habitual offender.*—The fact that a person convicted of an offence under s. 411 of the Penal Code, had been previously convicted of an offence under s. 457 of the Code does not render him a habitual offender, and he need not necessarily be dealt with under s. 315 of the Crim. Pro. Code. **A.W.N. 1882, 215.**

(7)—Where an old convict for theft was again found prowling about at night with intent to steal, and seemed to be again, under the circumstances of the case, guilty of stealing, he was held to have created against himself a presumption of criminal habit in the sense of s. 315, Crim. Pro. Code, 1872, which, if unrebutted, would justify a Magistrate in applying ordinarily the rule of that section. **A.W.N. 1881, 153.** [*R.*, A.W.N. 1882, 215].

See SENTENCE, 27 P.L.R. 1904.

Hackney Carriage.

See BOM. ACT VI OF 1863, s. 6, 4 Bom. L.R. 768.

See CANTONMENT CODE (1899), ss. 22, 282, 22 P.L.R. 1907.

Hackney Carriages Act.

See ACT XIV OF 1879.

Handcuffs.

—If necessary to be used for arrest—*See* ARREST, 1 L.B.R. 173.

Handwriting, Comparison of.

See EVIDENCE.

Hansard's Reports.

See LIBEL, 14 C.W.N. 713.

Harbouring Offenders.

See PENAL CODE, ss. 141, 150 and 157, 29 C. 214=6 C.W.N. 143.

See PENAL CODE, s. 216, 11 C.L.J. 109.

See SENTENCE, 53 P.L.R. 1905=2 Cr. L.J. 232.

Hat.

See CRIM. PRO. CODE (1898), s. 144, 31 C. 990=8 C.W.N. 781.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 11 C.W.N. 79=4 Cr. L.J. 433.

See NUISANCE UNDER CRIM. PRO. CODE, 4 C.L.R. 410.

See PENAL CODE, s. 188, 31 C. 990=8 C. W.N. 781.

Headman.

—Village headmen, if proper witnesses for search—*See* BUR. ACT I OF 1899, ss. 6, 7, 14 Bur. L.R. 81=4 L.B.R. 213=7 Cr. L.J. 479.

See CRIM. PRO. CODE (1898), s. 103, U.B. R. 1908, 2nd Qr., Gambling, 1.

Head Constable.

See CONSTABLE.

See POLICE.

See ACT XII OF 1896, ss. 44 (2), 48 and 57, A.W.N. 1908, 157=5 A.L.J. 444=30 A. 377=8 Cr. L.J. 5.

Hearing.

——*Alteration of date of hearing.*—Where the date fixed for the hearing of a criminal case is accelerated and the accused's pleader, after being informed of the same, asked that the case may be taken on some other day, *held*, that the Magistrate should not conclude the trial and pronounce judgment without waiting until the date desired by the accused's pleader or the date originally fixed. **14 P.R. 1898 Cr.**

S. N. DAR, B. A. LL. B.,
Vakil High Court,
SRINAGAR (Kashmir)

Hearsay Evidence.

See EVIDENCE.

See EVIDENCE ACT, ss. 32, 33, 60.

See CRIM. PRO. CODE (1898), s. 106, Ch. VIII, 6 Bom. L.R. 34.

Hereditary Officers (Bombay) Act.

See BOM. ACT XI OF 1843.

See BOM. ACT III OF 1874.

High Courts' Act.

—S. 15—*See* CRIM. PRO. CODE (1898), s. 144, 2 Weir 94.

High Court (Division Bench).

—*Reference to High Court after former reference in same case.*—Where an order passed by an Assistant Magistrate in a case of breach of the peace under s. 530 of the Code of Criminal Procedure was submitted to High Court by the Sessions Judge, for being set aside on certain grounds stated, the want of jurisdiction in the Assistant Magistrate not being one of the grounds, a Division Bench, before whom that reference came, declined to interfere with the order, but another Division Bench, before whom the matter was subsequently brought on motion, *held* that they could enter into the question of the want of jurisdiction, and that, as the effect of the Assistant Magistrate's order was to prejudice one of the parties, the order, admittedly made without jurisdiction, should be set aside. **21 W.R. Cr. 32.**

High Court's Criminal Procedure Amendment Act.

See ACT XIII OF 1865.

High Court, Jurisdiction of.

1.—GENERAL.

2.—AS A COURT OF REFERENCE.

3.—REVISIONAL POWERS OF HIGH COURT.

See CRIM. PRO. CODE (1898), s. 439.

See HIGH COURT, SUPERINTENDENCE AND POWERS OF.

See LETTERS PATENT.

See REFERENCE TO HIGH COURT.

See REVIEW.

See REVISION.

——1.—(General).

(1)—*Charter Act (24 and 25 Vic., c. 104), s. 15—Jurisdiction of High Courts, subject to the Indian Legislature—Crim. Pro. Code (1898), s. 435—Effect of the section on High Court's jurisdiction.*—Although the local legislature has power to overrule a statutory power conferred on the High Court, yet this was not the object *and* result of the legislation expressed in s. 435 of the Code of 1898. **26 C. 188=3 C.W.N. 49.**

***High Court, Jurisdiction of*—continued.**

——1.—(General).—*continued.*

(2)—*Jurisdiction of High Court Criminal Bench to question validity of order, when remedy available from Civil Court.*—It is not desirable that a Criminal Bench of the High Court should consider the propriety or legality of an order, even if it has jurisdiction to do so, when a remedy can be easily obtained from a Civil Court. **29 C. 382=6 C.W.N. 469.**

(3)—*Power of the Supreme Council—Jurisdiction of the High Court.*—The power of the supreme legislative authority of India to remove any place or territory from the jurisdiction of the High Court is expressly authorised and contemplated by the Statutes and Letters Patent, which affect the constitution and jurisdiction of the High Court. **26 C. 874=3 C.W.N. 564.**

(4)—*Crim. Pro. Code (1882), s. 424—Power of expunging objectionable portions from a judgment.*—The High Court has no power to direct a subordinate Court to expunge or otherwise deal with certain passages in its judgment. **2 Weir 534.**

(5)—*High Court—Contempt of Court—Practice.*—The power of the High Court to imprison for contempt of Court for disobedience of an injunction, is irrespective of the Codes. **Rat. Un. Cr. C. 614.**

(6)—The High Courts in India possess the power of enforcing obedience to their orders by an attachment for contempt. **7 B. 5.**

(7)—*Stat. 6 and 7 Vic., c. 94—Stat. 28 and 29 Vic., c. 116—Stat. 29 and 30 Vic., c. 87—Order in Council of 9th August 1866—Person accused of having committed murder at Zanzibar—Case sent for trial to Bombay—Jurisdiction of Bombay High Court.*—The High Court of Bombay can try a prisoner charged with having committed murder at Zanzibar, and sent by the British Consul there, to Bombay. **3 B. 334.**

(8)—*Commission for examination of witnesses outside jurisdiction.*—The High Court has no power to issue a commission outside its jurisdiction. **5 B. 338.**

(9 and 10)—*Judicial Superintendent of Railways in H. H. the Nizam's Dominions—Power to commit to High Court of Bombay—Letters Patent, 1865 (Bombay), cl. 24—European British subjects in Native States.*—Per *Sargent, C. J*:—The Crim. Pro. Code applies to the Court of the Judicial Superintendent of Railways in His Highness the Nizam's Dominions held at Secunderabad. That Court is subordinate to the High Court of Bombay in all criminal matters relating to European British subjects, and the High Court must deal with such cases as if they were cases arising in British India. Per *Bayley, J*:—The Judicial Superintendent of Railways has power to commit prisoners for trial to the High Court of Bombay, and that Court has jurisdiction to try them. The Resident at

High Court, Jurisdiction of—continued.

——**1.—(General)**—*continued.*

Hyderabad is the authority which exercises superintending power over that Court, and it is only with regard to European British subjects which may be brought before the Judicial Superintendent that the High Court has any power at all, except where native prisoners may be committed for trial under s. 214. A prisoner committed by that Court could not, under cl. 24, Letters Patent, be tried on charges preferred by the Advocate-General under that clause. [*R.*, 5 Bom. L.R. 868.] It is the intention of the Legislature that European British subjects, although resident within the territories of Native States should be subject to the same law in every respect as a European British subject residing in the mofussil of any of the Presidencies in India. **9 B. 288, F.B.**

(11)—*High Court, powers of—Pending civil suit—Criminal prosecution during such pendency—Stay of criminal proceedings.*—The defendant in a civil suit ought not to be allowed to prejudice the trial of such suit, by launching and proceeding with a criminal prosecution, on the same facts against the plaintiffs and their witnesses, pending the trial of such suit, and the High Court in the exercise of its powers of superintendence has the power to direct the proceedings to be stayed, pending the trial of the civil suit. **30 M. 226=6 Cr. L.J. 131.**

(12)—Where criminal proceedings have been instituted by a District Judge against the parties or their witnesses in course of a civil suit; the High Court has no power to stay those proceedings until the decision of the Judge in the civil suit has been heard upon appeal. **6 C. 308.**

(13)—*Illegal commitment—Power of High Court.*—The High Court can quash an illegal commitment at any stage of a criminal proceeding. **6 C. 584=8 C.L.R. 265.**

(14)—*Division Bench of the High Court dealing with civil business—Jurisdiction to take cognisance of an order under s. 643, Civ. Pro. Code (1882), and s. 476, Crim Pro. Code (1882).*—A Division Bench of the High Court dealing with a civil business of a group has jurisdiction to deal with an order under s. 643 of the Code made by a Civil Court in that group. Such Bench may also take cognisance of an order under s. 476, Crim. Pro. Code, if such case has been transferred to the Bench by an order of Chief Justice. **23 C. 532.**

(15)—*Crim. Pro. Code, Act X of 1872, ss. 518, 520—Order by Magistrate without jurisdiction.*—The High Court will set aside an order passed under s. 518 of the Crim. Pro. Code by a Magistrate under circumstances which render it one passed without jurisdiction. **A.W.N. 1882, 140.**

(16)—*Crim. Pro. Code, Act X of 1882, s. 423—Altering conviction.*—The High Court has got power, under s. 423 of the Crim. Pro. Code, to alter a conviction under s. 474 of the Penal Code to one under s. 193 if the accused person would not be prejudiced by such alteration. **A. W.N. 1890, 86.**

(17)—*Crim. Pro. Code (1882), s. 438—Appeal by only two out of three accused—Conviction set aside—High Court's powers to direct release of person not appealing.*—The accused was tried with two others before a first class Magistrate for an offence under s. 325, I.P.C., and was convicted and sentenced. The other two accused appealed, and it was found that it was by an accident merely that the name of the third was omitted from the petition of appeal. The appellate Court considered the evidence for the prosecution, so untrustworthy that the appeals of the other two were allowed and the sentences and convictions against them quashed. Under such circumstances, the Sessions Judge referred the case of the third accused to the High Court with a recommendation that he also should be acquitted. *Held* that it was competent to the High Court to acquit and order the release of the third accused. **A.W.N. 1893, 51.**

(18)—*Crim. Pro. Code, Act X of 1882, s. 439—District Magistrate—Instruction to subordinates—Procession.*—The High Court has no jurisdiction to interfere with an instruction issued by a District Magistrate to his subordinates respecting the route of a procession. **A. W.N. 1891, 178.**

(19)—*Punjab Chief Court—Jurisdiction of the Chief Court—Convict incompetent to appeal from the order of a District Magistrate in the Punjab acting under special powers given by the Local Government—Local Government's statement—Native Indian subject committing an offence in a Native State—Penal Code, ss. 3 and 4.—Held*, that—The Chief Court, Punjab, has no jurisdiction to entertain and hear an appeal from the order of a District Magistrate in the Punjab, specially appointed by the Local Government to try criminal cases in a Native State outside British India. The Chief Court has also no power to question the validity of such an appointment, but is bound to accept as conclusive the statement of the Local Government with regard to the capacity in which that officer has acted. *Obiter.*—Native Indian subjects of His Majesty committing offences in a Native State are amenable to the jurisdiction of the Courts of that State. All that ss. 3 and 4 of the Indian Penal Code provide is, that such a subject is also liable to be prosecuted in British India for any offence committed under this Code, in a foreign territory (if not already tried there). **20 P.W.R. 1910 Cr.**

(20)—*Conviction by Superintendent of Cachar—Appeal—Jurisdiction of High Court.*—The High Court has no jurisdiction to hear an appeal from a conviction and sentence by the Superintendent of Cachar in his capacity as Magistrate of the District. **W.R. 1864 Cr. 18.**

(21)—*Act XIII of 1857, s. 26—Opium—Penalty—Power of High Court.*—The distribution of

High Court, Jurisdiction of—continued.

——**1.—(General)**—*continued.*

a penalty adjudged by the Magistrate under s. 26, is no part of his judgment, and, therefore, not a matter over which the High Court can exercise control under s. 404 Crim. Pro. Code, 1861. **8 B.L.R. Ap. 7=16 W.R. Cr. 65.**

(22)—The High Court cannot, as a Court of revision, under s. 297, deal with a case of acquittal as one of simple discharge and interfere with it. **11 B.H.C. 117.**

(23)—*Crim. Pro. Code (1898), ss. 144, 435—Order under s. 144 when to be made—Interference by High Court after expiry of order.*—Before making an order under s. 144, Crim. Pro. Code, a Magistrate should hold an enquiry and determine which party has the legal right contended for by both the parties and then protect the party he finds entitled to the exercise of that right. Where the period for which an order under s. 144 is to be in force has expired, the High Court will not interfere with the order. **Rat. Un. Cr. C. 967.** (5 C. 132, *R.*)

See ACQUITTAL, 8 C. 895.

See ACT XIII OF 1859, s. 2, 35 C. 1036, note=9 Cr. L.J. 188.

—Jurisdiction of High Court to transfer cases from Agent to Governor in Agency Tracts of Ganjam and Vizagapatam—*See* ACT XIV OF 1874, 14 M. 121=2 Weir 7.

—High Court's power to issue mandamus to commit case to it—*See* ACT X OF 1875, 2 C. 278.

See ACT X OF 1875, s. 14, 9 C. 397.

—High Court's power to order refund of fine on quashing a conviction—*See* ACT X OF 1875, s. 147, 1 C. 354.

See ACT V OF 1876, s. 8, Rat. Un. Cr. C. 494.

See ACT XVIII OF 1879, s. 36, A.W.N. 1908, 279=6 A.L.J. 22=31 A. 59=9 Cr. L.J. 59.

—To transfer case in case of European British subjects—*See* ACT XXI OF 1879, 9 B. 333, 12 M. 39.

—Detention in Reformatory School in lieu of sentence of imprisonment—Jurisdiction of High Court to alter or set aside the sentence —*See* ACT VIII OF 1897, ss. 1 and 16, 28 C. 423=5 C.W.N. 211.

—Power to deal with an order of detention in a reformatory passed without authority—*See* ACT VIII OF 1897, ss. 8, 16, L B.R. (1893—1900), 493.

—To interfere with a Magistrate's order for detention in a Reformatory in lieu of imprisonment—*See* ACT VIII OF 1897, s. 16, 1 L.B.R. 63.

See ACT VIII OF 1897, s. 16, 1 L.B.R. 42.

See ACT XV OF 1903, ss. 7 and 15, 7 Bom. L.R. 463=2 Cr. L.J. 439.

See ACT XIV OF 1908, 13 C.W.N. 605.

High Court, Jurisdiction of—continued.

——**1.—(General)**—*continued.*

See BEN. ACT IV OF 1876, s. 117, 11 C. 275.

See BOM. ACT IV OF 1890, s. 43, Rat. Un. Cr. C. 540=Cr. Rg. 13 of 1891.

See APPEAL, 26 M. 1=2 Weir 521, 11 B.H. C. 117, 17 C.P.L.R. 75.

See BAIL, 24 M. 161=2 Weir 657.

See BRIBERY, 15 M. 63=2 Weir 794.

See CERTIORARI, WRIT OF, 10 B.H.C. 102.

See COMMITMENT TO SESSIONS COURT, 4 C. W.N. cxvi, 26 M. 139=2 Weir 197, 30 M. 224 =16 M.L.J. 529=5 Cr L.J. 100, 16 M.L.J. 525=5 Cr. L.J. 99, 2 L.B.R. 209.

See COMPENSATION, 4 Ind. Cas. 399.

—High Court's power to reverse an order, reviving a complaint after discharge—*See* COMPLAINT, 1 C.W.N. 49.

See COMPLAINT, 24 C. 528=1 C.W.N. 370, 4 C.W.N. 825.

See CONTEMPT OF COURT, 10 C. 109=10 I.A. 171, P.C.

—Remission of penalty under recognizance bond—*See* CRIM. PRO. CODE (1898), s. 106, 8 C.L.R. 72.

See CRIM. PRO.CODE (1898), ss. 112 and 122, 3 S.L.R. 168 Cr.

—Order regarding management of property attached, under s. 146—*See* CRIM. PRO. CODE (1898), ss. 145, 146, 435, 29 C. 382=6 C.W.N. 469.

—Power of High Court to revive an order made under s. 476, Crim. Pro. Code, 1898—*See* CRIM. PRO. CODE (1898), ss. 190, 195, 436, 439, 6 Cr. L.J. 25=U.B.R. 1907, Crim. Pro. Code, 1.

See CRIM. PRO. CODE (1898), ss. 202, 203, 441, 5 M.L.T. 79=2 Ind. Cas. 618.

See CRIM. PRO. CODE (1898), ss. 202, 203, 437, 439, 33 C. 1282.

See CRIM. PRO. CODE (1898), ss. 202, 204, 242, 244 and 439, 1 P.W.R. 1908 Cr.=4 P.R. 1908 Cr.=86 P.L.R. 1908=7 Cr. L.J. 202.

See CRIM. PRO. CODE (1898), ss. 208 and 347, 12 C.W.N. 1014=8 Cr.L J. 221=36 C. 48 =1 Ind. Cas. 469.

—Order of commitment—High Court's power to set it aside—*See* CRIM. PRO. CODE (1898), s. 215, 2 Weir 262.

See CRIM. PRO. CODE (1898), s. 215, 16 M. L.J. 525, 9 Cr. L.J. 250=1 S.L.R. Cr. 6.

See CRIM. PRO. CODE (1898), ss. 215, 436, 439, 16 M.L.J. 529=30 M. 224.

See CRIM. PRO. CODE (1898), ss. 215, 436 and 526, 27 M. 54=2 Weir 227.

See CRIM. PRO. CODE (1898), ss. 271 (2), 342 (1), 439, 494, 5 M.L.T. 216.

High Court, Jurisdiction of—continued.

——**1.—(General)**—*continued.*

—Jurisdiction of High Court to send prisoner to jail outside Presidency towns—*See* CRIM. PRO. CODE (1898), s. 307, 29 C. 286=6 C.W. N. 254.

See CRIM. PRO. CODE (1898), s. 307, 2 Weir 388, 2 Weir 390.

See CRIM. PRO. CODE (1898), s. 423, cl. (*a*), 2 Weir 476=7 M.H.C. 339.

—Power of High Court to order a re-trial before a new jury—*See* CRIM. PRO. CODE (1898), s. 423 (2), 2 Weir 384=2 Weir 493.

See CRIM. PRO. CODE (1898), s. 432, 9 Cr. L.J. 248=1 S.L.R. 4 Cr.

See CRIM. PRO. CODE (1898), s. 434, 8 B. 200.

—Non-exercise or improper exercise of discretion vested in a Magistrate—High Court's power to interfere—*See* CRIM. PRO. CODE (1898), s. 435 (1, 2, 3), 19 C. 52.

See CRIM. PRO. CODE (1898), s. 435 (1, 2, 3), 2 Weir 538, 2 L.B.R. 239.

See CRIM. PRO. CODE (1898), s. 476, 163 P. L.R. 1905=3 Cr. L.J. 73.

See CRIM. PRO. CODE (1898), s. 550, 14 P. W.R. 1909 Cr.

See CRIM. PRO. CODE (1898), s. 552, 16 C. 487.

See DACOITY, 5 M.L.T. 100=32 M. 179=9 Cr. L.J. 567.

See DEAF AND DUMB PERSON, 27 C. 368= 4 C.W.N. 421.

See DEFAMATION, 3 P.W.R. 1909 Cr.=9 Cr. L.J. 154=1 Ind. Cas. 99.

See DISCHARGE OF ACCUSED, 5 A. 161, 6 C.L.J. 705=9 Cr. L.J. 400.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 6 A.L.J. 113=31 A. 150=9 Cr. L.J. 382=1 Ind. Cas. 762, 24 B. 527 =2 Bom. L.R. 84, 27 C. 892=4 C.W.N. 613, 34 C. 840=6 Cr. L.J. 452, 13 C.W.N. 125=4 Ind. Cas. 354.

See EVIDENCE, 10 B.H.C. 497.

See FOREIGN TERRITORY, OFFENCES COMMITTED IN, 9 C. 288.

—When judgment of High Court could be altered—*See* JUDGMENT, 21 A. 177.

See JURY, 2 A.L.J. 475=2 Cr. L.J. 357, 23 B. 696=1 Bom. L.R. 114.

—Control of Indian Legislature over High Courts—*See* LEGISLATURE, POWERS OF, 3 C. 63=1 C.L.R. 161, F.B.

See LEGISLATURE, POWERS OF, 26 C. 874= 3 C.W.N. 564.

See LETTERS PATENT, 1865 (BOM), cl. 25, 2 B. 61.

High Court, Jurisdiction of—continued.

——**1.—(General)** – *concluded.*

See MAGISTRATE, JURISDICTION OF, 12 C.W.N. 604=7 Cr. L.J. 400.

See MANDAMUS, 2 Weir 22=2 Weir 248=1 M.H.C. 66.

See NATIVE STATES, 7 B.H.C. O.C.J. 172.

See NUISANCE UNDER CRIM. PRO. CODE, 4 C.L.R. 410.

See PRACTICE AND PROCEDURE, 8 C. 560 =10 C.L.R. 369.

See REFERENCE TO HIGH COURT, 9 C.L.J. 432=2 Ind. Cas. 593, 11 C.W.N. 715=5 Cr. L.J. 484.

See RESTORATION OF PROPERTY, 4 L.B.R. 14=6 Cr. L.J. 126.

—Review of judgment by the High Court—*See* REVIEW, 7 A. 672, Rat. Un. Cr. C. 458.

See SANCTION TO PROSECUTE, 22 C. 487, 9 C.P.L.R. Cr. 27, 13 M. 144, A.W.N. 1908, 273=5 A.L.J. 749=31 A. 38=9 Cr. L.J. 39=1 Ind. Cas. 569, 10 C.W.N. 1026=4 Cr. L.J. 168, 13 C.W.N. 1038, 5 C.L.J. 222, 7 P.W.R, Cr. 1908, F.B.=103 P.L.R. 1908=5 P.R. 1908 Cr.=7 Cr. L.J. 281.

See SECURITY FOR GOOD BEHAVIOUR, 14 C.W.N. 49.

See SENTENCE, 4 M.H.C. App. 36.

See SESSIONS JUDGE, JURISDICTION OF, 5 C.W.N. 411.

See ST. 24 and 25 Vic., ch. 104, s. 15, 1 Weir 786.

See ST. 39 and 40, Geo. III, ch. 79, 8 M. 24.

See TRANSFER OF CRIMINAL CASES, 8 C. 63, 5 M.H.C. 212, 26 M. 188=12 M.L.J. 391=2 Weir 678, 13 M.L.J. 69.

See VERDICT OF JURY, 14 C. 164, 4 M.L.T. 483, 2 C.L.R. 518.

——**2.—(As a Court of Reference).**

See HIGH COURT, JURISDICTION OF.—1—GENERAL.

See REFERENCE TO HIGH COURT.

(1)—*High Court—Reference under s. 286, Crim. Pro. Code, 1872.*—The High Court, as a Court of reference, can only deal with cases in which a sentence of death has been passed. **5 N.W.P. 130.**

(2)—*Crim. Pro. Code (1872), ss. 297, 307—High Court—Weight to be attached to evidence.*—In a reference under s. 307 of the Crim. Pro. Code, the High Court is bound to accept the opinions of the Judge and the jury where they agree. It is not open to it to believe the evidence which they have both disbelieved. **Rat. Un. Cr. C. 924=Cr. Rg. 29 of 1897.**

High Court, Jurisdiction of—continued.

——2.—(As a Court of Reference)—*concld.*

(3)—*Crim. Pro. Code (1882), ss. 238 and 307—Reference to High Court—High Court's power to convict a person for a minor offence not charged.*—It is competent to the High Court, in dealing with a case under s. 307 of the Crim. Pro. Code, to convict the accused under s. 365 of the Penal Code, although he was not charged with any such offence, but was charged with offences punishable under ss. 366 and 376, Penal Code. **22 C. 1006.**

(4)—*Crim. Pro. Code (1872), ss. 295, 296—Reference by District Magistrate against acquittal by Sessions Judge.*—Where prisoners convicted by a Bench of Magistrates are acquitted on appeal by the Sessions Judge, it is not competent for the District Magistrate to transmit the proceedings, under ss. 296, 297, Crim. Pro. Code, to the High Court, to have the order of acquittal by the Sessions Judge set aside. The High Court, as a Court of revision, will not interfere in any case of acquittal, the law having given to Government the right of appeal in such cases. **6 C.L.R. 245.**

——3.—(Revisional powers of High Court).

See HIGH COURT, JURISDICTION OF—1—GENERAL.

See REVISION.

(1)—*Superintendence, High Court's power of—S. 15 of the Charter Act—Interfering with order of Presidency Magistrate—Crim. Pro. Code, (Act V of 1898), s. 203, order under—Dismissal of complaint—Rule issued by High Court—Magistrate's duty to show cause.*—Independently of the Code of Criminal Procedure, the High Court has jurisdiction, under s. 15 of the Charter Act, to interfere with the order of a Presidency Magistrate, dismissing a complaint under s. 203, Crim. Pro. Code, and direct a further enquiry. There is no form of judicial injustice which the High Court, if need be, cannot reach, under the Charter Act. S. 15 of the Charter Act should be interpreted in an extended sense so as to give the High Court power of superintendence, that is to say, powers of revision over proceedings of the subordinate Courts. **12 C.W.N. 678=7 Cr. L.J. 499.**

(2)—*Pending case—Interference by High Court.*—It is only in very exceptional instances that the High Court should, as a Court of Revision, interfere with the action of a Subordinate Court in respect of any pending case, and especially when such a case has reached the stage where a charge has been drawn, and only the defence of the accused remains to be heard. Generally, it is inadvisable to interfere in a pending case, unless there is some manifest and patent injustice apparent upon the face of the proceedings and calling for prompt redress. **26 C. 786=3 C.W.N. 491.** [*R.*, U.B.R. 1904, 1st Qr., Crim. Pro. Code, 4].

(3)—The High Court has the power to interfere at any stage of the case, and when it is brought to its notice that a person has been subjected for over two months to the harassment

High Court, Jurisdiction of—continued.

——3.—(Revisional powers of High Court)—*continued.*

of an illegal prosecution, it is bound to interfere. **22 C. 131.** [*F.*, 20 B. 543, 3 L.B.R. 109; *R.*, 25 C. 233, 130 P.L.R. 1901; *D.*, 10 C.W.N. 322].

(4)—*Crim. Pro. Code (1861), s. 404—Magistrate acting without jurisdiction—Power to set aside proceedings.*—The High Court alone can set aside, under s. 404, the finding of a subordinate Magistrate, who has tried a case without jurisdiction and acquitted the accused. **4 M. H.C. App. 60.**

(5)—*Crim. Pro. Code (1898), s. 476—Prosecution directed by subordinate Civil Court—Powers of High Court.*—Where a subordinate Civil Court orders the prosecution of a person, the High Court has no powers of criminal revision, but it has power to interfere under s. 622, Civ. Pro. Code, 1882, when the necessary conditions exist. **1 A.L.J. 481=A.W.N. 1904, 170.**

(6)—*Criminal proceedings ordered by Civil Court, power of High Court to stay—S. 15, Charter Act, scope of—Ss. 28 and 29, Letters Patent—S. 476, Crim. Pro. Code.*—The power of general superintendence given by s. 15 is not limited by any other provisions of law, and it includes the power to point out to the subordinate Courts. the inexpediency of trying a case when it is likely to interfere with the due course of justice. The power of superintendence and transfer implies the power to send for the records in any case in the lower Courts, which must necessarily stay further proceedings in that case. Therefore, the High Court has the power to stay proceedings (ordered by a Civil Court) in Criminal Courts till the appeal from that Court is disposed. The fact that the Court may not have the power to set aside the order under s. 476, Crim. Pro. Code, is in itself no reason for holding the other way. **4 M.L.T. 186.**

(7)—*Crim. Pro. Code (1898), ss. 146 and 435—Revisional powers of High Court.*—The High Court has no power to interfere in revision with an order passed under s. 146, but it will have jurisdiction if the Magistrate has exceeded the powers given him by the section though, ostensibly, he acts under it. **7 Bom. L.R. 18 =2 Cr. L.J. 28.**

(8)—*Interference by High Court, in cases, where no appeal lies.*—The High Court is bound to interfere, even though no appeal lies, if it is clear on the face of the proceedings that the Magistrate approached the case from an entirely wrong point of view. **15 B. 351.** [*F.*, 19 B. 340].

(9)—*Order of Her Majesty's Consul at Muscat—High Court's revisional jurisdiction—Crim. Pro. Code (1898), s. 435.*—The High Court of Bombay has no criminal revisional jurisdiction over the proceedings of Her Majesty's Consul within the dominions of the Sultan of Muscat. **24 B. 471=1 Bom. L.R. 840.**

High Court, Jurisdiction of—continued.

——3.—(Revisional powers of High Court) —*continued.*

(10)—*Crim. Pro. Code (X of 1872), s. 518= s. 145 of the present Code—24 and 25 Vic., c. 104, s. 15—Interference by High Court—Nature of order under s. 518, Crim. Pro. Code, 1872.*— The High Court could not interfere, under the Charter Act, with orders properly passed by Magistrates under s. 518 of the Crim. Pro. Code of 1872=s. 145 of the present Code. [*R.*, 5 C. 7 F.B., 19 C. 127 ; *Exp.*, 1 C.L.R. 58.] *Obiter.*—An order under s. 518 of the old Code (=s. 145 of the present Code) is not a judicial proceeding, however much it may infringe upon the undoubted legal rights of parties. **2 C. 293, F.B.** [*R.*, 8 C. 590=11 C.L.R. 414].

(11)—*High Court's extraordinary criminal jurisdiction—Revisional powers.*—The High Court, in the exercise of its powers of extraordinary jurisdiction conferred by cl. 15 of the Charter, cannot, in criminal matters, interfere, unless all other remedies provided by law have been exhausted. **3 C. 573=1 C.L.R. 352.**

(12)—*Revisional powers of High Court—Notice to accused by District Magistrate.*—The High Court is competent, in the exercise of its revisional jurisdiction, to question not only the *legality* but the *propriety* of any finding, sentence or order ; and it is quite open to it to deal with the question whether a District Magistrate, in exercising the power under s. 437 of the Crim. Pro. Code, exercises a proper discretion in proceeding to make an order for further enquiry without giving notice to the accused, and allowing him an opportunity of being heard. *Semble.*—As a matter of strict law the accused was not entitled to be heard by the District Magistrate, before the order for further enquiry was made. **10 C. 268.**

(13)—*Conviction by Jury—High Court's power of interference.*—The High Court can interfere with a conviction of an accused by a Jury, only if it finds a defect in the charge, or in some other portion of the procedure. The question of sentence, however, is entirely in its hands. **22 C. 276.**

(14)—*High Court's powers of revision—Further enquiry—Crim. Pro. Code (1898), ss. 423, 435, 439—Letters Patent, 1865, cl. 28.*—Both under ss. 435 and 439 read with s. 423, Crim. Pro. Code, 1898, and under cl. 28 of the Letters Patent, the High Court has the power to revise the proceedings of Magistrates subject to the appellate jurisdiction of the High Court (such as Presidency Magistrates and to direct a further enquiry into a complaint. **26 C. 746 =3 C.W.N. 598.** [*Diss.*, 27 C. 126 ; *R.*, 27 B. 94].

(15)—*Crim. Pro. Code (1898), ss. 423, 439—Powers of High Court to deal with accused persons not appealing.*—The High Court has power, under s. 439, to deal with the case of accused persons not appealing against their conviction, while considering and trying the

High Court, Jurisdiction of—continued.

——3.—(Revisional powers of High Court) —*continued.*

appeal preferred by the other accused ; cl. (5) of s. 439 does not in any way affect the jurisdiction vested in the High Court to deal with their case. **5 C.W.N. 330.**

(16)—*Crim. Pro. Code (1898), ss. 439 and 476—Order of Munsiff directing prosecution—Interference by Criminal Bench, High Court—Civ. Pro. Code (1882), s. 622.*—A Criminal Bench of the High Court has no authority to interfere, under s. 439, Crim. Pro. Code, with the proceedings of a Munsiff taken under s. 476, Crim. Pro. Code. In such cases, a Civil Bench of the High Court should, under s. 622, Civ. Pro. Code, be moved for the purpose of hearing the application. **8 C.W.N. 73.** [*F.*, 4 L.B.R. 138 ; *R.*, A.W.N. 1904, 15=26 A. 249, 1 C.L.J. 161=32 C. 367=9 C.W.N. 364 =2 Cr. L.J. 110, 3 L.B.R. 234, 5 P.R. 1908 Cr.=7 P.W.R. 1908=103 P.L.R. 1908].

(17)—*Orders passed by a Magistrate—Executive orders and acts—Revision by High Court.*—A Magistrate passed certain orders depriving one person of, and giving another, possession of immoveable and moveable properties but not in accordance with any provision of law. The High Court in revision set aside the orders. **10 C.W.N. 246=3 Cr. L.J. 199.**

(18)—*Crim. Pro. Code (1898), ss. 145, 146—Proceedings instituted on a Police report—High Court, powers of.*—The High Court may interfere in a proceeding instituted by a Magistrate under s. 145, when the Police report on which the proceeding is based states in the vaguest terms that each of the parties claims a certain right, and that, inasmuch as both the parties are men of substance, there might be a breach of the peace. **11 C.W.N. 198=5 Cr. L J. 32.**

(19)—*Judge's notes of evidence and proceedings—Right of accused—Revisional powers of High Court.*—An accused person is not entitled to a copy of the record of the evidence and proceedings in the case, merely on the ground of an alleged probable hardship. The High Court can call for and examine the record of any case tried by a Court of Sessions, when there is a reasonable *prima facie* ground as respects either the irregularity of the proceeding, or the illegality or impropriety of the sentence or order passed. **1 M.H.C. 138.**

(20)—*High Court's power to order re-trial.*—The High Court, which has a power, which a District Magistrate does not possess, *viz.*, to order a re-trial, is not warranted in so doing merely because the Magistrate who has discharged an accused person in a case was competent to try and finally determine, but arrived at a conclusion, different from that at which the High Court would have arrived as to the credit due to the witnesses. **8 M. 336.** [*R.*, 3 M.L.T. 230=18 M.L.J. 57].

High Court, Jurisdiction of—continued.

——3.—(Revisional powers of High Court) *—continued.*

(21)—*High Court's power, to order re-trial for a graver offence by competent Magistrate—Crim. Pro. Code (1872), s. 299 (=s. 417 of the Code of 1898)—Crim. Pro. Code (1882), s. 439.* —Where the evidence discloses an offence of a graver character beyond the jurisdiction of a subordinate tribunal, the High Court may quash the conviction and sentence for the minor offence and direct a trial before a tribunal having jurisdiction for the graver. Whether it will do so or not is a question, not of law, but of expediency, on the facts of the particular case. **2 Weir 569=7 M.H.C. App. 5.** [*F.*, 2 Weir 569].

(22)—Where an offence, in its ordinary form, is within the jurisdiction of a tribunal, the jurisdiction is not necessarily ousted because the evidence discloses an element constituting the offence in a specific and graver form. In such cases it is a question, not of law, but of expediency, on the facts of the particular case, whether the High Court will interfere or not to quash the conviction. **2 Weir 569.** [*R.*, 2 Weir 609=24 M. 675].

(23)—*Defective investigation by Magistrates —Crim. Pro. Code (1872), s. 297 (=s. 439 of the Code of 1898).*—A defective investigation by a Magistrate constitutes a material error and will justify the High Court in setting aside the conviction. **2 Weir 570.**

(24)—*Reference—Revision— Powers— Crim. Pro. Code, s. 439 (5).*—Per *Aston*, J.—It is a well established rule of this Court that, in exercising the powers of revision, it interferes on questions of fact, only in very exceptional circumstances. The jurisdiction of the High Court, to interfere on questions of fact, has often been affirmed; and that, in very exceptional cases, this power should be exercised is obvious: such as, where there has been a conviction of a clearly innocent person, and, but for the powers given to the High Court, to interfere as a Court of revision, the only remedy would be by petition to the Government, to exercise its powers of prerogative. **8 Bom. L. R. 851=4 Cr. L.J. 446=1 M.L.T. 444.**

(25)—*Order of detention in a Reformatory improperly passed—Power of High Court to interfere—Reformatory Schools Act, s. 16.*—A High Court has power to interfere in appeal or revision, when an order of detention in a reformatory is opposed to the rules framed by the Local Government under the Act. If an order for detention in a Reformatory School is not properly passed, that is, if it does not conform to the rules made by the Local Government, the High Court is not debarred by s. 16 of the Act from altering or reversing such order. **1 L.B.R. 68.** (21 A. 391, 27 C. 133, *F.*; L. B. R. (1893—1900), 441, 25 C. 333, *Diss.*)

(26)—*Power of High Court to set aside an order of District Magistrate merely because case is one fit for reference.*—The High Court will

High Court, Jurisdiction of– concluded.

——3.—(Revisional powers of High Court) *—concluded.*

not set aside an order made by a District Magistrate, merely on the ground that the most proper course would have been to refer the case to the High Court, if it cannot be shown that the order made by the District Magistrate was not a fit and proper one for the High Court to make. **1 L.B.R. 311.** (15 C. 608, *F*).

(27)—*Powers of—Revision of interlocutory orders.*—It is competent for a High Court to exercise its powers of revision at any stage of a criminal case. In this case, the Chief Court of Rangoon treated a regular criminal appeal as an application for revision of an interlocutory order. **3 L.B.R. 109=3 Cr. L.J. 23.**

High Court Rules.

—Rules of the High Court, Appellate Side, Ch. V, Rule 5—Power of Full Bench to send case back to referring Bench for final disposal. —The language of r. 5 of Ch. V of the Rules of the High Court, Appellate Side, relating to references to the Full Bench in criminal matters, is sufficiently wide to enable the Full Bench to send a case back, with an expression of opinion upon the point of law raised, to the Bench which referred it for final disposal. **27 C. 839=4 C.W.N. 656, F.B.; 4 C. W.N. 645.** [*F.*, 28 C. 10].

High Court, Superintendence and Powers of.

See HIGH COURT, JURISDICTION OF.

(1)—*Interference by High Court, after expiry of order—Crim. Pro. Code (1898), s. 144.* —Where the period for which an order under s. 144, Crim. Pro. Code, is to be in force has expired, the High Court will not interfere with the order. **Rat. Un. Cr. C. 967=Cr. Rg. 22 of 1898.**

(1-*a*)—*High Court—Powers of interference.* —In a case where no appeal lay to it, the High Court, in the exercise of its extraordinary powers, reversed a conviction for cheating which was confirmed on appeal by the Sessions Judge. **9 B.H.C. 448.** [*R.*, 15 C.P.L.R 97].

(2)—*Crim. Pro. Code (1898), ss. 435 to 439—Revision, powers of, under ss. 435 to 439, of High Court, Sessions Judge and District Magistrate, if same—Evidence, misappreciation of, whether a ground for interference—Further enquiry, power to order.*—The accused were charged for an offence under s. 223, I.P.C., but were discharged by the Sub-Magistrate on the ground that the prosecution failed to establish the offence. The District Magistrate, sent for the records under s. 435, and directed a further enquiry by *another* Magistrate, on the ground that the reasons given by the Magistrate for discrediting the prosecution witnesses were not convincing. *Held* on appeal, by (*Wallis* and *Munro, JJ., Sankaran Nair, J., dissenting*) that, the powers of interference of the High Court and the Sessions Judge or District Magistrate are co-extensive under s. 437 and are not limited. There is nothing in

High Court, Superintendence and Powers of --continued.

s. 437 to suggest that misappreciation of evidence in the lower Court is not a ground of interference, but s. 436 shows that it is a ground of interference. That, in a case where the District Magistrate or the Sessions Judge considers that a Magistrate is wrong in discharging an accused and that a *prima facie* case is made out, the District Magistrate or the Sessions Judge cannot, in the exercise of the power to order further enquiry under s. 437, himself frame the charge or try the accused. Under the latter part of the section, the District Magistrate may make the further enquiry himself and frame the charge in the course of it. That, in a case of difference of opinion owing to mere appreciation of evidence, the Sessions Judge or District Magistrate is not bound to refer the case to the High Court, but would be justified in ordering a re-consideration of the same evidence. *Wallis, J.*—A subordinate Magistrate unsatisfactorily dealing with a case would be a good ground for ordering further enquiry by another Magistrate. When the legislature is not satisfied that the general revisional jurisdiction established by it is sufficient to deal with a particular class of cases and creates a special revisional jurisdiction in such cases, it seems to be in accordance with the intention of the legislature that the special jurisdiction should be exhausted before the general jurisdiction is resorted to. *Sankaran Nair, J.*—Recognising the distinction between revision and appeal, neither the High Court nor a District Magistrate, could interfere with an order of discharge on account of mere misappreciation of evidence. **5 M.L.T. 233, F.B. = 9 Cr. L.J. 192 = 19 M.L.J. 157 = 32 M. 220 = 1 Ind. Cas. 228.**

(3)—*Crim. Pro. Code (Act X of 1872), ss. 263 and 457 = ss. 307 and 238 (Act V of 1898) —Jury's verdict of acquittal—Powers of High Court on reference.*—On a reference, under s. 263 of the Crim. Pro. Code of 1872, the High Court can convict a prisoner of any offence, which the Jury could have convicted him of, upon the charge framed and placed before them, under s. 457 of the Crim. Pro. Code of 1872. **3 C. 189.** [*Appr.*, 22 C. 1006].

(4)—*Crim. Pro. Code (1882), s. 439—Charter Act, s. 15—Orders made by inferior criminal Courts—Powers of High Court*—Ultra vires *order of Magistrate under s. 144, Crim. Pro. Code.*—Under s. 439 of the Code, the High Court has the general power of revision of all orders made by inferior criminal Courts which come before it in any way whatsoever; under cl. 15 of the Charter Act it has a general power of superintendence, and, under that power, it can send for any record which it may desire to see. If, upon the face of the record, it finds that an illegality has been committed, and that an order has been made which the Magistrate has no jurisdiction to make, it can set aside the order. The High Court has power to interfere, under the Charter Act, if

High Court, Superintendence and Powers of —continued.

the proceeding of a Magistrate is *ultra vires* and could not be made under s. 144, Crim. Pro. Code. **19 C. 127.**

—Revision of order of acquittal—*See* ACQUITTAL, L.B.R. (1893--1900), 126.

See ACT X OF 1875, ss. 115 and 147, 12 B. H.C. A.C. 217.

See ACT V OF 1876, s. 8, 14 B. 381.

See ACT IV OF 1877, ss. 7, 45, 8 C. 166 = 10 C.L.R. 190.

See ACT IV OF 1877, s. 168, 7 C. 447.

—Revision by High Court of an order of a subordinate tribunal under s. 58, Forests Act VII of 1878—*See* ACT VII OF 1878, s. 58, 4 A. 417.

See ACT XVIII OF 1879, s. 14, 27 C. 1023 = 4 C.W.N. 389.

See ACT XVIII OF 1879, s. 36, 21 A. 181.

—Unprofessional conduct of practitioner—Opportunity to defend himself—*See* ACT XVIII OF 1879, s. 40, 15 C. 152, P.C. = 14 I.A. 154.

See ACT III OF 1884, s. 8 (6), 9 A. 420.

See ACT VIII OF 1897, ss. 8, 11, 16 and 31, 27 C. 133.

See ACT VIII OF 1897, ss. 4, 8, 16, 20 A. 158, 20 A. 160.

See ACT VIII OF 1897, s. 16, 21 A. 391, F.B.

See BOM. ACT VI OF 1863, ss. 22 and 25, 2 S.L.R. 20 Cr. = 10 Cr. L.J. 233.

See BOM. ACT VII OF 1867, s. 16, Rat. Un. Cr. C. 478.

See BOM. ACT VIII OF 1867, ss. 6 and 14, 10 Bom. L.R. 630 = 8 Cr. L.J. 141.

See BUR. ACT III OF 1889, ss. 9 and 20, cl. 2, L.B.R. (1893—1900), 147.

See BAIL, Rat. Un. Cr. C. 892.

—In cases of orders requiring security for good behaviour—*See* CRIM. PRO CODE (1898), ss. 118, 123, 406, 439, 2 O.C. 307.

—High Court's power of revision of Magistrate's order under s. 144, Crim. Pro. Code—*See* CRIM. PRO. CODE (1898), ss. 144 and 435 (3), 4 Bom. L.R. 582.

— Revision of orders in disputes as to immoveable property—*See* CRIM. PRO. CODE (1898), ss. 145 and 434 (3), 25 A. 537 = A.W.N. 1903, 102.

—High Court's power of interference with order under s. 146, Crim. Pro. Code—*See* CRIM. PRO. CODE (1898), ss. 146 and 435, 7 Bom. L.R 18.

--In cases of disputes of civil nature—*See* CRIM. PRO. CODE (1898), s. 147, 29 M. 97 = 15 M.L.J. 394 = 3 Cr. L.J. 31.

High Court, Superintendence and Powers of —concluded.

See CRIM. PRO. CODE (1898), s. 148 (3), 9 C.W.N. 887=1 C.L.J. 331=2 Cr. L.J. 408.

—Application for sanction to prosecute—Rejection by Magistrate—Independent application to Sessions Judge—Procedure, validity of—*See* CRIM. PRO. CODE (1898), s. 195, 25 A. 126=A.W.N. 1902, 197.

—Powers of High Court to act under s. 562 on appeal—*See* CRIM. PRO. CODE (1898), ss. 423 (*d*) and 562, 24 A. 306=A.W.N. 1902, 69.

—Appeal preferred by Government from acquittal—Revision—*See* CRIM. PRO. CODE (1898), ss. 435, 438, 439, 24 A. 346.

—In acquittals—*See* CRIM. PRO. CODE (1898), s. 439, 27 A. 359=A.W.N. 1904, 278, S.C. 191, Oudh.

—High Court's power of revision—*See* CRIM. PRO. CODE (1898), ss. 439, 476, 23 A. 249=A. W.N. 1901, 59.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 2 C.L.J. 241=2 Cr.L.J. 618=33 C. 68, F.B.=9 C.W.N. 1046.

See FURTHER ENQUIRY, 13 C.W.N. 1221.

See REFERENCE TO HIGH COURT, Rat. Un. Cr. C. 473.

See RESTORATION OF PROPERTY, 27 A. 415=A.W.N. 1905, 19=2 A.L.J. 64=2 Cr. L.J. 24, 13 C.W.N. 77.

See REVIEW, 19 C. 127.

See REVISION, 27 A. 630=A.W.N. 1905, 139 =2 Cr. L.J. 331, 27 A. 468=A.W.N. 1905, 65, 4 L.B.R. 339=9 Cr. L.J. 24, 5 N.L.R. 4=9 Cr. L.J. 211=1 Ind. Cas. 238, 2 S.L.R. 25 Cr.=10 Cr. L.J. 237.

See SANCTION TO PROSECUTE, 5 A.L.J. 247=A.W.N. 1908, 102=30 A. 243=3 M.L.T. 377=7 Cr. L.J. 389, 27 A. 292=1 A.L.J. 597 =A.W.N. 1904, 231, 3 A. 508, 1 A.L.J. 186 26 A. 1=A.W.N. 1903, 1, 27 M. 223=2 Weir 208=14 M.L.J. 74, 6 O.C. 216.

See SECURITY FOR GOOD BEHAVIOUR, 2 C. 384=1 C.L.R. 95.

See SECURITY TO KEEP THE PEACE, 3 C. 757=2 C.L.R. 408.

See VERDICT OF JURY, 3 C. 623=2 C.L.R. 304, 9 C. 53=11 C.L.R. 169.

High Seas, Offences Committed in.

(1)—*Merchant Shipping Act, 1854 (17 and 18 Vic., c. 104), s. 267—Merchant Shipping Act, 1855 (18 and 19 Vic., c. 91), s. 21—Colonial Courts Jurisdiction Act, 1874 (37 and 38 Vic., c. 27)—Offence committed by British Seamen on a British ship on the high seas—Procedure.* —The trial of a British seaman for an offence committed on British ship on the high seas must be conducted under the Code of Criminal Procedure, though the offence charged must be an offence under English law. **21 C. 782.**

High Seas, Offences Committed in—continued.

(2)—*Offence committed in British ship during voyage on the high seas—Penal Code—Crim. Pro. Code.*—A Presidency Magistrate has authority to convict a person of an offence under the Indian Penal Code, committed in a British ship during her voyage on the high seas. The charge should be framed with reference to the Indian Penal Code, and in case of conviction the punishment should be awarded under that Code. **25 B. 636=3 Bom. L.R. 253.**

(3)—*High seas—Offence committed within three miles of shore—Substantive Law applicable—Procedure—Punishment—Jurisdiction.*—An offence committed on the high seas but within 3 miles from the British Indian shores is one committed within British Indian territories (what may be called maritime territory) and the substantive law applicable is the Penal Code, and the procedure is also that laid down in the Crim. Pro. Code. Though, under Reg. XII of 1827, the District Magistrate had no authority beyond the low water-mark adjoining his district, Stat. 12 and 13 Vict., c. 96 gave to such Magistrates jurisdiction over offences committed on the high seas within the high water-mark as if they had been committed within their local jurisdiction. There might be a doubt as to what punishment the accused are liable to if the description of the offences charged were identical under the Indian and English Law, but the question does not arise in the case of the offence of mischief when it is not shown that the sentence provided in the Penal Code is heavier than what would be inflicted under the English law. *Per West, J.* **8 B.H.C. Cr. 63.** [*R.*, 11 Bom. L.R. 221].

(4)—*Jurisdiction—High seas—Substantive Law applicable—Procedure—Abetment by accessories—Merchant Shipping Acts—Penal Code—Imperial Statutes—Indian Legislation.* —One Marks was charged with having committed mischief by setting fire to a decked vessel of a burden of over 1,000 tons at a distance of about fifty miles off the Coast of Bombay on a voyage from Bombay to Liverpool. Elmstone and two others, brokers of the vessel, were charged with having abetted the said offence of mischief by conspiring to have her destroyed with intent to defraud an Insurance Company, and, in order to effect their design, bribing Marks to destroy her. Charges were framed both under the Penal Code and under the Imperial Statutes. The question was under what law the principal and the accessories respectively were to be punished. The following propositions of law were laid down. (1) The procedure applicable to the case is the one prevailing in the Indian High Courts in the exercise of their Original Criminal Jurisdiction. (2) The substantive law applicable to British-born subjects in such cases is the English Law and not the Penal Code, both in the case of the principal offender and of the abettors. The sentence therefore is to be under English Law. (3) There is no Indian enactment now in force providing for the offences under the circumstances above described, either for the principal

High Seas, Offences Committed in—concld.

offence or for the abetment, since the word "offence" in s. 109 of the Penal Code generally means an offence punishable under the Code and not one punishable under a special or local law. (4) No Imperial enactment has extended the application of the Penal Code in respect of similar offences when committed within British Indian limits to offences committed on the high seas. **7 B.H.C. Cr. 89, F.B.** [*R.*, 8 B.H.C. Cr. 63, 2 B. 19, 16 C. 238, 18 B. 636, 19 B. 105, 11 Bom. L.R. 221].

(5)—*Punishment—Procedure—European British subject—7 Will. IV., and 1 Vict., c. 85, s. 2—1 & 15 Vict., c. 19, s. 5—Jurisdiction—Act XIII of 1865.*—In prosecuting a British subject for an offence committed on board a British ship upon the high seas *held* (1) (Phear, J., *dubitante*) that he must be charged with an offence under the English law; (2) that the punishment must be according to the English law; (3) that the trial must be according to the procedure of the local Court. Therefore, where a British subject was charged before the High Court with having committed an offence under 7 Will. IV., and 1 Vict., c. 85, s. 2. on board a British ship, upon the high seas, within the admiralty jurisdiction of the Court, and found guilty of an offence under 14 and 15 Vict., c. 19, s. 5, *held* that the conviction was good, and that the prisoner would be rightly punished with rigorous imprisonment, which is defined by s. 53 of the Penal Code to be equivalent to imprisonment with hard labour, and that the trial had been rightly proceeded with under Act XIII of 1865. **1 B.L.R. O. Cr. 1.** [*Dist.*, 8 B.H.C. Cr. 63, 16 C. 238; *R.*, 7 B.H.C. Cr. 89, F.B., 8 B.H.C. Cr. 63].

See CRIM. PRO. CODE (1898), ss. 181 (1 to 3), 182, Rat. Un. Cr. C. 181.

Highway.

—*Right to conduct a procession.*—A person's right to conduct a procession on the public highway can only be questioned by a Magistrate, who, for the preservation of peace, may, if he sees sufficient ground, interdict the procession. **1 M.H.C. 50.** [*R.*, 2 Weir 77=6 M. 203].

See CRIM. PRO. CODE (1898), s. 133, 3 C.W.N. 345.

—Carrying of corpse on a highway—*See* CRIM. PRO. CODE (1898), s. 147, 7 M. 49=2 Weir 115.

See JURY, 18 A. 158, 22 A. 267.

See NUISANCE UNDER CRIM. PRO. CODE, 11 C. 8, 20 M. 433=1 Weir 233.

See PENAL CODE, ss. 153, 296, 26 M. 554=1 Weir 260=13 M.L.J. 171.

See PENAL CODE, s. 279, 19 B. 715.

Hill Municipalities Act.

See MAD. ACT III OF 1907.

Hindu Law.

1.—JOINT FAMILY.
2.—MAINTENANCE.
3.—MARRIAGE.

Hindu Law—continued.

——**1.—(Joint Family).**

See ACT XI OF 1878, ss. 19 and 20, A.W.N. 1906, 11=3 Cr. L.J. 88=28 A. 302=3 A.L.J. 833.

—Right of joint Hindu family to empower one to vote on their behalf—*See* BEN. ACT II OF 1888, ss. 14 and 24, 19 C. 192.

—*Kurta* inducing Collector to pay money due to family on false personation of minor members of joint family—*See* CHEATING, 32 C. 775=9 C.W.N. 807=2 Cr. L.J. 368=1 C.L.J. 469.

See CRIMINAL MISAPPROPRIATION, 1 Weir 453.

—Attachment of the undivided interest in the joint family of an absconding party—*See* CRIM. PRO. CODE (1898), ss. 87 and 88, 2 Weir 43.

See CRIM. PRO. CODE (1898), s. 198, 32 C. 425=8 C.W.N. 515.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 18 M.L.J. 343=31 M. 318=8 Cr. L.J. 205=4 M.L.T. 301.

See MAINTENANCE, 13 M. 17=2 Weir 620.

See PENAL CODE, ss. 124-A, 131, 37 P.W.R. 1907 Cr.

See PENAL CODE, s. 411, 29 A. 598=A.W.N. 1907, 187=6 Cr. L.J. 23.

See STOLEN PROPERTY, 22 A. 445.

See THEFT, 10 M. 186=1 Weir 408, 3 A. 181.

——**2.—(Maintenance).**

See MAINTENANCE.

(1)—*Right to maintenance—Justification for wife leaving husband—Unkindness or neglect—Cruelty—Crim. Pro. Code (1872), s. 536.*—Under the Hindu Law, mere unkindness or neglect short of cruelty would not be a sufficient justification for a wife to leave her husband's house. Reference being had to the first Code of Criminal Procedure (XXV of 1861) and to the existing Code (X of 1872), s. 536, unless a husband refuses to maintain his wife in his house, or has been guilty of acts of cruelty which would justify her in leaving his protection, she is not entitled to maintenance while living apart from her husband. **24 W.R. 377.**

(2)—*Maintenance, Right to, out of confiscated property.*—A Hindu widow was held not entitled to maintenance out of property belonging to her husband which had become forfeited to the Government on his conviction for rebellion. **2 Ind. Jur. N.S. 124.**

——**3.—(Marriage).**

See MARRIAGE.

(1)—*Hindu Law—Apostacy—Dissolution of marriage.*—There is no authority in the Hindu Law for the position that a degraded person or an apostate is absolved from all civil obligations incurred before degradation or apostacy. So far

Hindu Law—concluded.

——**3.—(Marriage)**—*concluded.*

as the matrimonial bond is concerned, such a view would be contrary to the spirit of the Hindu Law which regards the bond as absolutely indissoluble. **18 C. 264.**

(2)—*Hindu Law—Illegitimacy whether a disqualification for marriage.*—Illegitimacy under Hindu Law is no absolute disqualification for marriage, and where one or both the parties to a marriage are illegitimate, the correct view is to regard the marriage as valid, if they are, in point of fact, recognised by their castemen as belonging to the same caste. **18 C. 264.**

—Conversion of Hindu wife to Mahomedanism and remarriage with Mahomedan—*See* BIGAMY, 4 B. 330.

—Hindu wife becoming convert to Mahomedanism—Conditions necessary before marrying a Mahomedan a second time—*See* BIGAMY, 18 C. 264.

—Marriage according to Hindu rites of relapsed convert—Subsequent conversion and marriage to Christian—*See* BIGAMY, 10 M. 218=1 Weir 566.

—Second marriage with a Hindu woman by a person relapsing from Christianity to Hinduism—*See* BIGAMY, 1 Weir 561=3 M.H. C. App. 7.

—Hindu wife, whether entitled to separate maintenance on the ground of husband's second marriage—*See* MAINTENANCE, 7 M. 187 =2 Weir 640.

See MAINTENANCE, 13 M. 17=2 Weir 620.

Hindu Widows' Re-marriage Act.

See ACT XV OF 1856.

Holiday.

(1)—*Judicial work on holidays not allowed—Duty of Magistrate in cases of disputed possession.*—Magistrates should not take up judicial work on Sundays. In cases of disputed possession, the Magistrate is to look to possession and right. He must declare the party whom he may decide to be in possession and entitled to retain possession and forbid disturbance of his possession. **W.R. 1864, Cr. 2.**

(2)—*Trial on Sunday—Fining witnesses for non-attendance—Penal Code, s. 174.*—When a Magistrate, while travelling in his district, tried a case partly at one place and then fixed Sunday at noon for the further trial of the case at another place, and the witnesses came three hours late and, the Magistrate having then gone on, they were subsequently sentenced by him, under s. 174 of the Penal Code, for being intentionally absent, *held*, that the proceeding was irregular. The Magistrate was wrong in fixing Sunday for the trial of the case, and the witnesses might, on the ground that it was a recognised holiday, have refused to attend. **8 B.L.R. Ap. 12.**

(3)—*Criminal proceedings taken on Sunday.*—A Magistrate is not debarred in this country from taking criminal proceedings on Sundays. **6 N.W.P. 177.**

Holiday—concluded.

(4)—It is not illegal for a Village Magistrate to hold an enquiry on a Sunday. **1 Weir 921.**

See LIMITATION, 2 N.W.P. 122.

—Prosecution commenced six months after granting sanction—Intervention of holidays—*See* SANCTION TO PROSECUTE, 22 C. 176.

Honorary Magistrate.

See CRIM. PRO. CODE (1898), ss. 1 (2) (*a*), 4 (*p*) and (*s*), 55 (*b*), 109 (*b*), 31 C. 557=7 C.W. N. 661.

Horse.

—If includes ponies—*See* MAD. ACT III OF 1871, 5 M. 269.

House-breaking.

See CRIMINAL TRESPASS.

See PENAL CODE, ss. 445, 446.

(1)—*Penal Code, s. 445—House-breaking, when the offence of, is committed.*—According to s. 445, Penal Code, a person is said to commit house-breaking, if he effects his entrance or departure by using criminal force or committing an assault. Where the accused, having entered a house at night, quitted the house with a bell-metal vessel under his arm after having knocked down a person who stood in the door-way, *held*, that the accused was guilty of house-breaking. **1 Weir 530.**

(2)—*Crim. Pro. Code (1898), s. 35—Offences under ss. 457, 380, I.P.C.—Joinder of charges.*—When a person is accused of committing house-breaking and theft, he should be charged under s. 457 alone as only one offence is committed. **1 Bom. L.R. 69.**

(3)—*Crim. Pro. Code (1898), s. 35—Separate convictions for house-breaking and theft.*—The passing of separate sentences in a case of house-breaking with intent to commit theft and theft is illegal under s. 35, Crim. Pro. Code, 1898. **2 Weir 34.**

(4)—*Penal Code, ss. 457, 511, 109—House-breaking by night—Attempt—Abetment—Crim. Pro. Code, s. 35.*—Where a person was charged and convicted of attempting as well as abetting the same offence, the High Court set aside the conviction and sentence on one of the counts. **8 Bom. L.R. 855=4 Cr. L.J. 450.**

(5)—*Penal Code, s. 451—House-trespass with intent to commit adultery.*—A person making an entry into another's house with the object of having sexual intercourse with the latter's wife, is guilty of the offence of criminal trespass. **1 Weir 532=8 M.H.C. App. 6.** [*R.*, 2 Weir 308].

(6)—"*Burglarious entrance.*"—If the prisoners effect a "burglarious entrance," the offence would be house-breaking rather than "lurking-house trespass." **1 W.R. Cr. Letters, 9.**

(7)—*Attempt to commit house-breaking—Punishment.*—The accused, attempting to commit house-breaking by night for the purpose of committing theft and being interrupted by the inmates of the house, killed one of them. *Held*

House-breaking—concluded.

that, in the absence of evidence as to which of the accused caused the death, the accused could not be transported for life under s. 460, I.P.C., as the offence of house-breaking was only attempted. **16 P.R. 1874 Cr.**

(8)—*Death caused at the time of, whether murder—Penal Code, ss. 445, 457 and 460.*—Death caused voluntarily at the time of committing the offence of house-breaking by night is not murder, punishable under s. 302, Penal Code, but is an offence punishable under ss. 457 to 460, Penal Code. **L.B.R. (1893—1900), 267.**

(9)—*Penal Code, s. 445—Gist of the offence.*—To constitute house-breaking, entering into a building is essential; mere entering upon it is not sufficient. **9 P.R. 1890 Cr.**

(9-*a*)—*Murder committed by one of the house-breakers—Liability of other members.*—Where the two appellants, who formed members of a gang of four persons, attempted to break into a house by night, and in the attempt a person was killed, but it was not proved that the two appellants had any hand in the murder, *held*, that they were not guilty of murder, but were guilty of an offence under s. 460, I.P.C. **12 P.R. 1880 Cr.**

(10)—*House-breakers going out by night to a frontier District—Presumption.*—When a party of house-breakers goes out by night on a house-breaking expedition in a frontier district in the Punjab, *held*, that no presumption arises that there is a tacit understanding that each one shall stand by the others to the extent of causing death. **12 P.R. 1891 Cr.** (12 P.R. 1880, *R.*).

See ACT VI OF 1864, s. 3, 3 L.B.R. 112=3 Cr. L.J. 348.

See CRIMINAL TRESPASS, 22 C. 994, 16 C. 657.

See PENAL CODE, ss. 447, 457 and 511, 15 P.R. 1907 Cr.

See PENAL CODE, ss. 459, 460, 8 A. 649.

See SENTENCE, 10 A. 146=8 A.W.N. 5, 23 B. 706=1 Bom. L.R. 142, F.B.

See THEFT, 1 Weir 435.

House-breaking by Night.

See HOUSE-BREAKING.

House-search.

See BUR. ACT I OF 1899, ss. 6, 7, 4 L.B.R. 134=7 Cr. L.J. 411, 14 Bur. L.R. 81=4 L. B.R. 213=7 Cr. L.J. 479.

House Trespass.

See CRIMINAL TRESPASS.

See PENAL CODE, ss. 441—462.

See LURKING HOUSE TRESPASS.

(1)—*Penal Code, ss. 442 and 457—Term "buildings" explained.*—The mere surrounding of an open space of ground by a wall or fence of any kind, such as hurdles, could not be deemed to convert the open space into a 'building.' Trespass thereon would not, therefore, be house-trespass under s. 442. **1 Weir 523.**

House Trespass—continued.

(2)—*Penal Code, s. 442—House-trespass—Criminal intention.*—The essence of the offence of house-trespass is the intent in committing the trespass. The Magistrate must expressly find what the intent was, and must not leave it to inference. **1 Weir 524.**

(3)—*Penal Code, s. 442—Attempt to commit house-trespass.*—The removal of a trap-door with the intention of committing house-trespass amounts to an attempt to commit the offence. **Rat. Un. Cr. C. 188.**

(4)—*Penal Code, s. 457—House trespass by night with intent to commit adultery with complainant's wife—Husband alleging intent of theft.*—Where it was proved to the satisfaction of the Court that the accused entered the complainant's house in order to have sexual intercourse with the complainant's wife, and it was further proved that he did so without the complainant's consent, *held*, that he was properly convicted under s. 457, although the intent alleged by the complainant was not adultery, but theft. **23 A. 82.**

(5)—*Penal Code, s. 451—House-trespass in order to commit adultery—Criminal intention, proof of.*—Where a person enters a house with the object of committing adultery with the wife of the owner of the house, he is guilty of an offence under s. 451, and no complaint by the husband is necessary to charge him for that offence, although a prosecution for the offence of adultery must be instituted by the husband alone. **1 Weir 531.**

(6)—Where the accused was convicted, under s. 451, Penal Code, of house-trespass with intent to commit adultery, and there was no evidence as to whether the woman concerned, the complainant's sister, was married and whether her husband was alive or dead, *held*, that the accused could not be convicted of house-trespass with intent to commit adultery, but that he was liable to be convicted for house-trespass, the intention being to insult or annoy the complainant by having sexual intercourse with his sister. **1 Weir 535.** [*R.*, 1 Weir 537=19 M. 240].

(7)—Where the accused entered the complainant's house, in his absence, for the purpose of having sexual intercourse with his mother, a widow, and was found out by the complainant while he remained there, *held*, that the accused did not intend to annoy or insult the complainant. **1 Weir 537.**

(8)—To sustain a conviction under s. 451, it is not necessary that the Court should be in a position to say which specific offence the accused intended to commit It is sufficient, if the evidence leaves no room for reasonable doubt, that the accused intended to commit an offence. **1 Weir 533.**

(9)—*Penal Code, s. 456—Intent of accused.*—The offence of house trespass is not committed by a person who comes secretly to a house at the invitation of one of its inmates and solely for the purpose of keeping an assignation. **1 L.B.R. 355.** (1 U.B.R. 1897—1901, 354, 19 M. 240, *F.*)

House Trespass—continued.

(10)—*Penal Code, ss. 448, 451, 457—Intention essential under ss. 451 and 457, but not under s. 448.*—The accused was detected by the complainant in a half undressed condition under the cot of his wife, and the accused had entered with the knowledge of his wife. The accused was charged with house-trespass in order to commit theft. The Magistrate disbelieved the allegation as to theft, but convicted the accused under s. 451, I.P.C., stating that it was not necessary to specify exactly what offence the accused *intended* to commit. *Held*, that, the offence which the accused has the intention of committing is a substantial ingredient of the offences under ss. 451 and 457, I.P.C., and a conviction under those sections cannot be maintained, unless there is an express finding on this point. Under s. 448, it is not necessary to specify precisely the intention, and it is sufficient to show that the intention was criminal. The intention may be inferred from the circumstances. *Held*, further, that, having regard to the conduct of the complainant in fabricating false evidence in support of a false charge of theft, it was within the discretion of the Magistrate to discharge the accused, and decline to enquire into the minor offence which the husband declines to allege. **3 S.L.R. 86.**

(11)—*Penal Code, s. 448—House-trespass—Intention.*—A person who enters into the house of another secretly, in order to carry on an intrigue with a widow in the house, is not guilty of criminal trespass, as his intention was not to commit an offence punishable under the Penal Code, nor to cause insult or annoyance to the inmates of the house. **4 C.L.J. 169=4 Cr. L.J. 144.**

(12)—*Penal Code, s. 457—Lurking house-trespass by night.*—Where the accused was charged with lurking house-trespass by night in order to commit adultery with a widow, the sister of the complainant, *held*, that he could not be convicted, inasmuch as the brother either connived at the intrigue or did not; in the former case, there could not have been any intent to annoy, while, in the latter, the intention must have been to keep the matter secret from him and by no means to annoy him. **1 Weir 536.** [*F.*, 1 Weir 537=19 M. 240].

(13)—*Penal Code, s. 451—House-trespass for committing an offence with the connivance of the owner.*—When the owner in charge of a house professes to be an accomplice and invites another to his house to commit an offence, a conviction for house-trespass is bad in law. Where the accused, intending to bribe a judicial officer for the purpose of passing a decision in favour of a party in an original suit went to the officer's house for giving him the bribe, *held*, that he could not be convicted of house-trespass as he went there on the invitation of the officer, although the latter invited him to the house in order that he might be seized with the money and brought to justice. **1 Weir 534.**

(14)—*Penal Code, s. 457—Entry into compound.*—The words "house" or "building used as human dwelling" in s. 457 of the

House Trespass—continued.

Penal Code do not include compounds. An entry into a compound with intent to commit theft is punishable only as trespass and attempt to commit house-breaking with the intent above-mentioned. **Rat. Un. Cr. C. 484.**

(15)—*Penal Code, s. 448—Going into Horse Lines without permission—House-trespass.*—The going into a Horse-Line with a sowar without the permission of the Commanding officer does not constitute the offence of house-trespass. **Rat. Un. Cr. C. 328=Cr. Rg. 18 of 1887.**

(16)—*Penal Code, s. 442—Entry by excommunicated wife into the husband's house for demanding maintenance.*—The law does not recognise the loss of social status arising from excommunication from caste, as of itself depriving a wife of the right to joint enjoyment of her husband's property. Where a wife, who had been excommunicated, and was living separately, but who was not expelled from the house by her husband for any misconduct legally established, entered her husband's house for the purpose of demanding maintenance, *held*, that she could not be regarded as a trespasser, civil or criminal. **1 Weir 523.**

(17)—*Entry on invitation.*—A person entering a house in the possession of a woman at her instance with intent to commit adultery with her, is not guilty of house-trespass. **Colm. Dig. Cr. 58 of 1876.**

(18)—*Penal Code, s. 451—Absence of evidence of house-trespass—Conjectural reasons rejected—Opportunity to recall prosecution witnesses for cross-examination necessary.*—Where the complainant suggested that the accused person entered his house with the intention of committing theft, but the Magistrate convicted him under s. 451, Indian Penal Code, finding that he entered therein for the purpose of committing adultery, of which there was no evidence on the record. *Held*, as there was no proof on the record of house-trespass, the accused was wrongly convicted under s. 451, Indian Penal Code. *Held* also, that it is illegal to record hearsay evidence and not to give an opportunity to an accused person for recalling prosecution witnesses for cross-examination. **29 P.W.R. Cr. 1907=7 Cr. L.J. 230.**

(19)—*Penal Code, s. 457—House-trespass by night with intent to commit theft—Real offence, being an offence under s. 498—Conviction.*—Where, with the intention of hiding the real offence committed by the accused, *viz.*, one under s. 498, I.P.C., the complainant charged the accused of an offence under s. 457, I.P.C., with intent to commit theft, *held*, that the Court should be very chary of convicting the accused for an offence under s. 498, when the prosecution had not alleged an offence of that nature and the accused has had no fair chance of meeting such a charge. **31 P.R. 1901 Cr.** (41 P.R. 1882, *R.*).

(20)—*Penal Code, s. 457—Lurking house-trespass.*—An offence under s. 457 is ordinarily more serious than one under s. 380 and it is expedient that persons who commit an offence

House Trespass—continued.

under the former should be correctly convicted and adequately punished. Again, every person aware of the commission of an offence under s. 457, I.P.C., is bound, under s. 44, Crim. Pro. Code, to give information forthwith to the nearest Magistrate or police officer, and it is highly desirable for the sake of the suppression of this dangerous form of crime that such responsibility is enforced. **U.B.R. (1892—1896), Vol. I, 273.**

(21)—*Theft of cattle from a cattle-fold or pen.*—Where cattle was stolen out of a cattle-fold or pen with a thorn hedge round it, *held*, that the cattle-fold or pen was not a building and that the accused could not, therefore, be convicted of an offence under s. 457. He was liable to be convicted under s. 379, I.P.C. **57 P.R. 1887 Cr.**

(22)—*Penal Code, s. 442—Gist of the offence.*—Where the accused commits trespass into a building used as a dwelling house, the building being enclosed by four walls and the doorway in them, *held*, that the accused was guilty of house-trespass, although the particular part into which he entered may not have been used as a dwelling, or as a place of custody for property. **16 P.R. 1889 Cr.**

(23)—*Penal Code, s. 443—Lurking house-trespass.*—A person who is found in a position from which it can be inferred at the time of discovery that he is endeavouring to conceal his presence on the premises, may be said to have taken precautions to conceal his trespass from the occupier, within the meaning of s.443, I.P.C. **16 P.R. 1889 Cr.**

(24)—*Penal Code, s. 451—House-trespass with intent to commit theft, charge of—Conviction for house-trespass with intent to commit adultery—Crim. Pro. Code (1882), s. 199.*—The complainant charged the accused with house-trespass with intent to commit theft. The accused stated that he had gone into the house to have sexual intercourse with the wife of a person other than the complainant. The accused was convicted under s. 451, I.P.C., for house-trespass with intent to commit adultery. *Held* that it was irregular and to the prejudice of the accused to convict him for an offence different from the one charged, without proper opportunities to meet it. Further, in the absence of complaint by the husband, the prosecution was very injudicious, and the conviction and sentence should, therefore, be set aside. **A.W.N. 1886, 42.**

(25)—*Penal Code, s. 457—Lurking house-trespass.*—A village *chaukidar* on his rounds came near the back of a house, and then saw five men in a knot close up under the wall of the house. These men were engaged in removing some projecting tiles of the eaves or roof of the house. The *chaukidar* seized one of those men, the appellant. There was a struggle between the two and the appellant effected his escape, leaving a *lathi* and a *dhoti* behind. *Held* that the appellant was not guilty of the offence of lurking house-trespass by night, nor would

House Trespass—concluded.

the evidence warrant a finding of guilty on a charge of attempting to commit the offence of lurking house-trespass by night. **A.W.N. 1886, 290.**

(26)—*House-trespass and insult—Separate sentences—Penal Code, ss. 452, 504—Reformatory Schools Act, 1897, s. 31—Security for good behaviour.*—An accused person entered the complainant's house and intimidated and insulted him. He was convicted and fined Rs. 20 under s. 504, Penal Code, and required to furnish security under s. 31, Reformatory Schools Act. *Held* that, though the accused might be tried and convicted of house-trespass and of insult, he could not be punished separately for the two offences under ss. 452 and 504, Penal Code; and that the order under s. 31, Reformatory Schools Act, requiring the accused to furnish security for his good behaviour had the effect of a sentence, and cannot be combined with a sentence under s. 504, Penal Code, in this case. **1 L.B.R. 279.** (1 L.B.R. 33.. *F.*; 23 B. 706, *R.*).

See CRIM. PRO. CODE (1898), s. 106, 7 C.W. N. 25.

See HOUSE-BREAKING, 1 Weir 532=8 M. H.C. App. 6.

See SECURITY TO KEEP THE PEACE, 4 L. B. R. 277, 25 C. 628=3 C.W.N. 18.

Howrah Offences Act.

See BEN. ACT XXI OF 1857.

Human Body.

See THEFT, 25 A. 129.

Hurt.

See GRIEVOUS HURT.

See MURDER.

See PENAL CODE, ss. 319 to 338.

(1)—*Penal Code, ss. 321 and 322.*—Where a person intends to inflict injury upon one person, but actually inflicts injury upon another, his act constitutes the offence of hurt or grievous hurt, within the meaning of s. 321 or 322 of the Penal Code, according to circumstances. **3 C. 623=2 C.L.R. 304.** [*R.*, 14 C.P.L.R. 126].

(2)—*Penal Code, ss. 324 and 330—Hurting wife for constraining her to return to his house.*—A husband, causing hurt to his wife in order to constrain her to obey a demand of his to return to his house, will not be guilty of an offence under s. 330, which, apparently, refers to some demand in respect of property. In this case, as the husband slightly cut his wife with an instrument of stabbing or cutting, it was held that he was guilty under s. 324, Penal Code. **11 M. 257=1 Weir 336.**

(3)—*Penal Code, s. 324—Object of the section.*—The object of s. 324 is to make simple hurt more grave and liable to a more severe punishment, where it has the *differentia* of one of the modes of infliction described in the section. It is not necessary that the manner of use of the weapons must be such as is likely to cause death. **1 Weir 335=7 M.H.C. App. 11.**

Hurt—continued.

(4)—*Penal Code, s. 390—Robbery—Theft—Causing hurt to effect escape.*—A stole some rice from a house. As he was carrying away the rice, S seized him. He dropped the rice as soon as he was seized and he then stabbed S. with a clasp knife. *Held*, A came prepared to cause hurt and to commit robbery if necessary, but as he dropped the rice before he caused hurt to S, it could not be inferred that he caused the hurt for the purpose of carrying away the rice, the words "for that end" in s. 390 meaning for the purpose of carrying away the property. The inference is, that the accused committed the hurt in order to effect his escape. He was convicted of theft and causing hurt. **4 L.B.R. 147=7 Cr. L.J. 446.**

(5)—*Penal Code, ss. 160 and 324—Affray—Hurt—Failure to frame charge of offence under s. 324, legality of.*—Two persons got drunk and were found to have committed not only an affray, but also voluntarily causing hurt to each other with a *Da* in a public street. The Magistrate framed a charge against both of them only for an offence of affray and not one for voluntarily causing hurt under s. 324 of the Penal Code. *Held*, the offence under s. 324 of the Penal Code being more serious than that of an affray, the Magistrate was wrong in having omitted to frame a charge for the more heinous charge of hurt. **4 L.B.R. 237=7 Cr. L.J. 498.**

(6)—*Penal Code, ss. 320, 326—Grievous hurt—Remaining in hospital for twenty days.*—Before a conviction for the offence of grievous hurt can be passed, one of the injuries defined in s. 320 must be strictly proved; and the eighth clause is no exception to the general rule of the law that a penal statute must be construed strictly. The mere fact that an injured person remained in hospital for the space of twenty days is not sufficient proof of the offence of grievous hurt. From that circumstance, the inference could not be drawn that the injured person was, during that period, unable to follow his ordinary pursuits. An injured man may be quite capable of following his ordinary pursuits long before the twenty days are over, and yet, for the sake of permanent recovery, or greater ease or comfort, be willing to remain as a convalescent in a hospital, especially if he is fed at the public expense. **19 B. 247.** [*F.*, U.B.R. (1897—1901), 96].

(7)—*Causing hurt—Hurt caused in extorting confession of offence—Penal Code, s. 330—Witchcraft.*—To bring a case under s. 330 of the Penal Code, it must be proved that the hurt to the complainant was caused with intent to extort a confession of some offences or misconduct punishable under the Penal Code. That section, therefore, does not apply to a case where the confession extorted had reference to a charge of witchcraft. **13 W.R. Cr. 23**

(8)—*Causing hurt—Blow with umbrella—Penal Code, ss. 95, 319.*—The pain caused by a blow across the chest with an umbrella was held not to be of such a trivial character as to come within the meaning of the Penal Code, s. 95, but to be hurt under s. 319. **24 W.R. Cr. 67.**

Hurt—continued.

(9)—*Penal Code, s. 323—Gist of the offence.*—The act on which an accused person must be punished under s. 323 is the hurt which he intended to cause or might be reasonably held likely to cause, by the act done, and not an unfortunate and entirely unforeseen result of that act. **11 P.R. 1897 Cr.**

(10)—*Penal Code, s. 304 (a)—Causing death by a rash or negligent act.*—If, in evidence, there is nothing to show that the accused was rash, and death has resulted from the rupture of a greatly enlarged spleen, caused by a slight kick with bare foot, no offence is committed except that of voluntarily causing hurt. **U.B.R. (1892—1896), Vol. I, 217.**

(11)—*Causing death unintentionally—Penal Code, s. 323*—The accused in this case with no intention of doing anything more than chastise a disobedient and impertinent child, her daughter, struck her on the head or face and kicked her on the back. The child fell down senseless. The accused thinking the child was dead buried the body. *Held* that the conviction should be under s. 323, Penal Code, of voluntarily causing hurt. **18 W.R. Cr. 29.**

(12)—*Hurt caused to extort information of offence—Penal Code, s. 330—Commission of offence wholly immaterial.*—A charge may be made under s. 330 of causing hurt for the purpose of extorting information which might lead to the detection of an offence, even if the supposed offence has not been committed. The offence which that section intended to describe is that of inducing a person by hurt to make a statement, or a confession, having reference to an offence or misconduct; and whether that offence or misconduct has been committed is wholly immaterial. **20 W.R. Cr. 41.**

(13)—*Chance injury on provocation resulting in death—Penal Code, ss. 319-322—Nature of the offence.*—A husband, having been provoked by his wife, gave her a kick on the spleen not knowing that it was a diseased one. The wife died by the rupture of her diseased spleen. He showed by the blow itself and by the subsequent conduct that he had no intention or knowledge that the act was likely to cause hurt endangering human life. He was found guilty of having voluntarily caused grievous hurt and sentenced to five years' rigorous imprisonment. *Held* that the husband was guilty of an offence under ss. 319 and 321, Penal Code, and not of an offence under ss. 320 and 322. An admission by the husband in the presence of several witnesses that he had killed his wife and that she died after receiving the kick was held to be direct evidence against him. **8 W.R. Cr. 29.**

(14)—*Causing death after provocation—Death consequent upon disease of spleen—Nature of the offence.*—The prisoner having received provocation of a most gross character from his wife, threw her down with violence, sat upon her and slapped her. The woman died, and on examination it appeared that there were no external marks of violence on the body, but that there was a certain degree of

Hurt—concluded.

disease of the spleen and death was caused by the rupture of the spleen. *Held* that, under the circumstances, the prisoner was guilty of causing hurt and not of culpable homicide not amounting to murder. **5 W.R. Cr. 97.**

(15)—*Administering harmful drugs—Nature of the offence.*—*Held* by the majority of the Court (Seton-Karr, J., *dissenting*) that the offence of administering deleterious drugs, when life was not endangered, is punishable under s. 328, Penal Code, and not as for grievous hurt under s. 326. **4 W.R. Cr. 4.**

(16)—*Penal Code, s. 328—"Or other thing," meaning of.*—The words, "or other thing," in s. 328 of the Penal Code must be referred to the preceding words and be taken to mean "unwholesome or other thing" and not other thing simply. **1 W.R. Cr. 7.**

(17)—*Nature of injury constituting hurt—Causing disability for a fortnight.*—Causing a disability for a fortnight is punishable as voluntarily causing hurt. In order to constitute grievous hurt, the disability must be for 20 days. **1 W.R. Cr. 9.**

(18)—*Assault and causing hurt—Penal Code, s. 352—Autrefois acquit.*—A person who is tried and discharged for the offence of assault under s. 312, Penal Code, cannot again, upon the same complaint, be tried for "causing hurt." **7 B.L.R. Ap. 25=16 W.R. Cr. 3.**

(19)—*Compounding of offence of "hurt."*—The offence of voluntarily causing grievous hurt cannot legally be compounded. **1 B. 147.**

See CHARGE, 4 M.H.C. App. 5.

See CRIM. PRO. CODE (1898), ss. 236, 237, 1 L.B.R. 221.

See CULPABLE HOMICIDE, 1 C.L.R. 141, 3 A. 597.

See CULPABLE HOMICIDE NOT AMOUNTING TO MURDER, 2 A. 766, 2 A. 522.

See JOINDER OF CHARGES, 2 A. 139.

See PENAL CODE, s. 352, 7 B.L.R. Ap. 25 =16 W.R. Cr. 3.

See PENAL CODE, s. 375, 18 C. 49.

See PENAL CODE, ss. 459, 460, 8 A. 649.

—Causing hurt in assertion of the right—*See* RIOTING, 26 C. 574.

—Separate convictions for rioting and hurt—*See* SENTENCE, 17 B. 260, F.B.

—Distinct offences of rioting and hurt—*See* SENTENCE, 19 C. 105.

—Separate sentence for—*See* SENTENCE, 16 C. 442, F.B., 16 C. 725.

See SENTENCE, 11 C. 349.

Husband and Wife.

See BIGAMY.

See COMPLAINT.

See HINDU LAW (MARRIAGE).

See MAINTENANCE.

See MARRIAGE.

Husband and Wife—concluded.

—*Order for maintenance against husband—Divorce—Effect upon order—Presidency Magistrate's Act (IV of 1877), s. 234—Mahomedan Law—Talake bain—Talak biddat—Borah Mahomedans.*—An order made under s. 234 of Act IV of 1877 by the Presidency Magistrate directing a Borah Mahomedan husband of the *Imami* sect to pay a sum monthly for the maintenance of his wife belonging to the *Hanafi* sect, does not deprive the husband of his right to divorce his wife, and after such divorce the Magistrate's order can no longer be enforced. **7 B. 180.** (8 B.H.C. 95 Cr., *F.*; 5 C. 558, 19 W.R. Cr. 73, *R.*).

—*Right of husband to enjoy the person of his wife—Limitations.*—Under no system of law with which Courts have to do in this country whether Hindu or Mahomedan, or that framed under British rule, has it ever been the law that a husband has absolute right to enjoy the person of his wife, without regard into the question of safety to her. **18 C. 49.**

—*Evidence—Wife's evidence against husband—Criminal case.*—The evidence of a wife against her husband, in a charge of causing the death of a child, is admissible. **7 B.H.C. Cr. 50.** (6 W.R. Cr. 21, *R.*).

—*Prosecution for adultery—Death of husband—Abatement of prosecution.*—Although it is desirable that a prosecution for adultery should be withdrawn on the death of the husband, it cannot be said that the death has the effect of necessarily putting an end to the prosecution. **2 Weir 235=4 M.H.C. App. 55.**

—Husbands have no right whatever to chastise their wives, even with small canes or bamboos. **L.B.R. (1872—1892), 421.**

—Husband and wife only living together—Death of wife—Cause of death not ascertained—Presumption against husband—*See* CONFESSION, 19 P.W.R. 1907 Cr.=6 Cr. L.J. 260.

See CRIM. PRO. CODE (1898), s. 198, 3 C.L.J. 38=3 Cr. L.J. 187.

See CRIM. PRO. CODE (1898), ss. 199, 238, 27 M. 61=2 Weir 236.

See CRIMINAL TRESPASS, 4 M. 243.

See DEFAMATION, 25 B. 151=2 Bom. L. R. 665 F.B., 6 P.W.R. 1910, Cr.=10 P.R. 1910 Cr., 14 M. 379= 2 Weir 230=1 M.L.J. 242.

—Letter from husband to wife taken from wife's house on search being made—Admissibility in evidence—*See* EVIDENCE ACT, s. 122, 22 M. 1=2 Weir 778.

See HOUSE TRESPASS, 1 Weir 523.

See HURT, 11 M. 257=1 Weir 336.

See MAGISTRATE, JURISDICTION OF, U. B.R., 1904, 1st Qr., Crim. Pro. Code, 10.

See PENAL CODE, ss. 304, 325, 328, 375, 18 C. 49.

—Dishonest removal by wife of husband's property—*See* THEFT, 17 M. 401=1 Weir 409.

See THEFT, Rat. Un. Cr. C. 44.

Identification.

—*Identification made after dark—Evidence of a single witness as to identification—Conviction rarely safe.*—It is rarely safe to convict a man on the evidence of a single witness as to identification, especially when this identification is made after dark and the witness has at first professed to be unable to identify any one. **2 L.B.R. 206.**

Idol.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 4 Bom.L.R. 438.

See PENAL CODE, ss. 403 and 429, 11 M. 145=1 Weir 498.

Ignorance of Law.

See PENAL CODE, s. 79, 1 Weir 40=1 Weir 74.

Illegal Gratification.

See BRIBERY.

See PENAL CODE, ss. 161—163.

(1)—*Penal Code, s. 161—Scope of section.*—The plain words of s. 161 exclude the defence that the benefit bargained for was to go to somebody else, and also exclude the notion that an officer is protected if he agrees to let his official acts be swayed by the motive of accepting a gratification to be used professedly for advancing some public, not private, object, such as charity, science or religion. Where a police patel who had removed certain Mahars from the services of the village was present at a meeting of the villagers which was held at the patels' house, and agreed to restore them on their paying a sum of Rs. 300 to repair one of the village temples, *held* that the patel was guilty of an offence under s. 161, I.P.C. **21 B. 517.**

(2)—*Penal Code, s. 161—Illegal gratification.*—The accused, the *Kulkarni* of a village, told the ryots who had been given a grant of *tagav* by Government that he had worked for them for eight days and that they must pay him 12 annas each, or he would take notice of it and they would get into trouble. In consequence they paid him the money but not of their free will. *Held*, that the accused had committed an offence under s. 161, I.P.C., as he had made use of his official position and claimed and obtained money as a reward for rendering services which he had not rendered in that position. **Rat. Un. Cr. C. 955.**

(3)—*Penal Code, s. 161—Attempt to obtain illegal gratification—Demand of dusturi by Civil Court peon for service of summons.*—A Civil Court peon asking a party in a suit to pay him *dusturi*, if he wished him to serve summons on a witness without an identifier, is guilty of the offence of attempting to obtain an illegal gratification within s. 161, Penal Code, the attempt being complete when demand was made, and there being nothing further to be done by the accused to complete his attempt. **32 C. 292=9 C.W.N. 547.**

Illegal Gratification—concluded.

(4)—*Penal Code, ss. 109, 161, 214—Offering gratification to a public servant for screening him from an offence.*—A person giving a gratification to a public servant in consideration of screening him by not proceeding against him for an offence is not guilty of an offence under ss. 161, 109, I.P.C., but is guilty of an offence under s. 214. **13 P.R. 1881, Cr.**

(5)—*Receipt of, by a Sheristadar to influence the doing of official acts—Non-commission of act for which bribe was given—Liable note withstanding.*—The taking of an illegal gratification by a Sheristadar to influence the principal Sudder Ameen in his decisions is sufficient to support a conviction under s. 161, Penal Code, whether the actual influence was exercised or not. The latter part of the explanation to s. 161 expressly mentions that "a person who receives a gratification as a motive for doing what he does not intend to do or as a reward for what he has not done is equally liable." **3 W.R. Cr. 10.**

(6)—*Taking bribe to induce a public servant to forbear to do certain official act—Penal Code, s. 162—Person who bribes a good witness against person bribed.*—The evidence of the person who bribes is admissible against the person bribed. A person, who accepts for himself or for some other person, a gratification for inducing, by corrupt or illegal means, a public servant to forbear to do a certain official act, is punishable, not under s. 161, but under s. 162 of the Penal Code. **3 W.R. Cr. 19.**

(7)—*Taking illegal gratification—Proper order on conviction—Order to refund money inadequate.*—On a conviction for taking illegal gratification, a simple order to refund the money taken is quite inadequate to the gravity of the offence. **16 W.R. Cr. 74.**

(8)—*Penal Code, s. 161—Illegal gratification*—Where the gratification was given and taken to cause the *chaukidars* "to hold their tongues" respecting their discovery of an amour between the person who offered the bribe, and a widow who had visited him at night, and thereby to save him from the "disgrace" that might attach to a person detected in a clandestine intrigue, *held*, that the *chaukidar* was not liable to be convicted under s. 161, I.P.C. **A.W N. 1883, 179.**

(9)—*Penal Code, s. 161—Illegal gratification—Bribe given in two instalments.*—Where a Head Constable demanded a bribe of Rs. 150, and the bribe was paid in two instalments, *held* that this was only one transaction and there could be only one conviction. **A.W.N. 1888, 184.**

See EVIDENCE ACT, ss. 5—14, 6 C. 655=8 C. L.R. 197.

See PENAL CODE, ss. 21, 161, 32 C. 664=2 Cr. L.J. 512.

See SANCTION TO PROSECUTE, 13 C.W.N. 1062.

Illegality.

See CRIM. PRO. CODE (1898), ss. 529—538.

See IRREGULARITY.

(1)—*Crim. Pro. Code (1882), s. 537—Rule as to accomplice's evidence—Misdirection.*—The omission on the part of the Judge to tell the jury that it is dangerous to convict on the evidence of an accomplice alone when uncorroborated in material particulars by independent testimony, is an error in law which, if it materially prejudiced the prisoner, justifies the High Court in setting aside the verdict. **Rat. Un. Cr. C. 466=Cr. Rg. 24 of 1889.**

(2)—*"Illegal" and "unlawful" distinguished.*—The word "illegal" is defined in the Penal Code, but the word "unlawful" is not defined, and there are various sections in the Code where the two words are indiscriminately used. An act however may be lawful though it may be illegal. **24 C. 494=1 C.W.N. 274.**

See CRIM. PRO. CODE (1898), ss. 193, 195, 465, 471, 476, 9 Cr. L.J. 180=1 Ind. Cas. 220.

See CRIM. PRO. CODE (1898), ss. 237, 238, 13 C.P.L.R. Cr. 167.

See CRIM. PRO. CODE (1898), ss. 307 and 337, 13 C.W.N. 757=9 C.L.J. 638=36 C. 629 =2 Ind. Cas. 497.

See JOINDER OF CHARGES, 13 C.W.N. 804 =9 Cr. L.J. 147=1 Ind Cas. 69.

See JOINDER OF PARTIES, 3 M.L.T. 408 =31 M. 276=8 Cr. L.J. 154.

Illegal Omission.

(1)—*Crim. Pro. Code (1882), s. 44—Lambardar's duty to report a burglary.*—Where one of several *lambardars*, to the knowledge of others, directs the village *choukidar* to report a burglary at the Thana and the *choukidar* disobeys the order, it cannot be said that any of them had intentionally failed to give information. **5 P.R. 1889 Cr.**

(2)—*Crim. Pro. Code (1882), s. 45—Penal Code, s. 176—Duty of* lambardar *to give information of the offence of receiving illegal gratification.*—The *lambardar* of a village is not bound under s. 45 (*c*), Crim. Pro. Code, to give information of the offence of receiving illegal gratification as the offence is not a non-bailable offence. **30 P.R. 1887 Cr.**

(3)—*Crim. Pro. Code (1882), s. 45—Penal Code, s. 176.*—Bringing a suspected robber under arrest to the accused's village and releasing him there does not amount to the resorting to or passing through the village of a suspected robber within the meaning of cl. (*b*) of s. 45, Crim. Pro. Code. **30 P.R. 1887 Cr.**

(4)—*Accused failing to report design to commit murder—Penal Code, s. 118—Act X of 1872, s. 90.*—Where an accused was convicted under s. 118, I.P.C., for concealing P's design to commit murder, knowing that he would thereby facilitate the commission of an offence, the Court thinking that it was an illegal

Illegal Omission—concluded.

omission by the accused not to report the intention to commit murder, held that the accused not being a village headman or watchman or owner or occupier of land, or other person bound under s. 90, Crim. Pro. Code, to report the intention to commit a non-liable offence, and no provision of law existing under which the existence of a design on the part of P to commit murder ought to be reported, his omission to report such design was not an illegal omission within the meaning of s. 118, I.P.C., and as the accused had not concealed the existence of P's design by any overt act, his conviction must be set aside. **34 P.R. 1882 Cr.**

(5)—*Penal Code, ss. 43, 176*—Zaildar's *omission to give information of a riot.*—An omission by a zaildar or his *sarbarah* to give informations of a riot in his village is not an illegal omission. **19 P.R. 1886 Cr.**

(6)—*Penal Code, ss. 176, 202*—Chowkidar *finding a corpse in a stream—Crim. Pro. Code (1882), s. 45.*—A *chowkidar's* finding a corpse in a stream is enough to give rise to a suspicion that death has occurred under suspicious circumstances and he is bound to report under s. 45, Crim. Pro. Code, 1882. An omission to do so is punishable under s. 176 and not under s. 202, without anything to show that an offence, which he is bound to report, has been committed. **20 P.R. 1887 Cr.**

Illegal Order.

Illegal order.—An order not authorised by law cannot be allowed to stand whether it is for the ends of justice or not. **2 C.W.N. 290.**

Illegitimacy.

See CRIM. PRO. CODE (1898), s. 488.

See ILLEGITIMATE CHILDREN.

See MAINTENANCE.

See PROSTITUTION.

See HINDU LAW (MARRIAGE), 18 C. 264.

Illegitimate Children.

See CRIM. PRO. CODE (1898), s. 488.

See ILLEGITIMACY.

See MAINTENANCE.

See PROSTITUTION.

—Maintenance to—*See* APPEAL, 2 Ind. Jur. N.S. 88=7 W.R. Cr. 10.

Immoveable Property.

See CRIM. PRO. CODE (1898), ss. 145 to 147.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY.

—Ownership and possession of immoveable property are not so easily separated as ownership and possession of moveable property. **U.B.R. 1904, 1st Qr., Penal Code, 7.**

See CRIMINAL BREACH OF TRUST, 23 C. 372.

Immoveable Property—concluded.

See CRIMINAL MISAPPROPRIATION, 6 B. H.C. Cr. 33.

See PRIVATE DEFENCE, RIGHT OF, 3 N. L.R. 177=7 Cr. L.J. 49.

Impounding Document.

See ACT II OF 1899, s. 33, U.B.R. (1892—1896), Vol. I, 313.

See CRIM. PRO. CODE (1898), s. 104, 1 A. L.J. 607.

Imprisonment.

See FINE.

See PENAL CODE, ss. 53—75.

See SENTENCE.

(1)—*Crim. Pro. Code, s. 123—Failure to give security for good behaviour—Subsequent conviction for an offence.*—Where a person who is committed to prison under s. 123 for failure to give security to be of good behaviour is sentenced to imprisonment on a conviction of an offence, the term of imprisonment cannot be deferred, but must commence at once. **6 Bom. L.R. 1098.**

(2)—*What constitutes.*—The retaining of a person in a particular place or the compelling of him to go in a particular direction by force of an exterior will overpowering or suppressing, in any way, his own voluntary action, is an imprisonment on the part of him who exercises that exterior will. **2 M.H.C. 396.** [*F.*, 13 B.376].

(3)—*In default of payment of fine.*—The imprisonment awarded in default of payment of fine for an offence punishable under the Penal Code with fine only must be simple, not rigorous. **L.B.R. (1872—1892), 57.**

(4)—*Imprisonment in default of security, not punishment for offence—Substantive sentence to the close of such imprisonment—Crim. Pro. Code, ss. 123, 396 and 397.*—Imprisonment in default of security, not being a *sentence* of imprisonment within the meaning of ss. 396 and 397 is not a punishment for an offence. A sentence of imprisonment for a substantive offence must commence at once, and cannot be postponed to take effect at the expiration of the sentence of imprisonment which the convicted person is, at the date of the conviction, undergoing in default of giving security for good behaviour. **2 L.B.R. 72.**

(5)—*Penal Code, ss. 59, 75—Imprisonment—Meaning.*—The word "imprisonment" in s. 59 or s. 75 of the Penal Code, does not include imprisonment awarded in default of payment of fine. **A.W.N. 1882, 116.**

See ACT XIV OF 1882, s. 359 (5), 1 Weir 718.

See ACT IX OF 1890, s. 113, 20 M. 385=1 Weir 871.

See BAIL, 30 C. 872, P.C.=30 I A. 154=7 C.W.N. 729=5 Bom. L.R. 490.

Imprisonment—concluded.

See CRIM. PRO. CODE (1898), s.106, 6 M.H. C. 25.

—Imprisonment in default of security—*See* CRIM. PRO. CODE (1898), ss. 110 and 123, 23 A. 422=A.W.N. 1901, 114.

See CRIM. PRO. CODE (1898), ss. 118, 120, 123, 4 Bom. L.R. 934.

See CRIM. PRO. CODE (1898), ss. 118, 123, 128. Rat. Un. Cr. C. 395=Cr. Rg. 52 of 1888.

—For failure to give security, nature of—*See* CRIM. PRO. CODE (1898), ss. 123 and 397, 27 M. 525.

See CRIM. PRO. CODE (1898), s. 391 (3), 2 Bom. L.R. 54.

See CRIM. PRO. CODE (1898), ss. 396, 398 and 426, U.B.R. (1897—1901), Vol. I, 89.

—Imprisonment in different jails—*See* LOCAL GOVERNMENT, Rat. Un. Cr. C. 827.

See MAINTENANCE, 25 C. 291, 8 M. 70.

See PENAL CODE, s. 69, A.W.N. 1882, 85.

See REG. (BOM.) XIV OF 1827, ss. 7, 19, Rat. Un. Cr. C. 41.

See SECURITY FOR GOOD BEHAVIOUR, Rat. Un. Cr. C. 408.

Improvements in Towns.

See ACT XXVI OF 1850.

(1)—*Penalties under the Municipal Rules*—Penalties under the Municipal Rules must be enforced by the ordinary procedure, giving the accused an opportunity of defending himself. **62 P.R. 1866 Cr.**

(2)—*Powers of Municipal Committee.*—The powers of a Municipal Committee were limited to the definition and prohibition of nuisances and the fixing of reasonable penalties, which penalties were to be enforced by a Magistrate under the Crim. Pro. Code. The Committee has no power to impose a fine. **4 P.R. 1866 Cr.**

Improvements in Towns Act.

See ACT XXVI OF 1850.

Inam Deeds Act.

See MAD. ACT VIII OF 1869.

Incitements to Offences in Newspapers Act.

See ACT VII OF 1908.

Income-Tax.

See ACT IX OF 1869, s. 25, 14 W.R. Cr. 71.

Income-Tax Acts.

See ACT XXXII OF 1860.

See ACT IX OF 1869.

See ACT XXIII OF 1869.

See ACT II OF 1886.

Income-Tax Collector.

—If an inferior criminal or civil Court—*See* REVISION, 3 S.L.R. 66 Cr.

Indians.

—Indians and Englishmen constitute two separate classes. **14 P.W.R. Cr. 1907=5 Cr. L.J. 439=2 M.L.T. 272=10 P.R. 1907 Cr.**

Indictment.

—*Crim. Pro. Code, 1862, s. 41—Omission to state in the charge that property obtained was property of complainant.*—Under s. 41, Act XVIII of 1862, a charge in which there was an omission to state under ss. 415 and 420 of the Penal Code, that the money which it was alleged that the prisoner had, by deceit, fraudulently induced the prosecutor to pay to him, was the property of the prosecutor was held to be defective for uncertainty. The objection to such indictment, in order to be valid, should be taken before the jury was sworn. **1 Weir 471=1 M.H.C. 31.**

Infanticide (Female) Prevention Act.

See ACT VIII OF 1870.

Infection.

See BOM. ACT III OF 1888, 7 Bom. L.R. 460.

Infectious Disease.

—*Person suffering from infectious diseases—Power of Magistrates to order removal to hospital.*—In the city of Bombay, the authorities have power to remove persons suffering from infectious diseases to hospital, and in the absence of any such authority, Magistrates in Bengal have no authority to order the removal of such persons to hospital. **24 C. 494=1 C. W.N. 274.**

Information of Commission of Offence.

See CRIM. PRO. CODE (1898), s. 45.

(1)—*Crim. Pro. Code (1882), s. 45—Duty of reporting cases of suspicious death.*—Where the police officer to whom the report of a death ought to have been made under s. 45, Crim. Pro. Code, was himself present at the death, the accused could not be convicted for not making the report. **Rat. Un. Cr. C. 778=Cr. Rg. 42 of 1895.**

(2)—*Omission to give information to police regarding offence—S. 90 of the Crim. Pro. Code (of 1872) and s. 176 of the Penal Code.*—The provisions of s. 90 of the Crim. Pro. Code (of 1872) and s. 176 of the Penal Code are not to be used for purposes of vexation; where there has been information to the police of an offence from one of the parties bound to give such information, it is not reasonable that every other person, who may possibly be bound to give information, should be prosecuted for not having done so. **4 C. 623.** [*F.*, Rat. Un. Cr. C. 778; *Appl.*, 7 M. 436=1 Weir 103; *Relied on*, 20 C. 316].

Information of Commission of Offence—cld.

(3)—*Omission to report offence—Penal Code, ss. 118, 176—Crim. Pro. Code (1861), s. 138.*—*Held* that the prisoner could not be punished under s. 118 of the Penal Code, as there was no omission of an act which he was bound to perform which facilitated the commission of an offence; but that he should be convicted under s. 176, Penal Code, as he was bound to report the offence under s. 138, Act XXV of 1861, after he was informed of it. **1 Agra Cr. 37.**

(4)—*Scope and applicability of s. 176, Penal Code—Obligation to give information.*—S. 176 of the Penal Code applies to persons upon whom an obligation is imposed by law to furnish certain information to public servants, and the penalty which the law provides is intended to apply to parties who commit an intentional breach of such obligation. **16 W. R. Cr. 35,** 18 W.R. Cr. 32.

(5)—*Refusal to join in a dacoity—Presumption—Omission to give information to prevent offence when an offence—Penal Code, s. 176*—In the absence of any evidence to show that the accused knew that a dacoity would take place, whether he joined it or not, the refusal of the accused to join in a dacoity does not imply a knowledge on his part of the commission of that offence, or render him liable to punishment, under s. 176 of the Penal Code, for intentional omission to give notice or information for the purpose of preventing the commission of an offence. **7 W.R. Cr. 29.**

(6)—*Conviction of giving false information, knowledge of actual commission to be established—Penal Code, s. 203*—In order to justify a conviction for giving false information with respect to an offence under s. 203 of the Penal Code, it must be proved, not only that the person charged had reason to believe that an offence had been committed, but that the offence had actually been committed, and that the accused knew, or had reason to believe, that the offence had been actually committed. **20 W.R. Cr. 66.**

See ACCOMPLICE, 21 C. 328.

See BOM. ACT III OF 1901, ss. 122 and 161, 1 S.L.R. Cr. 88=8 Cr. L.J. 213.

—First information, nature and use of—*See* CRIM. PRO. CODE (1898), s. 154, 11 C.W.N. 554=6 Cr. L.J. 86.

—First information, when should be recorded—Admissibility—*See* CRIM. PRO. CODE (1898), s. 154, 7 C.W.N. 345.

—Information, meaning of—*See* CRIM. PRO. CODE (1898), ss. 154, 157 and 250, 14 C.W. N. 326.

Information to Police.

See CRIM. PRO. CODE (1872), s. 90, 4 C. 603 =3 C.L.R. 87.

Informer.

Accomplice—Informer—Difference—Need for corroboration.—Persons who have entered into communication with conspirators but who, from original intention or subsequent repentance, disclose the conspiracy to the public authorities, and nevertheless continue in the league so as to ensure the conviction of the conspirators, are informers and not accomplices so as to render it necessary that their evidence should be corroborated by independent evidence. The part they played as informers may however attach some disfavour to them. **Rat. Un. Cr. C. 428=Cr. Rg. 91 of 1888.**

See ACT III OF 1867, ss. 3, 4, 13 and 16, L. B.R. (1872—1892), 407.

Injunction.

—Disobedience of order of injunction by Civil Court—Remedy.—The proper remedy for disobedience of an order of injunction passed by a Civil Court is to commit the party to jail for contempt. **6 C. 445=7 C.L.R. 350.**

See BEN. ACT III OF 1899, ss. 449, 450, 452, 579, 11 C.W.N. 30=4 Cr. L.J. 408=34 C 341.

See MAINTENANCE, 2 M.L.T. 344=7 Cr. L. J. 235=30 M. 400.

Inland Customs Act (N.W.P.)

See PUNJ. ACT XIV OF 1843.

Inoculation.

—In areas outside Municipality, whether an offence—Penal Code, s. 81—Vaccination Act, s. 6—Prohibition of inoculation—Procedure—Crim. Pro. Code (1898), s. 133—Inoculation is not an offence in itself, though s. 6 of the Vaccination Act prohibits the practice within the areas to which the Act is extended. Being really practised as a remedial measure, s. 81 of the Penal Code will apply. If it is found necessary, in the interests of the public, to prohibit the practice outside the areas referred to in the Vaccination Act, the District Magistrate should draw up a proceeding and after taking the evidence of the Civil Surgeon on the point, can issue orders to be served personally on the inoculators under s. 133, Crim. Pro. Code, to show cause why the practice of their trade should not be suppressed as being injurious to the health of the community. If sufficient cause is not shown, the order can be made absolute and its violation then becomes punishable under s. 188, Penal Code. **L.B.R. (1893—1900), 545.**

—Negligent inoculation—*See* PENAL CODE, s. 269, 1 Weir 226.

Inquest.

—Inquiry by Magistrate into cause of death, not a judicial proceeding—Crim. Pro. Code (of 1872), ss. 135, 296=ss. 174 and 435 (Code of 1882)—Coroner's inquest.—A divisional Magistrate's enquiry under s. 135 of the Crim. Pro. Code (of 1872), into the cause of the death of a person under suspicious circumstances is not

Inquest—concluded.

a judicial proceeding; and where he sent a report of the result of his inquiry to his executive superior—the Magistrate of the district—the High Court could not call for it under s. 296 of the Code. There is no analogy between such an enquiry and a coroner's inquest—*Per* MARKBY, J. **3 C. 742.** [*F.*, Rat. Un. Cr. C. 843].

See BOM. ACT VIII OF 1867, s. 11, Rat. Un. Cr. C. 740.

See CRIM. PRO. CODE (1898), ss. 161, 174, 27 P.R. 1908 Cr.=9 Cr. L.J. 105.

See REVISION, Rat. Un. Cr. C. 843.

Inquest Report.

—Bom. Reg. XII of 1827, s. 52—Bom. Act VIII of 1867—Inquest Report — Evidence.—Reg. XII of 1827, s. 52 having been repealed by (Bombay) Act VIII of 1867, an inquest report is not admissible in evidence. **6 B.H.C. Cr. 75.**

Inquiry.

See ENQUIRY.

See LOCAL ENQUIRY.

Insane Offender.

—Insane offender when liable to punishment—Measure of punishment.—The Penal Code does not concede that all insane impulses are beyond the power of self-control, but places them under the restraint of the ordinary Criminal Law when the insanity is not so advanced as to render the insane offender incapable of knowing the nature of his act, or that he is doing what is wrong or contrary to law. But even so, though the weakening, through the unsoundness of mind, of capacity for self-control may be no valid plea against a conviction, it does not follow that it may not be properly taken into consideration as affecting the punishment merited. **L.B.R. (1893—1900), 249.** (7 W.R. Cr. 47, *R.*).

Insanity.

See ACCUSED PERSON.

See CRIM. PRO. CODE (1898), ss. 464—475.

See LUNACY.

See PENAL CODE, ss. 84, 85.

See UNSOUNDNESS OF MIND.

(1)*—Penal Code, s. 84—Insanity, plea of.*—Where the accused, a habitual ganja smoker, was charged with the offence of murder, *held*, that he would not be protected by s. 84. I.P.C., unless there was evidence to warrant a finding that the accused's habit had induced a diseased state of mind so as to make him incapable of knowing the nature of his act or its criminality. **14 B. 564.** [*R.*, Rat. Un. Cr. C. 766, 20 B. 215, Rat. Un. Cr. C. 818, 17 C.P.L.R. 113].

(2)*—Insanity—Proof of.*—Where the evidence of a plea of insanity consisted of a civil surgeon's evidence that the prisoner's intellect was weak

Insanity—continued.

and other depositions to the effect that his conduct, of late, had been unusual and that his father was insane, *held* that there were not sufficient proofs that the prisoner, at the time of committing the offence, was incapable of knowing the nature of the act or that he was doing what was wrong and contrary to law. **Rat. Un. Cr. C. 10.**

(3)—*Sanity, presumption of.*—The law presumes every person at the age of discretion to be sane unless the contrary is proved; and, if a lunatic has lucid intervals, the law presumes the offence of such person to have been committed in a lucid interval, unless it appears to have been committed during derangement. **Rat. Un. Cr. C. 172.**

(4)—*Penal Code, ss. 84, 99—Unsoundness of mind.*—Partial delusions or the mere existence of mental disease does not necessarily exempt a person from criminal responsibility. The proved unsoundness of mind of the sort described in s. 84 is a complete defence; and mental weakness caused by disease is an extenuating circumstance affecting the sentence. When the absence of any motive, preparation or purpose for a criminal act is admitted, or evidence of mental derangement such as melancholy or excitement, or of very extraordinary conduct has been given, or other index of disease of the brain appears in the case, the Magistrate or Judge ought to use the means pointed out in the various provisions of law, so as to find out as much as possible about the mental state of the accused. **Rat. Un. Cr. C. 229.**

(5)—*Crim. Pro. Code (X of 1872), s. 426 = s. 466 (Act V of 1898)—Accused a lunatic.*—As soon as an accused declared to be a lunatic is transmitted to the place of safe custody appointed by the Local Government, the authority of the Criminal Court over him ceases. It can only be revived under the circumstances mentioned in s. 432=s. 473 of the present Code (Act V of 1898). **2 C. 356.**

(6)—*Penal Code, s. 84—Plea of insanity.*—Where the plea of insanity is taken on behalf of an accused person, the question that arises is not whether at the time of the trial the man was of unsound mind, but whether he was so at the time of the commission of the deed, and whether by reason of that unsoundness of mind he was incapable of distinguishing between right and wrong. **28 C. 613=5 C.W.N. 665.**

(7)—*Penal Code, ss. 84 and 302—Murder—Criminal responsibility of person suffering from insane delusion.*—The criminal responsibility of a person suffering from an insane delusion and committing an offence in consequence thereof depends upon the nature of the delusion; if the man was labouring under a partial delusion only and was not in other respects insane, he must be considered to be in the same situation as to responsibility as if the facts with respect to which the delusion existed were real. The estimate of the guilt of a person suffering

Insanity—continued.

from and acting under the influence of a delusion must be made upon the basis of the actual existence of the facts in regard to which the delusion existed; and whether the person was under a misapprehension in regard to the delusion or not, his culpability would be the same. **28 C. 613=5 C.W.N. 665.**

(8)—*Insane prisoners—Procedure in regard to—Crim. Pro. Code (1861), ss. 225, 226, 393 and 394.*—S. 226, Crim. Pro. Code, does not positively require the commitment of the accused in cases in which he is of unsound mind at the time of committing the act. In cases which fall under the other general exceptions of the Penal Code, there would be no grounds for committing, because he would be entitled to an acquittal and release. When a person accused is acquitted on the ground of insanity, the Jury or Court is to find specially whether he committed the act or not; and if he be found to have committed it, he is to be kept in safe custody (ss. 393, 394, Crim. Pro. Code). A commitment is therefore discretional with the Magistrates in such cases. **8 W.R. Cr. Cir. 3.**

(9)—*Penal Code, s. 84—Proof of unsoundness of mind.*—The accused stabbed his brother's wife, a child, and killed her. No motive was suggested for his killing the child and he was living with the child affectionately. The prisoner had been sick of fever for six days previous to the occurrence, and had taken little food during that time. During that period, he acted strangely and abused his father and brother. The medical evidence, in the case, proved merely the possibility of a sudden attack of homicidal mania. Before the Village Magistrate, the accused confessed that he had killed the child and answered the questions put to him rationally. *Held*, that there was no positive evidence that the accused was suffering from delirium at the time he committed the murder, or that he was unconscious of the nature of the act he had committed. But the High Court, while confirming the conviction of the accused for murder, directed that, in lieu of the sentence of death, the accused be transported for the term of his natural life, and directed also that the evidence and the judgment be brought to the notice of His Excellency the Governor in Council in order that he might, if he thought fit, reduce the sentence under the special circumstances of the case. **12 M. 459=1 Weir 42.** [*F.*, 23 C. 604; *R.*, 14 B. 564, Rat. Un. Cr. C. 698, 17 C.P.L. R. 113].

(10)—The policy of the law is to exercise control not only on the sane, but, so far as is possible, also the insane. Therefore, it is not every person mentally diseased who, *ipso facto*, is exempted from criminal responsibility. Such exemption is allowed only to the limited extent stated in s. 84, Penal Code, which concisely reproduces the English law as to non-punishable insanity. Legal and inferential insanity discussed and explained. **17 C.P.L.R. 113.**

S. N. DAR, B. A. LL. B.
Vakil High Court.

Insanity—continued.

(11)—*Relevancy of weak control over emotions.*—When an accused, notwithstanding some mental derangement, is held accountable under the criminal law for his actions, because he was capable of knowing the nature of his acts and that what he was doing was wrong and contrary to law, a Court, in determining the legal punishment may properly take into judicial consideration the impaired capacity of control over the emotions and will which forms part of the mental derangement in which other faculties are involved. **L.B.R. (1893—1900), 249.**

(12)—*Crim. Pro. Code, Act V of 1898, s. 464—Sessions case—Insanity of prisoner—Procedure—Penal Code, s. 84—Proof of insanity.*—Where a prisoner appears to be of unsound mind, the Magistrate and the Sessions Court should inquire into the fact of unsoundness before calling on him to stand his trial, and adopt the procedure laid down in s. 464 of the Crim. Pro. Code instead of going on with the trial. Where the only facts established were that the accused got angry because his food was not ready and killed his wife and attacked all those who came to assist her, *held* that this was no proof of the state of mind described in s. 84 of the Penal Code. **A.W.N. 1905, 2.**

(13)—*Crim. Pro. Code, Act X of 1872, s. 426—Accused lunatic—Procedure.*—Where a Magistrate finds that the accused under trial is of unsound mind, but, instead of staying the trial and acting under s. 426 of the Crim. Pro. Code, proceeds with it and acquits him under s. 84 of the Penal Code, *held* that the procedure was irregular. **A.W.N. 1882, 106.**

(14)—*Penal Code, s. 84—Plea of insanity—Burden of proof—Evidence Act, s. 105.*—The accused killed his wife and then attempted to commit suicide. Being found to be incapable of understanding the proceedings and of defending himself, he was placed in the lunatic asylum and treated as a lunatic for more than a year and a half. After his discharge, as cured, from the asylum, he was tried for the offences. As regards his state of mind at the time of the commission of the offence, the Court found that he was sane, entirely relying upon the statement of some villagers who merely deposed that they had never known him to be insane. *Held* that, although, in a defence of insanity, the *onus* would lie upon the person alleging it, *i.e.*, the person charged, the accused had placed before the Court *prima facie* evidence, when it was shown that for more than a year and a half, from immediately after the date of the commission of the offences, he had been in a lunatic asylum and treated as a lunatic, and that the opinions of illiterate villagers were evidence of the state of mind of the accused at the time of the commission of the offence. The case was remanded for re-trial on this point. **A.W.N. 1901, 132.**

(15)—*Death caused by insane person.*—Unsoundness of mind as absolving a man from the consequences of the death caused by him observed upon. **13 B.L.R. Ap. 20=20 W.R. Cr. 70.**

Insanity—continued.

(16)—*Crim. Pro. Code (1872), ss. 425, 232—Trial of fact of unsoundness of mind.*—Where on the trial of a prisoner by a Sessions Judge, the Judge, entertaining some doubt as to the prisoner's sanity, took the evidence of the Civil Surgeon, and himself decided that the prisoner was of sound mind and capable of making his defence, whereupon the trial proceeded, and the prisoner was convicted, *held* that the conviction must be set aside and a new trial directed, reading ss. 232 and 425 of the Crim. Pro. Code together. The preliminary issue of soundness of mind or otherwise ought to have been tried by the Jury, and not by the Judge personally. **10 B.L.R. Ap. 10=19 W.R. Cr. 15.**

(17)—*Test of unsoundness of mind--Knowledge of wrong doing.*—The test to determine whether a person who has committed an act, which is charged against him as an offence, was of sound mind at the time of its commission, is whether he knew that he was doing wrong. **24 W.R. Cr. 5.**

(18)—*Penal Code, s. 84.*—Where, at the time of committing a murder, the accused is, by reason of unsoundness of mind, incapable of knowing that which he was doing was wrong or contrary to law, he cannot be convicted of murder. **8 P.R. 1889 Cr.**

(19)—*Proof— Effect.*—Insanity should be proved *aliunde*, and should not be merely inferred from the extreme moral perversion of the act committed. Mental unsoundness is not a ground for reducing punishment, but is a ground for dealing with the accused in a separate and distinct manner as prescribed by the Crim. Pro. Code. **56 P.R. 1866 Cr.**

(20)—*Monomaniac—Sentence.*—A sentence cannot be interfered with on the ground of the accused being a monomaniac. **109 P.R. 1866 Cr.**

(21)—*Penal Code, s. 84.*—S. 84 exempts a man from criminal liability for his act, only when he is prevented, by reason of mental disease, from controlling his own conduct, or from passing a rational judgment on the moral character of the act he meant to do. **42 P.R. 1887 Cr.**

(22)—*In case of insane person Sessions Judge to proceed under ss. 389 and 390, Crim. Pro. Code, instead of trying him.*—In the case of a person who is insane and unaccountable for his actions and, therefore, incapable of making his defence, the Sessions Judge, instead of trying him in this mental state, should proceed under the provisions of ss. 389 and 390, Crim. Pro. Code. **3 W.R. Cr. 57.** 3 W.R. Cr. 70, 1 W.R. Cr. 11, 1 W.R. Cr. 15.

(23)—*Accused insane at the time of the commission of the offence—Procedure to be followed by Magistrate—Accused found insane at trial—Procedure—Sessions Judge not empowered to try without a specific charge—Medical certificate not sufficient evidence—Medical officer to be personally examined.*—Where a Magistrate

Insanity—concluded.

finds a prisoner, charged with murder, to be sane at the time of the preliminary investigation, although he was insane when he committed the act, the proper procedure for him to follow is to commit the accused for trial at the Sessions. A Session Judge has no power to try a prisoner who had been committed for trial on no specific charge. The procedure to be followed in a case where the prisoner is found to be insane at the time of his trial is that prescribed by ss. 391 and 392, Crim. Pro. Code. A mere certificate given by a medical officer is not sufficient evidence of the prisoner being of unsound mind and incapable of making his defence. The medical officer should be personally examined as to the reasons which induced him to give an opinion on the point. **9 W.R. Cr. 23.**

(24)—*Accused insane at the time of trial—Acquittal illegal—Proper procedure.*—A prisoner, who was declared by the Civil Surgeon to be insane at the time he was called on to make his defence, was acquitted by the Deputy Magistrate on the ground that, at the time of committing the offence, he was not aware that he was doing an act contrary to law. *Held*, that the order of acquittal was not according to law, and that the proceedings should have been stayed and the prisoner detained pending the orders of the Government. **10 W.R. Cr. 37.**

(25)—*Procedure on acquittal on the ground of insanity.*—Where a prisoner was convicted by the Sessions Judge, the High Court acquitted him on the ground of insanity under s. 393, Crim. Pro. Code, and directed that he should be kept in safe custody until the orders of the Local Government, which the Sessions Judge should apply for, had been obtained regarding him. **7 W.R. Cr. 42.**

(26)—*Sanity of accused doubted—Procedure.*—Where a Court entertains doubts as to the sanity of the accused, the Court should not merely put questions to the accused, but should try the fact of such unsoundness of mind by examining the Civil Surgeon or some other medical officer, and by taking such evidence as might have been procurable from the village at which the accused resides, with the view of ascertaining whether the accused had, at any time, prior to the commission of the crime, exhibited symptoms of insanity. **1 B.H.C. 38.**

See CRIM. PRO. CODE (1898), s. 272, Rat. Un. Cr. C. 19.

See CRIM. PRO. CODE (1898), ss. 341 and 465, U.B.R. (1892—1896), Vol. I, 38.

See CRIM. PRO. CODE (1898), ss. 464, 466, 2 Weir 581.

—Procedure in case of insane persons—*See* CRIM. PRO. CODE (1898), ss. 464, 466, U.B.R. (1892—1896), Vol. I, 50.

Insolvent Act (St. 11 and 12 Vic., c. 21).

—*Fraudulent practice in trade—Power of Court to punish criminally.*—Certificate refused where insolvent had been guilty of fraudulent practices in trade. Certificate suspended in the case of a partner at home who, though innocent of the fraudulent practices, omitted to give notice to the parties intended to be defrauded. The Insolvency Court has no power to punish criminally fraudulent practices in trade. This is left to the action of creditors through the channel of the criminal law. **Cor. 13.**

Inspection.

(1)—*Inspection of books, the subject-matter of the charge.*—Where a witness produces books which form the subject-matter of the charge against the accused, the accused or his counsel is, at least so far as is necessary for the purposes of the trial, entitled to inspect them. **10 C.L.R. 54.**

(2)—Sessions Judges and District Magistrates should inform themselves thoroughly from time to time what business is transacted by their subordinates. Such enquiry is far more effective than the mere inspection of statements. **16 W.R. Cr. Cir. 2.**

See MAGISTRATES, JURISDICTION OF, 5 Bom. L.R. 978.

Inspection of Documents.

(1)—*Crim. Pro. Code, ss. 94, 99—Documents produced before Court on search warrant--Power of Court to order inspection.*—When documents and other things seized upon the premises of an accused person by virtue of a search warrant issued under s. 96 of the Code are brought before Court, the Magistrate would have the power to allow the prosecution the inspection thereof. They stand, when they are brought to the Court, precisely in the same position as documents or things found either upon the person of a prisoner at the time of his arrest or at his house upon a search made by the police, and afterwards forwarded to the Court. But the inspection should be confined to the documents covered by the search warrant. **15 C. 109.** [*F.*, 5 Bom. L.R. 980; *R.*, Rat. Un. Cr. C. 891, 5 Bom. L.R. 978].

(2)—*Crim. Pro. Code, s. 94—Production of documents—Power of Courts.*—A Magistrate has, under s. 94 of the Code, the power of calling upon any person to produce any document or thing in that person's possession or power, which has any connection with the offence which happens to be under investigation or inquiry. Of course, he cannot call for anything and everything from anybody and everybody. The thing called for must have some relation to, or connection with, the subject-matter of the investigation or inquiry, or throw some light on the proceedings or to supply some link in the chain of evidence. It may be that the thing called for may turn out to be wholly irrelevant to the inquiry; but so long as it is considered to be necessary or desirable for the purposes of the inquiry, the Magistrate has such power. **19 C. 52.**

Inspection of Documents—concluded.

(3)—*Right of accused to inspect statement of witnesses recorded by a police officer and to obtain copies thereof.*—An accused person on his trial is entitled to call for and inspect the statements of witnesses recorded by a police officer, while making an investigation under s. 161, Crim. Pro. Code, and where the law allows an accused person to inspect documents, the right to obtain copies thereof from the proper officer follows as a corollary. **S. C. 189, Oudh.** (16 C. 640, *F*).

(4)—*Bombay Survey and Settlement Act I of 1865, s. 14—Bombay Act IV of 1868—Notice to produce evidence—Effect of disobedience.*—The provision in Bombay Act IV of 1868, s. 14, is inapplicable where the notice to produce documents is defective for want of specification of the documents required for inspection. Disobedience of an order to produce documents under cl. 1 of s. 14 of Bombay Act I of 1865 renders the person liable to an adjudication in his absence and does not render him liable to a criminal prosecution. **11 B.H.C. 231.**

See ACCUSED PERSON, 1 Bom. L.R. 433.

See CRIM. PRO. CODE (1898), s. 94, 5 Bom. L.R. 978.

See CRIM. PRO. CODE (1898), ss. 162 and 164, 17 M.L.J. 471=30 M. 466=6 Cr. L.J. 346=3 M.L.T. 14.

See EVIDENCE ACT, s. 76, 20 M. 189=2 Weir 763, F.B.

Insult.

See PENAL CODE, ss. 504, 509.

(1)—*Penal Code, s. 504—Criminal insult, what constitutes.*—To constitue an offence under s. 504, I.P.C., it is sufficient if the insult is of a kind calculated to cause the other party to lose his temper and say or do something violent. The public peace can be broken by angry words as well as by deeds. **4 Bom. L.R. 78.**

(2)—*Penal Code, s. 504—Insulting a person with intention of provoking a breach of peace.*—Where the accused used abusive language against the complainant so as to reduce him to a state of abject terror, *held*, that the accused was guilty under s. 504, inasmuch as the insulting provocation would, under ordinary circumstances, cause a breach of the peace, and that the offender was not protected from the consequences of his act because the person insulted became too terrified to accept the provocation in the manner intended. **10 M. 353=1 Weir 620.** [*R.*, U.B.R. (1892—1896), 290 Cr., 1 Weir 621, 1 Weir 622].

(3)—*Penal Code, s. 504—What constitutes the offence.*—To constitute an offence under s. 504, Penal Code, an insult known to be likely to provoke and cause a breach of the peace is sufficient. What the law makes punishable under the section is the insulting provocation which, under ordinary circumstances, would cause a breach of the peace to be committed.

Insult—concluded.

The mere forbearance of the person insulted from being provoked to commit a breach of the peace is not sufficient to protect the offender. **1 Weir 134=1 Weir 621.**

See PENAL CODE, s. 228, 6 Bom. L.R. 541.

—Insulting the modesty of a woman—*See* PENAL CODE, s. 509, 5 Bom. L.R. 502.

Intention.

(1)—*Intention—Natural consequences of an act.*—Although there is no presumption that a person intends what is merely a possible result of his action, or a result which though reasonably certain is not known to him to be so, still, it must be presumed that when a man voluntarily does an act knowing at the time that, in the natural course of events, a certain result will follow, he intends to bring about that result. **26 B. 558=4 Bom. L.R. 280.** [*R.*, 17 P.R. 1908=32 P.W.R. 1908 Cr. =8 Cr. L.J. 488].

(2)—*Intention, inference of.*—Intention, like any other psychological fact, has to be inferred from the act itself. **1 C.W.N. 465.**

(3)—*Proof of criminal intention.*—In criminal cases, the presumption of innocence must be displaced by positive evidence. When an act is not *per se* criminal, the specific intent which renders it criminal must be established by cogent evidence. **12 M. 273=1 Weir 375.**

(4)—*Inference of intention.*—The knowledge or intention, with which a particular act is done, is usually to be inferred both from the nature of the act done, and from all other circumstances in the case which throw light upon the motive or the object with which such act was done, and the state of the mind of the accused at the time of committing the act. **27 P.R. 1883 Cr.**

(5)—*Intention or knowledge inferred from nature and extent of injury—Accused entitled to benefit of doubt.*—The intention or knowledge of the accused can only be inferred from the nature and extent of the injury, and, on this point, the accused is entitled to the benefit of the doubt. **U.B.R. (1897—1901), Vol. I, 316.**

See ACT XVIII OF 1869, s. 29, 6 M.H.C. App. 5=1 Weir 900.

—Omission to set out the guilty intention in a charge—*See* CRIM. PRO. CODE (1898), s. 537, 22 C. 391.

—House-breaking by night—Presumption of intention—*See* CRIMINAL TRESPASS, 16 C. 657.

See CULPABLE HOMICIDE NOT AMOUNTING TO MURDER, 4 L.B.R. 367.

See FALSE EVIDENCE, 3 C.W.N. 81, 3 N.W.P. 133.

See OFFENCE, 24 B. 287=1 Bom. L.R. 678.

See PENAL CODE, s. 24, 8 A. 653.

See PENAL CODE, ss. 86 and 300, 4 L.B.R. 306.

Intention—concluded.

—Intention of editor and publisher—Contributions to the paper, admissibility of to know intention—*See* PENAL CODE, s. 124-A, 22 B. 112.

See PENAL CODE, s. 124-A, 5 M.L.T. 393 =32 M. 384.

Interlocutory Order.

See CRIM. PRO. CODE (1898), ss. 423, 435, 439, 70 P.L.R. 1904.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 11 C.W.N. 79=4 Cr. L.J. 433.

See TRANSFER OF CRIMINAL CASES, 8 C. 63.

Interpreter.

—*Interpreter—Sworn interpreter—Necessity for Crim. Pro. Code (1861), s. 198.*—There is no provision, in s. 198, Crim. Pro. Code, 1861, for making use of a regularly sworn interpreter to interpret his evidence to a party making a statement, except in cases where his services are required by the Court. It is the presiding officer's duty to see that the evidence is clearly and properly interpreted to the party making a statement. **16 W.R. Cr. 71, Cr.**

Interrogatory.

See EVIDENCE ACT, s. 33, 19 B. 749.

Interruption.

—to Court—*See* PENAL CODE, s. 228, 6 Bom. L.R. 541.

Intervenor.

—"*Intervenor,*" *right of, to come in—Crim. Pro. Code (1872), s. 536.*—There is no provision in the Code for allowing an "intervenor" to come in, in the middle of proceedings under this section. **4 C. 650=3 C.L.R. 551.** [*Appr.*, 21 C. 404; *Observed*, 30 C. 155].

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 3 C.W.N. 329.

Intoxication.

—*Voluntary drunkenness to be taken into account for throwing light on intention.*—In a case of murder committed in a drunken squabble, it was held that voluntary drunkenness, though it did not palliate any offence, might be taken into account as throwing light on the question of intention. **W.R. 1864 Cr. 24.**

—*Offence committed under—Palliation of offence.*—Intoxication should not be treated as an aggravation of an offence. Nor is it any excuse for it. **8 B.L.R. Ap. 21=16 W.R. Cr. 36.** 5 W.R. Cr. 58; 5 W.R. Cr. 79.

Investigating Officer.

—Powers of—*See* CRIM. PRO. CODE (1898), s. 202, 33 C. 1282=5 Cr. L.J. 83.

Investigation.

—*Crim. Pro. Code, s. 556—Investigation by Magistrate—Trial by same Magistrate—Validify.*—Where a District Magistrate took an active part in the investigation of a case, he was held not to be competent to have it tried himself. **14 Bur. L.R. 335.**

See CRIM. PRO. CODE (1898), s. 4, 26 B, 533 =4 Bom. L.R. 271.

—In a case under s. 145, whether an enquiry in a Criminal Court—*See* CRIM. PRO. CODE (1898), ss. 4, cl. (*k*), 145 and 526, 28 C. 709 =5 C.W.N. 749.

See CRIM. PRO. CODE (1898), s. 437, U.B.R. (1892—1896), Vol. I, 48.

Iron.

—Iron includes steel. 10 C.L.J. 48.

Irregularity.

See CRIM. PRO. CODE (1898), ss. 529 to 538.

See ILLEGALITY.

(1)—*Crim. Pro. Code (1882), s. 529—Scope.*—S. 529 deals with acts done by a Magistrate in no way empowered by law to do those acts; it has no reference to a Magistrate empowered otherwise under the Act to tender pardon, but not possessing jurisdiction over the particular offence. **20 A. 40.** [*D.*, 4 C.W.N. 821].

(2)—*Irregularity in enquiry—Effect on trial.*—An irregularity in the conduct of an enquiry, even though sufficiently serious to induce the High Court to annul a commitment, is not sufficient to justify the annulment of the trial after the commitment had been made and a trial had upon it, unless the irregularity has caused a failure of justice by prejudicing the accused in his defence. **Rat. Un. Cr. C. 177 =Cr. Rg. 31—3—1881.**

(3)—*Crim. Pro. Code (1882), s. 537—Absconding of accused after evidence taken—Conviction in his absence—Review.*—An accused was present throughout a trial whilst the evidence was taken; but he having thereafter absconded, the Magistrate passed sentence upon him in his absence, and on his re-arrest, re-pronounced his judgment: *Held* that the case might be regarded as falling under s. 537 of the Crim. Pro. Code at least for the purposes of a review not sought by the accused, but that the Magistrate should not have pronounced judgment in the absence of the accused. **Rat. Un. Cr. C. 325=Cr. Rg. 12 of 1887.**

(4)—*Case triable with aid of assessors tried by jury.*—Where a Sessions Judge tries a charge by a jury instead of with the aid of assessors, the irregularity does not vitiate the trial, which can be treated as one held with the aid of assessors, and the verdict of the jury treated as their opinion as assessors. **Rat. Un. Cr. C. 951=Cr. Rg. 15 of 1888.**

(5)—*Irregular procedure in Criminal trials—Effect of waiver by the accused.*—Where Criminal proceedings are substantially bad in

Irregularity—continued.

themselves, the defect will not be cured by any waiver or consent of the accused or their pleaders. **6 C. 96=6 C.L.R. 521.** (2 C. 23, *R.*).

(6)—*Erroneous order of commitment by Sessions Judge—Cure of defect—Crim. Pro. Code (Act X of 1872), s. 283.*—Where, however, a trial under a commitment made by an erroneous order of Sessions Judge has been held and no actual failure of justice has been caused by such error, s. 283 of the Crim. Pro. Code would be a bar to the reversal of the judgment. **7 C. 662.**

(7)—*Crim. Pro. Code (1882), ss. 87, 537—Irregularities in the publication of proclamation—Competency of Magistrate enforcing penal consequences of disobedience to resort to the provisions of s. 537—Powers of appellate Courts.*—A Magistrate enforcing the penal consequences of alleged disobedience to a proclamation under s. 87, Crim. Pro. Code, cannot utilize s. 537 in order to cure any defect in the mode of the publication of the proclamation, although it may be open to the Sessions Judge, on appeal, or to the High Court to consider whether the provisions of s. 537 apply to such defect. **19 M. 3=2 Weir 40.**

(8)—*Crim. Pro. Code, s. 537—Disobedience to express provision of law as to the mode of a trial.*—A disobedience to an express provision of the law as to the mode of trial cannot be regarded as a mere irregularity and, therefore, it is not curable under s. 537 of the Code. **25 M. 61=11 M.L.J. 233=3 Bom. L.R. 540=28 I.A. 257=5 C.W.N. 866=2 Weir 271=10 M.L.J. 147, P.C.** [*F.*, 17 C.P.L.R. 159].

(9)—*Crim. Pro. Code (1898), ss. 531, 177, 179, 180, 181, 183—Offence committed in one district—Trial by a Magistrate in another district, not a material irregularity.*—Where an offence is committed within the jurisdiction of a Sub-Divisional Magistrate in one district, but is tried by a Magistrate in another district, the irregularity of the trial is cured by s. 531 of the Code. This section is not limited to cases, where the offence committed, within the jurisdiction of a Court, is tried by that Court, outside the limits of the local area of its jurisdiction. Ss. 177, 179, 180, 181 and 183 must be read together with s. 531. The intention of s. 531 is to provide against the contingency of a finding, sentence or order regularly passed by a Court, in the case of an offence committed outside its local area, being set aside, when no failure of justice has taken place. **30 M. 94=1 M.L.T. 345=4 Cr. L.J. 500.** [*R.*, 18 P.W.R. 1908 Cr.]

(10)—*Waiver of.*—An accused person, submitting himself to the jurisdiction of a Magistrate, should be deemed to have waived any irregularity, touching the manner in which the Magistrate has enforced such accused's appearance before himself. **16 C.P.L.R. 9.** (25 C. 20, 10 C. 604, *R.*).

See ACT XXXVI OF 1860, s. 52, 3 B.H.C. Cr. 36, note.

Irregularity—continued.

See ACT V OF 1876, s. 22, 15 A. 208.

—False statement before Registrar—Irregularities in proceedings—Effect with respect to jurisdiction of Criminal Courts—*See* ACT III OF 1877, ss. 72 and 73, 10 C. 604.

See CANTONMENT CODE (1899), s. 167, cl. (*i*), 3 A.L.J. 694=4 Cr. L.J. 374=A.W.N. 1906, 303.

See CHARGE, 9 Bom. L.R. 148=5 Cr. L.J. 164=31 B. 218, 15 M.L.J. 224=2 Cr.L.J. 381.

See CHARGE TO JURY, 30 M. 44=1 M.L.T. 399=5 Cr. L.J. 78.

See COMMITMENT TO SESSIONS COURT, 2 S.L.R. 9 Cr.=10 Cr. L.J. 224.

See COMPENSATION, 2 S.L.R. 14 Cr.=10 Cr. L.J. 229.

See COMPLAINT, 5 M.L.T. 1=32 M. 3=9 Cr. L.J. 108=1 Ind Cas. 22.

See CRIM. PRO. CODE (1898), ss. 10 (2), 12, 528, 34 C. 918.

See CRIM. PRO. CODE (1898), s. 30, 7 C.W.N. 457.

See CRIM. PRO. CODE (1898), s. 145, 25 A. 537=A.W.N. 1903, 102, 30 C. 155=6 C.W.N. 757, F.B., 32 C. 287, 33 C. 68=9 C.W.N. 1046=2 C.L.J. 241=2 Cr. L.J. 618, 5 C.W.N. 710, 6 C.W.N. 104, 8 C.W.N. 590, 7 O.C. 334.

—Omission of Magistrate to inform accused of his right to be tried by another Court—*See* CRIM. PRO. CODE (1898), ss. 190, 191, 537, 28 A. 212=A.W.N. 1905, 258=2 A.L.J. 745=2 Cr. L.J. 809.

See CRIM. PRO. CODE (1898), ss. 195 and 477, S.C. 303, Oudh.

See CRIM. PRO. CODE (1898), ss. 202, 203, 441, 5 M.L.T. 79=2 Ind. Cas. 618.

—Disobedience to express provision as to mode of trial—*See* CRIM. PRO. CODE (1898), s. 234, 15 C.P.L.R. Cr. 53.

See CRIM. PRO. CODE (1898), ss. 276, 279, 326, 7 C.W.N. 188.

See CRIM. PRO. CODE (1898), ss. 307 and 337, 13 C.W.N. 757=9 C.L.J. 638=36 C. 629=2 Ind. Cas. 497.

See CRIM. PRO. CODE (1898), s. 367, 18 M. L.J. 197=7 Cr. L.J. 459.

—Not commencing fresh trial after withdrawal of case if mere irregularity—*See* CRIM. PRO. CODE (1898), ss. 528 and 537, 6 O.C. 192.

See CRIM. PRO. CODE (1898), s. 530, Colm. Dig. Cr. 43 of 1876.

See CRIMINAL PROCEEDINGS, 14 C. 358.

See DEFAMATION, 3 P.W.R. 1909 Cr.=9 Cr. L.J. 154=1 Ind. Cas. 99.

Irregularity—concluded.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 4 A.L.J. 705=A.W.N. 1907, 265=6 Cr. L.J. 352=30 A. 41, 2 C.L.J. 241=2 Cr. L.J. 618=33 C. 68, F.B.=9 C.W.N. 1046.

See JOINDER OF CHARGES, 27 C. 839=4 C.W.N. 656, F.B., 6 A.L.J. 977, 6 Bom. L.R. 725.

See JOINT TRIAL, A.W.N. 1907, 208=6 Cr. L.J. 215, 5 M. 20=2 Weir 303.

See JUDGE AND JURY, Rat. Un. Cr. C. 452.

See JUDGMENT, 21 C. 121, 23 C. 502.

See PENAL CODE, s. 124-A, 5 M.L.T. 393=32 M. 384.

See PENAL CODE, ss. 372 and 373, 12 M. 273=1 Weir 375.

See REVISION, 13 C. 272.

See SANCTION TO PROSECUTE, 17 M.L.J. 533=2 M.L.T. 493=6 Cr. L.J. 382=31 M. 80, 28 C. 217=5 C.W.N. 291, 8 P.R. 1908, Cr.=15 P.W.R. 1908 Cr.=149 P.L.R. 1908=7 Cr. L.J. 353.

See SECURITY FOR GOOD BEHAVIOUR, 12 C.W.N. 299=7 C.L.J. 177=35 C. 243=7 Cr. L.J. 146, 11 Bom. L.R. 740.

See SECURITY PROCEEDINGS, 10 O.C. 365=7 Cr. L.J. 94.

See SECURITY TO KEEP THE PEACE, 17 M.L.J. 407=30 M. 330=2 M.L.T. 329=6 Cr. L.J. 278.

See SUMMARY TRIAL, U.B.R. (1906), Crim. Pro. Code, 51=5 Cr. L.J. 298.

See TRANSFER OF CRIMINAL CASES, 12 C.W.N. 138.

Irrigation Act (Bombay).

See BOM. ACT VII OF 1879.

Jail.

See APPEAL, 8 W.R. Cr. Cir. 5, 8 W.R. Cr. Cir. 7, 12 W.R. Cr. Cir. 5, U.B.R. (1892—1896), Vol. I. 5.

Jail Certificate.

—Not proof of previous conviction—*See* PREVIOUS CONVICTION, 2 L.B.R. 53.

Jailor.

See BOM. ACT II OF 1874, s. 30, Rat. Un. Cr. C. 136.

Jails Act.

See BOM. ACT II OF 1874.

Jails, Presidency, Act.

See ACT XII OF 1867.

Jamadar.

—Order appointing an officer as commissioned officer with retrospective effect—*See* ACT XI OF 1878, 27 P.R. 1885 Cr.

Joinder of Charges.

1.—GENERAL.

2.—WHEN LEGAL.

3.—MISJOINDER OF CHARGES.

See CRIM. PRO. CODE (1898), ss. 233—240.

See JOINT TRIAL.

——1.—(General).

(1)—*Crim. Pro. Code (1898), s. 235 (1), 'transaction' meaning of the word in—Offences to be tried jointly to constitute one continuous act—Proximity in time not essential.*—The word 'transaction' in s. 235 (1) of the Code suggests not necessarily proximity in time so much as continuity of action and purpose, that is to say, it is not necessary that the act should have been committed, all on the same occasion, but it is sufficient that though separated by a distinct interval of time they are closely connected by continuity of purpose or progressive action towards a single object. So in this case where the prisoner, for the removal of a cart of which he committed theft, broke into the cattle shed of a neighbour of the cart owner, took out two bullocks and drove off the cart to a certain place for selling the same, it was *held*, that the two thefts constituted part of one transaction within the meaning of the said section, and the circumstance of the theft of the bullocks prefaced by house-breaking essential to the perpetration of the entire offence could make no difference. The acts in this case were further connected by the prisoner's admission that he took the bullocks because the removal of the cart would otherwise have been impossible, and the two acts were therefore rightly tried together as unmistakably forming part of a single transaction. **2 N.L.R. 147=4 Cr.L.J. 420.**

(2)—"*Offences of the same kind*," *scope of the expression—Crim. Pro. Code, s. 453—Separation of charges and trials.*—The words "offences of the same kind" in s. 453 are not to be limited by the explanation to that section, but include such cases as where a man has, within a year, committed two offences of house-breaking. Nor are they limited to offences against the same person. [*Appr.*, Rat. Un. Cr. C. 331]. The explanation to s. 453 must be understood as extending and not limiting the meaning of the section—*Per Field, J.* Judges should take care that prisoners are not prejudiced by the joinder of charges, and should be anxious to lend a willing ear to any application for separation of charges and for separate trials upon separate charges.—*Per Norris, J.* **9 C. 371=11 C.L.R. 522.** [*R.*, 15 B. 491].

(3)—*Crim. Pro. Code (1882), ss. 247, 253—Joinder of charges under summons and warrant cases—Nature of the trial—Complainant's default—Proper order.*—Where two charges arising out of the same transaction are made against an accused person, one of which is a summons case, and the other a warrant case, the case should be tried as a warrant case. If,

Joinder of Charges—continued.

——**1.—(General)**—*continued.*

in such a case, the complainant is absent on the day to which the hearing of the case is adjourned, the Magistrate should make an order, under s. 253 of the Code, for discharge and not for acquittal under s. 247. **11 C. 91.** [*F.*, 22 B. 711].

(4)—*Crim. Pro. Code (1898), ss. 233, 235—Joinder of charges of a summons case and a warrant case—Procedure.*—Where the accused had committed the offences of mischief and of insult likely to produce breach of peace on two different occasions, charges of both the offences could not be tried together as they did not form parts of one transaction within s. 235, Crim. Pro. Code. Where two charges, one of an offence punishable with imprisonment exceeding six months, and the other of an offence not so punishable, are tried together at one trial, the trial of the two together forms only one case, not two. And as the case relates to an offence punishable with more than six months' imprisonment it is a warrant case. The fact that it relates to some other offence also does not alter its nature and so formal charges should be framed for both offences. **3 L.B.R. 113=3 Cr. L.J. 350.**

(5)—*Crim. Pro. Code (1898), s. 110, cl. (d)—Security for good behaviour—Joinder of charges.*—The law, as to the joinder of charges against a person accused of definite offences, has no application to an enquiry under s. 110, cl. (*d*). **11 C.W.N: 789=6 Cr. L.J. 1.**

(6)—*Crim. Pro. Code (1898), ss. 233 to 239—Joinder of offences and parties in the preliminary enquiry—Validity of commitment.*—The sections of the Crim. Pro. Code relating to joinder of charges, *viz.*, 233 to 239, refer to the trial of the accused. The ruling of the Privy Council in 25 M. 61 cannot be extended to preliminary enquiries, held by Magistrates committing a case to the Sessions Court, so as to render the commitment itself illegal, because there was misjoinder of offences or of offenders in the preliminary enquiry. **26 M. 592=2 Weir 297.** (25 M. 61, *Expl.*)

(7)—*Offences committed in one year in three separate transactions.*—There is no provision of the Crim. Pro. Code which says all offences committed within one year in the course of three separate transactions may be tried at one trial. **30 M. 328=17 M.L.J. 141=2 M.L.T. 177=5 Cr. L.J. 341.**

(8)—*Robbery on same night in several different places—Crim. Pro. Code (1872), s. 453—Separate and distinct offences of same kind.*—Persons committed on three separate and distinct charges for three separate and distinct robberies, committed on the same night in three different houses, must be tried separately on each of the three charges. **6 W.R. Cr. 83.**

(9)—*Dacoity and receiving stolen property—Distinct offences—Penal Code, ss. 395, 412.*—The practice of dividing the facts which constitute parts of one offence into several minor offences is not legal. So a person convicted of dacoity cannot be convicted also of dishcnestly receiving stolen property transferred by commission of dacoity when there is no evidence of the commission of more than one offence. **13 W.R. Cr. 42.**

(10)—*Charges for distinct offences—Separate charges and trials—Several offences under one section of Penal Code.*—Where a person is charged with several offences under one section of the Penal Code, the proper procedure is to try the accused under separate charges for each of the several distinct offences under the section. **20 W.R. Cr. 70.**

(11)—*Crim. Pro. Code, Act V of 1898, ss. 233, 234—Penal Code, s. 161—Bribe collected from several persons—Charges.*—Where a bribe was collected by public subscription and paid in a lump sum to the accused, the latter cannot be charged under s. 161 of the Penal Code, merely with the receipt of the whole sum collected, but he must be charged with receipt of not more than three separate items making up the bribe. **A.W.N. 1904, 223.** (25 M. 61, *F.*)

(12)—*Crim. Pro. Code (1882), s. 215—Joinder of charges—Quashing of commitment.*—Three accused were jointly committed to take their trial before the Sessions Court on the following charges, *viz.*, the first accused under s. 457, of seven distinct offences committed within one year, all the three accused under s. 411, I.P.C., for dishonest possession of and dealing with stolen property belonging to seven different persons, and under s. 413, I.P.C., for habitually receiving and dealing in stolen property. *Held* that the commitment was bad and must be quashed. **A.W.N. 1883, 39.**

(13)—*Joinder of charges.*—Two charges of robbery committed in respect of different persons and at different times and places, though within the space of one year, should be separately committed and tried. **A.W.N. 1883, 107.**

(14)—*Crim. Pro. Code (1898), ss. 222, 233, 234, 235, 236, 239, 403—Criminal breach of trust—Indian Penal Code (Act XLV of 1860), s. 409—Trial of accused—Joinder of charges—Previous acquittal—Bar to trial.*—The accused was tried for the offence of criminal breach of trust as a public servant in respect of Rs. 12 odd, and was acquitted of the offence. He was again tried for the same offence in respect of another item of Rs. 19 odd, misappropriated during the same period as that to which the Rs. 12 related, and was convicted. On appeal, the Sessions Judge acquitted the accused on the ground that his previous acquittal was a bar to the second trial:—*Held*, reversing the order of acquittal, that the previous acquittal did not, under the circumstances, operate as a bar

Joinder of Charges—continued.

——1.—(General)—*concluded.*

to the accused's conviction at the second trial. S. 233, Crim. Pro. Code, contains the general rule, namely, that, for every distinct offence of which any person is accused, there shall be a separate charge, and every such charge shall be tried separately. To this rule there are several exceptions, *viz.*, those contained in ss. 234, 235, 236 and 239 of the Code. S. 222, Crim. Pro. Code, is an exception to another general rule that, at a trial for an offence, certain particulars must be given in the charge. Clause 2 of s. 222 modifies that rule as to charges for criminal breach of trust, but does not restrict in any way the scope and object of s. 234 of the Code. **12 Bom. L.R. 226.**

(15)—*Crim. Pro. Code (1898), ss. 233, 239, 537.*—Irregularities under ss. 233, 239, Crim. Pro. Code, are not curable under s. 537. **5 P.R. 1900 Cr.**

——2.—(When legal).

(1)—*Crim. Pro. Code (1872), s. 453, scope of—Distinct offences of the same kind committed during the year.*—S. 453 of the Crim. Pro. Code of 1872 simply places a statutory limit on the number of charges, which may legally form part of a single trial and an accused may be separately charged and tried on the same day for any number of distinct offences of the same kind committed during the year. **3 C. 540=1 C.L.R. 478.**

(2)—*Crim. Pro. Code (1882), ss. 234 and 235 Embezzlement of public money on three occasions within a year.*—Where a Post Master was charged with criminal breach of trust in regard to three sums of money paid to him within a year by different persons for money orders, *held*, that the joinder of the charges was not illegal, the offences being of the same kind, *viz.*, embezzlement of public money by a public servant, committed within one year and in the same circumstances. **7 A. 174, F.B.** [*F.*, 9 C.L.J. 149=13 C.W.N. 507=5 M.L.T. 349].

(3)—*Crim. Pro. Code, ss. 235, 239—Joinder of charges—Same transaction—Conviction set aside—Procedure.*—Though the members of a police force, who had conspired to maltreat suspected persons in the course of an investigation, could, under certain circumstances, be dealt with under the provisions of ss. 235 and 239, for a series of oppressive acts of which they were guilty in the prosecution of their common object, still, it would be necessary to consider carefully whether the alleged acts were, as a matter of fact, so connected together in one series as to form essentially and strictly the same transaction. If, in any case, either the accused are likely to be bewildered in their defence by having to meet many disconnected charges, or the prospect of a fair trial is likely to be endangered by the production of a mass of evidence directed to many different matters and tending by mere accumulation to induce an undue

Joinder of Charges—continued.

——2.—(When legal)—*continued.*

suspicion against the accused, then, the propriety of combining the charges may well be questioned. Four persons, members of the police force, were charged with ill-treating and wrongfully confining one Hanma, his wife Rakhma and his son-in-law Yellia, during the course of the police investigation, with the object of extorting confessions from them and recovering stolen property. They were committed for trial in two separate cases for the following offences:—(1) All the accused for an offence under s. 330, I.P.C., committed against Hanma, the charge covering several acts of violence alleged to have been committed against him during his illegal confinement, which formed the subject of the second charge. (2) All the accused with an offence under s. 348 committed against Hanma between the 5th and 18th January, 1889. (3) Accused Nos. 1 and 3 with an offence under s. 348 committed against the deceased Rakhma, wife of Hanma, on the 5th January, 1889. (4) Accused No. 3 with an offence under s. 330 committed against the deceased Rakhma on the 14th January, 1889. (5) All the accused with an offence under s. 330 committed against Yellia in the interval between the 15th and 23rd January, 1889. (6) All the accused with an offence under s. 348 committed against Yellia during the same period. (7) Accused Nos. 1, 2 and 3 with an offence under s. 346 committed against Yellia between 8th February and 9th March, 1889. The Magistrate committed the accused in two separate cases, which were tried together by the Sessions Judge, under ss. 235 and 239, Crim. Pro. Code, on the ground that the same four persons were accused in both the cases and were charged with different offences committed in what was virtually one transaction, namely, a police investigation into an alleged theft. *Held*, that the several acts of violence alleged to have been committed against Hanma during his illegal confinement, forming the subject of the second head of charge, could be rightly regarded as constituting a single transaction. But the act of violence said to have been committed against Rakhma at a different place could not be regarded as a part of that transaction. Nor was the wrongful confinement of Rakhma by the accused Nos. 1 and 3 on the 15th January, a part of the transaction constituted by the hurt, which was caused to her by the accused No. 3 on the previous day. Again, all acts of hurt caused to Yellia during his first period of wrongful confinement would, with the confinement, be part of the same transaction. But the second period of confinement, said to have commenced sometime after the termination of the first, would be a separate transaction. *Held*, also, that by the combination of the two cases, the accused were prejudiced and should be re-tried by the Sessions Judge. [*R.*, 16 B. 414, Rat. Un. Cr. C. 659, 83 P.L.R. 1901, 31 C. 1053, 29 B. 449=7 Bom. L.R. 527=2 Cr. L.J. 480, 2 N.L.R. 147=4 Cr. L.J. 420, 1 S.L.R. 73 Cr.=8 Cr. L.J. 191, 4 L.B.R. 294=14 Bur. L.R. 242]. Where the High

Joinder of Charges—continued.

——**2.—(When legal)**—*continued.*

Court held that the accused were prejudiced by misjoinder, the proper course was to set aside the conviction and sentence, and direct their re-trial. **15 B. 491.** [*R.*, 28 C. 104, 10 M. L.J. 147, F.B., 25 M. 61, P.C. = 2 Weir 279].

(4)—*Penal Code, s. 206—Charge of several fraudulent transfers made on one day—Crim. Pro. Code (1882), s. 235—Same transaction.*—Where a committing Magistrate framed a general charge under s. 206, I.P.C., against an accused person, of several fraudulent transfers made on one and the same day, and the Sessions Judge limited the prosecution to three or four charges, *held* that the proximity of time combined with the case as to intention and similarity of action and result, brought all the transfers within the words "same transaction" in s. 235. **16 B. 414.** [*R.*, 19 B. 51, 27 B. 135, 2 N.L.R. 147 = 4 Cr. L.J. 420, 10 Bom. L.R. 848].

(5)—*I.P.C., ss. 485 and 486—Crim. Pro. Code (1898), ss. 234, 235—Joinder of charges—Same transaction.*—A person can be tried at one trial for having in his possession stencil plates for the purpose of counterfeiting trade marks (s. 485, I.P.C.), for having sold goods to which a counterfeit trade mark was affixed (s. 486), and for having in his possession such goods (s. 486), since the three offences can be said to arise out of the same transaction. The real and substantial test for determining whether several offences are connected together so as to form the same transaction, depends upon whether they are so related to one another, in point of purpose, or as cause and effect, or as principal and subsidiary acts, as to constitute one continuous action. A mere interval of time between the commission of one offence and another does not, by itself, necessarily import want of continuity, though the length or the interval may be an important element in determining the connection between the two. **27 B. 135 = 4 Bom. L.R. 930.** [*F.*, 2 N.L.R. 147 = 4 Cr. L.J. 420, 11 C.W.N. 715 = 5 Cr. L.J. 484; *R.*, 10 C.W.N. 520 = 2 C.L.J. 618 = 3 Cr. L.J. 111, 1 S.L.R. 73 Cr. = 8 Cr. L.J. 191, 4 L.B.R. 294 = 14 Bur. L.R. 242, 13 C.W.N. 1089].

(6)—*I.P.C., ss. 302 and 395—Crim. Prc. Code, s. 235—Joinder of charges—Acts forming part of the same transaction.*—The accused formed into a gang for committing dacoity and proceeded to a village for that purpose. When they reached the place, it was daylight; they, therefore, concealed themselves in a secluded *nala* during the daytime. While they were so concealed, a woman came down from the *nala* for collecting some vegetables. Fearing detection, the gang fell on her and stonod her to death. After concealing her body, the accused proceeded to the place of the destination and committed a dacoity. The accused were committed for trial under s, 396, I.P.C. At the trial, the Judge altered the charge to two separate charges under s. 302 as against some

Joinder of Charges—continued.

——**2.—(When legal)**—*continued.*

of the accused, and under s. 395 as against all, and tried both the charges jointly, holding that the offences formed part of the same transaction. *Held* that the procedure adopted was right, for, it was clearly in order to the committal of the theft constituting an ingredient of the dacoity that the murder took place, and the offences under ss. 302 and 395, I.P.C., therefore formed part of one series of acts so connected together as to form the same transaction. **4 Bom. L.R. 789.**

(7)—*Crim. Pro. Code (1898), ss. 222, 239—Several acts of breach of trust committed within the year—Joinder of charges—Joint trial—Same transaction.*—S. 222 of the Code clearly admits of the trial of any number of acts of breach of trust, committed within the year, as amounting only to one offence. It does not require any particular formulation of the accusation, but only enacts that it is sufficient to show the aggregate offence without specifying the details. It dispenses with the necessity of amplification; it does not prohibit enumeration of the particular items in the charge. It suffices, for the purpose of justifying a joint trial, that the accusation alleges offences committed by each accused to have been committed in the same transaction, within the meaning of s. 239 of the Code. It is not necessary that the charge should contain the statement as to the transaction being one and the same. It is the tenor of the accusation and not the wording of the charge that must be considered as the test. In s. 239 of the Code, a series of acts separated by intervals of time are not excluded, provided that the object of those jointly tried has, throughout, been directed to one and the same objective. If the accused started together for the same goal, this suffices to justify the joint trial, even if, incidentally, one of those jointly tried has done an act, for which the other may not be responsible. The foundation for the procedure in the section is the association of persons concurring, from start to finish, to attain the same end. **7 Bom. L.R. 633 = 2 Cr. L.J. 578 = 30 B. 49.** [*R.*, 2 N.L.R. 147 = 4 Cr. L.J. 420, 10 P.R. 1906 Cr. = 4 Cr. L.J. 285 = 117 P.L.R. 1907, 18 P.W.R. 1908 Cr. = 8 Cr. L.J. 75, 1 S.L.R. 73; *D.*, 17 M.L.J. 141 = 30 M. 328 = 2 M.L.T. 177 = 5 Cr. L.J. 341].

(8)—*Crim. Pro. Code (1898), ss. 225, 233, 234, 235, 236 and 237—Joinder of charges—Indian Penal Code, ss. 124-A and 153-A—Publication in sedition.*—The accused was convicted of offences under ss. 124-A and 153-A of the Indian Penal Code in respect of each of two articles that appeared in his newspaper. The Magistrate, who tried the case, had framed a charge, with two heads, one bearing on each article, and each head mentioned that the accused was punishable under ss. 124-A and 153-A for publishing the article. It was contended on behalf of the accused, (1) that the receipt of his paper by Government servants in their capacity as such servants was no publication;

Joinder of Charges—continued.

——2.—(When legal)—*continued.*

(2) that each of the offences ought to have been charged separately; (3) that from the articles, passages which offended against s. 124-A and those against s. 153-A ought to have been distinctly pointed out in separate charges; and (4) that the trial of four offences at one trial was illegal. *Held* (1) that it is a sufficient publication if a newspaper containing a seditious article has been received by a Goverment servant; (2) that the accused had distinct notice of the charges he had to answer, and the informal mode, if any, in which the charges were drawn up was cured by s. 225 of the Criminal Procedure Code; (3) that, as each of the two articles taken as a whole brought the act of the accused within each of the ss. 124-A and 153-A, no specification of particular passages was necessary; (4) that as the charge under s. 124-A in respect of one article could have been legally joined with a charge under s. 124-A in respect of the other article, and as the accused could have been convicted under s. 153-A by the application of ss. 236 and 237 of the Criminal Procedure Code, even though s. 153-A was not the subject-matter of the charge, the addition of s. 153-A in the charge was not illegal. *Per Chandavarkar, J.*—There is nothing in the Criminal Procedure Code which directs, that, where an accused person is alleged to have done two or more acts, each of which may fall within the definition of an offence under one or another section of the Penal Code, the section or sections in either case being the same, the joinder of the charges under those sections is illegal. Substantially the acts amount in such a case to offences punishable under the same sections of the Penal Code and therefore they are offences of the same kind. *Per Heaton, J.*—S. 234, Crim. Pro. Code, does not say that at the most a trial must be limited to three charges; it says it must be limited to three offences and that the offences must be of the same kind. The "offence," as defined by the Code itself, is the act or omission made punishable. Publication of two seditious articles on different dates amounts to two offences, and these are punishable under the same sections of the Penal Code, and are offences of the same kind. The word 'section' in the second clause of s. 234 is not invariably to be read as singular. It is not the intention of the Criminal Procedure Code, either expressed or implied, to exclude from the operation of s. 234 an offence because it is made the subject of more than one charge. **10 Bom. L.R. 801=8 Cr. L.J. 272.**

(9)—*Crim. Pro. Code (1882), s. 235 (1)—House-breaking by night to commit theft and theft—Separate sentences—Penal Code, ss. 71, 380, 457.*—An accused can, under s. 235 (1), Crim. Pro. Code, legally be tried at one trial for the offences of house-breaking by night to commit theft, and of theft, and separately be convicted for each of the offences. Inasmuch as, though nothing contained in s. 235 affects s. 71, I.P.C., still when the accused commits distinct offences which, when combined, are not punishable

Joinder of Charges—continued.

——2.—(When legal)—*continued.*

under any single section of the Penal Code, s. 71 does not apply to the case. **Rat. Un. Cr. C. 228=Cr. Rg. 6 of 1886.**

(10)—*Joint trial—Person charged with theft and with receiving the stolen property—I.P.C., ss. 380 and 411.*—The trial of a person on a charge of theft jointly with the charge of having dishonestly received the property stolen, is not illegal. **6 C.L.R. 245.** [*F.*, 6 Bom. L.R. 517; *D.*, 1 C.W.N. 35; *F.*, Rat. Un. Cr. C. 915; *R.*, 2 L.B.R. 19 Cr.].

(11)—The offence of dishonestly receiving stolen property from a person, who has stolen that property, cannot be regarded as an offence committed in the same transaction as the theft itself, unless it be in a case where, simultaneously with the offence of theft, the offence of receiving stolen property is committed. **1 C. W.N. 35.** [*Diss.*, 6 Bom. L.R. 517; *F.*, 3 P. R. 1905 Cr; *R.*, 2 L.B.R. 19, 29 B. 449=7 Bom. L.R. 527, 33 C. 1256=10 C.W.N. 912=3 C.L.J. 412=3 Cr. L.J. 391, U.B.R. 1907, 1st Qr., Crim. Pro. Code, 5=6 Cr. L.J. 28=14 Bur. L.R. 38; *D.*, 20 C. 10].

(12)—*Joint trial of accused—Joinder of theft and of receiving or disposing of stolen property—Appreciable interval of time between two acts, otherwise connected together, immaterial—Crim. Pro. Code (1898), s. 239.*—The trial of an accused charged with the offence of theft together with another accused charged with dishonestly receiving or disposing of stolen property, is perfectly legal, if the two offences committed form part of the same transaction within the meaning of s. 239, Crim. Pro. Code. As proximity of time between two acts does not necessarily constitute them parts of the same transaction, so an appreciable interval of time between two acts, otherwise connected together, does not prevent them from continuing to be parts of the same series of connected events. **2 L.B.R. 19.** (Rat. Un. Cr. C. 449, 6 C.L.R. 245; *F.*, 1 C.W.N. 35, *Diss.*]

(13)—*Crim. Pro. Code, (1882), s. 234—Using eleven forged documents in three sets in three suits on different occasions.*—The accused was charged, under s. 471 of the Penal Code, for using, as genuine, eleven forged rent receipts. These receipts were put in by him in three sets in three suits pending against him, on different occasions. The receipts in each set was put in each suit simultaneously, together with a written statement in the particular case. Three charges were framed against him in respect of each set of receipts. He was convicted and sentenced on these three charges. It was contended, on appeal, that a separate charge should have been made for each one of the documents and that, consequently, the trial should be set aside as contrary to law, inasmuch as it was really a trial of eleven offences of using forged receipts. *Held*, that, as the "usings" charged were merely the putting of

Joinder of Charges—continued.

——2.—(When legal)—*continued.*

each set of documents in each suit simultaneously, together with the written statement in each case, and, as there was nothing to show that any of them was used at any other time, there was no valid ground for questioning the correctness of the conviction. **20 C. 413.**

(14)—*Crim. Pro. Code (1898), ss. 222, sub-sec. 2 and 234—Charge of embezzlement in one year—Three counts included in one charge.*—Where a person was put upon his trial for embezzlement of three sums in one year and one charge was drawn up, in which all the three sums and the persons from whom he collected them were specified, but he was not charged with three offences under s. 409, Penal Code, but with one offence and was convicted of one offence and sentenced to one term of imprisonment: *Held*, that the charge was not illegal as it was in accordance with ss. 234 and 222, sub-sec. 2 of the Crim. Pro. Code. **10 C.W.N. 51=32 C. 1085=3 Cr. L.J. 138.**

(15)—*Crim. Pro. Code (1898), ss. 234, 235, 480, 482 and 537—Misjoinder of charges—"Drawing up of proceedings on the same day that the offence is committed"—Penal Code, ss. 178 and 179—Refusing to take oath—Refusing to answer questions.*—Where, at the same trial, an accused person is charged with two offences under s. 178, I.P.C., and two offences under s. 179 of the Code, *held*, the case was not governed by s. 234 of the Crim. Pro. Code and there was no misjoinder. Moreover, the facts having all been admitted and the sentence passed being practically for only one of the offences, the accused was not prejudiced, and the irregularity, if any, was cured by s. 537 of the Crim. Pro. Code. S. 482 does not require the Magistrate to draw up proceedings on the same day that the offence is committed. The section need not be read along with s. 480 of the Crim. Pro. Code. *Quære.*—Whether a person, who has once committed an offence under s. 178 of the Penal Code, can be held to have committed a further offence under s. 179 of the Penal Code, when he refuses to answer the questions put to him. **7 C.L.J. 63=35 C. 161=7 Cr. L.J. 95.**

(16)—*Crim. Pro. Code (1898), s. 235—Joinder of charges of dacoity, forgery, using a forged document as genuine, and cheating.*—The trial of the accused on seven charges, three of dacoity, two of forgery, one of using as genuine a forged document, and one of cheating by personation, would be perfectly regular, if the offences with which the accused was charged all formed one transaction. **11 C. W. N. 715=5 Cr. L.J. 484.**

(17)—*Crim. Pro. Code (1898), ss. 222, 234—Joinder in one trial of two charges of criminal breach of trust and another for a gross sum made up of three distinct items.*—On a charge of criminal breach of trust or dishonest misappropriation of money, it is sufficient, under s. 222, to specify the gross sum, in respect of which the offence has been committed, without

Joinder of Charges—continued.

——2.—(When legal)—*continued.*

specifying the particular items of which the gross sum is composed, and the charge so framed shall be deemed to be a charge of one offence, within the meaning of s. 234. So where an accused is tried on charges of criminal breach of trust in respect of two cheques, and also on another charge in respect of a gross sum made up of three distinct items, which might have been, but were not, specified, the trial is, in fact, not on five distinct charges but is only for three offences, and is, therefore, legal under s. 234. S. 222 is not intended to apply only to cases where there is a general deficiency in an account and the prosecution is unable to specify the particular items of the deficiency, but it applies also to cases, where the items might have been, but are not, specified. **29 M. 558=5 Cr. L.J. 133.**

(18)—*Crim. Pro. Code (1898), ss. 237 and 239—Joinder of charges—Charge of theft or, in the alternative, of receiving stolen property.*—Although there is authority for holding that several persons accused under s. 411, Penal Code, of receiving stolen property at different places and times cannot be legally tried together, yet persons accused of having jointly committed theft could legally and properly be tried together, and, if tried on that charge, they might, under s. 237, Crim. Pro. Code, be convicted of the offence of receiving stolen property, if the evidence showed that the facts proved led to the inference that that offence, rather than theft, was committed. So, where all the accused were charged with the offence of theft jointly, or, in the alternative, with the offence of receiving stolen property and were tried together, *held*, that the trial was not illegal. **17 M.L.J. 219=5 Cr.L.J. 479.**

(19)—*Crim. Pro. Code (1898), s. 239—Joinder of charges—I.P.C., ss. 385 and 500—Defamation and attempt to put in fear of injury for committing extortion—Acts forming same transaction.*—A person, against whom a complaint has been filed under ss. 500 and 211, I.P.C., wrote a letter to the complainant, asking him to do what he would ask the complainant to do, and that he would say a lot of things against the complainant in Court if he did not do so. The complainant refusing to yield to his threat, the accused, in his statement, made a large number of defamatory statements. The accused was charged a second time for defamation as regards those new imputations and was convicted at the same trial on three charges of defamation, and, on a fourth charge, of attempting to put the complainant in fear of injury in order to commit extortion under s. 385, I.P.C. *Held*, that the threat to make the charges if not squared, and the making of the charges subsequently, were one series of acts so connected together as to form the same transaction, and that it was legal to convict at the same trial on both charges under ss. 500 and 385, I.P.C. **18 P.R. 1904 Cr.=120 P.L.R. 1904 (25 M. 61, P.C., 16 P.R. 1902 Cr. and 17 P.R. 1903 Cr., *R.*).**

Joinder of Charges—continued.

——2.—(When legal)—*concluded.*

(20)—*Crim. Pro. Code (1898), ss. 233, 239—Misjoinder of parties and charges—Objection raised for the first time on revision—Penal Code, s. 384—Extortion—Sentence.*—The accused, an officiating *kanungo* and a compounder, were jointly tried and convicted under s. 384, Penal Code, for extorting money from certain persons in villages infected with plague and sentenced to two years' rigorous imprisonment. The convictions and sentences were upheld on appeal. In the Chief Court, it was contended that the trial was illegal for misjoinder of parties and charges, and that the sentences were severe. *Held*, that, as the objection to the irregularity in the trial was not raised at an early stage of the case, and it was not shown that the accused were prejudiced thereby in any way, it was too late to press the objection which was of a formal nature, the Court holding that there was no such misjoinder as to invalidate the trial. The sentences were reduced to six months' rigorous imprisonment, including one month in solitary confinement. **132 P.L.R. 1902.**

(21)—*Joint trial—Offences under ss. 379 and 215, Penal Code—Crim. Pro. Code (1898), s. 239.*—The joinder of charges must be justified by s. 239 of the Crim. Pro. Code, which authorises the joint trial of persons accused of the same offence or of different offences committed in the same transaction. The joinder of charges and separate convictions under ss. 379 and 215, I.P.C., are legal and proper. **2 L.B.R. 23.** (1 L.B.R. 203, *Diss*, ; 2 L.B.R. 19, *F.*) [*Overruled in part by* 4 L.B.R. 199].

——3.—(Misjoinder of charges).

(1)—*Crim. Pro Code (1898), ss. 233, 235—Distinct offences—Magistrate trying a case and forming an opinion—Re-trial by another Magistrate.*—The joint trial of a person for three distinct offences of forging certain cheques, of cheating and of falsification of account books, in respect of three distinct forgeries, is bad for misjoinder of charges. **2 P.R. 1905 Cr.=44 P.L.R. 1905.** (25 M. 61, P.C., *R.*).

(2)—Where the accused were charged with eight separate and distinct offences and tried at one trial for the same, *held*, that the trial was illegal. When the Magistrate, who tried a case, has already formed an opinion on the evidence on the record and has expressed the same, and the cases are sent back for re-trial, it is only fair to the accused that they should be tried by a different Magistrate who has formed no opinion. **7 A.L.J. 19.**

(3)—*Evidence, misreception of—Crim. Pro. Code (Act V of 1898), ss. 233, 234, 236, 239, 537—Statement of accused as to place of concealment—Independent discovery by police—Statement as to conduct—Evidence Act (I of 1872), s. 27—I.P.C., ss. 395, 411 and 412.*—There is no misjoinder of charges where some of the accused charged under s. 395, Penal Code, were also charged under ss. 411 and 412 of the

Joinder of Charges—continued.

——3.—(Misjoinder of charges)—*continued.*

Code, on the strength of an incident which was part of the evidence against them on the charge under s. 395. A statement made by the accused to the police officer, after the discovery was made, as to the place where the stolen property was concealed, is admissible in evidence under s. 27 of the Evidence Act; but the reception of the statement as to the pointing out by the accused of the place of concealment, though not illegal, is improper. **11 C.L.J. 182.**

(4)—*Crim. Pro. Code (1898), ss. 233, 239—Joint trial—Receiving stolen property by different accused at different times from different persons*—Accused No. 1 received stolen property from certain thieves. Subsequently, accused No. 1 delivered to accused No. 2 a portion of such property in satisfaction of a debt which he owed to the latter. With accused No. 3 was found a further portion of the property identified as stolen, but there was nothing to show when he received it and from whom. The three accused were, under these circumstances, tried at one trial on charges of receiving stolen property, knowing it to be stolen. *Held*, by *Batty* and *Russel, JJ.*, (*Aston, J, dissenting*), that the three offences against the three accused were distinct offences which could not be regarded as offences committed in the same transaction within the meaning of s. 239, and that the trial of the three accused together was thus in contravention of the provisions of s. 233 of the Code and therefore illegal. **29 B. 449=7 Bom. L.R. 527.** [*R.*, 1 S.L.R. 73 Cr. ; *D.*, 17 M.L.J. 219=5 Cr. L.J. 479].

(5)—*Crim. Pro. Code (1898), s. 235—Acts not forming one series of transaction—Penal Code, ss. 307, 406.*—In a conviction under s. 307, I.P.C., a charge under s. 406 was also joined. *Held*, that the two acts did not form one series of transaction within the meaning of s. 235, Crim. Pro. Code, and that the two charges ought not to have been joined. **6 A.L.J. 697=3 Ind. Cas. 466.**

(6)—*Crim. Pro. Code, s. 237—Joinder of charges—Penal Code, ss. 471, 468, 477-A.*—A person cannot be tried at one trial for offences under ss. 471, 468 and 477-A, I.P.C. ; such a trial is not merely irregular but illegal. **4 Bom. L.R. 440.**

(7)—*Crim. Pro. Code (1898), ss. 235 and 239—Joint trial of several persons charged with distinct offences of cheating.*—The joint trial of several persons for distinct offences of cheating is opposed to ss. 235, 239, Crim. Pro. Code and it is an illegality which cannot be cured by s. 537. **16 P.R. 1902 Cr.** (25 M. 61, P.C., *R.*).

(8)—*Crim. Pro. Code (1898), ss. 233 and 239—Illegality on account of misjoinder not curable by s. 537, Crim. Pro. Code (1898).*—S. 537 does not cure illegalities under ss. 233 and 239 of the Crim. Pro. Code, 1898. **5 P.R. 1900 Cr.**

Joinder of Charges—continued.

——3.—(Misjoinder of charges)—*continued.*

(9)—*Crim. Pro. Code (1898), ss. 234, 235, 537—Joinder of charges—Irregularity—Penal Code, s. 477-A.*—The joinder of charges contrary to the provisions of the Code of Criminal Procedure is not merely an irregularity which can be remedied under s. 537. Hence, where the accused was charged with having altered and mutilated certain accounts between the years 1907 and 1909, *held*, that the charge was bad, inasmuch as he could have been tried at one trial, only for three separate offences committed within the space of twelve months from first to last. **6 A.L.J. 977=32 A. 57=4 Ind. Cas. 808.**

(10)—*Crim. Pro. Code (1898), ss. 234 and 235—Misjoinder of charges—Illegality.*—An accused person was charged with and tried for, first, three separate acts of criminal misappropriation committed within a year, and secondly, two separate offences of forgery with intent to conceal two of such acts of criminal misappropriation. *Held* that this was an illegality not covered by the provisions of s. 537 of the Code of Criminal Procedure. **A.W.N. 1908, 152=5 A.L.J. 400=30 A. 351=8 Cr. L.J. 4.**

(11)—*Crim. Pro. Code (1898), ss. 233, 234, 235, 236, 239—Misjoinder of charges—Irregularity—Fresh trial—Counts charging continued acts of criminal breach of trust and forgery—Penal Code, ss. 408 and 467.*—The accused was charged and tried at one and the same trial for three offences under s 408, Penal Code, and three offences of forgery under s. 467 of the Code, and was convicted and sentenced in respect of all the six offences. *Held* that the trial of any person in respect of six offences at one and the same trial, although they may have been committed within the space of 12 months, contravened the rule laid down in s. 233, even when read with s. 234, Crim. Pro. Code, and as cl. (1), s. 235, and s. 234 of the Code must be mutually exclusive, to hold that s. 234 covered all the offences committed in the course of three similar but separate transactions, when the number of offences was more than three, would be straining the language of the section beyond all bounds. The trial, therefore, of any person in respect of six offences, three of embezzlement and three of forgery, was an irregularity sufficient to make a re-trial necessary. **7 A.L.J. 225.**

(12)—*Criminal breach of trust and falsification of accounts—Crim. Pro. Code (1898), s. 234—Misjoinder of charges—Irregularity, if curable.*—The accused was charged at one trial with criminal breach of trust with respect to seventeen sums of money, and also with falsifying account books of Government regarding several items. *Held* that the trial involved misjoinder of charges in contravention of the provisions of s. 234, and that it was an irregularity which could not be amended. **4 Bom. L.R. 433.** [*R.*, 6 Bom. L.R. 725, 30 M. 328=2 M.L.T. 177=17 M.L.J. 141=5 Cr. L.J. 341].

Joinder of Charges—continued.

——3.—(Misjoinder of charges)—*continued.*

(13)—*Crim. Pro. Code (1898), ss. 233, 537—Joinder of charges—Penal Code, ss. 380, 414—Illegality vitiating trial.*—The joinder of a charge under s. 414, I.P.C., with a charge under s. 380, I.P.C., is opposed to the provisions of s. 233, Crim. Pro. Code, and constitutes not merely an irregularity which might be cured under s. 537, but is an illegality which vitiates the trial. **6 Bom. L.R. 725.**

(14)—*Penal Code, ss. 147, 323—Rioting and causing hurt—Separate sentences.*—Rioting and causing hurt in the course of rioting are distinct offences and are, therefore, separately punishable. **2 A. 139.** [*R.*, 6 C. 718=8 C.L.R. 390, 7 A. 29].

(15)—*Crim. Pro. Code (1872), s. 314—Conviction for several offences—Term of imprisonment.*—S. 314 limiting the Magistrate's powers of punishment for several offences to twice the amount which he is, by his ordinary jurisdiction, competent to inflict, applies to "one trial" for more offences than one. In a case, where there is not one indictment containing different counts on the same facts, but separate and distinct cases in regard to the facts themselves, the evidence and the procedure, *held*, that the trials constituted separate trials, notwithstanding the fact, the judgments in the several cases were delivered on one and the same day, and the Magistrate's power of punishment was not limited to twice the amount, which he was, by his ordinary jurisdiction, competent to inflict. **3 A. 305 F.B.**

(16)—*Crim. Pro. Code (1872), ss. 452, 453—Offences of the same kind committed against different persons.*—The combination of three offences of the same kind, for the purposes of one trial, can only be, where they have been committed in respect of one and the same person, and not against different prosecutors, within the period of twelve months as provided by the Crim. Pro. Code. **4 A. 147.** [*F.*, 3 A.W.N. 107; *R.*, 28 C. 104; *D.*, 7 A. 174=4 A.W.N. 321; *Diss.*, Rat. Un. Cr. C. 331, 9 C. 371, 9 C.L.J. 149=13 C.W.N. 507=5 M.L.T. 349].

(17)—*Penal Code, ss. 167 and 466, offencse under—Crim. Pro. Code (1872), s. 453.*—Offences under ss. 167 and 466 of the Penal Code are not of the same kind within the meaning of s. 453 of the Crim. Pro. Code, so that charges under the sections ought not to be tried together. **8 C. 450=10 C.L.R. 421.**

(18)—*Committal on two separate charges--Trial as for one offence—Separate trials—Crim. Pro. Code (1872), s. 454.*—Though persons charged with rioting and causing grievous hurt may be tried as for one offence under s. 454 of the Crim. Pro. Code, it is not illegal to have separate trials. **8 C. 481.**

(19)—*Crim. Pro. Code (1872), s. 453—Penal Code, ss. 411 and 413—Offences of different kinds.*—The offence of receiving or retaining

Joinder of Charges—continued.

——3.—(Misjoinder of charges)—*continued.*

stolen property, punishable under s. 411, and of habitually receiving or dealing in such property, punishable under s. 413, I.P.C., are not offences of the same kind within the meaning of s. 453, Crim. Pro. Code. **8 C. 634=10 C. L.R. 466.**

(20)—*Crim. Pro. Code (1882), ss. 234, 537.—Trial of a person for more than three offences—Legality of the trial.*—It is clear from the terms of s. 234, that a man can only be tried for three separate offences of the same kind at the same trial, and, therefore, if a man were tried for four specific offences at one trial, it would not be merely an irregularity, which could be cured by s. 537, but a defect in the trial, which would render the whole trial inoperative, unless it were cured by some subsequent proceeding by striking out some portion of the charge. But as to the propriety or legality of such a proceeding, the Court refrained from expressing any opinion. Under the circumstances of the case, the Court held that it was not proved that the prisoner was tried for more than three offences in one trial. **14 C. 128.** [*R.*, 10 M.L.J. 147, F.B., 25 M. 61=2 Weir 271 P.C., 83 P. L.R., 1901; *Diss.*. 21 A. 127; *Overruled*, 27 C. 839].

(21)—*Crim. Pro. Code (1882), ss. 233, 234 and 537—Joinder of distinct charges, legality of.*—A joint trial of a charge against five men of having committed a riot on a certain day and another charge against four of them of having committed criminal trespass on a subsequent day is illegal within the terms of s. 233 of the Code, and does not come within the terms of s. 234. **14 C. 395.** [*R.*, Rat. Un. Cr. C. 401, 29 B. 449=7 Bom. L.R. 527; *Expl.*, 28 C. 104].

(22)—*Crim. Pro. Code (1898), ss. 233, 234 and 537—Joinder of charges—Offences not committed within one year, trial of—Proceedings, whether can be cured by s. 537.*—S. 537 can be applied to cases in which the trial has been held on charges joined together contrary to s. 234 of the Code. The failure to try the charges separately is an error, omission, or irregularity in the proceedings before or during the trial, which, unless there has been a failure of justice, is cured by s. 537. **27 C. 839=4 C.W.N. 656. F.B.=4 C.W.N. 645, 4 C.W.N. 656.** [*F.*, 28 C. 1011, *Overruled*, 25 M. 61=28 I.A. 257=11 M.L.J. 233=5 C.W.N. 866=2 Weir 294=3 Bom. L.R. 540, P.C.; *F.*, 28 C. 7, 26 A. 195, 7 Bom. L.R. 527=29 B. 449, U.B.R. 1907, Crim. Pro. Code, 5=6 Cr. L.J. 28=14 Bur. L.R. 38].

(23)—*Crim. Pro. Code (1898), ss. 237, 238—Separate offences by separate persons at different times.*—The trial of two separate and distinct offences, committed by separate sets of persons at different times, at one and the same trial, is illegal. **1 C.L.J. 475=2 Cr. L.J. 393.**

(24)—*Crim. Pro. Code, ss. 233, 537—Misjoinder—Attempts to cheat, on different dates—Defect, if cured—Several charges, if necessary.*—A joinder of two offences, committed on two different dates, one following the other, in one charge, is an illegality, which vitiates the trial and cannot be cured by s. 537 of the Code. Where an accused person attempts to cheat a whole body of villagers and speaks to them in a body and not to each individual villager for the purpose, he may be tried on one charge for each attempt to get money from them. **2 C.L.J. 618=10 C.W.N. 520=3 Cr. L.J. 111.** [*R.*, 6 C.L.J. 757=6 Cr. L.J. 442].

(25)—*Crim. Pro. Code (1898), ss. 233, 234, 235, 537—Joinder of charge of abetment of criminal breach of trust and an alternative charge.*—Where a person was charged with abetment of criminal breach of trust and for offences under ss. 419 and 380, I.P.C., in respect of a document which was quite unconnected with the acts of criminal breach of trust, *held*, that the joint trial was improper, and the accused was prejudiced by reason of the confession of the principal offender having been used and treated as a substantial part of the evidence on the latter charges. **5 C.W.N. 294.**

(26)—*Receiving stolen property from different persons on several dates—Abetment—Crim. Pro. Code (1898), ss. 233, 235—Misjoinder of charges.*—Where the accused were charged, in one Court, with having dishonestly received or retained articles stolen from different persons on different dates, and in another Court with having aided and abetted one another in the commission of that offence, and were convicted at a single trial, *held*, that, in the absence of evidence that the acts of receiving or retaining were so connected together as to form one transaction, the charges framed and the single trial held with respect thereto were illegal. *Held*, also, that the mere fact that all the articles were being dishonestly retained on the day when they were discovered with the accused would not constitute a single offence or establish that several offences were committed in one and the same transaction. The accused could only be tried for three of such offences committed within one year. **9 C.W.N. 1027=2 Cr. L.J. 847.**

(27)—*Crim. Pro. Code, ss. 234, 239—Joinder of charges—Several accused persons, if can be jointly tried for distinct offences of the same kind, committed within twelve months—General Clauses Act (X of 1897), s. 13.*—S. 234 of the Code does not apply where several persons are jointly accused. When, therefore, several accused persons were jointly charged with having, on two separate dates, within the space of 12 months, committed two offences of the same kind, not forming parts of the same transaction, *held*, that the joinder was illegal. Conviction and sentence obtained at the joint trial were set aside and re-trial by another Magistrate directed. **10 C.W.N. 32=33 C. 292=3 Cr. L.J. 126.** [*R.*, 11 C.W.N. 54, 6 C.L.J. 757=6 Cr. L.J. 442].

Joinder of Charges—continued.

——3.—(Misjoinder of charges)—*continued.*

(28)—*Crim. Pro. Code (1898), s. 233—Extortion, acts of, trial for—Joinder in one charge of distinct offences forming part of same transaction—Illegality.*—The joinder in one charge of two distinct offences, though arising out of the same transaction, is an illegality fatal to the trial. **10 C.W.N. 53=3 Cr. L.J. 141.** [*R.*, 6 C.L.J. 757=6 Cr. L.J. 442; *D.*, 11 C.W.N. 54=4 Cr. L.J. 415].

(29)—*Crim. Pro. Code (1898), ss. 233, 537—Charge—One charge for three different offences, if legal—Error in form.*—Where, under an arrangement made with the concurrence of their pleaders, the accused were jointly tried for three offences committed against three different persons on the same date and forming part of the same transaction, and there was framed one charge against them, instead of three, and it ran thus: "That you on or about the 3rd July committed theft of paddy from the fields of A, B and C and thereby committed an offence punishable under s. 379 of the Indian Penal Code and within my cognizance." *Held*—That although strictly speaking three separate charges should have been drawn up in identical terms for the three offences under s. 379, I.P.C., yet as in the one charge framed the three offences had been kept separate and were distinguished by the letters A, B and C, the error in framing one charge, was an error in form rather than in substance, and, as such, did not amount to an illegality but was an irregularity which would be cured by the provisions of s. 537, Crim. Pro. Code, unless it was shown that the accused had been prejudiced or that a failure of justice had been occasioned in consequence thereof. **11 C.W.N. 54=4 Cr. L.J. 415.**

(30)—*Charges, misjoinder of—Crim. Pro. Code (Act V of 1898), ss. 234 and 239—Penal Code (Act XLV of 1860), ss. 225 and 379, charges under—Joinder—Illegality.*—Where one of the accused, caught in the act of committing theft, was rescued by others while being taken to the *thana* by the complainant, and some of the rescuers snatched away some clothes from the person of the complainant, and the Magistrate tried all the accused jointly, two of them on charges under ss. 225 and 379, I.P.C., two on a charge under s. 379, I.P.C., and the remaining two on a charge under s. 225, I.P.C. *Held*, that the trial was illegal, being vitiated by misjoinder of charges. Two separate trials were directed, one in respect of the original theft and the other in respect of the rescuing and the theft committed in the course of the rescuing. **13 C.W.N. 804=9 Cr. L.J. 147=1 Ind. Cas. 69.**

(31)—*Charges—Misjoinder—Crim. Pro. Code (Act V of 1898), ss. 233, 235—Transaction, whether one—Penal Code (Act XLV of 1860), ss. 408 and 420.*—The petitioner, a *jamadar* in the service of a firm, was entrusted with two cheques for encashment on the 20th September and told to pay thereout the freight and take delivery of certain goods from the Railway Company, He cashed the cheques on the 21st idem, and, on the 22nd, when asked by the firm, denied having done so. On the 26th idem he induced, under promise of immediate payment, a clerk of the Railway to give him the delivery of the goods, and then without making payment he absconded. He was charged with the offences of criminal misappropriation and cheating under ss. 408 and 420, I.P.C., and was tried for the offences in one trial. *Held*, that the offence under s. 408, I.P.C., was committed against the firm and was complete before the petitioner cheated the Railway Company, and therefore the two offences could not be tried together as they were not committed in one transaction. **13 C.W.N. 1089.**

(32)—*Charges—Misjoinder—Crim. Pro. Code (Act V of 1898), ss. 233 and 239—Transaction, same, what is—Occurrences not forming the same transaction.*—Where the accused, more than five in number, after having obstructed certain Civil Court peons in the execution of a decree, held a consultation, and then, at the instance of two of them, all of them, with the exception of one or two, proceeded to the kutchery of the decree-holder in order to beat his son and tahsildar, and brought out the tahsildar whom they took to the house of the judgment-debtor, where they had obstructed the Civil Court peon, and violently assaulted him there; *Held*, that the two occurrences, one of obstructing the execution of the decree and the other of assaulting the tahsildar, did not form one transaction, and the accused could not be tried on charges arising out of both the occurrences at one trial. The second occurrence was clearly the result of an afterthought, and there was then no further intention to obstruct the execution of the decree in the course of which the incident of the first occurrence took place, and it cannot be said that there was any continuity in the ideas or methods of the rioters. The fact that all the accused did not take part in the second occurrence and that the common object in respect of it was different from that in respect of the first occurrence shows that the two occurrences did not form parts of the same transaction. **13 C.W.N. 1113.**

(33)—*I.P.C., ss. 372, 373—Crim. Pro. Code (1882), ss. 234 and 537—Misjoinder of charges.—Irregularity.*—Where a woman, a member of the dancing-girl caste, who obtained from another woman, a minor girl, who was employed by her for the purpose of prostitution, while still a minor, and who subsequently took in adoption another girl of the same caste, was charged and tried together with the parents of the second girl on charges relating to both the girls, *held*, that, although the Magistrate was in error in trying the two charges together, the irregularity had not occasioned a failure of justice. **12 M. 273=1 Weir 375.** [*R.*, 27 C. 839].

(34)—*Crim. Pro. Code (1898), ss. 234 and 537—Misjoinder of charges—Illegality—Irregularity—Power of appellate Court to remedy*

Joinder of Charges—continued.

——3.—(Misjoinder of charges)—*continued.*

the misjoinder.—The joinder, at one trial, of more charges than three, for offences of the same kind and extending over a period longer than a year contravenes s. 234 of the Code of Criminal Procedure and is an illegality not curable under s. 537. Such an illegality cannot be amended by arranging afterwards what might or might not have been properly submitted to the jury, and, thereupon, support the conviction or appropriate the finding of guilty to so much of it as was legal. To allow such a course would leave to the Court the functions of the jury, and the accused would never have been really tried at all upon the charge afterwards arranged by the Court. **25 M. 61=11 M.L.J. 233=3 Bom. L.R. 540=28 I.A. 257=5 C.W.N. 866=2 Weir 271, P.C.** [*F.*, 1 L.B.R. 361, 15 C.P.L.R. 53, 16 P.R. 1902 Cr., 2 Weir 296=26 M. 125, 4 Bom. L.R. 440, 4 Bom. L.R. 433, 4 Bom. L.R. 53, 6 C.W.N. 486=29 C. 385, 8 C.W.N. 180, 4 P.L.R. 1905, 101 P.L.R. 1904, 6 Bom. L.R. 725, 2 Cr. L.J. 393=1 C.L.J. 475, 2 C.L.J. 618=3 Cr. L.J. 111=10 C.W.N. 520, 28 M. 437=15 M.L.J. 236, 11 C.W.N. 472=5 Cr. L.J. 197=5 C.L.J. 231, 3 P.R. Cr. 1907=5 Cr. L.J. 493=47 P.L.R. 1907, 6 C.L.J. 757=6 Cr. L.J. 442, 6 C.L.J. 757=6 Cr. L.J. 442, 17 M.L.J. 141=2 M.L.T. 177=5 Cr. L.J. 341=30 M. 328; *Appl.*, A.W.N. 1904, 223; *R.*, 3 P.R. 1903 Cr., 17 P.R. 1903 Cr.=149 P.L.R. 1903, 33 C. 68=9 C.W.N. 1046=2 C.L.J. 241, U.B.R. 1904, 1st Qr., Crim. Pro. Code, 2, 2 P.R. 1905 Cr. =44 P.L.R. 1905=2 Cr. L.J. 34, 18 P.R. 1904 Cr.=120 P.L.R. 1904, 14 P.R. 1905 Cr. =64 P.L.R. 1905, 9 C.W.N. 898=1 C.L.J. 616, 9 C.W.N. 909, 9 C.W.N. 974, 3 L.B.R. 52, F.B., 9 C.W.N. 1065=2 C.L.J. 259=33 C. 352, 2 N.L.R. 147=4 Cr. L.J. 420, 1 M.L.T. 409=5 Cr. L.J. 94=29 M. 569, 3 L.B.R. 280=5 Cr. L.J. 417, 16 P.W.R. 1907 Cr.=6 Cr. L.J. 137, 11 C.W.N. 1128=6 Cr. L.J. 321, U.B.R. 1907, 1st Qr., Crim. Pro. Code, 5=6 Cr. L.J. 28=14 Bur. L.R. 38, 4 N.L.R. 71; *Expl.*, 26 M. 592=2 Weir 298; *D.*, 26 B. 533, 5 O.C. 313, 24 A. 254=22 A.W.N. 4, A.W.N. 1905, 258=28 A. 212=2 A.L.J. 745 =2 Cr. L.J. 809, 32 C. 1085=10 C.W.N. 51, 29 M. 558=5 Cr. L.J. 133, 5 P.R. 1906=4 Cr. L.J. 75=116 P.L.R. 1907, 11 C.W.N. 789=6 Cr. L.J. 1, 9 Bom. L.R. 789=6 Cr. L.J. 164=2 M.L.T. 414=32 B. 111, 7 C.L.J. 63, 18 P.W.R. 1908 Cr.]

(35)—*I.P.C., ss. 109, 458, 477 and 477-A.—Crim. Pro. Code (1898), ss. 233 and 235—Misjoinder of charges—Same transaction.*—A person was convicted on three charges, namely, (1) of abetting the falsification of an account book, (2) of fraudulently destroying and secreting other documents (3) and of abetting criminal breach of trust. No objection was taken to the joinder of charges before the Sessions Judge by whom the accused was convicted. The only sense in which the alleged falsification of the account book and the alleged fraudulent destruction and secretion of documents could

Joinder of Charges—continued.

——3.—(Misjoinder of charges)—*continued.*

be said to be connected together was the fact of the accused being left in the charge of the account book and of the documents giving him an opportunity of defrauding the complainant by falsifying the account book and destroying the document. It was not suggested that the account book was falsified in order to conceal the fact that documents had been destroyed or documents had been destroyed in order to prevent a particular falsification from being detected. *Held*, that the offences charged did not constitute one series of act so connected together as to form the same transaction, and that the misjoinder of charges could not be treated as an irregularity curable under s. 537. **26 M. 125=2 Weir 295.**

(36)—*Crim. Pro. Code (1898), s. 235—Kidnapping a child, and assaulting the child's mother on a subsequent day whether amounts to "same transaction."*—A person was charged at one trial with kidnapping, wrongful confinement and assault and was convicted. The case against him was, that he kidnapped and wrongfully confined a boy and that, on the boy's mother, a day or two afterwards, coming to his house and asking that the boy should be allowed to return to her, he assaulted her. *Held*, that the charge of assault ought to have been brought and tried separately, as it could not be said that the assault on the mother was one of a series of acts so connected together as to form the same transaction. **26 M. 454=2 Weir 296.**

(37)—*Crim. Pro. Code (1898), ss. 227, 233, 234, 537—Charge of more than three offences at one trial—Striking out offences so as to reduce them to three.*—Where a person is charged with, and tried for, four offences committed in the same year, it is not open to a Magistrate, purporting to act under s. 227, to strike out one of the charges, and convict the accused on the remaining three. The words of s. 227 may be wide enough to warrant a Court in altering a charge, by striking out one of the charges, at any time before judgment; but the section does not seem to warrant the striking out of a charge, for the purposes of curing an illegality which had already been committed. Disobedience to an express provision as to a mode of trial cannot be regarded as a mere irregularity, within the meaning of s. 537. **29 M. 569 =1 M.L.T. 409=5 Cr. L.J. 94.**

(38)—*Crim. Pro. Code (1898), ss. 117 (4), 537—Security to keep the peace—Joinder of charges—Joint enquiry against two rival factions, bad.*—Where the members of two rival factions were proceeded against, and bound over to keep the peace, in one enquiry, *held*, that the holding of a joint enquiry was bad, and the defect cannot be cured by s. 537, Crim. Pro. Code. Persons belonging to contending factions are not "associated together in the matter under enquiry" within the meaning of s. 117(4), Crim. Pro. Code. **5 N.L.R. 65=9 Cr. L.J. 560=2 Ind. Cas. 240.**

Joinder of Charges—continued.

——3.—(Misjoinder of charges)—*continued.*

(39)—*Theft and receiving stolen property, joinder of the charges of, when illegal.*—Out of five persons accused in this case, four were charged with theft, and the fifth with receiving the property stolen. They were jointly tried at one and the same trial. The receiving of the stolen property was not simultaneous with the theft. *Held*, that the offences of stealing and of the receipt of the stolen property were not part of the same transaction and the joint trial was illegal. **3 P.R. 1905 Cr.=21 P.L.R. 1905.**

(40)—*Crim. Pro. Code (1898), ss. 233 and 239—Charge of the offence of murder against one person—Distinct offence of grievous hurt against another—Whether joinder of the charges and single trial legal.*—On the commitment of four persons on a charge of murder, the Sessions Judge framed another charge against them of causing grievous hurt to one W, on the facts that, sometime after the alleged murder, three of the accused tried to carry off the body of the victim, and, when W tried to prevent them, they caused him grievous hurt. After joint trial for both the offences, the Judge acquitted them of murder, convicting three of them for causing grievous hurt. The question for decision on appeal was whether the trial was not bad for misjoinder of charges. *Held*, since the murder might have been committed by one set of men, with one object, and the attempt to carry off the body might have been made and the grievous hurt caused, therein, by another set of men with a different object, the murder and grievous hurt were not such offences as must have been committed in the same transaction within the meaning of s. 239 of the Code, so as to be charged and tried together at one trial. **10 P.R. 1906 Cr.=4 Cr. L.J. 285=117 P.L.R. 1907.**

(41)—*Joinder of six charges, one under s. 201, I.P.C. and two under s. 193, I.P.C., relating to the report and evidence about the death of one person, and one under s. 201, I.P.C., and two under s. 193, I.P.C., relating to the report and evidence about the death of another person—Whether such trial is invalidated.*—In a case under appeal it was held by the Full Bench that the trial was invalidated by the joinder of six charges, one under s. 201, I.P.C., and two under s. 193, I.P.C., relating to a report and evidence about the death of one person, and one under s. 201, I.P.C. and two under s. 193, I.P.C., relating to a report and evidence about the death of another person. **14 Bur. L.R. 242, F.B.=4 L.B.R. 294.**

(42)—*Misjoinder of charges—Kidnapping and murder—Distinct offences—Penal Code, ss. 366, 302—Crim. Pro. Code (1898), ss. 233, 235 (1).*—Mere proximity in time between two acts does not necessarily constitute them parts of the same transaction. Where, therefore, the offences of kidnapping and of murder did not constitute a series of acts forming the same transaction, but were two

Joinder of Charges—continued.

——3.—(Misjoinder of charges)—*continued.*

distinct offences not falling within the scope of s. 235, sub-s. (1)—*held*, that s. 233 of the Code applied, that the charges of kidnapping and murder should have been tried separately, and that the effect of the misjoinder of charges was to make the trial altogether illegal. **1 L.B.R. 361.** (25 M. 61, P.C., *F.*).

(43)—*Joinder of the offences of forgery and criminal misappropriation committed in one transaction with like offences committed in another—Misjoinder, effect of—Crim. Pro. Code, ss. 233 and 537.*—If every possible combination of two charges is covered by some section of the Code, the joinder is legal; if not, it is illegal. A joinder of charges not authorised by the Crim. Pro. Code renders the trial illegal, and such error is not curable under s. 537. The joinder at one trial of charges of forgery and of criminal misappropriation committed in the course of one transaction with another forgery or another criminal misappropriation committed in the course of another transaction is illegal, because, there is no section of the Crim. Pro. Code under which the forgery in the one case could be joined with the misappropriation in the other case. The general rule as to the trial of offences is stated in s. 233. **2 L.B.R. 10.** (14 A. 502, *R.*; 25 M. 61, *F.*).

(44)—*Crim. Pro. Code (1898), s. 233—Offences of theft and escaping from lawful custody.*—The trial of the two charges, *viz.*, theft and escape from lawful custody at one trial is contrary to s. 233. The theft and the escape are not so connected as to form one transaction and none of the sections mentioned in s. 233 will cover the joinder. **3 L.B.R. 221=4 Cr. L. J. 389.**

(45)—*Crim. Pro. Code (1898), s. 239—Joint trial of accused for giving false evidence in one case, illegality of—'Same transaction,' meaning of.*—The accused were convicted at one trial, of giving false evidence in a case of dacoity, on the ground that the accused had conspired to give such false evidence. They were, however, neither charged with, nor convicted of, so conspiring. *Held*, the joinder of charges was illegal, since the words 'the same transaction' in s. 239 of the Code, cannot embrace the examination of all the witnesses throughout a trial, but could apply only to the examination of each witness as such separately. **3 L.B.R. 231=4 Cr. L.J. 489.**

(46)—*Security proceedings—Charge of being thieves by habit—Crim. Pro. Code, ss. 107, 108, 110 and 117 (4).*—Where four men were charged with being thieves by habit, for being bound down for good behaviour under s. 110, Crim. Pro. Code, it was *held* that it was an error to try them all together. The question whether a person is by habit a thief or not is personal to himself and forms a matter separate by itself. S. 117 (4), Crim. Pro. Code, refers to such cases as where several persons are charged with being concerned in a wrongful act that may occasion a breach of the peace (s. 107

Joinder of Charges—concluded.

——8.—(Misjoinder of charges)—*concluded.*

Crim. Pro. Code), or in an act regarding the dissemination of seditious matter (s. 180, Crim. Pro. Code), not to proceedings under s. 110. **4 L.B.R. 46=6 Cr. L.J. 284.**

(47)—*Penal Code, ss. 457, 380, charges under —Crim. Pro. Code (1898), s. 537.*—The joinder of the two charges under ss. 457 and 380, I.P.C., is illegal. Such misjoinder could not be cured by s. 537, Crim. Pro. Code. **U.B.R. 1904, 1st Qr., Crim. Pro. Code, 2.** (U.B.R. 1892—1896, 33, 25 M. 61, *R.*).

(48)—*Crim. Pro. Code (1898), s. 237—Charge of criminal breach of trust—Conviction for cheating, whether sustainable.*—The accused was charged with criminal breach of trust under s. 406, I.P.C., in respect of an amount deposited with him, by complainant as security for the due discharge of his duties as accused's travelling agent. The Magistrate found that accused misappropriated the security money, and convicted him both under ss. 406 and 420, I.P.C. *Held*, that the conviction for the offence of cheating, to which the accused was not called on to plead and for which the defence evidence would have been different, was illegal. **9 Cr. L.J. 406=1 Ind. Cas. 867.**

(49)—Act I of 1878—Joint trial—Different transactions—*See* **113 P.L.R. 1906=4 Cr. L.J. 178.**

See ACT III OF 1867, ss. 3 and 4, 5 P.W.R. 1910 Cr.

See ADULTERY, Rat. Un. Cr. C. 4.

See CHEATING, 4 L.B.R. 315=9 Cr. L.J. 15, F.B.

See COMMITMENT TO SESSIONS COURT, Rat. Un. Cr. C. 915.

See CRIM. PRO. CODE (1898), s. 192, 2 N.W. P. 21.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 4 C.W.N. 748.

See ESCAPE FROM LAWFUL CUSTODY, 11 M. 441=1 Weir 210.

See HOUSE-BREAKING, 1 Bom. L.R. 69.

See PENAL CODE. ss. 125-A, 153-A, 10 Bom. L.R. 848=8 Cr. L.J. 281.

See PENAL CODE, s. 419, 149 P.L.R. 1903.

See PRACTICE AND PROCEDURE, 10 Bom. L.R. 973=4 M.L.T. 450=9 Cr. L.J. 226.

See SANCTION TO PROSECUTE 13 C.W.N. 1062.

—Joint trial of persons called upon to furnish security to keep the peace—*See* SECURITY TO KEEP THE PEACE, 9 A. 452.

See UNLAWFUL ASSEMBLY, 6 M.L.T. 17.

See WAIVER, 3 M.L.T. 407=18 M.L.J. 330 =8 Cr. L.J. 152.

Joinder of Parties.

See CRIM. PRO. CODE (1898), ss. 145 to 147.

(1)—*Crim. Pro. Code (1882), s. 145—Persons in possession of land under dispute made parties —Right to give evidence in support of their claims.*—Where persons who, though not actually involved in a dispute under s. 145 of the Code, are made parties to the proceedings, they have a right to adduce evidence in support of their claim, and to have such evidence considered by the Court. **20 C. 520.**

(2)—*Crim. Pro. Code (1898), s. 117 (4)—Joinder of persons in conflict with one another—Legality.* —Where the parties have been in conflict with one another, they cannot be said to have been associated together in the matter under enquiry within the meaning of s. 117 (4), and the joinder of such persons is an illegality. **3 M.L.T. 408=31 M. 276=8 Cr. L.J. 154.**

See CRIM. PRO. CODE (1898), ss. 233, 239, 423 and 537, 28 C. 104.

—Joint trial of persons charged with criminal breach of trust and receiving stolen property—Objection, when to be taken—*See* CRIM. PRO. CODE (1898), ss. 223 and 537, 28 C. 7.

—In riot cases, opposite parties to be separately tried—*See* PENAL CODE, s. 148, S.C. 75, Oudh.

Joint Magistrate.

—Committal by joint Magistrates—*See* MAGISTRATE, JURISDICTION OF, 2 N.W.P. 132.

Joint Trial.

See ACCOMPLICE.

See ACCUSED PERSON.

See APPROVER.

See CRIM. PRO. CODE (1898), ss. 233--240.

See JOINDER OF CHARGES.

(1)—*Crim. Pro. Code (1898), ss. 233, 234 and 537—Joint trial of two persons charged with distinct offences—I.P.C., ss. 290 and 291—Irregularity, if curable.*—Two persons accused of different offences committed in different transactions should be tried separately, though, of course, one trial may be commenced immediately after the other, and the judgments in the two cases, may be delivered one after the other. A joinder in one charge of two distinct offences committed on one and the same date is an illegality which vitiates the trial, and is not covered by s. 537. **6 C.L.J. 757=6 Cr. L.J. 442.**

(2)—Where a Magistrate tried 14 persons together and convicted some under s. 290, and the remainder under s. 291, Penal Code, *held*, that the Magistrate in trying the persons accused of distinct offences together had committed an irregularity calculated to prejudice the accused persons and the conviction should, therefore, be set aside. **5 M. 20=2 Weir 303.** [*R.*, 10 M.L.J. 147, 2 Weir 271=25 M. 61, P.C., 3 L.B.R. 52].

Joint Trial—continued.

(3)—*Held*, that a joint trial for several offences in contravention of the provisions of s. 233, Crim. Pro. Code, is illegal, and that the illegality is not cured by s. 537 of the Code. **P.L.R. 1900, 61 Cr.**

(4)—Every infringement of the rule contained in s. 233, not provided for in the remaining sections of Ch. XXIII, Crim. Pro. Code, is not an illegality which necessitates the trial being set aside, but may be an irregularity which can be cured by s. 537, if it did not prejudice the accused or occasion a failure of justice. There is no distinction, as regards the gravity of the infringement of s. 233, between (i) the joint trial of distinct offences of a different kind ; (ii) the joint trial of more than three offences of the same kind, and (iii) a joint trial which combines these two infringements of the rules contained in these sections. The same considerations arise in each of these cases and the question, whether s. 537 saves the trial, must be decided on the same lines in each case. The accused were charged at one trial with having committed three dacoities on the 25th December, 1899, and M, one of the accused was also charged with having murdered a person while rescuing a prisoner from custody, with having taken part in a dacoity after the murder, with rescuing the prisoner and stealing property. The charges were kept separate and the opinions of the assessors were separately recorded on the charges which affected M., only and those which affected all the accused. *Held*, that the accused were not prejudiced by the procedure adopted, and the irregularity was cured by s. 537, Crim. Pro. Code **83 P.L.R. 1901.** (11 M. 441, 14 C. 128, 395, 15 B. 491, 14 A. 502, 20 C. 537, 5 P.R. 1900 Cr., *R.*)

(5)—Where two separate offences, which should have been tried separately, were, as a matter of fact, tried together, it was held that this did not amount to more than an irregularity, which, as it did not appear that the accused were in any way prejudiced, was covered by s. 537 of the Code of Criminal Procedure. **A.W.N. 1907, 208=6 Cr. L.J. 215.**

(6)—*Crim. Pro. Code, ss. 233, 239—Joint trial of several persons for distinct offences—Penal Code, ss. 411 and 458.*—Two accused were charged by police under s. 458 of the Penal Code and, having been tried jointly, the Magistrate convicted one of them, under s. 411, and the other, under s. 458 of the Penal Code. *Held*, that the joint trial being illegal, the convictions must be set aside ; that, when the Magistrate found that s. 458 was not applicable to one of the accused, he should have tried the two accused separately. **165 P.L.R. 1905=51 P.R. 1905 Cr.=3 Cr. L.J. 76.**

(7)—*Crim. Pro. Code (1882), s. 234—Joint trial for four offences—Two offences of the same kind committed against different persons.*—Where the accused was tried, in contravention of s. 234, Crim. Pro. Code, for four offences instead of three and convicted of all of them, the conviction and sentence for the fourth offence were reversed as illegal. **Rat. Un. Cr. C. 212=Cr. Rg. 26—2—1885.**

(8)—A person charged with two offences of the same kind within the definition of the second paragraph of s. 234 of the Crim. Pro. Code, can be tried for both the offences at one trial, although the offences are committed against different persons. **Rat. Un. Cr. C. 331=Cr. Rg. 21 of 1887.** [*F.*, 13 C.W.N. 507=9 C.L.J. 149].

(9)—*Crim. Pro. Code (1898), ss. 233 and 234—Trial—Several offences—Same accused—One trial, if legal.*—When a person commits offences of a similar nature against a series of persons, he may, at one and the same trial, be tried for any three of them committed within twelve months. **9 C.L.J. 149=13 C.W.N. 507=5 M. L.T. 349=3 Ind. Cas. 319.**

(10)—*Crim. Pro. Code (1898), ss. 233, 234—Joint trial—Two offences of receiving property stolen from different persons at different times.*—One trial, for having been found in possession of stolen properties belonging to two different persons and stolen at different times is illegal. **13 C.W.N. 418=9 Cr. L.J. 277=1 Ind. Cas. 335.**

(11)—*Crim. Pro. Code (1898), ss. 233 and 239—What persons may not be tried jointly—Misjoinder.*—A, B and C passed certain resolutions defamatory of the complainant and published those resolutions, and D transmitted the resolutions to a newspaper. All the four persons were tried together and convicted. But it was not shown that A, B and C instigated D to write the letter to the paper or that they had any common purpose. Nor was there any evidence to show that the offences were all committed in one and the same transaction. *Held*, s. 239 not being applicable to the case, s. 233 prohibits the joint trial of A, B and C along with D. **7 M.L.T. 127.**

(12)—*Crim. Pro. Code (1898), ss. 233 and 235—Charges under ss. 302 and 201, Penal Code.*—Charges under ss. 302 and 201, Penal Code, cannot be combined. **2 Weir 301.**

(13)—*Crim. Pro. Code (1898), s. 239—Joint trial of several accused—Validity—Irregularity in trial—Conviction set aside—Duty of Court to order retrial—Delegation of duty to deliver judgment.*—The joint trial of several accused renders the trial invalid, except in the cases falling under s. 239 of the Code. The authorities responsible for carrying out the prosecution of offenders should not be compelled by the Court to revive a prosecution, which they may not consider it expedient to revive, or to carry it out in a particular way. In appeal or revision the superior Court is concerned with what has taken place, and it is required to adjudicate thereupon. Having done so, it is only in exceptional cases, where it can be justified in giving orders for the future proceedings of the Crown, and the executive duty of repeating the prosecution where the first trial breaks down.

Joint Trial—continued.

The delivery of judgment in an original criminal trial is an essential act entrusted to the tribunal holding the trial, and cannot legally be delegated by such tribunal to any other tribunal. 4 N.L.R. 71=8 Cr. L.J. 11.

(14)—*Crim. Pro. Code (1898), ss. 235, 239—Opium Act (I of 1878), s. 9—Opium, possession of—Joint trial—Same transaction.*—C, who held a license for sale of opium, allowed C,B, who did not hold license, to sell opium. The accused were jointly tried and convicted of an offence under s. 9 of the Opium Act. It was contended that the trial, being held in contravention of ss. 235 and 239 of the Code, was illegal. *Held*, that the transaction, in respect of which the accused were convicted being the same, their joint trial was not illegal. **113 P.L.R. 1906=4 Cr. L.J. 178.**

(15)—*Crim. Pro. Code, ss. 235 and 239—Joinder of parties, charges and trials—Meaning of expression "same transaction"—Object of giving wide powers to trying Courts regarding joinder of charges and defendants—Prejudice to accused.*—By ss. 452 to 458 of Act X of 1872, which are reproduced with slight modifications in the present Code as ss. 233 to 239, the Legislature considerably widened the powers of the Court as regards joinder of charges and joinder of defendants. The object was clearly to avoid the necessity of the same witnesses giving the same evidence two or three times over in different trials, and to join in one trial those offences with regard to which the evidence would overlap. The expression "same transaction," used in ss. 235 to 239 is an expression which, from its very nature, is incapable of exact definition, and must have been advisedly used, because it had this quality. The area of facts covered by the expression "same transaction" varies with the circumstances of each case. The illustrations to the section however, make the intention of the Legislature sufficiently clear. Those criminal acts, which are by English and Indian law regarded as subsidiary to an offence, are included in the same transaction as the offence. Instances of such acts are in the case of theft, the disposing of the stolen property, and handing it over to a receiver; and in case of murder, the concealment of the body. If a series of acts are so connected together by proximity of time, community of criminal intent, continuity of action and purpose and such subsidiary acts as would make the co-accused *particeps criminis* or an accessory after the fact, or by the relation of cause and effect, as to constitute, in the opinion of the Court, one transaction, then the accused may be charged with and tried at one trial for every offence committed in such series of acts. If more persons than one are accused of different offences committed in a series of acts so connected, they may be tried together. Whether or not the series of acts be so closely connected as to form the same transaction necessarily rests with the Court to decide. The limits are wide, but no joinder of charges or trials should be permitted which will result in bewildering any of the accused in

Joint Trial—continued.

his defence, or in causing undue prejudice against him. Three accused persons were tried on a charge under s. 302, I.P.C., of murder and the third accused was also tried on a further charge, under s. 201, I.P.C., with having caused evidence of the said murder to disappear by disposing of the corpses of the deceased persons with the intention of screening the said accused from legal punishment. It was held that their joint trial was not illegal and that they were not prejudiced by it. The history of the law as to joinder of charges and of trials traced. A murderer cannot be charged under s. 201 with causing evidence to disappear by concealing the corpse. **1 S.L.R. 73 Cr.=8 Cr. L.J. 191.**

(16)—*Crim. Pro. Code (1898), s. 239—Joint trial of certain accused with another unconnected with the offence—Penal Code, ss. 379, 411.*—The joint trial of accused 2 and 3 with accused 1, for an offence committed by accused 2 and 3 alone, is illegal under s. 239, Crim. Pro. Code. The fact that the accused knew where stolen property was concealed, and their bringing out the same from the place where they had been concealed, cannot support a conviction either for theft or being in possession of stolen property. **3 S.L.R. 136.**

(17)—*Crim. Pro. Code (1898), s. 235—Acts forming part of the same transaction—Offences of theft, intimidation and being members of unlawful assembly committed on one day, and intimidation and unlawful assembly committed on the following day—One trial—Legality.*—Where the accused committed theft of sheep and, on being remonstrated by the owner, threatened him with force, drove him into his house and confined him there till late at night, and on the next morning went again to his house and renewed the threat and intimidation:—*Held*, that the above acts formed part of the same transaction within the meaning of s. 235, and need not be tried separately. **9 Cr. L.J. 367.**

(18)—*Crim. Pro. Code, s. 239—Joint trial for two different offences—One offence committed by all the accused, the other by some—Penal Code (Act XLV of 1860), s. 411—Stolen property—Possession—Accused pointing out where property was concealed, effect of.*—Where it appeared that the three accused, in the presence of *mashirs* went into a patch of jungle and brought out a box containing aniline dyes, and the accused Nos. 2 and 3 on another occasion took out of some *lai* bushes a tin of coal tar, and all the accused were jointly tried and convicted under s. 411 of the Penal Code, the allegation being that both the box and the tin had been stolen from a train. *Held*, (1) that the joint trial of the accused was illegal; (2) that the mere fact that the accused apparently knew where the stolen property was concealed did not establish that they were in possession of stolen property. **11 Cr. L.J. 4=4 Ind. Cas. 481=3 S. L.R. 136 Cr.**

(19)—*Crim. Pro. Code (1898), ss. 233, 234, 239, 537—False evidence by two persons—Joint trial.*—Where two persons are severally charged

Joint Trial—continued.

with giving false evidence in their depositions at a trial in a Sessions Court, their offences are distinct and they must be tried separately under the provisions of s. 233, Crim. Pro. Code. **4 Bom. L.R. 53.**

(20)—*Penal Code, ss. 193, 467—Two accused—Joint trial of the accused for offence under s. 193—Validity.*—Where two persons were tried together and convicted under ss. 467, 193 of the Penal Code, *held* that, under the second head, each of the accused should have been tried separately and not jointly. **Rat. Un. Cr. C. 31=Cr. Rg. 7—4—1870.**

(21)—In the case of an offence under s. 193, I.P.C., two persons cannot be tried jointly, but ought to be charged and tried separately. **26 M. 592=2 Weir 297.** [*R.*, 4 Cr. L.J. 489=3 L.B.R. 231].

(22)—*I.P.C., ss. 188, 419—Epidemic Diseases Act, 1897, s. 3—Distinct offences—Joint trial, legality of.*— Four persons were tried together at one trial. The acts, for which two of them were convicted were entirely distinct from those, for which the other two were convicted. Two out of the four were in result convicted and sentenced for disobeying a lawful order of a public servant under s. 188, Penal Code, read with s. 3 of the Epidemic Diseases Act, while the remaining two were convicted of attempting to cheat by personation under s. 419 of the Penal Code. *Held*, that the trial was illegal and the conviction should be set aside. **3 L.B.R. 214 =4 Cr. L.J. 479.**

(23)—*Crim. Pro. Code (1898), ss. 235, 239—Joint trial of offences under ss. 240, 243, Penal Code—Validity.*—The joint trial of a person under s. 240, Penal Code, for delivering counterfeit Queen's coins to another, and of the latter under s. 243 for being in possession of the same, is permissible in law. **8 C.W.N. 717.**

(24)—*Crim. Pro. Code (1898), ss. 233, 234—Scope—Joint trial of several distinct complaints against the same accused—Effect of failure to take objection.*—S. 234 refers to acts done by the same individual or same set of individuals as against the same complainant or complainants so connected with each other that they may in law be taken to be one person. Where three persons laid three separate complaints against the accused alleging that they committed rioting and individually caused hurt to each of the complainants, and threw away and spoilt their foreign salt and other articles, *held*, that the joint trial of the accused on three separate complaints was illegal, and the illegality could not be cured by the fact that no objection was taken to the procedure adopted, either in the Court of first instance or in the appellate Court. **11 C.W.N. 1128=6 Cr. L.J. 321.** [*F.*, 13 C.W.N. 418; *D.*, 9 C.L.J. 149].

(25)—*I.P.C., ss. 328, 380, 401 and 411—Charges under—Crim. Pro. Code (1882), ss. 234, 235—Joint trial—Validity—Practice.*— Where the Sessions Judge tried at one trial all

Joint Trial—continued.

the accused on a charge under s. 401 of the Penal Code, three sets of the accused on three different heads of charges under ss. 328 and 380 and one of the accused on a charge under s. 411, *held* that the joint trial of all the accused on all the heads of charges was opposed to s. 234 of the Crim. Pro. Code, and though it was therefore unnecessary for the Judge to try the accused on the separate heads of charges under ss. 328, 380 and 411 of the Penal Code, it was permissible to record evidence under those heads in order to prove the charge under s. 401. *Held* also that as the accused were not prejudiced by the trial on all the charges, the conviction need not be set aside. **Rat. Un. Cr. C. 509=Cr. Rg. 27 of 1890.**

(26)—*Security to keep peace—Crim. Pro. Code (1887), ss. 107, 112—Joint trial of two opposing parties—Duty of prosecution where proceedings are taken against many persons.*— Where there are two contending parties opposed to each other and inclined to commit a breach of the peace, it is irregular for a Magistrate to take steps against both the parties jointly and to try both the parties in one and the same proceeding. But such joint trial is not, *ipso facto*, null and void, but only where the accused has been prejudiced thereby. It is essential, before any proceeding under s. 107 can succeed, for the prosecution to establish what each individual person implicated has done to furnish a basis for the apprehension that he would commit a breach of the peace. What is evidence against one cannot be treated as evidence against all others, without discriminating between the cases of the various persons implicated. **9 A. 452.** [*F.*, 8 C.W.N. 180].

(27)—Two opposing parties to a proceeding under s. 107, Crim. Pro. Code, 1898, cannot be proceeded against and bound over in one proceeding. **5 C.L.J. 231=11 C.W.N. 472=5 Cr. L.J. 197.**

(28)—*Simultaneous trial of the opposing parties in a riot on distinct and separate charges before the same jury—Irregularity of procedure.*—On separate committals of the opposing parties in a riot, the Sessions Judge judicially mixed up the two trials before the same jury letting in the two cases one after the other, putting the prisoners in the two cases on their defence in the same order and summed up in both simultaneously after hearing addresses of the counsel for the accused in both and the reply of the Government Pleader. On the jury returning a verdict in respect of all the accused, *held*, that the trials ought to have been kept quite distinct and separate and that the procedure adopted by the Sessions Judge was clearly against law and re-trials were ordered. **6 C. 96 =6 C.L.R. 521.** (B.L.R. Sup. Vol. 750=8 W. R. 47 Cr., *D.*) [*Dist.*, 20 C. 537; *R.*, L.B.R. (1872—1892), 275, 9 A. 452, 1 C.W.N. 426, 8 C.W.N. 344].

(29)—*Crim. Pro. Code, s. 239—Same transaction, what amounts to—Disposal and receipt of stolen property—I.P.C., ss. 411 and 414.*—

Joint Trial—continued.

Where a stolen article is criminally disposed of by one person (s. 414, I.P.C.) and at the same time and place dishonestly received by another (s. 411, I.P.C.), the two offences form part of the same transaction, and the two persons can be tried jointly at the same time. **6 Bom. L. R. 361.** [*F.*, 7 Bom. L.R. 527=29 B. 449].

(30)—*Crim. Pro. Code, s. 239—Joint trial of offences under ss. 409 and 411, I.P.C.*—A person who commits criminal breach of trust can be tried jointly with the person who receives the property obtained by the breach of trust. The offence of receiving stolen property is committed where the receiver knows or has reason to believe it to be stolen property. In other words, his knowledge or belief that the property comes through the tainted channel of theft or criminal breach of trust, which is an essential ingredient of the offence, connects him with the transaction of theft or criminal breach of trust, so as to make him a *particeps criminis*, and that connection is sufficient to constitute the offences one transaction, whether the two acts take place simultaneously or not. **6 Bom. L.R. 517.** [*R.*, 1 S.L.R. 73 Cr.=9 Cr. L.J. 191; *D.*, 29 B. 449=7 Bom. L.R. 527].

(31)—*Crim. Pro. Code (1882), ss. 109, 239—Separate trials.*—It is not legal to carry on a joint trial of two persons who are required to show cause why they should not execute bonds under s. 109 of the Crim. Pro. Code. **Rat. Un. Cr. C. 556.** (9 A. 452, *F.*)

(32)—*Crim. Pro. Code (1882), ss. 117, 118—Separate enquiry for each accused.*—Where several persons are arraigned to show cause under ss. 117 and 118, each must be separately tried. **Rat. Un. Cr. C. 585=Cr. Rg. 46 of 1891.** (Rat. Un. Cr. C. 556, *R.*)

(33)—*Penal Code, ss. 240 and 243—Separate conviction—Distinct offences—Joint trial of two persons, one for an offence under s. 240, the other under s. 243, Penal Code—Crim. Pro. Code (1898), ss. 235, 239 and 403.*—C gave the accused 50 counterfeit rupees to pass for him in Calcutta. While in Calcutta, the accused's trunk was broken open and the counterfeit coins were stolen. The accused then gave information to the police which led to the discovery of 64 other counterfeit rupees in the house of C. C was separately tried and convicted under s. 243, Penal Code, for being in possession of counterfeit coins. The accused and C were also tried jointly, the former under s. 243, the latter under s. 240 with reference to the Rs. 50 he made over to the accused to pass off in Calcutta. It was contended on appeal that C could not be tried for an offence under s. 240 after he had been convicted of the possession of base coin under s. 243 and that therefore his confession as co-accused was improperly used against the accused and that the joint trial was bad. *Held*, regarding the first contention, that the delivery of the base coin with a view to its being charged for good money was a distinct offence from that for which C

Joint Trial—continued.

was previously convicted. *Held*, also, that the joint trial was permissible by s. 239 read with the first clause of s. 235, Crim. Pro. Code. **31 C. 1007.**

(34)—*Crim. Pro. Code, ss. 235 and 239—Joint trial—Persons charged with offences committed on different occasions and dates and unconnected with one another—New trial by different Magistrate.*—Where two persons H and S, who were both concerned in an offence, committed on a certain date, were jointly tried for that offence, as also for another offence committed by S. only on a previous date (the latter offence being complete in itself), and H was convicted, *held*, on appeal by H, that the joint trial was bad. The conviction of H was set aside and a new trial by a different Magistrate was ordered. **31 C. 1053=8 C.W.N. 715.**

(35)—*Crim. Pro. Code (1898), ss. 233, 239 and 537—I.P.C., s. 411—Separate retainers by separate persons at different places—Joint trial—Illegality and not mere irregularity.*—*Per* HARINGTON and STEPHEN, JJ., (BRETT, J. *contra*).—Separate retainers by separate persons, of separate articles, at different places, although the articles may have been the proceeds of one dacoity, cannot be said to be in the course of the same transaction. Persons charged with such retention cannot be tried jointly. S. 537 of the Crim. Pro. Code does not apply to such a case. **3 C.L.J. 412=3 Cr. L.J. 391=33 C. 1256.**

(36)—*I.P.C., s. 211—Two persons preferring false charge—Joint trial—Misjoinder of parties.*—Where two persons preferred a false charge of stealing goat, the mere fact that one of them made the statement on one day and the other on the succeeding day would not make the joint trial of the two persons under s. 211, Penal Code, bad for misjoinder of parties. **27 M. 127=1 Weir 192.**

(37)—*Crim. Pro. Code (1898), ss. 222, 233, 234, 235—Charge alleging three offences under s. 409, Penal Code, and three distinct offences under s. 477 (a), Penal Code—Offence committed in one year in three separate transactions.*—Under s. 233 of the Code, a person cannot be tried and convicted at one trial on a charge which alleges three distinct acts of criminal breach of trust under s. 409, Penal Code, and three different acts of falsification of accounts under s. 477 (*a*), Penal Code. S. 234 does not cover the case because the offences of falsification of accounts are not of the same kind as the offences of criminal breach of trust, and s. 235 does not cover it because the falsification of accounts, connected with one act of criminal breach of trust cannot be said to form part of the same transaction with the other criminal breaches of trust. A conviction on such a charge is not only irregular but illegal, and the trial is vitiated thereby. There is no provision of the Crim. Pro. Code which says all offences committed within one year in the course of three separate transactions may be tried at one trial. **30 M. 328=17 M.L.J. 141=2 M.L.T. 177=5 Cr. L.J. 341.**

Joint Trial –continued.

(38)—*Crim. Pro. Code (1898), ss. 239, 439 and 537—Joint trial of both parties in a riot, whether merely irregular or altogether illegal and void—Interference by Chief Court on revision entirely discretionary* —Where two parties are arrayed against each other in a riot, it cannot be said that the offence of rioting was committed by both the parties in the same transaction, within s. 239 of the Code, so as to justify a joint trial of the persons on both the sides. The offence of rioting committed by each side forms a separate transaction and s. 239 will, therefore, be entirely inapplicable. Though, in the light of the Privy Council judgment in *Subramania Iyer* v. *King-Emperor*, 25 M. 61 ; it must be held that a trial which is not warranted by the provisions of the Crim. Pro. Code is altogether illegal and void and not merely irregular, within the purview of s. 537, yet it would be entirely inconsistent with the letter and scope of s. 439 to hold that, in every case of illegal trial the Chief Court is necessarily obliged to interfere without due regard to the circumstances of the particular case. The illegality of a trial is no doubt *prima facie* good and strong ground for exercise of revisional jurisdiction, but it is not imperative on the Court to take such action in every case, however small and scant may be the necessity or reason for adopting such course so as to interfere with the conviction in every such case, especially where no prejudice is shown to have been caused by such illegality. **5 P.R. 1906=4 Cr. L.J. 75= 116 P.L.R. 1907.**

(39)—*Crim. Pro. Code (1898), ss. 233, 251, 252 and 256—Separate trial for distinct offence —Evidence for prosecution—"Trial" when commences.*—Where seven persons were sent up by the police, charged with theft in a building or dishonest receipt and disposal of stolen property, the Magistrate took evidence against all the seven, discharged two of them and, having come to the conclusion that the disposal of the property by the appellant and the remaining accused did not form one transaction, he determined to frame separate charges and to try the appellant separately from the other accused, but without re-hearing the evidence for the prosecution separately, although portions of the evidence, which were relevant against the remaining accused, had no connection with the case of the appellant. *Held*, that the word "trial" includes the taking of evidence in support of the prosecution, as also the whole of the subsequent procedure laid down in Ch. XXI of the Code for the trial of warrant cases, and that the appellant should be re-tried *de novo*. The words "claims to be tried" in s. 256, no doubt, give colour to the argument that no trial commences until after the accused refuses to plead, or does not plead, or claims to be tried, but the words do not really raise any doubt that a trial under Chapter XXI commences when the accused appears or is brought before a Magistrate under s. 252. **3 L.B.R. 280=6 Cr. L.J. 417.**

(40)—*Crim. Pro. Code (1898), s. 233—Upper Burma Criminal Justice Regulation, Sch. XV.*

Joint Trial—continued.

—Where the accused was tried and convicted at one trial of the offence of causing hurt and of abetment of theft at a different place on the same day, it was held that the joint trial of the offences was an illegality which was not curable either by the Criminal Justice Regulation or any other provision of law. **U.B.R. 1904, 2nd Qr., Penal Code, 9.**

(41)—*Joint trial of several persons for one transaction—One of them found to have committed offence of more aggravated character triable by Court of Sessions—Committal of all accused to Sessions.*—Where several persons are jointly charged in respect of one transaction, but it appears from the facts implicating the whole of them that one has committed an offence of a more aggravated character than the rest, which either must or should be tried by a Court of Session, the Magistrate investigating the case should, for purposes of convenience, send up the whole of the accused for trial. **A.W.N. 1881, 64.**

(42)—*Crim. Pro. Code (1872), s. 453—Joint trial for more than three offences—Waiver.*—The accused was committed for trial before the Court of Sessions on four charges of criminal breach of trust between July 1879 and 1880, but no objection was taken by the accused either before the Magistrate or the Court of Session to the effect that he could not be charged and tried at the same time for more than three offences with reference to s. 453, Crim. Pro. Code, 1872. *Held* that the objection having been taken for the first time in the High Court without showing that the accused had been prejudiced thereby, the conviction could not be set aside on that ground. **A.W. N. 1881, 68.**

(43)—*Penal Code, ss. 193, 196—False evidence—Several accused—Joint trial.*—Where one of the accused used forged receipts in evidence in a Revenue case and three others gave evidence in support of the receipts, *held* that a joint trial of all the accused, the first for an offence under s. 196 and the others for offences under s. 193 of the Penal Code, was illegal. **A.W.N. 1882, 37=4 A. 293.** [*F.*, A.W.N. 1882, 44].

(44)—*False evidence — Conspiracy — Joint trial.*—Persons accused of having given false evidence cannnot be jointly tried. Though their common object may be to involve a person in a criminal case, yet, the false evidence cannot ordinarily be regarded as an abetment of the offence of another. **A.W.N. 1882, 64.**

(45)—*Penal Code, s. 193—Separate trial.*—Where several persons are accused of offences under s. 193 of the Penal Code, each should be tried separately and allowed to have the evidence of the others taken on his behalf. **A.W. N. 1882, 124.**

(46)—*False evidence—Separate trial.*—Persons accused of having given false evidence in respect of the same matter cannot be jointly committed for trial. **A.W.N. 1882, 160.**

Joint Trial—continued.

(47)—*Rioting—Opposing parties—Joint trial.*—Persons composing both parties to a riot with deadly weapons cannot be jointly tried for rioting. Each party should be tried separately. **A.W.N. 1882, 160.**

(48)—*Penal Code, ss. 395, 401—Distinct offences—Separate trials.*—Where in a trial, twenty-five persons were charged, under s. 401 of the Penal Code, with belonging to a gang of dacoits, some of them also with a dacoity committed on one date, and some others with a dacoity committed on another day, *held* that the three charges should be inquired into in separate trials. **A.W.N. 1882, 178.**

(49)—*Several dacoities—Separate trials.*—Where the accused were jointly committed for trial for six dacoities committed between two dates, *held* that a separate commitment should have been made for each dacoity. **A.W.N. 1882, 180.**

(50)—*Crim. Pro. Code, (Act X of 1872), s. 458—Joint trial.*—Where A and B were charged with having committed house-breaking by night with intent to commit theft, and C with having received some stolen article on a certain day and D with having received some other stolen articles on another day, *held* that the three offences should not be tried together, but separately. **A.W.N. 1882, 215.** [*R.*, A.W.N. 1883, 158].

(51)—*Joint trial of three separate dacoities.*—Where three separate dacoities were committed at different places and on three different sets of travellers, but the accused were tried jointly for all the three offences, *held* that the procedure was illegal and that separate trials should be held. **A.W.N. 1883, 12.**

(52)—*Penal Code, s. 174—Non-obedience to summons—Joint trial of several persons.*—It is illegal to conjointly try in one trial several persons accused of distinct substantive offences of contempt of Court. It is obvious that this procedure may have been very prejudicial to the cases of the persons thus improperly tried, for, they would be precluded from calling each other as witnesses in support of their various and distinct pleas of not guilty. **A.W.N. 1883, 25.**

(53)—*Joinder of trial—Duty of Magistrates and Judges.*—In this case, some ten persons were jointly tried and convicted under ss. 147, 325, I.P.C., by the Sessions Judge. In appeal the High Court made the following observations. "If Magistrates think fit to commit and Judges to try ten or a dozen persons at the same time and in a single proceeding, the best they can be expected to do is very clearly and explicitly to distinguish between the cases of the several prisoners and to point out how the evidence, affects them individually. The evidence should not be treated *en bloc.*" **A.W.N. 1883, 145.**

(54)—*Joint trial of offences under ss. 457, 411, I.P.C.*—Where two persons charged under s. 457, I.P.C., with house-breaking by night

Joint Trial—continued.

and a third person under s. 411, I.P.C., with receiving part of the stolen property, were jointly committed for trial before the Court of Sessions, *held* that, as the offences were distinct offences, the commitment should be annulled. **A.W.N. 1883, 158.**

(55)—*Crim. Pro. Code (1882), s. 234—Offences under ss. 401, 411—Distinct offences.*—*Held* that the offences under ss. 411 and 401, I.P.C., could not be tried together. **A.W.N. 1883, 179.**

(56)—*Crim. Pro. Code (1882), s. 234—Distinct offences—Joint trial.*—*Held* that the joint trial of an accused for offences under ss. 471 and 193, I.P.C., was illegal and must be quashed. **A.W.N. 1883, 188.**

(57)—*Joint trial—False verification of written statement.*—A charge against several persons of having all together verified a written statement as true while they knew it to be false, can be tried jointly against all, unlike charges of having given false depositions. **A.W.N. 1884, 52.**

(58)—*Penal Code, ss. 193, 199—Joint trial—Land Revenue Act, XIX of 1873, Ch. V—Judicial proceedings.*—The joint trial of several persons for giving false evidence is irregular. It is questionable whether a proceeding under Ch. V of the Land Revenue Act is a judicial proceeding. **A.W.N. 1885, 29.**

(59)—*Penal Code, s. 193—False evidence—Joint trial of two accused.*—Where two persons are charged with giving false evidence, separate charges should be framed and separate enquiries held. **A.W.N. 1882, 44.**

(60)—*Crim. Pro. Code (1898), s. 235—Several offences committed on several times covering a period of nearly 2 years—Bad for multifariousness—'Same transaction' meaning of—Scope of s. 235.*—Six accused were charged as Directors of the Circars Provident Fund, Bapatla, with having committed breaches of trust in respect of three sums of money alleged to belong to the company on several times covering a period of nearly 2 years. The fourth and sixth accused were also charged with having falsified certain accounts by making false entries therein on 20th and 25th April, 1905, and these two and the first accused with having falsified another document on 24th June 1905. The sixth accused was further charged with having cheated two persons, one on the 6th March 1905 and another on the 29th March 1905, and the fourth accused with having cheated a third person on the 17th June 1905. Those among the six accused persons, who were not charged with the substantive offences of falsification of accounts and cheating, were charged with having abetted the commission of these offences; *held* (1) *prima facie*, the trial is open to objection on the ground of multifariousness; it violates the express injunctions of the legislature prohibiting the trial of several offences covering a period of more than one year at one trial, and the trial together of a number of offences which are not of the same kind within the

Joint Trial—continued.

meaning of the Code. The acquittal of the accused on some of the charges, which the prosecution failed to prove, cannot make valid the trial which was illegal *ab initio*. S. 235, Crim. Pro. Code, 1898, allows of a number of offences, even if exceeding three and extending over a period of more than twelve months, being tried at one trial, if they are committed "in one series of acts so connected as to form the same transaction." Community of purpose or design and continuity of action are essential elements of the connection necessary to link together different acts into one and the same transaction. **7 M.L.T. 299.**

(61)—*Crim. Pro. Code (1898), ss. 235 and 239—"Same transaction" what is—Permitting cattle to trespass—Impounding of cattle—Subsequent rioting in rescuing cattle—Offences committed in the same transaction.*—Certain parties were charged and tried for permitting cattle to trespass, and the same parties with others were charged and tried together for rioting in rescuing the cattle after they had been impounded at another time and in another place. But it was not found that the parties, when they premitted the cattle to trespass, intended that, if the cattle were impounded, they would rescue them. *Held*, the acts of permitting cattle to trespass and the rescuing of cattle are not so connected together as to form the same transaction (s. 235), and the "different offences" were not committed in the same transaction (s. 239) and that the accused ought not therefore to be tried together either under s. 235 or s. 239. **7 M.L.T. 367.**

(62)—*Crim. Pro. Code (1898), ss. 233 and 239—Distinct offences—Defamatory resolutions—Transmission of resolution to a newspaper—Concert.*—Where accused Nos. 1 to 3, who were charged with passing and publishing resolutions defamatory of the complainant, were tried jointly with the fourth accused, who was charged with transmitting the resolutions to a newspaper: *Held*, that, in the absence of a concert between all the accused, their joint trial was illegal, as the offences committed by accused Nos. 1 to 3 and the offence committed by the 4th accused were not committed in the same transaction within the meaning of s. 239, Crim. Pro. Code. **11 Cr. L.J. 135=5 Ind. Cas. 436=7 M. L.T. 127.**

See ACT XVIII OF 1879, 6 M. 252=1 Weir 116.

See CHARGE, 5 B.H.C. Cr. 55.

See CRIM. PRO. CODE (1898), ss. 110, 112, 117 (4), 537, 5 O.C. 243.

—Of several matters of dispute—*See* CRIM. PRO. CODE (1898), s. 145, 5 C.W.N. 710.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 9 Cr. L.J. 265=1 S. L.R. 25 (Cr.), 15 C. 31.

See ESCAPE FROM LAWFUL CUSTODY, 11 M. 441=1 Weir 210.

—Recording evidence in—*See* EVIDENCE, 10 C.P.L.R. Cr. 23.

Joint Trial—concluded.

See EVIDENCE ACT, s. 30, A.W.N. 1908, 241 =4 M.L.T. 398=8 Cr.L.J. 380.

See EVIDENCE ACT, ss. 118, 133, U.B.R. 1906, Evidence 3=5 Cr. L.J. 300.

See FALSE EVIDENCE, 10 C. 405.

See JUDGMENT, 12 C.W.N. 114.

See PARDON, 3 M.L.T. 407=31 M. 272=8 Cr.L.J. 153, 5 A.L.J. 691=A.W.N. 1908, 259.

See PENAL CODE, s. 193, 5 A. 17.

See PENAL CODE, s. 373, 11 C.P.L.R. Cr. 6.

See SECURITY FOR GOOD BEHAVIOUR, 27 C. 781=4 C.W.N. 531, A.W.N. 1882, 92.

—Not prejudicing the accused, illegality of —*See* SECURITY FOR GOOD BEHAVIOUR, 9 O.C. 69=3 Cr. L.J. 290.

See UNLAWFUL ASSEMBLY, 6 M.L.T. 17.

Joint Zilla and Sessions Judges Act.

See ACT XXIX OF 1845.

Joke.

—Practical joke—*See* THEFT, Rat. Un. Cr. C. 564.

Journey.

—Offence committed on a journey—*See* JURISDICTION OF CRIMINAL COURTS, 1 C.L. J. 334=2 Cr. L. J. 411.

Judge.

(1)—*Judges, duty of, in the administration of justice.*—The duty of a Judge is to administer justice according to law; he is not entitled to put terms on the Crown or on any suitor, requiring conformity to his own extra-judicial views. What is legal is a matter competent to a Judge to ascertain. But the question whether the Crown is morally justified in calling a witness or prosecuting a criminal is not usually one for a Court of law. A Judge may fairly mediate an accommodation, but not put terms on pronouncing sentence or giving judgment. A Judge may not use language which tends to stop the approach of persons aggrieved or which may cause scandal, or which tends to show that he is influenced by either fear or favour. He must not interpose personal views on matters moral or political, and so forth, lest the suitor or the subject, generally, should have reason to suppose that these rule his judgment, and lead to the passing of orders contrary to the law of the land and the delay of common right. To the law of the land every Judge is strictly bound to conform, and the Judges of the inferior Courts are bound to act upon the interpretations of the Hight Court which is the Highest tribunal. **Rat. Un. Cr. C. 786 =Cr. Rg. 48 of 1895.**

(2)—*Competency of interested Magistrate to act as Judge.*—A Magistrate ought not to act as Judge in a case in which he has a distinct and substantial interest. Though a Magistrate having such interest, may initiate proceedings

Judge—continued.

where it is his duty to do so, he ought not to act judicially where it is not necessary for him to do so and where he is a witness for the prosecution. **2 C. 23.**

(3)—*Statement of Judge, value of.*—The statement of a Judge who presides at a trial, whether it be in a criminal or civil case, is, as to what has taken place at the trial, conclusive. Neither the affidavits of bystanders, nor of jurors, nor the notes of counsel, nor of short-hand writers, are admissible to controvert the notes or statement of the Judge. **10 B.H.C. 75.**

(4)—*Magistrate being witness—Legality of conviction.*—A Magistrate cannot, in a case in which he is the sole Judge of law and fact, be a competent witness—*Per* CURIAM. [*Appl.*, 20 C. 857; *R.*, 17 B. 299.] The trial and conviction by a Magistrate of an accused in a case, wherein he (the Magistrate) is himself a witness, is illegal—*Per* MARKBY, J. The conviction may be upheld, if there is evidence other than that of the Magistrate to support it—PRINSEP, J. **2 C. 405.** [*Appl.*, 20 C. 857; *F.*, 21 P.L.R. 1904; *R.*, 17 B. 299, 21 C. 920].

(5)—When a Judge is the sole Judge both of law and fact, he cannot give evidence before himself, and the accused are entitled to have nothing stated against them in the judgment, which was not stated on oath in their presence and which they had no opportunity of testing by cross-examination and of rebutting. **19 M. 263=2 Weir 725.**

(6)—*Importation into case by Judge of his own knowledge of facts, impropriety of.*—A Judge is entitled to make use of his knowledge of the character of a witness in order to decide whether to give credit to his evidence or not. But, on the other hand, a Judge or Magistrate cannot, without giving evidence, import into a case his own knowledge of particular facts. **L.B.R. (1893—1900), 445.** (14 B. 572, 7 M.I.A. 203, 15 I.A. 91. 7 W.R. 190, 11 M.I.A. 221, 22 W.R. 9, 25 W.R. 121, 3 I.A. 286, 20 C. 866, *F.*)

(7)—*Incapacity of Judge to give evidence.*—*Held*, that a District Magistrate ought not to have given evidence in a case which he intended to decide himself. **L.B.R. (1893—1900), 72.** (2 C. 414 and 416, *R.*).

(8)—*Dying declaration recorded in absence of accused—Examination of Magistrate who recorded it—Practice.*—The Chief Court, following 29 P.R. of 1887, Cr. directed the Sessions Judge to examine the Magistrate who recorded the statement of the deceased as to the circumstances under which it was made. **P.L.R. 1900 69 Cr.** (29 P.R. 1887 Cr. *F.*).

(9)—*Competent witness in trial of case instituted by himself.*—A Judge is a competent witness and can give evidence in a case being tried before himself, even though he laid the complaint acting as a public officer, provided that he has no personal or pecuniary interest

Judge—continued.

in the subject of the charge, and he is not precluded thereby from dealing judicially with the evidence of which his own forms a part. **6 B.L.R. A.Cr. 7=13 W.R. Cr. 60.**

(10)—*Qualifications and disqualifications—Interest in case—Municipal cases—Magistrate also Vice-Chairman of Municipality.*—*Held* that a Magistrate who was also Vice-Chairman of a Municipal Committee could impose fines under Bengal Act III of 1864. **3 W.R. Cr. 33.**

(11)—It is not proper for Judges to try cases in which they have any personal interest. **Bourke O.C. 273, 3 W.R. Cr. 29.**

(12)—*Power of Judge—Deciding case on evidence taken by his predecessor—Irregularity in criminal case.*—Where several prisoners were tried by a Sessions Court consisting of a Judge and assessors, the latter convicted them, which finding was recorded by the Judge. The Judge, however, postponed giving judgment and left the district without recording his finding or his judgment, and the Judge's successor, after considering the evidence which had been taken before his predecessor, convicted and passed sentence on the prisoners. *Held* that the conviction was not valid and the trial had not been completed. The High Court accordingly set aside the conviction and ordered the re-trial of the prisoners upon the charges upon which they were committed for trial. **21 W.R. Cr. 47, 3 M. 112, 23 W.R. Cr. 59.**

(13)—*Power of Judge—Pronouncing judgment out of Court—Irregularity in criminal case.*—In this case the Magistrate conducted and closed the trial in the established Court-house, but could not by reason of illness pronounce judgment which he did at his private house. *Held* that the Judge was not competent to quash the sentence on this ground and to order a new trial by the Magistrate, his power being limited to refer the case for the consideration of the High Court under s. 434, Crim. Pro. Code, 1861. **1 Agra Cr. 17.**

(14)—*Power of Judge to delegate to assessors, examination of witnesses.*—In cases where the assessors view the scene of the offence, it is not proper for the Judge to delegate to them his power of examining witnesses on the spot. **5 W.R. Cr. 59.**

(15)—*Opinion of assessor—Personal knowledge.*—It is not proper for a Sessions Judge to import into his judgment the opinion of an assessor derived from personal knowledge and unsupported by the evidence on the record. **24 WR. Cr. 28.**

(16)—*Duty of Judge—Private knowledge or information.*—It is not proper for a Judge to import his own private knowledge or opinion into a case, but he must simply decide the issues before him on the evidence before him. **2 W.R. Act X, 29, 7 B.H.C. Cr. 50, 25 W.R. 152.**

See EVIDENCE ACT, s. 151, 3 M.H.C. 372.

Judge—concluded.

—Judge's notes of evidence and proceedings —Right of accused—*See* HIGH COURT, JURISDICTION OF, 1 M.H.C. 138.

See SANCTION TO PROSECUTE, 9 M. 439 = 2 Weir 213, 6 M.L.T. 128.

See WITNESS, 2 P.W.R. 1910, Cr.

Judge and Jury.

See CHARGE TO JURY.

See JURY.

See VERDICT OF JURY.

(1)—*Crim. Pro. Code (1898), ss. 298, 299—Functions of Judge and Jury—Question of law.*—The jury are not entitled to resort to a commentary on the law during their consultation about the verdict. The different duties of the Judge and the Jury are made clear in ss. 298 and 299, Crim. Pro. Code, the Jury should take the law from the Judge. **6 Bom. L.R. 258.**

(2)—*Crim. Pro. Code (1882), s. 298—Judge and Jury—Proof of documents—Evidence Act, s. 73—Comparison of hand-writing—Revision by High Court.*—In a trial by jury, where the Judge allowed certain documents to go upon the record, which were not proved under the requirements of s. 73 of the Evidence Act, for the purpose of comparison with the disputed hand-writing, *held*, that there was no such irregularity of procedure as to warrant an interference in revision. Whether the documents were proved or not, it was for the jury to decide. **Rat. Un. Cr. C. 452.**

(3)—*Crim. Pro. Code (1882), s. 269—Trial by Jury—Two charges, one triable by Jury and the other by assessors—Duty of Judge.*—Where a Session Judge tries with jurors an accused on two charges, one of which was triable by jury and the other by assessors, *held* that he should first record the opinion of the jury as assessors regarding the latter charge and not refer the whole case to the High Court when he disagrees with the jury. **Rat. Un. Cr. C. 600 = Cr. Rg. 19 of 1892.**

(4)—*Crim. Pro. Code (1882), s. 298—Evidence Act, s. 24—Retracted confession—Admissibility.*—Where a retracted confession of an accused is tendered in evidence at the trial of a case tried by a jury, it is the duty of the Judge to determine the question of its admissibility under s. 298, Crim. Pro. Code, and s. 24, Evidence Act. **Rat. Un. Cr. C. 730 = Cr. Rg. 58 of 1894.**

(5)—*Sessions Judge authorised to ask jury the grounds for their verdict.*—The law does not prevent a Sessions Judge from asking a jury regarding the grounds of their verdict and such a course is desirable in the interests of justice. **1 J.G. 6.**

(6)—"*Court,*" *meaning of—Evidence Act, s. 30.*—The word "Court" in s. 30 of the Evidence Act, means and includes, in a trial by jury, both Judge and Jury. **4 C. 483 = 3 C.L.R. 270, F.B.**

Judge and Jury—continued.

(7)—*Crim. Pro. Code (1898), ss. 300, 301 and 303—Trial by jury—Delivery of verdict of guilty—Jury being prevented to give out what they had to say, after delivery of verdict of guilty, impropriety of.*—Where, after the delivery of a verdict of guilty, the jury want to say something more, it is undesirable to stop the jury at such a stage of the proceedings, for it may so happen that before the verdict is recorded, the foreman of the jury may make some observation in respect of that verdict, which may show the presiding judicial officer that the jury have not properly understood the case. It would, then, be the duty of the Sessions Judge not to record the verdict, but to recharge the jury so as to lay the case properly before them. **30 C. 485.**

(8)—*Crim. Pro. Code (1898), ss. 297 and 288—Evidence Act, ss. 27, 30—Statement by co-accused how far evidence against the accused—Statement before investigating officer, evidentiary value of—Direction to Jury.*—It is the duty of the Judge, not of the jury, to decide the point, whether an accused person, while making a confession, was or was not in police custody, as it is a matter which is necessary to be proved in order to enable the confession to be admitted in evidence [Crim. Pro Code, s. 298, cl. (*b*)] ; and his omission to state to the jury his finding on the point is not a misdirection and could not prejudice the accused. Where an accused person makes a confession, the most that could be taken into consideration on such statement against a co-accused would be, under ss. 27 and 30 of the Evidence Act, so much of the information as was the immediate cause of the discovery of some relevant fact against him. Where a witness makes a statement to a police officer or to an *investigating* Magistrate, it is no evidence against the accused, even if the statement before the *investigating* Magistrate be made in the presence of the accused; for s. 288 of the Crim. Pro. Code, does not apply to the case, as it is not one made before a *committing* Magistrate holding an enquiry under Ch. XVIII of the Code. A direction by the Judge to the Jury that such statement is strong evidence against the accused is clearly a serious misdirection. **18 M.L.J. 66 = 31 M. 127 = 3 M.L.T. 270 = 7 Cr.L.J. 325.**

(9)—*Crim. Pro. Code (1882), s. 132 (2)—Direction to reconsider the verdict, when can be made.*—Where the jury appear to be confused and to have failed to understand the remarks of the Judge, he is not acting improperly in telling them to reconsider their verdict. **2 Weir 514.**

See CONFESSION, 11 Bom. L. R. 332 = 2 Ind. Cas. 517, 1 J.G. 77.

See CRIM. PRO. CODE (1898), ss. 269 (3), 309, 537, 26 M. 598 = 2 Weir 333.

See CRIM. PRO. CODE (1898), ss. 300 to 303, 306, 307, 2 B. 526 (Note).

See CRIM. PRO. CODE (1898), ss. 423 (2), 367, 2 Weir 499.

Judge and Jury—concluded.

See PRACTICE AND PROCEDURE, 1 W.R. Cr. Letters, 9.

See REFERENCE TO HIGH COURT, 29 C. 128=6 C.W.N. 253.

Judge of High Court.

—*Crim. Pro. Code (1882), ss. 333, 555—Retirement of Judge after part trial—New Judge appointed—Objections to proceed with the case*—Nolle prosequi.--Where, in a Sessions case in the High Court, after evidence had been partly gone into, the Judge retired from the case under s. 555, and the Chief Justice appointed, under cl. 13 of the Charter, another Judge, and the counsel for the accused objected that the prosecution should not proceed with the trial from the point where it had been left, and that the jury empannelled before the former Judge had still the seisin of the case, *held*, that the only way to get rid of the many difficulties arising in the case is that the Advocate-General should enter into a *nolle prosequi* under s. 333, Crim. Pro. Code. **2 C.W.N. 481.** [*R.*, 3 L.B.R. 75].

Judgment.

See CRIM. PRO. CODE (1898), ss. 263, 367, 369, 370.

(1)—*Conviction by Court of limited jurisdiction--Contents of judgment.*--Every conviction by a Court of limited jurisdiction ought to contain a statement of its legal justification within itself. **Rat. Un. Cr. C. 310=Cr. Rg. 62 of 1886.**

(2)—A judgment, under s. 367, Crim. Pro. Code, 1882, should state sufficient particulars to enable a Court of appeal to know what are the findings and how they have been arrived at. **Rat. Un. Cr. C. 833=Cr. Rg. 76 of 1895.**

(3)—*Crim. Pro. Code (1882), ss. 367, 464—Judgment, form and nature of.*—A judgment, in a criminal case, should not be one in the nature of a stereotyped judgment which might answer any case. But where a judgment, though not a long and elaborate one, affords a clear indication that the Judge has duly considered the evidence, the judgment is a proper one. **1 C.W.N. 169.**

(4)—*Crim. Pro. Code (1882), ss. 367, 424—Judgment not in accordance with—Validity.*—The following judgment on appeal by a Sessions Judge,—"it is urged that the evidence is quite untrustworthy, and that the decision should be reversed. The depositions have been gone through and commented upon at great length. The Court finds no ground of interference. The appeal is dismissed," was held not to be in accordance with the provisions of ss. 367 and 424 of the Code; and the appeal was, therefore, directed to be re-heard. **11 C. 449.** [*F.*, 13 C. 110, 8 A.W.N. 280, 15 B. 11, 22 C. 241; *R.*, 19 A. 506; *Expl. and D.*, 20 C. 353].

(5)—The judgment of a District Magistrate, on appeal, in the following terms "I see no reason to distrust the finding of the lower

Judgment—continued.

Court. The sentence passed appears however harsh. I reduce the term of imprisonment to 15 days. The fine and term of imprisonment in default will stand," was held not to be a judgment in accordance with ss. 367 and 424 of the Code. **13 C. 110.** [*See* 22 C. 241, 15 B. 11, 20 C. 353, 19 A. 506 and 8 A.W.N. 280].

(6)—*Judgment not to be brief—Compliance with provisions of s. 367, Crim. Pro. Code.*—A judgment should not be too brief. It should comply with the provisions of s. 367, Crim. Pro. Code, so as to render it easy to summarily dismiss an appeal from a perusal of the judgment alone. **L.B.R. (1893—1900), 626.**

(7)—*Crim. Pro. Code, s. 429—Form of original and appellate judgment.*--To say simply that a charge is proved by the evidence of witnesses does not satisfy the requirements of s. 429 of the Crim. Pro. Code. Though it is not necessary for an appellate Court, in confirming a conviction by the lower Court, to set forth its reasons in full, yet it is desirable that it should do so when the circumstances of the case necessarily required special notice. **8 B. H.C. Cr. 101.**

(8)—*Judgment of appellate Courts, form and contents of—Crim. Pro. Code (1882), ss. 367, 424.*—Where, on an appeal from a conviction by a Magistrate having the powers conferred by s. 34, Crim. Pro. Code, and sentence of four years' rigorous imprisonment, the Sessions Judge dismissed the appeal in the following judgment:—"I have perused the record and see no cause for interference with the finding of the District Magistrate. As regards the sentence it is not excessive, but having regard to the great age of the appellant, I will reduce it to three years' rigorous imprisonment, with three months' solitary confinement," *held*, that the judgment had complied with the provisions of ss. 367 and 424, Crim. Pro. Code. **19 A. 506, F.B.**

(9)—A judgment of a Criminal Court dismissing an appeal without duly considering the evidence in the case, is not a judgment in accordance with ss. 367, 424 of the Crim. Pro. Code. The following judgment was recorded by a District Magistrate, in dealing with an appeal "The affray was a faction-fight between members of the two parties into which the society of Dhunshi seems to be split up. There is no good ground for doubting the justice of the Magistrate's findings that the two appellants took part in the affray, and that the party to which they belonged were the aggressors. The appeal is dismissed, and the conviction and sentence are confirmed." This was *held* not to be a judgment in accordance with the provisions of ss. 367 and 424, Crim. Pro. Code. **15 B. 11.** (13 C. 110, *F.*) [*F.*, Rat. Un. Cr. C. 772; *R.*, 20 C. 353, 6 C.P.L.R. 24 Cr., Rat. Un. Cr. C. 826, Rat. Un. Cr. C. 844, Rat. Un. Cr. C. 776; *D.*, 1 C. W.N. 169].

(10)—It cannot be held that, merely because the form of a judgment does not exactly comply

Judgment—continued.

with all the requirements of s. 367 of the Code, 1882, it is not a valid judgment. The omission in the judgment must be substantial, in order to invalidate the judgment. Where a Sessions Judge, on appeal, delivered the following judgment:—"The appellants have been convicted of breaking into Hari's house at night, dragging Hari's wife to the fields and dishonouring her, though they did not have intercourse with her. I have read through the evidence, and I think that the Deputy Magistrate was quite right to believe the evidence. The sentence of one year's imprisonment and Rs. 50 is not heavy. I dismiss the appeal." *Held*, that, as the judgment of the Sessions Judge showed that he had appreciated the points which the prosecution had to establish, and that he had clearly in view the point for determination, *viz.*, the credibility of the evidence of the witnesses for the prosecution and had expressed an opinion on that point, and as there was nothing to show that any other point was raised at the hearing of the appeal or submitted to him for determination, there was no sufficient reason for the High Court to interfere as a Court of revision. **20 C. 353.**

(11)—A judgment of a criminal appellate Court was in the following form:—"After reading the evidence and hearing the counsel for the appellants and the Government Pleader I am convinced that the Deputy Magistrate has decided the case rightly. The appeal is dismissed." *Held*, that judgment was not in accordance with the provisions of ss. 367 and 424 of the Code. **23 C. 420.** [*R.*, 19 A. 506, F.B.]

(12)—*Of the appellate Court—What it should contain—Judgment of the first Court, whether may be read as supplementing judgment of the appellate Court—Joint trial of several accused.*—The judgment of an appellate Court dealing with the case of several accused who were convicted in a joint trial must show on the face of it that the case of each accused has been taken into consideration, and should state reasons as far as may be necessary to show that the appellate Court has devoted judicial attention to the case of each accused. An appellate judgment must be quite independent and stand by itself. It ought not to be read in connection with or as supplementary to the judgment of the Court of first instance. **12 C.W.N. 134=6 Cr. L.J. 427=35 C. 138.**

(13)—*Crim. Pro. Code, ss. 367, 421—Judgments of appellate Courts—Reasons for decision—Sentence passed before completion of judgment—Validity—Defect whether curable.*—An appellate Court, in rejecting an appeal under s. 421 of the Code, is not obliged to give a judgment containing the particulars enumerated in s. 367 of the Code nor to give reasons for its decision. [*F.*, 20 B. 540, 2 Weir 473=25 M. 534, 9 C.W.N. 623, U.B.R. 1906, 2nd Qr., Crim. Pro. Code, 49.] Where a Magistrate was writing the judgment, while

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the arguments were going on and passed sentence on the accused before the judgment had been completed, *held*, that the judgment so pronounced was not one in accordance with ss. 366 and 367 of the Code. *Per* Prinsep and Trevelyan, JJ). [*D.*, 23 C. 502.] *Held*, that the irregularity mentioned above was one contemplated by s. 537 of the Code, and that, as it had not occasioned any failure of justice, no retrial was necessary. *Per* Prinsep and O'Kineally, JJ. (Trevelyan, J., *dissenting*) *Per* Trevelyan, J:—The case was more than a case of a mere "error, omission or irregularity in the judgment or proceedings," as there was no judgment in accordance with the law. The case ought, therefore, to be re-tried. **21 C. 121.**

(14)—*Crim. Pro. Code (1882), ss. 366, 367 and 537—Sentence pronounced before judgment was ready—Irregularity whether covered by s. 537.*—Where a Magistrate, after consideration of the arguments addressed to him in a case tried by him, reserved judgment, and pronounced sentence, apparently after full consideration, on the day to which the case has been adjourned, though he had not written the judgment, *held*, that the omission of the Magistrate to record a judgment before pronouncing the sentence was an omission or irregularity which would be covered by the provisions of s. 537, and would not render the trial nugatory. **23 C. 502.**

(15)—*Crim. Pro. Code (1882), ss. 367 and 424—Form and contents of judgment—Defective judgment of an appellate Court.*—A judgment of a Criminal Appellate Court was in the following terms:—"After hearing the arguments of the pleaders for the appellants and examining the record, I am of opinion that the lower Court had ample grounds for convicting the accused of rioting. I do not consider the sentence too severe." *Held* that the judgment was not one in accordance with ss. 367 and 424 of the Code as it did not contain the point or points for determination nor an explicit statement of the reasons for the decision on such point or points, and that the appeal should, therefore, be re-heard. **22 C. 241.** [*R.*, 19 A. 506, F.B.; *D.*, 1 C.W.N. 169].

(16)—*Crim. Pro. Code (1898), s. 367—Judgment of appellate Court, deficiency in—Duty of Sessions Judge.*—It is the duty of the Sessions Judge disposing of an appeal to record a judgment according to law. Any deficiency in that judgment could not be made up for, by a reference to the judgment of the Magistrate. It is his duty to go into the evidence and try the appeal in a proper manner. **7 C.W.N. 30.**

(17)—*Crim. Pro. Code (1898), s. 367—Meagre judgment in appeal—Power of High Court.*—Where the judgment of a District Magistrate acquitting, on appeal, an accused person, was so meagre that it was impossible to form an opinion as to the merits of the case or to say whether there had been a miscarriage

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of justice or not, the High Court, on the application of the complainant, set aside the order of acquittal, and directed the appeal to be reheard. **5 C.L.J. 452=5 Cr. L.J. 349.**

(18)—*Crim. Pro. Code (1898), s. 421—Rejection of appeal—Judgment.*—In rejecting an appeal under s. 421, Crim. Pro. Code, the appellate Court is not bound to write a judgment. **20 B. 540.** [*F.*, 2 Weir 473=25 M. 534; *R.*, U.B.R. 1906. 2nd Qr., Crim. Pro. Code, 49=4 Cr. L.J. 284].

(19)—*Crim. Pro. Code (1882), s. 421—Summarily rejecting an appeal—Recording of reasons.*—When a Court acts under the first paragraph of s. 421, Crim. Pro. Code, and rejects an appeal summarily, it is admissible for the Court to state shortly in its order the reason or reasons which influenced it in coming to the conclusion that there is no sufficient ground for interfering in the case. **17 A. 241, F.B.** [*F.*, 2 Weir 473=25 M. 534, U.B.R. 1906, 2nd Qr., Crim. Pro. Code, 49=4 Cr. L.J. 284; *R.*, 19 A. 506, F.B., 3 A.L.J. 693=A.W.N. 1906, 303=3 Cr. L.J. 373].

(20)—*Crim. Pro. Code (1872), ss. 227, 464—Reasons for convictions, statement of—Summary trial.*—Generally speaking, the judgment of a Magistrate must, under s. 464, Crim. Pro. Code, contain the finding and the reasons for the finding, whatever the nature of the finding may be. The first part of s. 227 discharges a Magistrate, in the case of summary trial, from the necessity of recording the reasons for his finding in general, but cl. (*h*) requires him to enter a brief statement of those reasons in the case of a conviction. **6 C.L.R. 273.**

(21)—*Crim. Pro. Code (1882), ss. 367, 424—Appellate judgment—Magistrate— Clerk.*—A Magistrate should always write his judgment himself and cannot get it written by a clerk. **Rat. Un. Cr. C. 545=Cr. Rg. 19 of 1891.**

(22)—*Crim. Pro. Code (1898), s. 263 (h)—Summary trial—Statement of reasons for conviction.*—Under s. 263 (*h*), a Magistrate in recording his reasons for the conviction, should state them so that the High Court on revision may judge whether there were sufficient materials before him to support the conviction. Where a Magistrate's "brief statement of the reasons for the conviction" was simply,—"the witnesses called by the complainant support the complainant; the witnesses (for the accused) do not say that the accused has not committed the offence;" *held*, that it was not a sufficient compliance with the provisions of s. 263 (*h*). **18 B. 97.** [*F.*, Rat. Un. Cr. C. 778, 1 L.B.R. 95, 1 L.B.R. 208, 3 L.B.R. 3=2 Cr. L.J. 375; *R.*, 21 A. 189, 2 S.L.R. 3 Cr.]

(23)—The proceedings of a Magistrate in a summary trial, must show the reason for convicting the accused, so that the High Court, on revision, may judge, whether there are sufficient materials in support of the conviction. **3 C.W.N. 281.**

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(24)—*Judgment of High Court, when could be altered.*—A judgment of High Court is not complete until it is sealed. Till then it may be altered by the Judge concerned without the necessity of having recourse to any formal procedure by way of review of judgment. **21 A. 177.** [*F.*, 27 A. 92=A.W.N. 1904, 195; *D.*, 10 C.L.J. 80].

(25)—*Note to a judgment, propriety of.*—It is a most unwarrantable proceeding on the part of the Judge to add a note to his judgment, by which he tries to throw doubts on the conclusion at which he had arrived on the evidence. *Per* Stuart, C.J. **2 A. 33.**

(26)—*Crim. Pro. Code (1872), ss. 275, 276, 464—Copy of judgment.*—To comply with the provisions of s. 275 of the Crim. Pro. Code, it is enough to file along with the appeal a copy in the prisoner's own language given to him under s. 464 as amended by Act XI of 1874. A person desiring to get a copy of the judgment in the language of the Court, may do so as a proceeding under s. 276 of the Code (s. 25 of Act XI of 1874). **Rat. Un. Cr. C. 82.**

(27)—*Hearing of case by one Magistrate—Judgment by successor—Validity.*—A Magistrate, after having heard all the evidence in a case, cannot postpone it for judgment by his successor in office, on the same materials; but must pass the judgment himself. **Rat. Un. Cr. C. 124.**

(28)—If before a finding is recorded, the presiding officer of a Court is removed, his successor cannot pass a judgment upon a consideration of the evidence recorded by him. 4 **M.H.C. App. 42.**

(29)—*Crim. Pro. Code (1882), s. 367—Signature to judgment, when to be appended.*—The signature to a judgment should be appended at the time of pronouncing it in open Court. **Rat. Un. Cr. C. 429.**

(30)—*Crim. Pro. Code (1882), s. 257—Judgment of Sessions Court, how to be treated by subordinate Magistrates.*—A Magistrate being subordinate to a Sessions Court must treat its judgments with respect and be guided by them on such matters of procedure as arise on s. 257 of the Crim. Pro. Code. **Rat. Un. Cr. C. 854 =Cr. Rg. 20 of 1896.**

(31)—*Crim. Pro. Code (1882), s. 370—Interpretation of the section.*—The meaning of s. 370 is that, where the offence is sufficiently grave to involve a fine of Rs. 200 or imprisonment as the substantive sentence, the Magistrate is bound to record his reasons so as to enable the party to bring the matter up to the High Court. But in petty cases which can be met by a fine of a few rupees, the decision ought to be recorded shortly. **14 C. 174.**

(32)—*Magistrate embodying in his judgment matters not proved by evidence.*—A Magistrate had, in his judgment, described matters, which [illegible] under his own observation. In doing so,

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he had embodied in his judgment matters which, if relevant, should have been deposed by him on oath in the witness box. *Held*, that the accused were entitled to have nothing stated against them in the judgment which was not stated on oath in their presence, and which they had no opportunity of testing by cross-examination; *held* also, that the Magistrate could not give evidence before himself, inasmuch as he was the sole judge both of law and fact. **20 C. 857.** [*F.*, 6 M.L.J. 143=19 M. 263=2 Weir 725].

(33)—*Crim. Pro. Code (1898), ss. 366, 367—Delivery of judgment some days after conviction and sentence of prisoner, effect of.*—Where the judgment in a criminal case was written and delivered some days after the prisoners were convicted and sentenced, *held*, that it was a violation of the provisions of ss. 366, 367, Crim. Pro. Code, and amounted to a defect which vitiated the conviction and sentence. **27 M. 237=2 Weir 240.**

(34)—*Sessions Judge's interference with Magistrate's orders—Record of reasons.*—Sessions Judges ought to record their grounds for confirming, reversing, or modifying sentences or orders of Magistrates in cases of appeal. **5 M.H.C. App. 12.**

(35)—*Findings—Heads of charge—Offences committed in one continuous transaction—Sentence.*—To enter up findings on every head of charge is not only not illegal, but is the most convenient course. Where the acts constituting an offence are founded on one single continuous transaction, sentence should only be passed for the principal offence. **6 M.H.C. App. 47.**

(36)—*Delay in delivering—Crim. Pro. Code (1872), s. 464.*—Delay in pronouncing judgment is not only unjust to the accused in that it prevents him from appealing at once against his sentence, but also opposed to the principles of law. **5 C.P.L.R. Cr. 24.**

(37)—*Crim. Pro. Code (1882), s. 263—Summary trial--Form of judgment.*—In a case of dishonestly receiving stolen property which had been summarily tried, the Magistrate recorded: —"There seems no doubt whatever of the truth of the case for prosecution." *Held*, that this did not satisfy the requirements of s. 263, Crim. Pro. Code, *viz.*, that in case of conviction the Magistrate must give a brief statement of his reasons therefor. **A.W.N. 1883, 114.** [*R.*, A.W.N. 1885, 213, A.W.N. 1886, 181, 21 A. 189].

(38)—*Criminal case—Judgment in one case based on evidence in another—Legality.*—Where a Sessions Judge tried charges of rioting by two parties, one after the other, but obtained the opinion of the assessors and delivered judgment in both cases together, basing the judgment in one case on evidence taken in the other, *held* that the procedure was irregular and that there should be a re-trial. **A.W.N. 1885, 28.** [*R.*, 9 A. 609].

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(39)—*Criminal case—Judgment based on statements, not evidence.*—Where a Judge, during the trial and in the earlier part of his judgment, had expressed the opinion that the accused had committed adultery and then changed his opinion on the basis of a horoscope produced after the trial by the father of the girl representing her age to be 13 and held that the accused had committed rape, *held* that the procedure was extremely irregular. **A.W.N. 1885, 31.**

(40)—*Crim. Pro. Code (1872), s. 464—Alteration not allowed after judgment has been signed.*—When a judgment has been signed by a Magistrate, it cannot be altered by him according to s. 464 of the Crim. Pro. Code. But on finding that he has passed an illegal sentence, a Magistrate may, if the prisoner is suffering prejudice, direct the jailor to suspend execution and merely keep the prisoner in detention, which should, in no case, be allowed to exceed the term of imprisonment awarded, while the case is referred to the High Court. **Rat. Un. Cr. C. 137=Cr. Rg. 29—8—1878.**

(41)—*Judgment following verdict of jury—Judgment of acquittal.*—A judgment passed by a Sessions Judge following the verdict of the jury, acquitting the accused, is a judgment of acquittal for purposes of an appeal by the Government. **2 C. 273.**

(42)—*Crim. Pro. Code (1882), ss. 267, 427—Defective appellate judgment.*—Where the case against each of the appellants was, in several respects, distinct and different, *held*, that the Judge should have placed something on the record to show that he had considered them separately. **A.W.N. 1886, 289.** [*R.*, A.W.N. 1888, 280, 19 A. 906=A.W.N. 1897, 142].

(43)—*Crim. Pro. Code (Act X of 1882), ss. 367, 424—Judgment in appeal.*—Where a District Magistrate dismissed a criminal appeal in the following terms:—"Read proceedings. I see no reason for interfering with the decision or sentence," *held* that this was not a judgment within the meaning of the Crim. Pro. Code. **A.W.N. 1888, 280.** (11 C. 449, 13 C. 110, 6 A.W.N. 177, 289, *R.*) [*R.*, 19 A. 506=A.W.N. 1895, 142].

(44)—*Crim. Pro. Code (Act X of 1882), s. 195—Appeal from order--Judgment of appellate Court.*—Where a Sessions Judge disposed of an application to revoke the sanction granted by a Magistrate, in the words "I decline to interfere on revision," *held* that this order did not fulfil the requirements of the law and that the Judge should have stated his reasons. **A.W.N. 1892, 60.**

(45)—*Crim. Pro. Code (Act X of 1882), ss. 366, 367, 537—Order of acquittal—Sessions case—Form.*—An order of acquittal in a Sessions Court must be in the form of a judgment, and the order must be to set the prisoner at liberty. Otherwise the order of acquittal is not operative. A defect in this particular is not cured by s. 537 of the Crim. Pro. Code. **A.W.N. 1892, 157.**

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(46)—*Appellate Court—Local enquiry—Judgment.*—Where an appellate Judge makes a local enquiry which probably influenced his decision, the nature of such enquiry and its result must be set forth in his judgment. **A.W.N. 1896, 73.**

(47)—*Crim. Pro. Code (1882), ss. 369, 537—Addition to judgment after signature.*—It would depend upon the circumstances of each case whether an alteration made in the judgment after it had been signed was something more than an irregularity. But the mere fact of an addition being made to a judgment where such addition does not materially prejudice the accused and has not occasioned a failure of justice, does not vitiate the judgment and justify an order for a re-trial. **A.W.N. 1898, 11.**

(48)—*Judgment passed on evidence recorded by predecessor.*—A Sessions Judge is not competent, even with the consent of the accused, to pass a judgment on evidence wholly recorded by his predecessor. **1 P.R. 1890 Cr.** (3 M. 112 and 22 W.R. 59 Cr., *F.*).

(49)—*Death of Magistrate hearing—Conviction by successor—Omission to inform the accused of the right to re-hear witnesses not a fatal defect.*—Where a Magistrate, who heard a case and wrote notes of his judgment and of the punishment to be awarded, died before recording judgment, and his successor convicted the accused and sentenced them to the punishment proposed by his predecessor without informing them of their right under the proviso, *held*, that, as the accused were not prejudiced by the omission, the irregularity was cured by s. 537, Crim. Pro. Code. **6 P.R. 1884 Cr.**

(50)—*Defective judgment of appellate Court—Crim. Pro. Code (1882), ss. 367 and 424.*—An appellate Court's judgment which ran as follows, "I have gone through the case, but see no grounds to interfere. The witnesses for the defence would not support the accused, and after the evidence of two was taken, the rest were withdrawn by the barrister for the accused." *Held* that the judgment did not comply with the requisites of ss. 367 and 424, Crim. Pro. Code, 1882. **31 P.R. 1884 Cr.**

(51)—*Conviction on evidence recorded by a predecessor—Right of accused to have the witnesses recalled.*—Where there has been a demand by the accused to re-hear evidence under the proviso to s. 350, Crim. Pro. Code, 1898, a refusal by the Magistrate to do so amounts to disobedience of an express provision as to the mode of trial, which is not a mere irregularity curable by s. 537, Crim. Pro. Code. But a mere omission to enquire from the accused whether he wished to exercise the right reserved by proviso (*a*) to s. 350, is curable by s. 537. **3 P.R. 1903 Cr.** (6 P.R. 1884, 25 M. 61, 25 C. 863, *R.*)

(52)—*Judgment of appellate Court, defect in—Power of Chief Court in revision—Crim. Pro. Code (1872), s. 464.—Per Boulnois and Lindsay, JJ.*, (Campbell, J., *dissenting*).—The Chief Court is competent on the revision side, to set aside a defective judgment of an appellate Court and return the case to the appellate Court. But the order of the Magistrate who tried the case in the first instance cannot be disturbed except for the reasons given in s. 283, Crim. Pro. Code, 1872. *Per* Campbell, J:—The Chief Court cannot set aside a defective judgment, but, assuming that it has power, it could also set aside the judgment appealed from and pass such orders as it thought fit. **6 P.R. 1876 Cr.**

(53)—*Judgment pronounced after transfer to another district.*—Certain accused were tried and convicted, but no judgment was pronounced, nor was any future date fixed for it. The Judge who tried the case was subsequently transferred and then he wrote the judgment sentencing two of the accused to death and one to transportation for life. On a reference to the High Court for confirmation of the death sentence and an appeal from the third accused, *held*, that the judgment, finding and sentence were pronounced and passed without jurisdiction. **20 P.R. 1879 Cr.**

(54)—*Comments on conduct and evidence of police officers—Sessions Judges.*—In a judgment in a Sessions trial, the evidence and conduct of police officers concerned should be scrutinised and commented on in the same degree as those of other material witnesses, and no further. **23 W.R. Cr. 65.** [*R.*, Rat. Un. Cr. C. 786].

(55)—*Criminal cases—Record sent to appellate Court—Crim. Pro. Code (1882), s. 367, para 5, proviso—Record of heads of charge—Judgment in trial by jury.*—In trials by jury "heads" of the Judge's "charge" are to include such statement on the part of the Sessions Judge as will enable the appellate Court to decide whether the evidence has been properly laid before the jury, or whether there has been any misdirection in the charge. **23 W.R. Cr. 32.**

(56)—*Criminal cases—Necessity of findings on each charge—Criminal Court—Sessions Judge.*—A Sessions Judge should record his findings, whether of conviction or acquittal, on all the charges under which the prisoners are committed for trial. **13 W.R. Cr. 50.**

(57)—Necessity for written judgment before pronouncing decision—*See* 14 A. 242.

See APPEAL, Rat. Un. Cr. C. 826, 5 Bom. L.R. 704, 27 M. 510=1 Weir 787.

See ASSESSORS, 6 B.H.C. Cr. 55.

See COURT FEES, Rat. Un. Cr. C. 364=Cr. Rg. 9 of 1898.

—In the alternative—*See* CRIM. PRO. CODE (1898), ss. 236, 367, 7 N.W.P. 137.

—Validity of—Written by a Magistrate after his transfer—*See* CRIM. PRO. CODE (1898), s. 12, 15 C.P.L.R. Cr. 15.

—Liability to whipping—Grounds of liability to be stated both in charge and judgment—*See* CRIM. PRO. CODE (1898), s. 221, 5 M. 158.

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See CRIM. PRO. CODE (1898), ss. 362, 370, 31 C. 983=8 C.W.N. 839.

See CRIM. PRO. CODE (1898). ss. 367 and 424, 37 C. 194=11 C.L.J. 410.

See CRIM. PRO. CODE (1898), s. 421, 32 C. 178.

See CRIM. PRO. CODE (1898), s. 435, 80 P.L.R. 1904.

See CRIM. PRO. CODE (1898), s. 537, 2 Weir 711.

See CRIMINAL TRESPASS, 7 C.L.J. 238=7 Cr. L.J. 312.

See DISCHARGE OF ACCUSED, 31 M. 543.

See EVIDENCE, 23 C. 610.

—Power of expunging objectionable portions from a judgment—*See* HIGH COURT, JURISDICTION OF, 2 Weir 534.

See JOINT TRIAL, 4 N.L.R. 71=8 Cr. L.J. 11.

See LETTERS PATENT, 1865 (MAD.), cl. 15, 4 Ind. Cas. 871 Cr.

See MURDER, 2 Ind. Cas. 622=8 P.W.R. 1909 Cr.

—Omission to specify offence in—*See* PENAL CODE, s. 225, 5 L.B.R. 21=2 Ind. Cas. 619.

See PLEADER, 6 Bom. L R. 540.

—Duty of appellate Court to write judgment —*See* PRACTICE AND PROCEDURE, 2 Weir 473.

See REVIEW, 7 A. 672.

See SUMMARY TRIAL, 6 M. 396=2 Weir 328, Rat. Un. Cr. C. 725, 2 S.L.R. 3 Cr.

Judicial Commissioner.

—*Power of—False evidence—Crim. Pro. Code (Act XXV of 1861), s. 172.*—A Judicial Commissioner cannot, under s. 172 of the Code of Criminal Procedure, 1861, commit a witness for a false deposition given before the Assistant Commissioner. **3 B.L.R. A. Cr. 36=12 W.R. Cr. 31.** [*R.*, 12 W.R. Cr. 69].

Judicial Commissioner of Mysore.

—*European British subjects—Jurisdiction of Judicial Commissioner of Mysore—Justice of the peace.*—The Judicial Commissioner of Mysore has no jurisdiction, either as a High Court or as a Sessions Court, over European British subjects, being Christians, when the commitment to his Court is made by a justice of the peace. **5 M. 33=1 Weir 7.**

Judicial Determination.

—"*Judicial determination,*" *meaning of.*—"Judicial determination" of a complaint does not necessarily mean the trial of the persons against whom the complaint is made, but the final disposal of the matter of the complaint by the officer holding the enquiry, upon evidence produced before him. **5 C.W.N. 254.**

Judicial Enquiry.

—*Enquiry by District Magistrate into a crime alleged to be about to be committed—Enquiry, even if official, certainly not judicial—Result and value of the enquiry—Statement by a boy, value of.*—When the Magistrate of a District received information which he apparently believed and which, if true, showed that a grave crime was being or was about to be committed, which, if successful, would result in a great wrong in respect to properties in his district, and when the said Magistrate caused some enquiries to be made and took such steps as seemed to him necessary, in the emergency, for the prevention of the crime: *Held*, that those enquiries, if they could be called official in any sense, were certainly not judicial. The enquiries were secret, no notice was given to anybody, on behalf of the person principally interested, and there was nobody to check the mode in which the alleged statements were elicited, nobody to test the statements by cross-examination, nobody to watch the accuracy with which they were recorded, and, consequently, no weight can properly be given to the proceedings at, or the result of, such enquiries. When reliance is sought to be placed upon an alleged statement made by a boy, it must be proved that the language used was his own and not put in his mouth by the person conducting the examination, as nothing could be easier than to extract by the latter process almost any statement from a frightened child, who suddenly finds himself alone in the custody of strangers, and some of them officials. **4 C.L.J. 181=8 Bom. L.R. 705=1 M.L.T. 301=4 Cr. L.J. 334, P.C.**

See COURT, 12 B. 36.

See CRIM. PRO. CODE (1898), ss. 200 and 202, 11 C.W.N. 170.

Judicial Notice.

—*Justice of the Peace—Case sent up to High Court.*—Where R, has tried a case and sent it up to the High Court, but it did not appear whether he had done so in his capacity of Magistrate or Justice of the Peace, *held* the High Court was bound to take judicial notice that R. was a Justice of the Peace for Bengal. **1 B.L.R. O. Cr.=15 W.R. Cr. 71, note.** [*R.*, 16 W.R. Cr. 21, 17 W.R. Cr. 35, 19 A. 390, F.B., 15 W.R. Cr. 69; *D.*, 13 W.R. Cr. 40].

See EVIDENCE ACT, s. 57, 22 B. 54.

Judicial Officers, Liability of.

See ACT XVIII OF 1850.

(1)—*Liability of Municipal Commissioner sitting as Magistrate under Ben. Act III of 1864.*—A Municipal Commissioner invested with the powers of a Magistrate under Bengal Act III of 1864 is protected by Act XVIII of 1850 in respect of every act done by him in such capacity judicially. **13 W.R. 340.**

(2)—*Judicial Act—Right of suit—Liability of Magistrate—Ben. Act VI of 1868, Sch. K.*—The removal by a Magistrate of an obstruction in the exercise of the powers conferred upon

Judicial Officers, Liability of—concluded.

him by Sch. K, cl. 1, of Bengal Act VI of 1868 is not a judicial act; and the Magistrate is, therefore, not protected by Act XVIII of 1850 from a suit in the Civil Court to try the question of the right of the person against whom the order was made to create the obstruction and for damages. **14 B.L.R. 254 = 21 W.R. 391.**

(3)—*Protection while exercising judicial functions—St. 21, Geo. III, c. 70, s. 24—Trespass, action of.*—The St. 21, Geo. III, c. 70, s. 24 protecting Provincial Magistrates in India from actions for any wrong or injury done by them in the exercise of their judicial offices, does not confer unlimited protection, but places them on the same footing as that of English Courts of a similar jurisdiction, and only gives them an exemption from liability when acting *bona fide* in cases in which they have mistakenly acted without jurisdiction. Trespass will not lie against a Judge for acting judicially, but without jurisdiction, unless he knew, or had the means of knowing, of the defect of jurisdiction, and it lies upon the plaintiff in every such case to prove that fact. **2 M.I.A. 293.** [*F.*, 12 A. 115; *D.*, 9 C. 341, P.C.; *R.*, 2 M.H.C. 396, 6 M.H.C. 423].

(4)—*Order made by Political Agent in his executive capacity.*—In a suit brought in the High Court, Bombay, by the Hindu inhabitants of Mahalingpore, a village in the territories of the Chief of Modhool, against the Political Agent at the Court of Modhool, for damages for injury done to them by certain orders made by him which affected their caste, the plaint stated that the defendant, at the time the orders were made, exercised exclusive civil jurisdiction throughout the territories of the Chief of Modhool, and that the Court of the defendant was a Court subject to the superintendence of the High Court at Bombay; and that the orders complained of were made by him as Political Agent and in his executive capacity. *Held* that there was no cause of action, whether the acts were done by the defendant as Political Agent or in his judicial and magisterial capacity. **7 B.L.R. 452, note.**

(5)—*Illegal arrest when acting* bona fide—*Liability of public officer.*—Where the defendant, the commanding officer of a regiment, had unlawfully caused the plaintiff, a contractor, to be arrested and kept in confinement on the reasonable suspicion of fraud entertained against him, believing himself to be lawfully possessed of the authority to do so, and did not act in malice or conscious violation of the law, nor for the furtherance of any unlawful purpose, but failed to establish the fraud imputed, *held* that the plaintiff was, under the circumstances, entitled to substantial damages. **3 Agra 409.**

See CRIM. PRO. CODE (1898), ss. 202, 204, 242, 244 and 439, 1 P.W.R. 1908 Cr. = 4 P.R. 1908 Cr. = 86 P.L.R. 1908 = 7 Cr. L.J. 202.

—Exemption of judicial officers from giving evidence—*See* EVIDENCE ACT, s. 121, 2 Weir 777 = 6 M.H.C. App. 42.

Judicial Officers, Liability of, Act.

See ACT XVIII OF 1850.

Judicial Officers' Protection Act.

See ACT XVIII OF 1850.

Judicial Procedure.

(1)—*Object of.*—The end and use of judicial procedure being to apply the law correctly to a correct presentment of facts, and it being impossible for right to be vindicated, or for the proper relief to be obtained, in a Court of justice, without a fair hearing being given to both sides, it is not easy to exaggerate the importance of those provisions which, intelligently enforced, secure that the defence shall know what has to be met and shall have proper opportunity for so doing **L.B.R. (1893—1900), 258.**

(2)—A Magistrate, who fails to act reasonably, carefully, and circumspectly, cannot be said to have "in good faith believed himself to have jurisdiction," within the meaning of Act XVIII of 1850; and consequently he cannot claim the protection of that Act in an action brought against him in a Civil Court. **3 B.H.C. Ap. 1.**

Judicial Proceedings.

(1)—*Manner of proof of judicial proceeding.*—Where the charge is a false deposition in a judicial proceeding, the deposition and the proceeding, being written records, should be proved by production of such records and not by parol evidence. **8 B.H.C. Cr. 37.**

(2)—*Crim. Pro. Code (Act XXV of 1861), ss. 318, 404—Judicial proceeding—Procedure.*—A proceeding under s. 318 of the Crim. Pro. Code, is a judicial proceeding within the meaning of s. 404. The Magistrate, in such a proceeding, has to enquire who is in actual possession, not who is entitled to legal possession. **4 B.H.C. A.C. 153.**

(3)—*Crim. Pro. Code (1872), Ch. XLI—Proceedings under the chapter, nature of.*—Proceedings under Ch. XLI of the Code of 1872 (Ch. XXXVI of the Code of 1898) are judicial in their nature, and must not be conducted as if they were merely ministerial matters. The notes of evidence, therefore, must not be inadequate and vague, and the order recorded must be based on distinct findings of fact. **5 A. 224.** [*R.*, 23 B. 50].

(4)—*Crim. Pro. Code (Act XXV of 1861), Ch. XX—Magistrate's order—Judicial proceeding.*—A Magistrate's order made under Ch. XX of the Crim. Pro. Code is a judicial proceeding. **Rat. Un. Cr. C. 89, F.B.** 4 B.H.C.R.C. C. 120, *overruled.*)

(5)—*Crim. Pro. Code (1872), ss. 518, 519, 527—Order under s. 518, by a first class Magistrate—Power of District Magistrate to refer to High Court.*—An order passed by a first class Magistrate under s. 518 of Crim. Pro. Code being, under s. 520 of the Code, not a judicial proceeding, the District Magistrate cannot refer it to the High Court, but he is at liberty to deal with it in his executive capacity. The

Judicial Proceedings—concluded.

mere fact that the District Magistrate has to exercise his discretion carefully and make due enquiry does not make the function in any way judicial. **Rat. Un. Cr. C. 129.**

—Proceedings under s. 8, Act V of 1876, if judicial proceedings—*See* ACT V OF 1876, s. 8, 14 B. 381.

See ACT V OF 1876, s. 8, Rat. Un. Cr. C. 494.

—Enquiry under Legal Practitioners' Act if a—*See* ACT XVIII OF 1879, 6 M. 252=1 Weir 116.

See ACT II OF 1886, s. 25, 44 P.R. 1905 Cr. =187 P.L.R. 1905=3 Cr. L.J. 128.

See CANTONMENT CODE (1899), s. 283, 9 P.R. 1909 Cr.

See CONTEMPT OF COURT, 16 P.R. 1897 Cr.

See CRIM. PRO. CODE (1898), ss. 4, 476, 28 A. 89=A.W.N. 1905, 195=2 A.L.J. 717=2 Cr. L.J. 454.

See CRIM. PRO. CODE (1898), ss. 96, 105, 165, 13 C.W.N. 458=9 C L.J. 298=36 C. 433=5 M.L.T. 367.

See CRIM. PRO. CODE (1898), ss. 144, 435 and 476, 19 M. 18=2 Weir 591.

See CRIM. PRO. CODE (1898), s. 195, 9 C.W. N. 127.

See CRIM. PRO. CODE (1898), ss. 426, 439 (1 to 4), 440, 523, 2 A. 276.

See CRIM. PRO. CODE (1898), s. 476, 34 C. 42=11 C.W.N. 125=4 Cr.L.J. 460.

See CRIM. PRO. CODE (1898), ss. 476, 192, 202, 13 C.W.N. 122=36 C. 72=1 Ind. Cas. 203.

See CRIM. PRO. CODE (1898), s. 487, 16 C. 121, 16 C. 766, F.B.

See FALSE EVIDENCE, 14 C.W.N. 132, 2 M.H.C. 43, 4 N.W.P. 6.

See JOINT TRIAL, A.W.N. 1885, 29.

—When come to an end—*See* PENAL CODE, s. 228, 1 Weir 214.

See SANCTION TO PROSECUTE, 2 C.L.J. 619=10 C.W.N. 222=3 Cr. L.J. 112, 27 C. 452=4 C.W.N. 594.

See SECURITY FOR GOOD BEHAVIOUR. 10 P.R. 1899 Cr.

Judicial Superintendent of Railways.

See HIGH COURT, JURISDICTION OF, 9 B. 288, F.B.

Julkar.

See FISHERY.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 6 C.W.N. 161.

See SECURITY TO KEEP THE PEACE, 6 C.L.J. 697=6 Cr. L.J. 398=35 C. 117=12 C. W.N. 487.

Jurisdiction of British Courts.

—*Crim. Pro. Code (1872), s. 67—Dacoity committed in Native State—Retention of property in British territory—Jurisdiction of British Courts.*—Where the accused formed part of a gang which committed dacoity in Velanpor in Baroda territory, but a portion of the stolen property was found concealed by the accused in British territory, *held*, that a conviction for dacoity by a British Court could not be sustained, as that was a substantive offence completed as soon as perpetrated, although, had that place been in British territory, the subsequent acts in process of taking away the property might, in the legal sense, as they would have the same legal character, have coalesced with the first and principal one so as to give jurisdiction under s. 67. *Held*, further, that the accused could be properly convicted of retaining stolen property known to have been obtained by dacoity, the retaining having taken place in British territory. **1 B. 50.** [*R.*, 6 C. 307, 5 B. 338].

See JURISDICTION OF CRIMINAL COURTS, 16 B. 178, 19 B. 741.

Jurisdiction of Civil Courts.

(1)—*Enquiry into public right per se—Crim. Pro. Code (1861), ss. 318 and 319.*—A Civil Court has no jurisdiction to enquire into a public right *per se*. As ancillary to an enquiry whether a person has been injured in his private capacity, it may enter upon such an enquiry, but not abstractedly and otherwise than collaterally to a suit arising out of a private injury. **12 W.R. 199=3 B.L.R. A.C. 305, 3 B.L.R. Ap. 43=11 W.R. 434.** [*Appr.*, 15 C. 460, F.B., 7 B.L.R. 184, 1 A. 249; *D.*, 14 W. R. 163, 6 C. 291, 12 W.R. 275, 14 C. 60].

(2)—*S. 308, Crim. Pro. Code, scope of—Control over joint family house—Magistrate, jurisdiction of.*—S.308, Crim.Pro.Code, refers to nuisances in a thoroughfare or public place, and has nothing to do with the interior of private houses, and, therefore, does not bar the jurisdiction of the Civil Courts in a suit brought to set aside an order of a Deputy Magistrate restricting some of the owners and occupiers of a house from the free use of their own portion of joint property. **8 W.R. 239.** (2 W.R. Mis. 30, *F.*).

(3)—*Order by Magistrate under s. 521 of the Crim. Pro. Code, 1872—Competency of Civil Court to set aside.*—A Civil Court is incompetent to set aside an order by a Magistrate, under s. 521 of the Crim. Pro. Code, 1872, declaring a right of way over property, on the ground of its having been made without jurisdiction. **6 C. 291=7 C.L.R. 433.**

(4)—*Magistrate's order under s. 308, Crim. Pro. Code, 1861—Opening of road—Jurisdiction of Civil Courts to interfere with order.*—A Civil Court is not competent to declare a road, which has been opened by the order of a Magistrate, to be no public thoroughfare, and to direct that it be closed by the assistance of the officers of the Court. **11 W.R. 434=3 B.L.R. Ap. 43.**

Jurisdiction of Civil Courts—continued.

(5)—The Civil Courts have jurisdiction to set aside an order by a Deputy Magistrate to open a road over lands. **1 W.R. 277.** (S.D.A. 1853, 929 and S.D.A. 1858, 48, *R.*).

(6)—*Order of Magistrate interfering with private paths—Civil suit.*—When a Magistrate interferes with private paths, his acts, being beyond the scope of his jurisdiction, may be set aside by a civil suit. **1 W.R. 324.** [*D.*, 7 W.R. 95; *R.*, 6 C. 291, 15 C. 460, F.B., 6 W. R. 30].

(7)—*Order for removing an encroachment not dealt with as local nuisance—Crim. Pro. Code (1861), Chs. XX, XXII—Penal Code, s. 431.*—A regular suit lies to the Civil Court from the proceedings of a Magistrate ordering the removal of an encroachment not treated as a local nuisance. S. 431, Penal Code, gives the Magistrate no authority whatever to order the removal of encroachments. The Magistrate could only legally proceed under Ch. XX, or Ch. XXII, Crim. Pro. Code. Any decision under the latter is expressly subject to a regular suit. **2 W.R. 287.**

(8)—*Magistrate's order encroaching on party's land—Jurisdiction of Civil Courts—Crim. Pro. Code (1861), s. 308.*—A plaintiff is not precluded from suing for a declaration of his civil rights to land encroached upon by a road being widened in consequence of a Magistrate's order, on the ground that such order might have been reversed on the criminal side of the High Court. **7 W.R. 48.**

(9)—*Owner's right to keep up shed—Magistrate ordering removal—Crim. Pro. Code (1861), s. 308—Civil suit.*—No suit would lie in a Civil Court to establish the owner's right to keep up a shed, for the removal of which a Magistrate made an order under s. 308, Crim. Pro. Code, 1861. **7 W.R. 11.**

(10)—*Magistrate's order declaring a road public—Crim. Pro. Code (1861), s. 308—Appeal.*—The Civil Courts have jurisdiction to entertain a suit which, if successful, has, in fact, the direct effect of setting aside and rendering inoperative the order of a Magistrate declaring a road to be a public one, and directing the obstruction of bamboo-posts to be removed. S. 308, Crim. Pro. Code, 1861, does not provide specificaliy for any appeal. **7 W.R. 95.** (S.D.A. 1853, 929, S.D.A. 1855, 267, S.D.A. 1858, 933, 1 W.R. 324, 2 W.R. 287, Marsh, 1861, 214=2 Hay, 86, *R.*).

(11)—*Crim. Pro. Code (1872), ss. 308, 310, 311—Magistrate ordering obstruction to public thoroughfare to be demolished—Jury—Verdict, if can be questioned in Civil Court.*—A Magistrate, considering the plaintiffs' *mud kotha* to be an obstruction to a public thoroughfare, made an order under s. 308, Crim. Pro. Code, 1872, and the plaintiffs, being dissatisfied with the order, got, under s. 310, a jury appointed to try the order, who found that the order was reasonable and proper, and that the building was an obstruction; the plaintiffs then sued the Magistrate, complaining that, by his order, the building had been demolished and the materials carried away, and claiming the value of the materials and the recovery of the land. *Held*, with reference to s. 311, Crim. Pro. Code, that no suit would lie and that the decision of the jury as to the proprietorship of the land could not be questioned in a civil suit. **19 W.R. 345.**

(12)—*Province of Civil Courts—Questions of ownership between Government and private persons.*—It is the province of the Civil Courts to decide questions of ownership of land between Government and private persons just as much as between two private persons. If Government officers take summary possession of a man's land, otherwise than under the Land Acquisition Act or other legal authority, his rights are no more affected by such illegal action than they would be by the illegal seizure of his land by a private person. In such a case, the Revenue officers are mere trespassers and there is nothing illegal in the owner taking possession of his property. **28 M. 304=2 Cr. L.J. 754.**

(13)—*Jurisdiction of Civil Court—Suit for declaration that defendant is not lawfulwife of plaintiff—Effect of order under s. 488, Crim. Pro. Code, 1898.*—When an order has been passed under s. 488, Crim. Pro. Code, awarding maintenance to a wife against the plaintiff as her husband, *held*, that a Civil Court has no jurisdiction to pass a decree that the wife is not entitled to receive maintenance; but it is competent to decide whether sho was or was not the lawful wife of the plaintiff. **158 P.L.R. 1901.**

(14 and 15)—*Magistrate's order under s. 308, Crim. Pro. Code, 1861, relating to nuisance—Suit to cancel order.*—A Civil Court is incompetent to set aside an order duly made by a Magistrate under Ch. XX, s. 308, Crim. Pro. Code. 1861, relating to nuisances, or to restrain him from carrying such order into effect. **4 B.L.R. F B. 24=12 W.R. F.B. 18.** [*Appr.*, 15 C. 460, F.B.]

(16)—*Act XXIII of 1861, ss. 16, 19—Power of Civil Court to send case to Magistrate for trial of perjury and forgery.*—Under ss. 16 and 19, Act XXIII of 1861, Civil Courts had power to refer to Magistrates, or to make commitments to the Sessions, in cases of perjury or forgery, only when they had come to some conclusion in respect of the guilt of the party concerned, or the truth or otherwise of the document or evidence. **7 W.R. 482.**

(17)—Suit for possession after order of Criminal Court—Suit to set aside order of Magistrate under s. 318, Crim. Pro. Code, 1861—Suit for possession—*See* **21 W.R. 79.**

(18)—Suit for ejectment after dispossession of plaintiff under order of Magistrate—*See* **22 W.R. 461.**

(19)—*Suit for closing a new road and opening old one.*—In a suit for closing a new road

Jurisdiction of Civil Courts—concluded.

opened by the defendant through the land of the plaintiff, and for opening an old road which had been closed by the defendants, *held*, *per* Markby, J., that the question of opening and closing a public road belonged to the Criminal Court. The Civil Court had no jurisdiction to entertain the suit. **3 B.L.R. A.C. 351=12 W.R. 275.** [*Appr.*, 7 B.L.R. 184; *F.*, 1 A. 249; *R.*, 2 B. 370].

(20, 21 and 22)—Order of Magistrate as to right to use of water—Suit to set aside Magistrate's decision under s. 320, Crim. Pro. Code, 1861—*See* **18 W.R. 284.**

(23 to 30)—Crim. Pro. Code, s. 145—Failure of one party to file a written statement—Competency of Magistrate to decide in favour of party filing the statement—Power of Magistrate to issue warrant in proceeding under s. 145. **5 C. W.N. 71.**

(31)—Crim. Pro. Code (Act X of 1872), ss. 491, 530—Dispute likely to cause breach of the peace—Decision on title by Civil Court—Police Report, incorporation of, by reference. **6 C. 835=8 C.L.R. 217.**

See U.P. ACT I OF 1900, s. 183, 6 A.L.J. 458 =31 A. 371=1 Ind. Cas. 896.

—Appeal from Civil Courts directing prosecution for forgery—*See* APPEAL, 5 W.R. Mis. 18.

See CRIM. PRO. CODE (1898), s. 144, 6 N.W.P. 104.

See CRIM. PRO. CODE (1898), s. 144, 1 N.W.P. 197.

See CRIM. PRO. CODE (1898), ss. 478, 195, 18 B. 581.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 7 C.L.R. 516, 2 Ind. Cas. 266.

—To set aside Magistrate's order for maintenance—*See* MAINTENANCE, 18 A. 29.

See MAINTENANCE, 2 M.L.T. 344=7 Cr. L.J. 235=30 M. 400, 2 Weir 614, 2 Weir 615.

See SANCTION TO PROSECUTE, 6 M.H.C. 191, 1 L.B.R. 47.

Jurisdiction of Civil and Criminal Courts.

See JURISDICTION OF CIVIL COURT.

See JURISDICTION OF CRIMINAL COURT.

See MAGISTRATE, JURISDICTION OF.

(1)—*Crim. Pro. Code (1898), s. 476—Power of Munsiff to direct the trial of person for an offence under s. 500, I.P.C.—Procedure when Munsiff wants to show cause.*—A Munsiff, as a judicial officer, cannot direct under s. 476, Crim. Pro. Code, a trial of the person who had committed an offence under s. 500, I.P.C., and

Jurisdiction of Civil and Criminal Courts—concluded.

ask the Magistrate to deal with his order directing the trial as a complaint. If a Munsiff desired to show cause against a rule issued by the High Court, he should appear by Counsel. He is not an officer as the District Magistrate is with reference to the case. **6 C.L.J. 713=6 Cr. L.J. 405.**

(2)—*Order for disposal of property by Criminal Court—Pledge of goods received bona fide from person in possession—Contract Act, s. 178.*—Where certain jewels were given to the accused to sell, but she did not sell them and her niece pawned them, and the police seized the jewels from the pawnee and returned them to the owner, under orders of the Magistrate, who convicted the accused of criminal breach of trust, *held* that the question of the validity of the pledge and the question, whether the circumstances were such as to raise a reasonable presumption that the pawnor was acting improperly, ought to be left to a Civil Court, and the possession of the jewels ought not to be transferred in consequence of the police having seized them. The owner having given the jewels to be disposed of for money, he is not entitled to the assistance of a Criminal Court in recovering them from a person to whom they were so disposed of. **4 L.B.R. 25=6 Cr. L.J. 135.**

Jurisdiction of Criminal Courts.

1.—GENERAL.
2.—JURISDICTION OVER EUROPEANS.
3.—JURISDICTION OVER NATIVES.

See COMMITMENT TO SESSIONS COURT.
See CRIM. PRO. CODE (1898), ss. 177—189.
See MAGISTRATE, JURISDICTION OF.
See SESSIONS JUDGE, JURISDICTION OF.

——1.—(General).

(1)—*The Foreign Jurisdiction and Extradition Act, XI of 1872, ss. 3, 9—Offence committed by Native Indian British subject in Cyprus—Jurisdiction of British Courts.—Held by the Full Bench (Stuart, C.J., dissenting).*—Cyprus is a "Native State" in reference to Native Indian subjects of Her Majesty within the meaning of Act XI of 1872. Such a person, a soldier in Her Majesty's Indian Army, while serving with his regiment in Cyprus, committed murder, and was charged with that offence at Agra, after his return with the regiment. *Held*, that the Criminal Courts of Agra had jurisdiction to try the case. *Per* Stuart, *C. J.*, *contra*. —Cyprus is not a foreign or a "Native State" according to the true intent and meaning of Act XI of 1872. **2 A. 218, F.B.** [*R.*, 24 B. 287 =1 Bom. L.R. 678].

(2)—*Crim. Pro. Code (1882), s. 188—Offence committed outside British India—Political Agent's certificate, necessity for.*—A charge of kidnapping committed in Nepal cannot be enquired into in British India without the Political Agent's certificate, as required by s. 188, Crim. Pro. Code, 1882. **19 A. 109.**

Jurisdiction of Criminal Courts—contd.

——**1.—(General)**—*continued.*

(3)—The British Criminal Courts have no jurisdiction, under ss. 181, 188 of the Crim. Pro. Code, 1882, to try a case of escape from lawful custody committed beyond the limits of British India (Mysore State) in the absence of a certificate from the Political Agent. **Rat. Un. Cr. C. 870 = Cr. Rg. 42 of 1896.**

(4)—*Crim. Pro. Code (1882), ss. 182 and 532—Trial by British Courts of offences committed in foreign territory without certificate of the Political Agent.*—Where a District Magistrate, who was himself the Political Agent of a foreign territory, initiated criminal proceedings against a Native Indian subject of Her Majesty, in a British Court, for an offence committed in the foreign territory without the certificate mentioned in s. 188, *held*, that the certificate was a preliminary requisite to the enquiry and any subsequent production of the certificate signed by the District Magistrate would not validate the trial, nor could the defect be cured by s. 532, Crim. Pro. Code. **13 M. 423 = 2 Weir 147.** [*R.*, 1 Bom. L.R. 678, 24 B. 287, 2 Weir 148, 4 P.R. 1902 Cr. = 21 P.L.R. 1902, F.B.].

(5)—*Offence committed in Foreign States—Jurisdiction of British Courts.*—When a person, resident in Mysore, a foreign territory, commits an offence there, British Courts have no jurisdiction to try the offence. **6 M.H.C. App. 3.**

(6)—*Crim. Pro. Code (1872), s. 67—Offences committed outside British India—Jurisdiction of British Courts—Extradition Act (XI of 1872), s. 9.*—The Court trying an offender must, as a general rule, have jurisdiction over the place of the delict. But illn. *(f)* to s. 67, Crim. Pro. Code, treats a theft completed in one district as continuing in three others to which the stolen property is carried. The Magistrates of either of these districts have jurisdiction to try the case. This rule is applicable only to the scope of the relative jurisdictions of Courts in British India and cannot be applied to an offence not committed within the jurisdiction of either of them, but committed in a foreign territory. In such a case the general rule applies. This general rule is often modified by statutes. Where the prisoner is a British subject, jurisdiction may be given by an observance of the proviso to s. 9 of the Extradition Act. **1 M. 171.** [*R.*, 6 C. 307].

(7)—*Crim. Pro. Code (1872), ss. 67 and 70—Offences committed outside British India—Applicability of the Code.*—S. 67, Crim. Pro. Code, applies only to the trial of offences committed in British India. The words " journey or voyage " do not include a voyage on the high seas, or in foreign territory, but are confined in their meaning to a journey or voyage within the territories of British India. S. 70, as well as s. 67, has relation only to a trial of an offence committed in British India, in which the only defect is that some Court in

Jurisdiction of Criminal Courts—contd.

——**1.—(General)**—*continued.*

British India, other than the Court which actually tried the charge, had local jurisdiction over the offence. **5 M. 23 = 1 Weir 1.** [*R.*, 9 P.L.R. 1902, 1 M.L.T. 345 = 30 M. 94].

(8)—*Crim. Pro. Code (1882), s. 180—Dishonest receipt in foreign territory of property stolen in British India.*—Where the accused persons, who were not proved to be British subjects, were found in possession, in a Native State, of property the subject of dacoity in British India, and they were not shown to have participated in the dacoity, nor was there any evidence that they had dishonestly or otherwise received or retained in British India any stolen property, *held*, that the British Courts had no jurisdiction over them. **9 A. 523.** [*R.*, 126 P.L.R. 1902].

(9)—*Crim. Pro. Code (1882), s. 179—Loss to employers doing business at one place arising out of an agent's acts at another place—Jurisdiction.*—Where the agent of a company at Cawnpore, who was sent to Lower Bengal on business, parted with goods of his employers in Lower Bengal and did not remit their price to his employers at Cawnpore, and failed to account for the goods or their value, *held*, that the case was covered by the provisions of s. 179, that the consequence of the accused having made away with, for his own purposes, goods of his employers, in Lower Bengal, or the price of them, was a loss of those goods that ensued to his employers in Cawnpore, and that, therefore, the Magistrate at Cawnpore had jurisdiction to try the case. **19 A. 111.** [*R.*, 67 P.L.R. 1901, 18 P.W.R. 1908 Cr. = 8 Cr. L.J. 175; *D.*, 5 A. L.J. 333 = A.W.N. 1908, 115 = 7 Cr. L.J. 394].

(10)—*Criminal Courts—Question of title—Duty of Magistrate.*—It is at all times desirable that questions of title should not be tried in Criminal Courts, and more especially when such questions depend on the construction of obscure documents, or are to be decided in respect to transactions of which, at the best, only an imperfect record is preserved. The prosecution, in order to establish that a title has been asserted with a fraudulent or dishonest intent, must show that the accused had no reasonable grounds for asserting the title, and that he asserted it dishonestly or fraudulently in the sense which these terms bear in the Indian Penal Code. **2 N.W.P. 202.**

(11)—*Jurisdiction of the Resident at Aden over offences triable by a Court of Session committed at Perim.*—The Court of the Political Resident at Aden has no jurisdiction over the island of Perim, and the Political Resident at Aden is not a Judge of the Court of the Session for that island. Where a person was charged with having committed murder at Perim, and was committed by a Magistrate at Perim for trial in the Court of the Political Resident at Aden, and he was convicted and sentenced to death, held that the conviction should be set aside and that the prisoner retried before a Court of competent jurisdiction. **10 B. 263.**

Jurisdiction of Criminal Courts—contd.

——1.—(General)—*continued.*

(12)—*Appeal from order of Political Resident.*—The prisoner was charged with having committed murder in the island of Perim. He was committed by the Magistrate at Perim to be tried before the Political Resident at Aden. He was found guilty and sentenced to death. He then appealed to the High Court of Bombay. By the Aden Act II of 1864, s. 29, it was provided that "no appeal shall lie from an order or sentence passed by the Resident in any criminal case. The High Court, however, admitted the appeal, being doubtful as to whether the above provision applied to cases arising in the island of Perim. **10 B. 258.**

(13)—*Greek residents of Zanzibar—Jurisdiction of British Courts.*—On a consideration of Her Majesty's orders in Council, the chief being that of 1884, passed under the Foreign Jurisdiction Acts, 1843 to 1878, the Greek residents at Zanzibar, having been placed under British protection, are liable to British criminal law in force in Zanzibar. **19 B. 741.** [*R.*, 22 B. 54].

(14)—*Africa orders in Council, 1889, 1892, 1893—Jurisdiction of British Consul of Uganda to try German subjects for aiding King Unyoro to wage war against the King of Uganda Sphere of influence.*—The accused, who were admittedly German subjects, were convicted under cls. 48, 50, Africa Orders in Council, 1889, of taking part in operations of war by aiding and abetting the King of Unyoro in carrying on war, insurrection or revolution against the Kingdom of Uganda and the protecting power, and the first accused was further convicted of slave dealing. The war in which the King of Unyoro was engaged necessitated a partial occupation of his territory by military posts. The jurisdiction of H. M.'s Commissioner and Consul-General for Uganda, who convicted them, was questioned. *Held* that neither the Africa Order of 1889, nor the addition made to it by the Order in Council of 1892, gave jurisdiction to H. M.'s Commissioner and Consul-General at Uganda, as the latter order applied only to places declared to be a protectorate, which Unyoro was not, notwithstanding the fact that the accused, being German subjects, were subjects of the Signatory powers, nor could the Government of a temporary and partial military occupation of Unyoro by the British force confer any jurisdiction on the Consular Court, whose powers are strictly limited by the various orders in Council. The phrase "British sphere of influence" is intended to mark out African territories within which other European powers are, by mutual understanding, not to extend their conquests to the disadvantage of the British power in East Africa, whose sphere is marked out by 30 Meridian East Longitude. **22 B. 54.**

(15)—*Penal Code, ss. 109, 115, 148, 302—Abetment in British India of offence committed outside British India—Crim. Pro. Code (1882), s. 188.*—Where a British subject abets in British India an offence committed outside British India, he is not charged with an offence punishable under the Penal Code, and cannot, therefore, be tried by British Courts. S. 188, Crim. Pro. Code, does not apply to such a case. **19 B. 105.** [*R.*, 22 B. 54; *D.*, 24 B. 287=1 Bom. L.R. 678].

(16)—*Penal Code, ss. 108-A, 372—Disposal of minor girl for immoral purposes, effected outside British India—Jurisdiction of British Courts—Abetment, Crim. Pro. Code (1898), s. 188.*—The charge against the first accused was that she took a minor girl of 16 years from Sholapur to Tuljapur (in the Nizam's territory) to dedicate her to the goddess Amba, with intent or knowing it to be likely that the girl would be employed or used for the purpose of prostitution, and the second accused was charged with having directed the first accused to do so. *Held* that the intention of either accused, while they were staying at Sholapur did not constitute any offence, and their removal with the girl toTuljapur did not, by itself, constitute an abetment. The second accused was, therefore, not guilty of abetment under s. 108-A, I.P.C. *Held* also that the British Courts had no jurisdiction over the offence of the disposal of the girl in Tuljapur in the absence of a certificate of the political agent or the sanction of the Local Government as required by s. 188, Crim. Pro. Code. **24 B. 287 =1 Bom. L.R. 678.**

(17)—*Escape of convict—Magistrate of the District within which he escaped to try him.*—A convict escaping from custody must be tried for that offence in the district within which he escaped; the Magistrate of another district has no jurisdiction to try him for the offence. **1 B.H.C. 139 Cr.**

(18)—A Magistrate, who was also a servant of the Corporation of Calcutta, was held disqualified, by reason of his connection with the Corporation, to try a case prosecuted by the Corporation and the trial and conviction were held illegal. **2 C. 23.** [*R.*, 9 C.W.N. 1046=2 C.L.J. 241=33 C. 68, F.B.]

(19)—*Power of Courts to question legality of orders by the executive under the Crim. Pro. Code.*—The power of Courts to question the propriety or legality of an order made or a notification issued by the executive under the Crim. Pro. Code arises only when an attempt is made to enforce the exaction of a penalty against a person committing a breach of such order or notification. **6 C. 88.**

(20)—*Dishonest retention in British India of property stolen beyond it.*—A person, who steals property out of British India and brings it into it, though he cannot be tried for the offence of theft, can be convicted of dishonestly retaining stolen property. **6 C. 307=7 C.L.R. 411.** (1 B. 50, *R.*). [*Not F.*, 5 B. 338].

(21)—*Tributary mehals—Mohurbhunj—Powers of Government, extent of—Jurisdiction.*—The Tributary mehals are a portion of British

Jurisdiction of Criminal Courts—contd.

——**1.—(General)**—*continued.*

India, which the Government of India has exempted from the ordinary law and jurisdiction of the Courts, and governs through special officials and enactments. The powers of Government as to Mohurbhunj (one of the "estates" forming the Tributary mehals), whatever they may be, do not extend to empowering the legally constituted tribunals of a British District to follow, in that district, and in the case of residents in it, any procedure, and to exercise any jurisdiction, other than that created by the law. The Tributary mehals (and Mohurbhunj) being British India and being excluded from the operation of all the laws in force in British India, unless specially extended to them, the orders of Government, conferring powers on particular officers over criminal offences committed within the Tributary mehals, are without authority. Where, on a British subject residing in Midnapore (and apparently a ryot of the Maharaja of Mohurbhunj) being charged with defamation before the Maharaja of Mohurbhunj, the case against him was transferred, on an application by the accused himself, to the Midnapore Magistrate, who was also Assistant Superintendent of the Tributary mehals, and tried, *held*, the proceedings were without jurisdiction. 7 C. 523=9 C. L.R. 93. [*R.*, 8 C. 985, F.B., 9 C. 288].

(22)—*Offence committed in Tributary mehals—British District—Conviction in another District—Crim. Pro. Code (Act X of 1872), s. 70—"Mohurbhunj"—British India—Inapplicability of law in British India to the territory.*—The Tributary mehals constitute by themselves a "district" within the meaning of the Crim. Pro. Code, and by the Government Order of 1872, the Superintendent of the Mehals was vested with the powers of a Sessions Judge. Hence a conviction under the Penal Code for an offence committed in Mohurbhunj, though the trial was not by the Superintendent of the Mehals, ought not to be set aside, in view of the provisions of s. 70 of the Crim. Pro. Code.—*Per* Mitter, J. The territory of Mohurbhunj is not within the limits of British India. (*Mitter and Prinsep, JJ., dissenting*). Though Mohurbhunj is part of British India, the Acts which extend to British India do not extend to Mohurbhunj. The law in force in British India cannot come into operation into Mohurbhunj until its exemption has been removed.—*Per* Prinsep, J. **8 C. 985, F.B.=11 C.L.R. 241.** [*R.*, 9 C. 288, 16 C. 667].

(23)—*Tributary mehal of Kheonjur—Ss. 182, 531 of the Crim. Pro. Code, 1882—Local area, meaning of.*—The Penal Code and the Crim. Pro. Code do not apply to the tributary mehal of Kheonjur, which stands exactly upon the same footing as Mohurbhunj, as regards its relations with British Government and its independence, and neither ss. 182 or 531 of the Code would confer jurisdiction on a Magistrate or a Judge in British India to take cognizance of an offence committed within that territory.

Jurisdiction of Criminal Courts—contd.

——**1.—(General)**—*continued.*

[*R.*, 4 P.R. 1902 Cr.=21 P.L.R. 1902 (96) F.B.] The words "local area" in s. 182, Crim. Pro. Code, means a local area over which the Code applies, and it would not refer to a local area in a foreign country, or in a portion of the British Empire to which the Code has no application. Further, the section in reality intends to provide for the difficulty which would arise where there is a conflict between different areas in order to prevent an accused person getting off entirely, because there may be some doubt as to what particular Magistrate has jurisdiction to try the case. S. 531 only refers to Districts, Divisions or Sub-Divisions, and local areas governed by the Code, but does not refer to a local area in a foreign country, or in a portion of the British Empire to which the Code has no application. **16 C. 667.** [*R.* 96 P.L.R. 1901, 9 P.L.R. 1902].

(24)—The expression "local area" in s. 182 includes Sessions Division, district or subdivision, and cannot be restricted to mean the scene of an alleged occurrence only. Where there is an uncertainty in which of two districts the scene of an alleged offence lies, s. 182 is applicable and the offence may be tried in the Court of either district. **25 C. 858=2 C.W.N. 577.** [*R.*, 96 P.L.R. 1901],

(25)—*The State of Sandoor—Jurisdiction of Bellary Sessions Court over Native subjects of the Raja and over Europeans.*—Sandoor is the State of a Native Ruler, though subordinate to the British power. The Sessions Court of Bellary has, therefore, no jurisdiction, under the Penal Code, to try Native subjects of the Raja. According to the treaty entered into between the British Government and the Raja of Sandoor in 1857, the Raja has surrendered exclusive criminal jurisdiction over a limited class of persons, *viz.*, Europeans and their servants, and all other resident persons, not Native subjects of the Raja, and leaves the Government unfettered to provide in the way they deem right for the preservation of the peace and the trial and punishment of offences committed by such persons. They can be apprehended, committed and tried by the Magistrate or Justices of the Peace and the Courts within Her Majesty's Indian territories or by Judicial Officers empowered to exercise jurisdiction in that place. **3 M.H.C. 354.**

(26)-*Officer invested with special powers under s. 34 of the Crim. Pro. Code, 1882—Trial of cases under s. 209, Crim. Pro. Code—Jurisdiction.*—An officer exercising special powers, under s. 34 of the Crim. Pro. Code, should rarely try a case himself under s. 209 of the Code, when there is some evidence which, if believed, would substantiate the charge of an offence beyond his jurisdiction. **10 C. 85=13 C.L.R. 375.** [*R.*, 12 M. 54=2 Weir 23].

(27)—*Crim. Pro. Code (1898), s. 183—Offence committed on a journey, where triable.*-The only

Jurisdiction of Criminal Courts—contd.

——**1.—(General)**—*continued.*

Courts competent to try the case of an offender in respect of an offence committed on a journey, are the Courts through or into the local limits of whose jurisdiction the offender in the course of the journey he was performing passed at the time the offence was committed. The journey referred to in the first part of s. 183 is the journey which the offender is in the course of performing; and the words "that journey" at the end of the section refer to the same journey. **1 C.L.J. 334=2 Cr. L.J. 411.**

(28)—*Jurisdiction of Criminal Courts—Civil claim.*—The Criminal Courts should not be put in motion with a view to assistance in the prosecution of a civil claim. **9 C.W.N. 974=2 Cr. L.J. 836.**

(29)—Bona fide *dispute as to the right to use a trade mark.*—A case in which there is a *bona fide* dispute between the parties as to the right to use a trade mark should be taken before a Civil and not before a Criminal Court. **11 C.W.N. 887=6 Cr. L.J. 151.**

(30)—*Abetment of waging war.*—The Sessions Court at Patna was held to have jurisdiction to try the offence of abetment of waging war against the Queen, though the waging of war did not take place in Patna; the rule of law as to abetment being that, where parties concert together and have a common object, the act of one of the parties, done in furtherance of the common object and in pursuance of the concerted plan, is the act of the whole. **17 W.R Cr. 15.**

(31)—*Entrusting of goods in a British port to be conveyed to another British port—Conversion of goods at a foreign port—Jurisdiction of British Courts—Crim. Pro. Code (1872), ss. 67, 70—12 and 13 Vic., C. 96—23 and 24 Vic., C. 88.*—Where rice was entrusted at Mangalore to the accused, the tindal of a *pattimar*, for conveyance to a person at Calicut, and the accused, after getting to sea, instead of taking his *pattimar* to Calicut, went off to Goa and there sold the rice, *held*, that the Sessions Court of Mangalore had no jurisdiction to try the offence under Crim. Pro. Code, as the offence was committed outside British India and that there was no offence committed on the high seas so as to give jurisdiction under 12 and 13 Vic., C. 96, as extended by 23 and 24 Vic., C. 88, inasmush as the act of conversion did not take place till Goa was reached, although the intention to commit the offence and the act of deviating from the course with that intention took place upon the high seas, and that, for want of a certificate from the Political Agent of Goa, as required by s. 9 of Act XXI of 1879, the trial and conviction were illegal. **5 M. 23=1 Weir 1.**

(32)—*Exercise of ecclesiastical jurisdiction*—Where the exercise of ecclesiastical jurisdiction is plainly *ultra vires* or otherwise unsanctioned by the ordinances of the society to which it appertains, or where such ordinances controvert

Jurisdiction of Criminal Courts—contd.

——**1.—(General)**—*continued.*

the general law, and, in either case, consequences result which the Criminal Law was intended to restrain, the Criminal Courts are not at liberty to decline jurisdiction. **8 M 140=2 Weir 249.**

(33)—*Crim. Pro. Code (1898), ss. 7 (3), 408, 435—Two Sessions Divisions in one District—Magistrate having jurisdiction over the whole District—Jurisdiction of the Sessions Courts in appeals against the Magistrate's decisions.*—Under s. 435, the Sessions Judge may call for and examine the records of any inferior Criminal Court "situate" within the local limits of his jurisdiction. The word "situate" means fixed or located, and when applied to a Court, it must be taken to refer to the place where the Court ordinarily sits. In the absence of any indication to the contrary in the Code, the principle thus laid down in regard to the analogous powers of revision under s. 435, should be followed in the case of appeals also. So, where a Magistrate, against whose decisions appeals are preferred, has his head-quarters in a place, which is within the local limits of one of the two Sessions Divisions in a District (*e.g.*, Malabar), though he is authorised to try offences throughout the whole District, including cases arising within the other Sessions Division, the appeals lie to the Sessions Division, within whose jurisdiction the head-quarters of the Magistrate are situate, irrespective of the place where the offence was committed. **30 M. 136=1 M.L.T. 402=16 M.L.J. 444=4 Cr. L.J. 443.**

(34)—*What Court should try a charge of murder—Penal Code, ss. 300, 304—Commitment.*—Where there is evidence to sustain a charge of murder, unless the accused is entitled to the benefit of one of the exceptions to s. 300, I.P.C., the case should be tried by a Court which has jurisdiction to try the accused for murder, *i.e.*, by the Court of Sessions; and which is, therefore, the Court which is competent to decide whether the accused is guilty of that offence or not. Where a Deputy Commissioner, in trying a case under s. 304, I.P.C., had to decide whether the accused was guilty of murder or not and he was not competent to try a charge of murder, *held*, he should have committed the accused to the Sessions Court. **5 C.P.L.R. Cr. 7.**

(35)—*Jurisdiction of Deputy Commissioner in cases of murder—Intention.*—In all ordinary cases where there is evidence that an accused person has caused the death of a man, and the question is whether the offence amounts to a murder or not, the case should be committed to the Sessions for trial. The Deputy Commissioner is not empowered to try a murder case, and therefore, all such cases should be committed, so that the question may be determined by a competent Court. Intention must not be confounded with wish. If a weapon used is such a weapon as would be likely to cause death when used, the law would presume an intention, a person being held to intend the natural consequences of his acts. **5 C.P.L.R. Cr. 48.**

Jurisdiction of Criminal Courts—contd.

——1.—(General)—*continued.*

(36)—*Local jurisdiction.*—Where the branch, in Ferozepore, of a firm in Karachi employed certain persons as their purchasing agents at Sangla in the Jhang District, the Court of Ferozepore had jurisdiction to try the offence of misappropriation by the purchasing agents at Sangla, as the moneys were payable at Ferozepore. **2 P.R. 1902 Cr.**

(37)—*Crim. Pro. Code (Act V of 1898), ss. 177, 179—Jurisdiction—Goods despatched from Delhi for sale on commission to the accused at Calcutta—Misappropriation—Jurisdiction—The words "any consequence that has ensued" in s. 179—Meaning.*—Where the complainant despatched goods from Delhi to the accused at Calcutta for sale on commission, and the accused mortgaged the goods and appropriated the money to their own use, *held*, that the offence alleged was complete as soon as the money had been misappropriated, and that the Calcutta Court alone had jurisdiction. *Held* also, the fact that the money should have been, and was not, sent to Delhi, did not give the Delhi Court jurisdiction, the accused having put the money into his own pocket at Calcutta. A Court which has no jurisdiction *to try* has no jurisdiction *to acquit* the accused, and the proper order is one of discharge. The words 'any consequence that has ensued' in s. 179, Crim. Pro. Code, mean some consequence modifying or completing the act or acts constituting the offence, and do not include the loss resulting to an employer from criminal breach of trust by his servant. **7 P.R. 1910 Cr.**

(38)—*Committing Magistrate entitled to weigh evidence in cases triable by the Sessions, and to pronounce as to their credibility.*—*Held*, that a committing Magistrate is entitled, at any rate to some extent, to weigh the evidence of direct witnesses, and to pronounce as to their credibility. Provided that he uses caution, and that, where the question is one of probabilities only, he leaves the decision to the Sessions Court, he is entitled to use his discretion and discharge the accused, if he disbelieves the evidence. **10 P.R. 1909 Cr.=155 P.L.R. 1909.**

(39)—*Grant of jurisdiction to British Government over Railway line through independent states—Extent of jurisdiction—Government Notification, effect of.*—In the absence of any express treaty and words which, in themselves, precisely define the amount of jurisdiction intended to be conveyed by the Nizam to the British Government, reference should be made to the correspondence which passed between the two Governments. On such reference, it is clear that the only jurisdiction that has been granted is civil and criminal jurisdiction along the line of Railway as in the case on other lines running through independent states. Therefore an arrest of a person for an offence committed in British territory and not committed on the Railway, or in any way connected with the administration of the Railway, merely because he was physically present on a portion of that line of the Railway, would not be legal. [*R.*, 1 Weir 13=26 M. 607, 33 C. 219=10 C. W.N. 361=8 Bom. L.R. 129=3 A.L.J. 250=1 M.L.T. 115=16 M.L.J. 115=33 I.A. 1=3 C.L.J. 395.] The territory on which the Nizam's State Railway is constructed has been and continues to be, part of the dominions of the Nizam. The authority, therefore, to execute any criminal process there must be derived in some way or another from the Nizam (the Sovereign of that territory). Notification in the Gazette of India by the Government of India could give no such authority, but it could only give effect to the extent in which the Nizam had permitted the British Government to make the notification. **25 C. 20=24 I.A. 137=2 C.W.N. 1, P.C.**

(40)—*Crim. Pro. Code (1882), s. 180—Offences committed in two districts—Commitment to sessions—Jurisdiction.*—Where it appeared that one of the accused was charged with an offence punishable under s. 366, committed in a certain district, and the other three accused were charged with an offence punishable under s. 368, I.P.C., committed in another District, and two of them also were charged with the offence punishable under that section, committed in the former District, *held*, that the proper Court to which commitment should be made was the Sessions Court of the former District. Where the Magistrate ordered the commitment of the case to the Sessions Court of the latter District, the order of commitment was not set aside by the High Court, but the case was transferred to the Sessions Judge of the former District. **18 A. 350.** [*R.*, 27 C. 1041].

(41)—*Criminal appeal—Remand, power of appellate Court as to.*—From their conviction, by a Deputy Magistrate, under ss. 147 and 349, Penal Code, the petitioners had preferred an appeal to the Sessions Judge. Without disposing of the appeal on the merits of the case, the Sessions Judge merely remarked that the Magistrate was wrong in having convicted the accused under the above sections, without arriving at any findings as regards the common object of the unlawful assembly and the possession of the property and passed an order remanding the case to the said Magistrate and sent the records back to him, with instructions to write out a proper judgment. *Held*, on revision, that the Sessions Judge had no authority, under any section of the Crim. Pro. Code, to pass the order, which he did. If he thought the Magistrate's decision was unsatisfactory, it was his duty, as the appellate Court, to go into the whole facts fully and dispose of the case. He had no power to devolve this duty, as he did, on the lower Court, which tried the case in the first instance. **32 C. 1069=3 Cr. L.J. 119.**

(42)—*Penal Code, s. 370—Crim. Pro. Code, s. 182—Jurisdiction.*—Under s. 182, Crim.

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——**1.—(General)**—*continued.*

Pro. Code, the jurisdiction of the Court of one district to try an offence under s. 370, Penal Code, buying or disposing of any person as a slave is not ousted by a re-sale of the same person as a slave in another district. **L.B.R. (1893—1900), 81.**

(43)—*Crim. Pro. Code (1882), ss. 182, 183, 526—Criminal breach of trust—Offence committed on journey—Jurisdiction.*—A resident of Kamaun District was travelling in the plains with the accused, his servant, who had the charge of his money and other moveable property. On arriving at Bulandshahr District, the master demanded an account from his servant and found a considerable amount unaccounted for and certain moveable property missing. The same night the accused disappeared, and the master made a report to the police and returned to Kamaun. Subsequently the accused was arrested in the Kamaun District, but no property was found with him. *Held* that the Magistrate of Bulandshahr would have jurisdiction to try the case, but as it was represented to the Court, under s. 526, Crim. Pro. Code, that it would tend to the general convenience of the parties and the witnesses, the trial was ordered to be held in Kamaun. **A.W.N. 1883, 88.**

(44)—*Abduction—Jurisdiction of Magistrate.*—Where the charge is of abduction of a girl from a place within the jurisdiction of the committing Magistrate, the latter has jurisdiction, though, on the evidence, it is possible to infer that the girl voluntarily left the place, but that the offence, if any, was committed by only a further removal from another place beyond the jurisdiction of the Magistrate. If the charge is not proved, that would be a ground for acquitting the accused. **A.W.N. 1884, 31.**

(45)—*Crim. Pro. Code (Act X of 1882), s. 188—Penal Code, s. 411—Offence outside British territory.*—A Magistrate in a British District has no jurisdiction to enquire into an offence of receiving stolen property committed in foreign territory, without a certificate from the Political Agent. **A.W.N. 1884, 85.**

(46)—*British subject choosing to reside outside British India not freed from allegiance thereby—Liable to be tried as a British subject.*—A subject of Her Majesty, by choosing to reside beyond the limits of British India for ten or twelve years, does not divest himself of his allegiance to Her Majesty or of his liability to be tried as a British subject in the Courts of British India. **2 J.G. 7.**

(47)—*Kidnapping—Place of trial—Jurisdiction—I.P.C., s. 366.*—The prisoner was committed to the Court of Sessions at Aligarh on a charge of kidnapping a girl with intent to compel marriage (I.P.C., s. 366). The offence was said to have been committed within the jurisdiction of Sessions Judge of Budaon. The sole ground, apparently, for taking proceedings

Jurisdiction of Criminal Courts—contd.

——**1.—(General)**—*continued.*

in the District of Aligarh was that the girl was found with the accused in that District. The Sessions Judge relying on the rulings in 3 A. W.N. 67 and 164 referred the case to the High Court for quashing the commitment on the ground that, kidnapping not being a continuous offence, the Courts of his District had no territorial jurisdiction over the case. *Held* that all proceedings theretofore had in the case should be quashed, and the record transferred to the Magistrate at Budaon, to proceed in the matter according to law. **A.W.N. 1887, 139.**

(48)—*Magistrate—Arms Act, XXXI of 1860.*—A Sub-Magistrate had no jurisdiction to try a case under s. 5, Act XXXI of 1860. **3 P.R. 1869 Cr.**

(49)—*Acquittal by Deputy Commissioner in a preliminary investigation—Effect—Act XV of 1862.*—Where the preliminary enquiry in a case of affray and culpable homicide was made by the Assistant Commissioner, but the case was afterwards made over to the Deputy Commissioner, who, after examining the Assistant Commissioner's file and putting a few questions to the witnesses directed the discharge of the accused, *held*, that the Deputy Commissioner, in proceeding under Act XV of 1862, did not become a Session Judge. He was merely holding a preliminary enquiry and the proceedings were quite distinct from a trial under Act XV of 1862. Therefore, the acquittal of the accused on the charge of culpable homicide, did not preclude the Commissioner from trying the accused on the charge of murder. **32 P.R. 1868 Cr.**

(50)—*Native Indian subject.*—The term "Native Indian subject of Her Majesty" means only a Native subject *de jure* and not *de facto*; a person who occasionally resides in British India does not thereby become *de jure* a subject, amenable to the jurisdiction of a British Indian Court for an offence committed by him in a foreign territory. **1 P.R. 1885 Cr.** (35 P.R. 1880 Cr. and 37 P.R. 1881 Cr., *R.*).

(51)—*Native Indian subjects.*—The mere fact that a man owns some lands in British territory and resides occasionally in British India, would not constitute him a British Indian subject. **22 P.R. 1883 Cr.**

(52)—*Cases of security for good behaviour.*—A Magistrate has no jurisdiction to proceed against a person under s. 110, when he resides outside his jurisdiction. **12 P.R. 1901 Cr.** (27 C. 993, *F.*).

(53)—*Warrant case—Summary trial.*—Where a Magistrate has issued a summons for an offence punishable with more than six months' imprisonment, the Code of 1882 did not authorize the Magistrate to change his procedure from that described in a warrant case into that prescribed in a summons case, by reason of his estimate of the prosecution evidence. **17 P.R. 1887 Cr.**

Jurisdiction of Criminal Courts—contd.

——1.—(General)—*continued.*

(54)—*Defamation—Publication.*—Where a petition presented to a person at L, contained defamatory matter against another and was published at A, at the request of the petitioner, the Court at A has jurisdiction to try the case of defamation ; for, the publication at A, being done at the request of the petitioner, was the act which completed the offence. Even an error as to local jurisdiction is curable under s. 531, Crim. Pro. Code, when such error has not occasioned a failure of justice. **44 P.R. 1885 Cr.** (33 P.R. 1874, *R.*).

(55)—*Special or enhanced powers of Deputy Commissioner—Act XV of 1862.*—The special or enhanced power conferred upon a Deputy Commissioner under Act XV of 1862 lapses on his ceasing to hold chief executive charge of the District, and it does not revive on his re-appointment, unless he were re-invested under the Act. **22 P.R. 1867 Cr.; 15 P.R. 1884 Cr.**

(56)—*Sentence or order of subordinate Court—Jurisdiction to alter.*—No Court, other than the Sudder Court, could, under Crim. Pro. Code, 1861, except upon appeal, alter the sentence or order of the subordinate Court. The Deputy Commissioner has no such power. **52 P.R. 1866 Cr.**

(57)—*Subordinate Magistrate—Transfer—Continuance of powers.*—A person cannot exercise the powers of a Magistrate of any class under s. 12, Crim. Pro. Code, 1882, at a particular time in a particular district, unless (*a*) he has been appointed by the Government under s. 12 to be a Magistrate in such district and such appointment is still in force ; or (*b*) he holds in that district at the time when he assumes to act as Magistrate, some office on which s. 40 can operate. Where an Assistant Commissioner in one district is transferred to another, that by itself does not authorize him to exercise the functions of the Assistant Commissioner without being specially authorized by the Government. **15 P.R. 1884 Cr.**

(58)—*Absence of certificate required by s. 188, Crim. Pro. Code (1882), s. 537.*—Where objection to the want of a certificate as required by s. 188, Crim. Pro. Code, 1882, was taken at a late stage of the appeal, and was not taken at the trial, *held* that the absence of the certificate was not a fatal defect, but only an irregularity cured by s. 537, if it had not prejudiced the accused in his defence. **35 P.R. 1888 Cr.** [*F.*, 35 P.R. 1888 Cr., Note].

(59)—*Son born of an alien in British India—33 Vic., Ch. 14 (Naturalisation Act of 1870).*—A son born in British India, of an alien, is a British subject of His Majesty, though the father lived in British India without becoming a naturalised British subject. **9 P.R. 1893 Cr.**

(60)—*Offences committed in foreign territories—Jurisdiction of British Courts.*—A British Court can deal with an offence committed by a

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——1.—(General)—*continued.*

Native Indian subject of Her Majesty in a foreign territory for which there is a Political Agent, on obtaining a certificate from the Political Agent. But British Indian Courts have no jurisdiction to try a foreigner for offences committed and completed outside the British territory. **7 P.R. 1894 Cr.**

(61)—*Native Indian subject of Her Majesty—Offence committed outside British India—Want of Political Agent's certificate—Crim. Pro. Code (1898), s. 188.*—Where a Magistrate enquired into an offence committed by a Native Indian subject of Her Majesty outside British India without the Political Agent's certificate as required by s. 188, Crim. Pro. Code, 1898, and committed the accused for trial, but the defect arising from the want of certificate was noticed by the Sessions Judge, and objection taken by him, *held*, that the commitment was bad and should be quashed. **11 P.R. 1899 Cr.**

(62)—*Theft in British India and receiving stolen property outside British India.*—Where property stolen in British India is received by foreigners outside British India, British Courts have jurisdiction over the offence of receiving stolen property. **29 P.R. 1867 Cr.**

(63)—*Property stolen in one district found in another's possession in a different district—Jurisdiction over the thief.*—Where property stolen in one district is found in the possession of another person in another district, the thief can be legally tried in the latter district as the latter's possession is the constructive possession of the thief. **4 P.R. 1871 Cr.**

(64)—*Foreigner found in foreign territory in possession of property stolen in British India.*—A foreigner found in possession in foreign territory of stolen property could not be convicted under s. 411, Penal Code, unless it was shown that he was one of the thieves or had possession of property in British India. **16 P.R. 1880 Cr.**

(65)—*Foreigner committing offence in British India without being personally present there.*—British Courts have no jurisdiction over a foreigner for acts which may be regarded as committed by him within British territory, unless, at the time of committing such acts, he was personally within British territory, as neither s. 65 or nor s. 67, Crim. Pro. Code, 1872, confers any jurisdiction, when but for those sections no British Court would have jurisdiction. **35 P.R. 1880 Cr.** (20 P.R. 1878, *R.*).

(66)—*Foreigner conveying property stolen in foreign territory into British India.*—A foreigner, who, after stealing the property in a foreign territory, conveys it into British India, is not amenable to the jurisdiction of British Courts. **5 P.R. 1881 Cr.**

(67)—*Foreigner conveying property stolen in foreign territory into British India.*—British Courts have no jurisdiction to try a person, not

Jurisdiction of Criminal Courts—contd.

——**1.—(General)**—*continued.*

being a British subject, for being in possession of stolen property, when the theft itself was committed in a foreign state. **4 P.R. 1883 Cr.** (5 P.R. 1881 Cr.).

(68)—*Retention by foreigner in British India of property stolen in foreign territory.*—It is no defence by the accused, a foreign subject charged with a dishonest retention in British, India of property stolen elsewhere, that he himself stole the property, and that he was not liable to be tried, convicted or punished by the British Court for the theft. **30 P.R. 1894 Cr.** (5 B. 338, 5 P.R. 1881 Cr. and 4 P.R. 1883 Cr., *R.*).

(69)—*Kidnapping.*—Where the offence of kidnapping is committed outside British India, the subsequent act of conveying the kidnapped person into British India is not such a consequence as is contemplated by the section, so as to give jurisdiction to a British Indian Court over the offence of kidnapping. S. 181 (4) applies only where the offence of kidnapping is committed within the jurisdiction of a Court in British India, and the person kidnapped is conveyed within the jurisdiction of another British Court. **1 P.R. 1901 Cr.** (10 B.H.C. 356, 30 P.R. 1889 Cr., 7 P.R. 1894, *R.*)

(70)—*Native Indian subject.*—Where the accused, who were the subjects of a foreign state, were arrested in that state, for being in possession of stolen property, *held*, that they could not be tried in British India for an offence under s. 413, Penal Code. **22 P.R. 1888 Cr.**

(71)—*Malicious prosecution, suit for—Letters Patent, 1865, cl. 112—Jurisdiction.*—Where the plaintiff, in an action for malicious prosecution, alleged that the defendant had instituted criminal proceedings against him before the Magistrate of Moradabad, causing a warrant to be issued by the Magistrate, and having him arrested under that warrant in Calcutta, *held* that the whole cause of action did not arise at Moradabad; that part of the cause of action arose in Calcutta, so as to entitle the plaintiff, with the leave of the Court, to bring an action in the High Court. **6 B.L.R. 141.**

(72)—*Crim. Pro. Code (Act XXV of 1861), s. 404—Question of jurisdiction not raised in lower Court.*—In an application for revision under the extraordinary jurisdiction of the High Court on the ground that the Full Power Magistrate who tried the case had no jurisdiction to try a case referred to him by the District Magistrate, without a complaint, *held*, that the question of jurisdiction, not having been raised in the Sessions Court, could not be raised before the High Court. **4 B.H.C. Cr. 33.**

(73)—*Criminal Court—Objection taken for first time on appeal.*—A plea as to the want of jurisdiction may be taken in the High Court, though not taken below. **16 W.R. Cr. 79.**

Jurisdiction of Criminal Courts—contd.

——**1.—(General)**—*continued.*

(74)—*Duty of Court to show its jurisdiction on its proceedings.*—It is not necessary that the Court must show its jurisdiction and competency on the face of all its proceedings. **8 W.R. Cr. 45.**

(75)—*Omission to maintain wife.*—An application for maintenance under s 536, Crim. Pro. Code, 1872, could, under s. 63 of that Code, be made only to the Court of the place where the husband refused to maintain his wife and not in any other District. **9 P.R. 1883 Cr.**

(76)—*Offences committed by foreigner outside British India.*—An offence committed by a foreigner outside British India, which, if committed within those limits by a subject of Her Majesty, would render such subject punishable by the British Indian Courts, is not liable to be dealt with by a Criminal Court under the Code of Criminal Procedure or punishable under the Penal Code. **30 P.R. 1889 Cr.**

(77)—*Crim. Pro. Code (Act XXV of 1861), s. 31—Jurisdiction to try foreigner*—A Magistrate has no jurisdiction to try the subject of a foreign State for the offence of receiving stolen property when the offence was not committed within British territory. **4 B.H.C. 38 Cr.**

(78)—*Penal Code, s. 227—Violation of conditions of remission of punishment—Jurisdiction—Crim. Pro. Code (1861), s. 33.*—The accused, was convicted by the Recorder's Court of Prince of Wales's Island, Singapore and Malacca, of burglary, and was sentenced by him "to be transported beyond the seas to such place as the Governor-General of India in Council may direct and appoint, for the term of ten years." He suffered, in pursuance of the sentence, imprisonment in the Ratnagiri jail for over eight years, at the end of which he was permitted to reside at Karwar on a ticket of leave. While at Karwar, the accused committed the offence of theft in a dwelling house, and was convicted by a Full Power Magistrate and sentenced to 15 months' imprisonment, before his original sentence of transportation had expired. *Held* that the Full Power Magistrate had power to sentence the convict to suffer so much of the punishment on the original conviction as he had not already suffered, that term being manifestly within his power, though he should have determined and declared the exact term of punishment, the convict was required to undergo in consequence of breaking the conditions of his ticket of leave. **9 B.H.C. 356.**

(79)—*Property stolen in one place and received at another.*—In order to make it legal to punish at Patna a prisoner committed in Calcutta on a charge of receiving stolen property, it must be shown that the property was stolen at Patna. **5 W.R. Cr. 49.**

(80)—*Offence committed on interrupted journey—Crim. Pro. Code (Act X of 1872), s. 67, illn. (a).*—Where an offence was alleged to have

Jurisdiction of Criminal Courts—contd.

——1.—(General)—*continued.*

been committed during a journey from Bombay to Calcutta, and was in fact committed between Bombay and Allahabad, at which latter place the complainant and the person by whom the offence was alleged to have been committed separated and proceeded to Calcutta by different trains, *held* that the Magistrate of Howrah had no jurisdiction to try the charge. To bring the matter within his jurisdiction, the journey should have been continuous from one terminus to the other without any interruption by either party. **13 B.L R. Ap. 4 ; 21 W R. Cr. 66.** [*F.*, 1 M.L.T. 343, 30 M. 94].

(81)—*Theft of box during journey—Crim. Pro. Code (1872), s. 67*—A box containing money having been missed during a halt at Sumbhoogunge, from a boat which was on the way to Chittagong, and a question having been raised whether the charge of theft, which was based on the loss, should be tried at Tipperah or Chittagong, *held* that the journey was not broken by the halt, and that, under s. 67, Crim. Pro. Code, the case could be tried at Chittagong. **25 W.R. Cr. 45.**

(82)—*Escape from custody—Jurisdiction.*—The jurisdiction to try the offence of escaping from lawful custody vests in the Magistrate having local jurisdiction in the District within which the accused escaped. The Magistrate of another District has no such jurisdiction. **1 B.H.C. 139.**

(83)—*Offence begun in one place and completed in another—St. 9, Geo. IV., c. 74, s. 56.*—S. 56 of the St. 9, Geo. IV, c. 74 (applying and extending to the British territories in India the provisions then recently made for England with respect to offences committed in two different places or partially committed in one place and accomplished in another) applies only to the cases of persons amenable to the Supreme Court at Calcutta beginning to commit offences in one place which are afterwards completed in another, and not to a case where the persons committing the offence were not amenable to the said Court, and where the whole offence which has been committed was within one jurisdiction. The term "within the limits of the Charter of the said United Company," must be construed to mean within the limits of the Trading Charter of the East India Company. **4 W.R. P.C. 109=7 M.I.A. 72=Boul. 189.** [*R.*, 7 B.H.C. Cr. 89, F.B., 10 B.H.C. 75, 10 B. 263].

(84)—*Crim. Pro. Code (1872), s. 66—Instigation in foreign state to commit murder in British territory.*—Where a foregin subject resident in foreign territory instigated the commission of the offence of murder in British territory, which was in consequence committed therein, *held* that the instigator was not amenable to the jurisdiction of British Courts. **10 B.H.C. 356.** [*R.*, 12 B. 507; 1 P.R. 1901 Cr. =121 P.L.R. 1901].

Jurisdiction of Criminal Courts—contd.

——1.—(General)—*continued.*

(85)—*British-born subject—Penal Code, s. 426—Jurisdiction—Justice of the Peace.*—A British-born subject charged with the offence of mischief under s. 426 of the Penal Code cannot be tried by a District Magistrate who is also a Justice of the Peace, but must be committed for trial before the High Court. **7 B.H.C. Cr. 1.**

(86)—*Charge of abetment of waging war against the Queen—Offence committed in Calcutta and tried at Patna.*—Where the prisoner was charged with having, at Calcutta, abetted the waging of war against the Queen, and was tried at the Sessions Court of Patna, it was held that the Court of Session at Patna had jurisdiction to try him, because he was a member of a conspiracy, other members of which had done acts within the District of Patna in pursuance of the original concerted plan, and with reference to the common object. The Court of Patna had jurisdiction, also, because the prisoner had sent money from Calcutta to Patna by *hundis*, and until that money reached its destination, the sending continued on the part of the prisoner. **9 B.L. R. 36=17 W.R. Cr. 15.**

(87)—*Acts done partly within and partly without British territories—Offence under Penal Code.*—A subject of the British Government can be tried by the Courts of this Country for acts done by him, whether wholly within or wholly without, or partly within and partly without, British India, provided they amount to an offence under the Penal Code. **2 W.R. Cr. 60.**

(88)—*European British soldier—Jurisdiction of Military authorities—Beng. Regs. XX of 1825 and XIII of 1833—4 Geo. IV, c. 81,*—A British-born European soldier in a regiment stationed at Hazaribagh was committed by the Deputy Commissioner of that place to the High Court on a charge of the murder of a comrade. Upon an application to have the commitment quashed and the prisoner handed over to the Military authorities in accordance with Reg. XX of 1825, it was *held* that the provisions of Reg. XX of 1825, as to the course to be taken in dealing with European British subjects who have committed offences were rescinded in Hazaribagh by Reg. XIII of 1833, s. 3, as being rules for the administration of Criminal Justice within the meaning of that section. Assuming the Regulation was in force, *held* that 4 Geo. IV, c. 81 and Reg. XX of 1825, though they gave jurisdiction to the Military authorities in certain cases, did not wholly exclude the jurisdiction of the Civil, as opposed to the Military Courts, and that, inasmuch as the proceedings before the Deputy Commissioner had been taken at the request of the Military authorities and assented to by them, such proceedings were not void, and the commitment was valid. **13 B.L.R. 474=22 W.R. 20.**

Jurisdiction of Criminal Courts—contd.

——1.—(General)—*continued.*

(89)—*European British subjects—Proof of status—Question of fact.*—The question whether an accused is a European British subject is a matter of fact to be determined judicially by the Court of Sessions on the evidence, in the event of the prisoner raising that question. **10 W.R. Cr. 6.**

(90)—*Power to try European British subject—Crim. Pro. Code (Act X of 1872), ss. 71—88—Power of Indian Legislature—24 and 25 Vic., c. 67 (Indian Councils Act), ss. 22 and 42.*—A European British subject in the mofussil was convicted by a Magistrate under the provisions of Ch. VII of Act X of 1872. He appealed to the High Court on the ground (*inter alia*) that the Magistrate had no jurisdiction to try the case, inasmuch as the Governor-General in Council had not the power, under 24 and 25 Vic., c. 67, to subject a European British subject to any jurisdiction other than that of the High Court, and, therefore, the provisions of Act X of 1872, under which the prisoner had been tried, were *ultra vires* and illegal. *Held* that the jurisdiction of the High Court as given by the Letters Patent was subject to the Legislative powers of the Governor-General in Council, and therefore the Magistrate had jurisdiction to try the case. **14 B.L.R. 106 = 22 W.R. Cr. 54.**

(91)—*Trial by Jury—Commissioner of Cooch Behar.*—The Commissioner of Cooch Behar had no jurisdiction to hold a trial by jury in the Gowalpara District. **8 W.R. Cr. 53.**

(92)—*Presumption of jurisdiction—Objection to jurisdiction.*—The High Court, being a Court of superior jurisdiction, the want of jurisdiction is not to be presumed, but the contrary. Where the High Court had jurisdiction to try a prisoner for the offence committed, if a charge had been made against him by a person authorized to make that charge, and the prisoner pleaded not guilty, *held* that proof need not be given that the officer had authority to send up the charge. Objections to the jurisdiction should be made before pleading to the general issue. **1 B.L.R. O. Cr. 15 = 15 W.R. Cr. 71, note = 17 W.R. Cr. 36, note.**

(93)—*Resistance to process of Civil Court.*—The resistance to the process of a Civil Court is punishable, under the Code of Criminal Procedure, by a Court of Criminal jurisdiction. **2 B. L.R. F.B. 21 = 10 W.R. Cr. 43.** (9 W.R. Cr. 63, *overruled*).

(94)—*Obstruction to right of way—Erection of building on public way.*—Where a party residing on one side of a public lane encroaches on the lane by building, and narrows the passage at that particular spot, so far as to cause the traffic to pass over a portion of the land of the party residing on the opposite side of the lane, the remedy of the latter is, by recourse to the Criminal Court, to prevent the obstruction of the public thoroughfare. If he does not do so, he has no cause of action against the other. **11 W. R. 445** [*D.*, 21 W.R. 408].

(95)—*Suit for closing new road and opening old one.*—In a suit for closing a new road opened by the defendants through the land of the plaintiff, and for opening an old road, which had been closed by the defendant, *held* by Markby, J., that the question of opening or closing a public road belongs to the Criminal, and not the Civil, Court. **3 B.L.R. A.C. 351 = 12 W.R. 275.** [*Appr.*, 7 B.L.R. 184; *F.*, 1 A. 249; *R.*, 2 B. 370].

(96)—*Application for maintenance.—Held*, that an application under s. 488, Crim. Pro. Code, 1882, for maintenance was not a complaint of an offence, and the provisions of the s. 177 were not applicable to determine the jurisdiction of a Court competent to entertain such application. **13 P.R. 1885 Cr.**

(97)—*Offences committed during journey—Theft of box during journey—Crim. Pro. Code (1872), s. 67—See* **25 W.R. Cr. 45.**

(98)—*Offences committed during journey—Offence committed on interrupted journey—Crim. Pro. Code, Act X of 1872, s. 67, illn. (a).*—Where an offence was alleged to have been committed during a journey from Bombay to Calcutta, and was in fact committed between Bombay and Allahabad, at which latter place the complainant and the person by whom the offence was alleged to have been committed separated and proceeded to Calcutta by different trains, *held* that the Magistrate of Howrah had no jurisdiction to try the charge. To bring the matter within his jurisdiction, the journey should have been continuous from one terminus to the other without any interruption by either party. **13 B.L.R. Ap. 4; 21 W.R. Cr. 66.**

(99)—*Offence committed only partly in one District—Receiving stolen property—Property stolen in one place and received at another.*—In order to make it legal to punish at Patna a prisoner committed in Calcutta on a charge of receiving stolen property, it must be shown that the property was stolen at Patna. **5 W.R. Cr. 49.**

(100)—*Penal Code, ss. 304-A, 323—Death resulting from intentional violence.*—Where the facts found showed that death resulted from violence intentionally directed against the deceased by the accused, the Chief Court, on the revision side, altered the conviction from one under s. 304-A, Penal Code, to one under s. 323 of the same Code. **11 P.R. 1880 Cr.**

See **ABETMENT**, 16 A. 389, 19 B. 105, 24 B. 287 = 1 Bom.L.R. 678, 4 C. 10 = 3 C.L.R. 81.

See **ACQUITTAL**, 9 Bom. L.R. 156 = 5 Cr. L. J. 171.

See **ACT XVIII OF 1850**, 12 A. 115.

See **ACT XIII OF 1859**, 7 M. 354 = 1 Weir 672, 13 P.W.R. 1910 Cr.

Jurisdiction of Criminal Courts—contd.

——**1.—(General)**—*continued.*

See ACT XX OF 1863, 1 M. 55=1 Weir 755.

See ACT XIII OF 1864, s. 71, 4 M.H.C. App. 4.

See ACT XI OF 1872, 6 B. 622.

See ACT III OF 1877, s. 82, 10 C. 604.

See ACT I OF 1879, 10 C.P.L.R. Cr. 1.

See ACT XXI OF 1879, 5 O.C. 55, 8 C. 985=11 C.L.R. 241, F.B.

See ACT IV OF 1880, 14 B. 227.

See ACT XV OF 1903, ss. 7 and 8, 33 C. 1032=4 Cr. L.J. 366.

See BEN. ACT VI OF 1901, 37 C. 27.

See BOM. ACT V OF 1878, 5 Bom. L.R. 873.

See BOM. ACT VII OF 1878, 3 B. 384.

See CASTE, 1 Weir 614.

See CONSULAR COURT, Rat. Un. Cr. C. 880 =Cr. Rg. 3 of 1897.

See CONTEMPT OF COURT, 25 P.R. 1873 Cr., 7 P.R. 1874 Cr., 4 P.R. 1876 Cr., 3 P.R. 1877 Cr., 22 P.R. 1879 Cr., 30 P.R. 1882 Cr. and 8 P.R. 1875 Cr.

See CRIMINAL MISAPPROPRIATION, A.W. N. 1881, 89.

See CRIM. PRO. CODE (1898), s. 144, 8 C.W. N. 376.

See CRIM. PRO. CODE (1898), s. 145, 30 C. 155=6 C.W.N. 737, F.B., 31 C. 48=7 C.W.N. 825, F.B., 5 C.W.N. 563, 6 C.W.N. 841, 3 Bom. L.R. 416.

See CRIM. PRO. CODE (1898), s. 179, 4 O C. 376, U.B.R. (1897—1901), Vol. I, 53, 4 M.L.T. 481=9 Cr. L.J. 92, 18 P.W.R. 1908 Cr. =8 Cr. L.J. 75.

See CRIM. PRO. CODE (1898), s. 185, 5 L.B. R. 17=9 Cr. L.J. 581=2 Ind. Cas. 361.

See CRIM. PRO. CODE (1898), s. 188, 13 B. 147.

See CRIM. PRO. CODE (1898), s. 530, 13 B. 502.

See CRIM. PRO. CODE (1898), s. 531, 30 M. 94=1 M.L.T. 345=4 Cr. L.J. 500.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 10 O.C. 89=5 Cr. L.J. 394, 7 C.L.R. 516.

See ENTICING AWAY MARRIED WOMAN, 21 P.L.R. 1902.

See PENAL CODE, s. 107, 16 A. 389.

See PENAL CODE, s. 228, 6 C.L.J. 713= 6 Cr. L.J. 405.

See PENAL CODE, ss. 392, 411, A.W.N. 1906, 52=3 A.L.J. 146=3 Cr. L.J. 247=28 A. 372.

See PENAL CODE, ss. 410, 411, 5 B. 338.

See REVISION, 13 C.W.N. 753 =10 Cr. L.J. 190=2 Ind. Cas. 846=36 C. 643.

Jurisdiction of Criminal Courts—contd.

——**1.—(General)**—*concluded.*

See SANCTION TO PROSECUTE, 4 N.L.R. 140, 1 L.B.R, 47, 9 C.P.L.R. Cr. 27.

See SECURITY TO KEEP THE PEACE, 10 O.C. 287=6 Cr. L.J. 302.

See THEFT, 10 B. 186.

——**2.—(Jurisdiction over Europeans).**

See EUROPEAN BRITISH SUBJECT.

(1)—*Crim. Pro. Code (1872), ss. 74, 83—European British subject—Procedure.*—Where a Magistrate tried an accused person as being other than a European British subject, notwithstanding the fact that the accused raised the plea, and convicted him, without deciding the question, and sentenced him to a punishment which, if the accused was a European British subject, the Magistrate had no right to award, the High Court remanded the case to the Magistrate, in order that he might decide, in the manner prescribed by s. 83, Crim. Pro. Code, whether the accused was or was not a European British subject. On its being found that the accused was a European British subject, *held*, that, as the Magistrate had tried the case without jurisdiction, the High Court could not proceed with the appeal on its merits, and to reduce the sentence, if the offence be established, to one which the Magistrate was competent to pass under s. 74 of the Code. **4 A. 141.** [*D.*, 2 A.L.J. 20=27 A. 397=A.W.N. 1905, 5=2 Cr. L.J. 17].

(2)—*Crim. Pro. Code (1882), ss. 4, 453, 454—European British subject—Waiver-Effect.*—The definition in s. 4 must be read with reference to the "special proceedings" against European British subjects contemplated in Ch. XXXIII, and not with reference to proceedings generally against Europeans, including proceedings in which they waive their rights under that Chapter. If, therefore, in any particular case, the special rules contained in Ch. XXXIII cease to have any application, the definition of "High Court" in s. 4 (i), ceases also to have any application to such a case. The definition in the latter part of s. 4 (i) then prevails; and the case falls within the category of "other cases," to which that part of the definition applies. If the case is one tried in the Province of Sind, the High Court, in reference to the proceedings in it, would be the Sadar Court in Sind. Where a European British subject waives his right to be dealt with as such by the Magistrate before whom he is tried, he shall not assert it in any subsequent stage of the same case. He thereby loses all the benefits of the special procedure provided for him, including the right to have the proceedings in his case reviewed by a Presidency High Court, if another Court exercises the highest revisional jurisdiction under the Code, in cases other than those against European British subjects, in the place where he is tried. **12 B. 561.** [*R.*, 1 P.R. 1908 Cr.=4 P.W.R. 1908 Cr.=7 Cr. L.J. 274=136 P.L.R. 1908].

Jurisdiction of Criminal Courts—contd.

——2.—(Jurisdiction over Europeans)—*cld.*

(3)—*Act XXIV of 1859 (Police), s. 48—Offence by a European British subject—Jurisdiction.*—The Cantonment Magistrate has no jurisdiction to try a European British subject for an offence under s. 48 of Act XXIV of 1859. **5 M.H.C. App. 25.**

(4)—*Letters Patent, 1865, (Madras), s. 21—European British subjects—Power of High Court to try them for offences committed in Mysore.*—By the operation of s. 21 of the Letters Patent constituting the High Court, the provisions in the Charter of the late Supreme Court still govern the criminal jurisdiction of the High Court. The Court is empowered to try British subjects for offences committed within the factories subordinate to Fort St. George or within territories subject to, or dependent upon, the Government of Madras, "or within any of the dominions of the Native Princes of India in alliance with the said Government." Mysore is ths territory of a Native Prince in alliance with the Madras Government, and, consequently, the High Court has jurisdiction to try European British subjects for criminal offences committed within such territory. **1 Weir 4=2 M.H.C. 444.** [*R.*, 6 M.H.C. App. III, 12 M. 39].

(5)—*British-born subject—Prcof.*—Where a prisoner pleaded that he was a British-born subject and that he ought, therefore, to be tried before the High Court, and where the evidence showed that the prisoner was the legitimate grandson of a person said to have been a Serjeant in the service of the King or of the East India Company and there was no sufficient evidence to establish a valid marriage between that grandfather and a Native Christian woman through whom the prisoner traced his descent, and there were also doubts about the nationality of the said grandfather, *held*, that there was no evidence to show that the prisoner was a British-born subject. **2 Weir 11=6 M.H.C. 7.**

(6)—*Crim. Pro. Code (1898), ss. 9 and 215—Jurisdiction of Courts of Sessions in British Beloochistan—European British subject—Chief Court's jurisdiction—Reg. VIII of 1896.*—The Courts of Sessions in Beloochistan have jurisdiction to try European British subjects committed to them by competent Courts. These Courts having been appointed by the Governor-General in Council under s. 3 of the Regulation, their jurisdiction is not affected by the fact that they have not been appointed by the Local Government under s. 9 of the Code. The Political Agent and the Cantonment Magistrate, Quetta, commit to the Chief Court, while the Extra Assistant Commissioner and Assistant Political Agent, Quetta, commit to the Sessions Court. So, a commitment of a European British subject to the Court of Sessions by the Extra Assistant Commissioner, Quetta, cannot be quashed under s. 215 of the Code. **5 P.R. 1907 Cr.=6 Cr. L.J. 108=41 P.L.R. 1907=26 P.W.R. 1907.**

Jurisdiction of Criminal Courts—cld.

—— 3.—(Jurisdiction over Natives).

(1)—*Crim. Pro. Code (1882), s. 188—Native Indian subject of Her Majesty committing offences in Native State—Jurisdiction of British Courts.*—A person born in the Baroda State of a father who was presumably a subject of His Highness the Gaikwar, since the father was resident in the Baroda State and was not shown to have been born outside that State, is not a Native Indian subject of Her Majesty, although both the father and the son have occasionally lived in British Territory within the meaning of s. 188, Crim. Pro. Code. But if he is a servant of the Queen, because of his employment in the British Government, he is, under s. 4, I.P.C., subject to punishment under the I.P.C for any offence committed "within the dominions of any State in alliance with the Queen." But it does not follow that the Magistrate of the place, in whose jurisdiction he is found, has jurisdiction under s. 188, Crim. Pro. Code, to try him for the offence committed in a foreign State. The term "Native Indian subject of Her Majesty" in s. 188, Crim. Pro. Code, must be construed strictly, and cannot be held to include "servants of Her Majesty." **16 B. 178.**

Jurisdiction of High Court.

See HIGH COURT, JURISDICTION OF.

Jurisdiction of Magistrate.

See MAGISTRATE, JURISDICTION OF.

Jurisdiction of Magistrates Act.

See ACT VII OF 1853.

Jurisdiction of Sessions Judge.

See SESSIONS JUDGE, JURISDICTION OF.

Jury.

See ASSESSORS.

See CHARGE TO JURY.

See CRIM. PRO. CODE (1898), ss. 274 to 332.

See JUDGE AND JURY.

See NUISANCE.

See VERDICT OF JURY.

(1)—*Crim. Pro. Code (1898), ss. 274, 451 (6)—Trial with a jury not properly constituted in accordance with Government Notification, validity of.*—Where the Local Government has issued a notification that in trials by jury, the jury should consist of five persons, a District Magistrate, trying a person with a jury consisting of seven persons under an old notification, is acting improperly, and the trial is a nullity. **26 A. 211=A.W.N. 1904, 1.**

(2)—*Crim. Pro. Code (1882), ss. 306, 307 and 536—Trial by Jury of offence triable with assessors—Judge disagreeing with Jury's verdict—Proper proceedings.*—Where the accused charged with an offence triable with the aid of assessors was tried by a Jury and was acquitted and the

Jury—continued.

Sessions Judge who disagreed with the jury treated the verdict of the jury, on learning that the case was triable with the aid of assessors, as the opinion of assessors and recorded a judgment convicting the accused, *held*, that the conviction was bad, as the trial by the jury was not invalid and the trial was complete when the jury returned their verdict. The Judge was bound to act either under s. 306 or under s. 307, that is, he was bound either to give judgment in accordance with the verdict, or to submit the case for orders of the High Court if he disagreed with the verdict, and was clearly of opinion that the reference was necessary for the ends of justice. **25 C. 555.** [*R.*, 23 B. 696, 2 Weir 453=26 M. 243].

(3)—*Crim. Pro. Code (1872), ss. 233 and 263—Trial by jury of charges, some of them triable by jury and others with the aid of assessors—Verdict of acquittal—Duty of Judge.*—Where charges, some of them triable by jury and others with the aid of assessors, are tried by a jury, and the jury return, by a majority, a verdict of "not guilty" on all charges, the Judge is not competent to treat the trial so far as regards the latter charges, as having been held with the aid of assessors, and to convict the accused concurring with the minority. He must accept the verdict of the jury as one of acquittal and then pass orders in accordance with s. 263. **4 C.L.R. 405.** [*F.*, 25 C. 555; *R.*, 23 B. 696, 2 Weir 453=26 M 243].

(4)—*Crim. Pro. Code (1898), s. 307—Verdict of jury as assessors—Judge differing from the verdict.*—The accused was tried with the aid of a jury, on four charges. On the first, second and the fourth charge, the Judge agreed with the jury and acquitted the accused. On the third charge, however, which referred to an offence not triable by a jury, the Judge invited the verdict of the jury as jurors instead of assessors, and disagreeing with their verdict, referred the matter for the orders of the High Court under s. 307, Crim. Pro. Code. *Held*, that though the procedure adopted by the Sessions Judge was most irregular, the trial must be accepted as a legal one, and that the case was one which could be submitted to the High Court under s. 307. **23 B. 696=1 Bom. L.R. 114.** [*R.*, 3 Bom. L.R. 278, 10 Bom. L.R. 632].

(5)—*Crim. Pro. Code (1898), ss. 303, 307—Differing from the verdict of jury, when allowable.*—The mere fact that, upon consideration of all the evidence before the Court, a Judge would have arrived at a conclusion different from that arrived at by the jury, would not justify the High Court in interfering with their unanimous verdict. **2 A.L.J. 475=2 Cr. L.J. 357.** [*Not F.*, 9 C.L.J. 638=36 C. 629=13 C. W.N. 757].

(6)—*Crim. Pro. Code (1882), s. 303—Questions to jury—Purpose—Practice.*—In a trial by jury where the verdict is general and has been delivered without ambiguity or incompleteness, and there is no reason to suspect a misconception of the doctrines of law, the Sessions Judge has no right to put questions to the jury with a view to point out on what points of evidence their opinions are at variance with his own. And the answers given to such questions cannot be taken into consideration. Even where special verdicts are required, such verdicts deal with the facts to be found and not with the evidence adduced to prove them. **Rat. Un. Cr. C. 442.**

(7)—*Crim. Pro. Code (1898), s. 303—Questioning the jury when allowable.*—Where the verdict of the jury is quite free from ambiguity, the Sessions Judge would not be acting legally under the provisions of s. 303 of the Code, in asking questions of the jury, and the High Court in this case declined to consider their answers. **2 A.L.J. 475=2 Cr. L.J. 357.**

(8)—*Practice—Judge—Jury—Taking evidence in absence of jury--Reference to High Court.*—It is not competent to a Sessions Judge to examine witnesses in a jury-trial after the jury has gone and in the absence of the accused, and then to act on the evidence in determining whether or not he should differ from the jury and refer the matter to the High Court. **7 Bom. L.R. 979=3 Cr. L.J. 42.**

(9)—*Crim. Pro. Code (1882), ss. 297, 301—Trial by jury—Necessity for summing up by Judge.*—In cases tried by jury, the Crim. Pro. Code does not contemplate the reception of a verdict from the jury without their having the assistance of a summing up by the Sessions Judge, since a careful summing up may often change the hasty and superficial impression of a jury, and the parties are entitled to this service. **Rat. Un. Cr. C. 288=Cr. Rg. 27 of 1886.**

(10)—*Penal Code, ss. 147, 149—Charge of rioting—Jury, power of, to decide physical capability of accused to take part in the riot.*—Where an accused person charged with rioting alleged that he was incapable of taking part in a riot, *held* that the verdict of the jury after seeing the physical condition of the accused is to be preferred to the testimony of witnesses. The jury was competent to decide whether a person in physical condition was capable of taking part in a riot and could have had the courage to be at a place where a riot took place. **6 C.L.J. 253=6 Cr. L.J. 359.**

(11)—*Jurymen—Disqualification.*—A clerk in the office of the District Magistrate is not disqualified on that account from sitting on a jury. **7 C. 42=8 C.L.R. 273.**

(12)—*High Court—Crim. Pro. Code (1875), ss. 32 to 37—Trial by jury—Hindu prisoner.*—The right conferred on a person not being a European British subject, to be tried by a jury, the majority of whom shall not be Europeans or Americans or both, only arises in the event of a British subject, who is accused jointly with him, choosing to avail himself of the privilege conferred on him by s. 35. In other cases, a person, not being a European British subject, has not such a right. **1 B. 232.**

Jury—continued.

(13)—*Crim. Pro. Code (1898), s. 332—Gentlemen on the jury list, duty of, to intimate change of address—Service of summons upon juror.*—The law does not contemplate the imposition of any obligation on persons on the jury list, either to notify their change of address to the Court before leaving their usual place of residence, or to make any arrangement for the acceptance of notice and for the giving of information to the Court that he would be unable to attend. Where summons was served by affixing the duplicate on the door of the dwelling house of a juror, who, at the time, was living away from home, and had no knowledge of such service, *held* that he was not liable for fine for non-attendance. **6 C.W.N. 887.**

(14)—*Crim. Pro. Code (1882). ss. 423-D, 507 and 537—Statements inadmissible—New trial—Appeal.*—Where inadmissible statements contained in the deposition of a witness obtained on commission were allowed to go to the jury, the High Court, on the appeal of the prisoner against the verdict of conviction, upheld the verdict. *Held*, that the High Court has discretion either to determine the appeal on the evidence or to order a new trial. **Cr. Rg. 11 of 1895.**

(15)—*Crim. Pro. Code (Act V of 1898), ss. 274, 451 (6)—Number of jurors—Government Notification.*—Where a District Magistrate tried a person for an offence under s. 304-A of the Penal Code, with a jury consisting of seven persons, while a Government Notification required all Sessions cases to be tried with a jury of five persons, *held* that the trial was by a Court without jurisdiction. **A.W.N. 1904, 1.**

(16)—*Withdrawal of case from jury—Improper acquittal.*—The Sessions Judge has no right to pronounce his own judgment on the credibility of the evidence, and to withdraw the consideration of the due weight to be given to the evidence to the jury. **16 W.R. Cr. 20.** [*R.*, 10 A. 414].

(17)—*Trial by jury or assessors—Deputy Commissioner of Non-Regulation provinces.*—*Held*, with reference to the provisions of ss. 445-A and 445-B of Act VIII of 1869, that the chief executive officer of a Non-Regulation province was bound to proceed under the provisions of Act XXV of 1861 in the trial of offences punishable by a Court of Session, and that he must try the prisoners with a jury or assessors, even if one of the counts of the charge against the prisoners be in respect of an offence not triable by a Court of Session. **13 W.R. Cr. 59.**

(18)—*Case tried by jury to which trial by jury had not been extended—Invalidity—Appeal.* Where a case, to which the Government had not extended trial by jury, was tried by jury, the trial was not considered invalid on that ground: but the Judge's charge may be treated as his judgment in the case, and the prisoner's appeal may be heard on the facts. **24 W.R. Cr. 30.**

Jury—continued.

(19)—*Trial by jury of case triable by assessors—Adultery—Crim. Pro. Code (1872), s. 233.*—The fact that a charge under the Penal Code, s. 497, was triable with assessors and not by a jury, would not affect the legality of a conviction of adultery before a jury. **24 W.R. Cr. 18.**

(20)—*Appointment of jury—Crim. Pro. Code (1872), s. 523—Discretion of Magistrate.*—A Magistrate under Act X of 1872, s. 523, should exercise his own independent discretion in selecting the members of the jury. **21 W.R. Cr. 43.**

(21)—*Jury improperly constituted—Crim. Pro. Code (1861), s. 310.*—A jury appointed under s. 310, Crim. Pro. Code, is not properly constituted when only the foreman is appointed by the Magistrate and the rest of the members by the parties. **7 B.L.R. Ap. 57; 16 W.R. Cr. 23.**

(22)—*Jury improperly constituted—Crim. Pro. Code (1872), s. 523.*—In a case in which a party, on whom an order had been made for the abatement of a nuisance, applied, under s. 523, Crim. Pro. Code, 1872, for the appointment of a jury, *held* that it was not proper for the Magistrate to appoint the complainant and two of his witnesses to be, the former a foreman, and the latter two of the members of the jury. **22 W.R. Cr. 47.**

(23)—*Decision of jury—Effect of—Finality of decision so far as Magistrate is concerned.*—Where a jury is appointed, under s. 310 of the Code of Criminal Procedure, to try whether an order passed by a Magistrate for the removal of a nuisance or obstruction is reasonable or not, the Magistrate is bound under that section to be guided by the decision of the jury. **12 W.R. Cr. 28.**

(24)—*Award delivered after time fixed, effect of—Crim. Pro. Code (Act VIII of 1869), s. 310—Act X of 1872, s. 523.*—A Magistrate cannot receive and enforce the award of a jury under s. 310 of the Crim. Pro. Code, 1861, delivered long after the day fixed for the purpose. **7 B.L.R. Ap. 57; 16 W.R. Cr. 23.**

(25)—*Fixing time for award of jury—Crim. Pro. Code (1861), s. 310.*—In referring a case regarding a nuisance to arbitrators under s. 310, Code of Criminal Procedure, 1861, a Magistrate should fix a time within which the arbitrators are to send in their award; and this must be done whenever from any cause the constitution of the jurors is changed and a fresh juror is appointed. **14 W.R. Cr. 69.**

(26)—*Report of majority of jury—Crim. Pro. Code (1872), s. 523—Duty of Magistrate.*—Where, under s. 523 of the Criminal Pro. Code, a Magistrate receives the report of a jury, he is bound to act according to the recommendation of the majority. When a number of jurors do not agree with one another in every respect, but all agree that a certain order passed by a Magistrate, taken as a whole, is not necessary, such jurors should be counted together as objecting to the order. **25 W.R. Cr. 31.**

Jury—continued.

(27)—*Omission to swear jury in Sessions case. —Quære.*—Whether the omission of a jury in a Sessions case to be sworn, is one which would be covered by s. 13 of the Oaths Act, 1873. **20 W.R. Cr. 19.**

(28)—*Objection to Juror—Crim. Pro. Code (1861), s. 344, cl. (3).*—The allowing of an objection to a juror coming within the third clause of s. 344 of the Code of Criminal Procedure, 1861, is in the discretion of the Court; and although the Judge is not bound to admit the objection, yet he should not treat it as frivolous. **16 W.R. Cr. 66.**

(29)—*Qualification of Juror—Selection of Jury.*—In forming a jury, a Sessions Judge should endeavour to obtain persons of an independent position in life, and men of judgment and experience. **23 W.R. Cr. 35.**

(30)—*Special Jury—Power of Clerk of Crown —Drawing up list of special jurors.*—The drawing up of the list of special jurors is entirely in the discretion of the Clerk of the Crown, and the Court will not interfere. **1 Ind. Jur. N. S. 106.**

(31)—*Crim. Pro. Code (Act XXV of 1861)—Trial by jury—Swearing if necessary.*—It is not necessary, in a trial by jury under the Crim. Pro. Code, that the jurors should be sworn. **3 B.H.C. 56.** [*R.*, 16 B. 359].

(32)—*Question for jury—Crim. Pro. Code (1872), s. 523—Procedure.*—Where a Magistrate directed a person either to remove an obstruction to a path leading to a road or to show cause why such order should not be enforced, and in which subsequently the Magistrate, at the request of the accused, appointed a jury under s. 523, Crim. Pro. Code, *held* that what the jury should have been asked to try was the question whether the first order of the Magistrate was reasonable and proper, and for that purpose to consider whether there was a *bona fide* question between the parties as to the right of way over this particular piece of land. **21 W.R. Cr. 64.** [*F.*, 5 C. 875].

(33)—*Appointment of second jury—Crim. Pro. Code (1872), s. 523.*—A jury appointed by a Magistrate under s. 523, Crim. Pro. Code, had thoroughly considered the matter submitted to them. The individual members of the jury had given in their opinion to the foreman to report to the Magistrate. The only delay occurred in the foreman's making the report. *Held* that the Magistrate could not appoint a second jury to consider the matter afresh, but ought to have acted on the report of the first jury which had been given in before he made his final order in the matter. **21 W. R. Cr. 54.**

(34)—*Supreme Court, Bombay—Practice—Jury—Crimes and misdemeanours—High Court —Letters Patent, 1862, cl. 38—Penal Code, Act XLV of 1860, s. 467.*—By cl. 38 of the Letters Patent of 1862, the practice in criminal proceedings observed by the Supreme Court

Jury—concluded.

should be followed by the High Court in its Original Criminal Jurisdiction. Such practice, in cases of trial by jury, was to detain the jurors together for the night in Court in cases of felonies, and to send them home in cases of misdemeanours. *Held*, in a trial for an offence under s. 467 of the Penal Code, where the jury were allowed to go to their homes before the close of the trial, that there was no irregularity since under the classification of offences before the operation of the Penal Code, the offence defined in s. 467 of the said Code was only a misdemeanour. The exercise of discretion by the lower Court is not reviewable under cl. 26 of the Letters Patent when there is no error of law. **3 B.H.C. Cr. 20.** [*R.*, 10 B.H.C. 75].

See ABETMENT, 1 W.R. Cr. Letters, 2.

—Recording evidence in the absence of assessors—*See* ASSESSORS, 15 A. 136.

—Offence triable both by jury and assessors —Proper procedure—*See* CRIM. PRO. CODE (1898), ss. 269 (3) and 309, 2 Weir 334.

See CRIM. PRO. CODE (1898), ss. 269 (3), 309, 537, 26 M. 598=2 Weir 333.

See CRIM. PRO. CODE (1898), ss. 269, 403, 536, 24 M. 641=2 Weir 458.

See CRIM. PRO. CODE (1898), ss. 276, 279, 326, 7 C.W.N. 188.

—Duty of Judge to explain the law to jury— Omission, whether amounts to misdirection— *See* CRIM. PRO. CODE (1898), ss. 297, 298, 29 C. 379=6 C.W.N. 292.

—Grounds of reference of verdict of jury— *See* CRIM. PRO. CODE (1898), s. 307, 7 C.W.N. 345.

—Trial by jury instead of with the aid of assessors—*See* CRIM. PRO. CODE (1898), ss. 418, 439, 536, 25 B. 680=3 Bom. L.R. 279, F.B.

See CRIM. PRO. CODE (1898), s. 423, 2 Weir 499, 2 Weir 384=2 Weir 493.

—Right of European British subject to be tried by a jury—*See* CRIM. PRO. CODE (1898), s. 451 (1), 24 A. 511=A.W.N. 1902, 142.

See CRIM. PRO. CODE (1898), ss. 521, 526, 10 C.L.R. 193.

See CRIM. PRO. CODE (1898), ss. 536, 537, 26 M. 243, note.

—Effect of not claiming.—*See* EUROPEAN BRITISH SUBJECT, 27 A. 397=2 A.L.J. 20 =A.W.N. 1905, 5=2 Cr. L.J. 7.

See EVIDENCE ACT, s. 30, Rat. Un. Cr. C. 436.

See EVIDENCE ACT, s. 167, 19 B. 749.

See PLEA OF GUILTY, 2 Weir 335.

See TRANSFER OF CRIMINAL CASES, 25 C. 727=2 C.W.N. 65.

Jury under Nuisance Sections of Crim. Pro. Code.

See CRIM. PRO. CODE (1898), ss. 133—138.

See NUISANCE.

(1)—*Crim. Pro. Code (1898), ss. 133 and 138—Obstruction to public way*—Bona fide *question of title—Reference to jury—Decision on mere inspection of locality—Validity—Nomination of jury—Duty of Magistrate.*—When the person called upon under s. 133, Crim. Pro. Code, 1898, to show cause why an obstruction should not be removed from a public way denies that it is a public way, it is for the Magistrate to determine whether there is a *bona fide* objection, and he cannot in spite of the objection (unless he determines that it is not *bona fide*) refer the matter to a jury. The jury is not competent to decide whether the way obstructed is or is not a public way. They can merely find whether the Magistrate's order is reasonable and proper, as originally made, when the matter is properly submitted to them. [*R.*, 2 P.R. 1903 Cr.] A jury cannot decide a matter referred to them under s. 138 without taking evidence and merely on inspection of the locality. They are bound to hear the parties and such witnesses as they may desire to have heard. [*F.*, 6 C.W.N. 886]. A Magistrate should use his own independent discretion in the nomination of the foreman and one half of the remaining members of the jury. **26 C. 869.**

(2)—*Crim. Pro. Code (1882), ss. 133, 135, 138, 139—Appointment of jury to consider the reasonableness of order under s. 133—Verdict of majority—Duty of Magistrate.*—Where a person, against whom an order under s. 133 was made, applied to the Magistrate to appoint a jury, and the majority of the jury, after examining the spot, found the order of the Magistrate to abate the nuisance was reasonable, but the Magistrate, however, discharged his order, *held*, that that portion of the order discharging his order under s. 133 should be set aside, and the questions should be considered again by a fresh jury. If the jury appointed under s. 138, required evidence, it should be produced before them. It is for the Magistrate to show by evidence that the obstruction referred to is an unlawful obstruction of a public way or in a public place. **18 A. 158.** [*R.*, 5 A.L.J. 488=A.W.N. 1908, 151=30 A. 364=8 Cr. L.J. 1].

(3)—*Crim. Pro. Code (1898), ss. 133, 135—Questions of title could not be raised after verdict of jury.*—Where a person called upon to show cause, under s. 133, why he should not remove an unlawful obstruction from a road, alleged to be a public road, put in a petition denying that there was ever a road as asserted, and also asked for the appointment of a jury, *held*, that he was bound by the verdict of the jury appointed, and should not raise a question of title subsequently. **22 A. 267.**

(4)—*Crim. Pro. Code (1882), ss. 133, 138 and 139—Jury—One of the jurors refusing to act.*—Where one of five jurors appointed under s. 138, had not acted at all on the jury, and, of the

Jury under Nuisance Sections of Crim. Pro. Code—(concluded).

remainder, two were in favour of the temporary order under s. 133 being maintained, and the other two against it, the magistrate would be wrong in declining to pass an order under s. 139 of the Code, but should summon a fresh jury and commence the enquiry afresh. **11 C. 84.**

(5)—*Crim. Pro. Code (1882), s. 133, Proceedings under—Majority of jury.*—The majority of the jury contemplated by s. 139 of the Code is a majority of the jurors appointed, and not merely the majority of the jurors, who attended the meetings held. The Magistrate cannot act upon the report submitted by such majority, but he can pass such order as he may think fit under s. 141 of the Code. **13 C. 275.**

(6)—*Crim. Pro. Code (1882), s. 138—Nomination of jury—Delegation.*—Under s. 138 of the Crim. Pro. Code, the Magistrate cannot delegate the duty of nominating the jury to another jury. **Rat. Un. Cr. C. 460=Cr. Rg. 17 of 1889.**

(7)—*Crim. Pro. Code (1898), ss. 133, 138, 140 and 141—Jury failing to return the verdict—Appointment of a fresh jury—Magistrate's discretion.*—Where, in a proceeding under s. 133, Crim. Pro. Code, the jury, appointed under s. 138, failing to return the verdict on account of certain causes, the petitioner appeared before the Magistrate and prayed for the appointment of a fresh jury, but the Magistrate refused the prayer, and, proceeding under s. 141, Crim. Pro. Code, made his original order absolute, *held*, that the Magistrate, in so doing, did not exercise a proper discretion. He ought to have, in the exercise of his discretion, appointed a fresh jury in compliance with the prayer of the petitioner. **12 C.W.N. 1047 =8 Cr. L.J. 233.**

—Reference to jury by Magistrate, propriety of—*See* CRIM. PRO. CODE (1898), s. 133, 31 C. 979=9 C.W.N. 72.

—Verdict of jury if can be questioned in Civil Court—*See* JURISDICTION OF CIVIL COURTS, 19 W.R. 345.

Justice of the Peace.

—*Jurisdiction—Magistrate and Justice of the Peace--British-born subject—Imprisonment in default of fine.*—A Magistrate, being also a Justice of the Peace, can try a British-born subject only under 53 Geo. III. C. 155, s. 105 and Act VII of 1853, but under neither of them has he power to award imprisonment in default of payment of fine. **6 B.H.C. Cr. 14.**

See ACT XXI OF 1879, 12 M. 39=1 Weir 10, 26 M. 607.

See JUDICIAL COMMISSIONER OF MYSORE, 5 M. 33=1 Weir 7.

Jute Warehouse and Fire Brigade Act.

See BEN. ACT II OF 1872.

Juvenile Offender.

See ACT VI OF 1864.

See ACT V OF 1876.

See ACT VIII OF 1897.

See CRIM. PRO. CODE (1898), s. 399.

See SENTENCE.

See WHIPPING.

(1)—*Crim. Pro. Code (1872), s. 318—Sentence of imprisonment—Confinement in Reformatory instead—Term.*--A Magistrate, finding a juvenile offender guilty of theft in a building, sentenced him to three months' rigorous imprisonment and ordered that, in place of this sentence, the offender should be confined in a Reformatory for fourteen months. *Held* that the Magistrate, having once passed a sentence of imprisonment for a particular term, could not direct the offender should be confined in a Reformatory for a longer term. **Rat. Un. Cr. C. 109=Cr. Rg. 8—6—1876.** [*R.*, Rat. Un. Cr. C. 180].

(2)—*Meaning of term--Crim. Pro. Code (1898) s. 399—Act VI of 1864 (Whipping) Act V of (Reformatory Schools), s. 7.*—A juvenile ...ced by ... is a person under the age of 16 as d...

Juvenile Offender—concluded.

s. 399, Crim. Pro. Code, and s. 7 of the Reformatory Schools Act, and hence a sentence whipping purporting to have been passed (8 offender aged 19 years under s. 5 of th ping Act is illegal. **L.B.R. (1893—1900)** B.H.C. Cr. 9 and 6 A. 482, *F.*). ...atory decision by Magistrate as to—... ...atory Schools Act, ss. 7, 10, 11.—An order ... s. 7, Reformatory Schools Act, as to its legality, open to question. Under s. 10, it is open to the District Magistrate to bring the case to the Reformatory ...ocal Government, which has notice of ...s. 11, to order the discharge of any ac... years. **L.B.R. (1893—1900), 255.**

(3)—*Age of accused sent to a ... ...* ...er s. 7, Reformaage ... accused being a ...

—Fine, whether an appropriate sentence for ... —*See* GRIEVOUS HURT, 1 L.B.R. 221.

See SECURITY FOR GOOD BEHAVIOUR, 4 L.B.R. 12=6 Cr. L.J. 123.

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